UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) April 28, 2005 (April 22, 2005)

THE NASDAQ STOCK MARKET, INC.
(Exact name of registrant as specified in its charter)

Delaware	**000-32651**	**52-1165937**
(State or Other Jurisdiction of Incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

One Liberty Plaza
New York, New York 10006
(Address of Principal Executive Offices)

Registrant's telephone number, including area code (212) 401-8700

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01. Entry into a Material Definitive Agreement

On April 22, 2005, The Nasdaq Stock Market, Inc. (the "Company") entered into a definitive agreement and plan of merger (the "Merger Agreement") with Instinet Group Incorporated ("Instinet") and Norway Acquisition Corp. ("Merger Sub"), a wholly owned subsidiary of the Company, under which the Company will acquire all outstanding shares of Instinet for an aggregate purchase price of approximately $1.878 billion in cash, comprised of approximately $934.5 million from the Company, approximately $207.5 million from Iceland Acquisition Corp. ("Iceland Acquisition Corp."), an affiliate of Silver Lake Partners II, L.P. ("SLP"), a private equity fund, pursuant to the sale of Instinet's institutional brokerage business (as described below), and the balance from Instinet's available cash, including approximately $174 million from the sale of Instinet's Lynch, Jones & Ryan, Inc. subsidiary ("LJR"). The Merger Agreement provides for Merger Sub to merge (the "Merger") with and into Instinet. As a result of the Merger, Instinet would become a wholly owned subsidiary of the Company. Completion of the Merger is subject to the completion of Instinet's sale of LJR, and customary closing conditions, including the approval of the Merger by Instinet's shareholders, as well as regulatory approvals, including approval of the Securities and Exchange Commission and approval under the Hart-Scott Rodino Antitrust Improvements Act of 1976. The Merger is expected to be completed during the fourth quarter of 2005 or the first quarter of 2006.

The Company has concurrently entered into a definitive agreement (the "Transaction Agreement") to sell Instinet's institutional brokerage business to Iceland Acquisition Corp., an affiliate of SLP, immediately upon the closing of the Merger, for a purchase price of $207.5 million, subject to certain adjustments. The proposed sale is subject to terms and conditions set forth in the Transaction Agreement. These include, among other things, the closing of the Merger, and closing conditions that are similar to the closing conditions contained in the Merger Agreement, including approval under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and obtaining other required regulatory approvals in respect of the sale of the institutional brokerage business to Iceland Acquisition Corp.

After the Merger and the sale of Instinet's institutional brokerage division, the Company will own Inet ECN.

The foregoing descriptions of the Merger Agreement and the Transaction Agreement do not purport to be complete and are qualified in their entirety by reference to the Merger Agreement and the Transaction Agreement, copies of which are attached as Exhibit 2.1 and Exhibit 2.2, respectively, to this Current Report on Form 8-K and are incorporated by reference into this Item 1.01.

In connection with the execution of the Merger Agreement, Reuters C LLC, Reuters Group PLC and Reuters Group Overseas Holdings (UK) Limited (collectively, the "Reuters Entities") and the Company entered into a Support Agreement, dated as of April 22, 2005 (the "Support Agreement"), pursuant to which, among other things, the Reuters Entities agreed to vote in favor of the Merger and agreed not to dispose of any of their common stock of Instinet prior to the consummation of the Merger. The Support Agreement will terminate upon the earliest of the (a) termination of the Merger

Agreement, (b) effective time of the Merger and (c) effectiveness of an amendment to or a waiver under the Merger Agreement that is materially adverse to the Reuters Entities. The foregoing description of the Support Agreement does not purport to be complete and is qualified in its entirety by reference to the Support Agreement, a copy of which is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated by reference into this Item 1.01.

The Company intends to finance the Merger Consideration from a combination of cash on hand, cash required by the Merger Agreement to be on hand at Instinet at the closing of the Merger, including the proceeds from the sale of Instinet's institutional brokerage business, proceeds from the sale of LJR, and certain financing arrangements entered into in connection with the Merger Agreement as described below.

On April 22, 2005, the Company entered into a Securities Purchase Agreement (the "Securities Purchase Agreement") with Norway Acquisition SPV, LLC ("Norway SPV"), providing for the sale by the Company to Norway SPV of $205 million aggregate principal amount of 3.75% Series A Convertible Notes due October 2012 (the "Series A Notes") and warrants (the "Series A Warrants") to purchase 2,209,052 shares of the Company's common stock (the "Common Stock") at $14.50 per share. The Series A Notes will be convertible into Common Stock, subject to certain adjustments and conditions at a purchase price of $14.50 per share, which would equal 14,137,931 shares. The Series A Notes and the Series A Warrants purchased by Norway SPV are indirectly owned by the H&F Entities (as defined below) and the SLP Entities (as defined below). The Series A Notes are governed by the terms of the Indenture (as defined below). The Company will receive proceeds of $205.0 million from the sale of the Series A Notes and Series A Warrants less fees and other expenses. The foregoing description of the Securities Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the Securities Purchase Agreement, a copy of which is attached as Exhibit 4.1 to this Current Report on Form 8-K and is incorporated by reference into this Item 1.01.

To fund its purchase of the Series A Notes and Series A Warrants from the Company, Norway SPV borrowed $205,000,000 aggregate principal amount pursuant to a Secured Term Loan Agreement, dated as of April 22, 2005 (the "Loan Agreement"), with Norway Holdings SPV, LLC, certain lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent. The equity interests of Norway Holdings SPV, LLC are indirectly owned by the SLP Entities and the H&F Entities. Until (i) the completion of the Merger or (ii) the later of (x) the termination of the Merger Agreement and (y) October 22, 2005, the Company will maintain all proceeds from the sale of the Series A Notes and Series A Warrants in a deposit and/or securities account subject to a Blocked Account Control and Security Agreement (the "Security Agreement"), dated as of April 22, 2005, by and among the Company, JPMorgan Chase Bank, N.A., as administrative agent, and JPMorgan Chase Bank, as depositary. In connection with the Loan Agreement, the Company entered into a Guarantee Agreement (the "Guarantee") with Norway SPV and JPMorgan Chase Bank, N.A., as administrative agent, pursuant to which the Company guaranteed the $205,000,000 aggregate principal amount borrowed pursuant to the Loan Agreement. The foregoing descriptions of the Guarantee and the Security Agreement do not purport to be complete and are qualified in their entirety by reference to the

Guarantee and the Security Agreement, copies of which are attached as Exhibits 99.2 and 99.3, respectively, to this Current Report on Form 8-K and are incorporated by reference into this Item 1.01.

On April 22, 2005, the Company also entered into a Note Amendment Agreement (the "Note Amendment Agreement") with Hellman & Friedman Capital Partners IV, L.P., H&F Executive Fund IV, L.P., H&F International Partners IV-A, L.P., and H&F International Partners IV-B, L.P (collectively, the "H&F Entities"), providing for the exchange by the Company of its $240 million aggregate principal amount of 4.0% Convertible Subordinated Notes due 2006 (the "Old Notes") for $240 million aggregate principal amount of 3.75% Series B Convertible Notes due 2012 (the "Series B Notes" and, together with the Series A Notes, the "Notes") and warrants (the "Series B Warrants" and, together with the Series A Warrants, the "Warrants") to purchase 2,753,448 shares of Common Stock at $14.50 per share. The Series B Notes will be convertible into Common Stock, subject to certain adjustments and closing conditions, at a purchase price of $14.50 per share, which would equal 16,551,724 shares. The Series B Notes will be governed by the terms of the Indenture. The foregoing description of the Note Amendment Agreement does not purport to be complete and is qualified in its entirety by reference to the Note Amendment Agreement, a copy of which is attached as Exhibit 4.2 to this Current Report on Form 8-K and is incorporated by reference into this Item 1.01.

In addition, under the Securities Purchase Agreement and the Note Amendment Agreement the Company agreed to hold a stockholder's meeting and use its reasonable best efforts to obtain from the Company's stockholders a vote approving an amendment to the Company's Restated Certificate of Incorporation that would permit the holders of the Notes to vote on all matters submitted to a vote of the stockholders of the Company. Under the terms of the proposed amendment, each holder of the Notes would be entitled to the number of votes equal to the number of shares of Common Stock that could be acquired upon conversion of such holder's Notes on the applicable record date, subject to the 5% voting limitation contained in the Restated Certificate of Incorporation of the Company.

The Company has also agreed to ask the Company's stockholders at the stockholders meeting described above to approve the potential issuance of the shares of Common Stock underlying approximately $7.8 million of the Series A Notes (the "Subject Shares"). If the stockholders do not approve the potential issuance of the Subject Shares, the Company will be required to redeem approximately $4.0 million aggregate principal amount of the Series A Notes from the SLP Entities for a repurchase price in cash equal to 105% of such aggregate principal amount plus any accrued and unpaid interest, but not including the repurchase date. In addition, on or prior to October 24, 2005 or, if later, five business days after the stockholders' meeting discussed above, the Company has the option to repurchase approximately $3.8 million aggregate principal amount of the Series A Notes from the H&F Entities for a repurchase price in cash equal to 105% of such aggregate principal amount plus any accrued and unpaid interest, but not including the repurchase date. If the Company's stockholders do not approve the issuance of the Subject Shares, the Company intends to exercise such option.

On April 22, 2005, the Company issued the Series A Notes and the Series A Warrants to Norway SPV pursuant to the Securities Purchase Agreement and the Series B Warrants

and the Series B Notes to the H&F Entities in connection with their agreement to exchange the Old Notes for the Series B Notes and the Series B Warrants. The Warrants will be exercisable by Norway SPV, the H&F Entities and their respective permitted transferees on or after April 22, 2006, or earlier under certain circumstances, and will terminate on the third anniversary of the closing of the Merger, unless earlier terminated in connection with the mandatory redemption of the Notes under the terms of the Indenture described below.

On April 22, 2005, the Company entered into an Indenture (the "Indenture") with Law Debenture Trust Company of New York, as trustee, governing the terms of the Notes. The Notes are senior unsecured obligations of the Company and rank pari passu in right of payment with all existing and any future senior unsecured indebtedness of the Company and are senior in right of payment to any future subordinated indebtedness of the Company.

Under the terms of the Indenture, subject to certain exceptions, the Company will be required to redeem the Series A Notes and Series A Warrants if the (i) Merger Agreement is terminated or (ii) if the Merger has not closed by April 22, 2006, but in no event earlier than October 24, 2005. The aggregate redemption price for the Series A Notes and Series A Warrants will be $205.0 million plus any accrued interest on the Series A Notes. Upon the mandatory redemption of the Series A Notes, (i) the Indenture and the Series B Notes will automatically be deemed to be amended to restate, with limited exceptions, the terms of the Old Notes and (ii) the Series B Warrants will be terminated.

The Notes will be convertible on and after April 22, 2006 (or earlier under certain circumstances) by their holders into Common Stock at an initial conversion rate of 0.0689655 shares of Common Stock per $1.00 principal amount of Notes, subject to adjustments, or, at the option of the Company, into cash and Common Stock.

The Company may redeem the Notes at any time after April 22, 2011 for a cash payment equal to the aggregate principal amount of the Notes plus any accrued and unpaid interest on the Notes, subject to the holders option to convert the Notes into Common Stock after notice of such redemption is given. The Indenture is subject to customary events of default, including failure to make required payments, failure to comply with certain agreements or covenants, acceleration of certain other indebtedness rendering of final judgments for the payment of certain money, and certain events of bankruptcy and insolvency. The foregoing description of the Indenture does not purport to be complete and is qualified in its entirety by reference to the Indenture, a copy of which is attached as Exhibit 4.3 to this Current Report on Form 8-K and is incorporated by reference into this Item 1.01.

After the earlier of (i) nine months after the closing of the Merger or (ii) October 22, 2006, the holders of the Notes and the Warrants will be entitled to the benefits of a registration rights agreement dated April 22, 2005 (the "Registration Rights Agreement") among Silver Lake Partners II TSA, L.P., Silver Lake Technology Investors II, L.L.C., Silver Lake Partners TSA, L.P., Silver Lake Investors, L.P., Integral Capital Partners VI, L.P. and VAB Investors, LLC (collectively, the "SLP Entities"), the Company and the H&F Entities. Under the Registration Rights Agreement, the Company has agreed to file registration statements to cover the resale of the Notes or the Common Stock issuable upon conversion of the Notes or exercise of the

Warrants at the request of the holders and grant rights to the holders to register their Common Stock if the Company files registration statements to register its Common Stock. The foregoing description of the Registration Rights Agreement does not purport to be complete and is qualified in its entirety by reference to the Registration Rights Agreement, a copy of which is attached as Exhibit 4.4 to this Current Report on Form 8-K and is incorporated by reference into this Item 1.01.

In connection with the issuance of the Notes and the Warrants, on April 22, 2005, the Company entered into an Amended and Restated Securityholders Agreement (the "Amended Securityholders Agreement") with the SLP Entities and the H&F Entities. Under the terms of this agreement, the H&F Entities and SLP Entities are each entitled to (i) have a representative appointed to the Company's Board of Directors, (ii) obtain additional information about the Company and (iii) certain consultation and information rights with the Company; provided that the SLP Entities and H&F Entities maintain ownership of a certain percentage of the Notes. The Amended Securityholders Agreement amended and restated in its entirety the existing Securityholders Agreement dated May 3, 2001 between the Company and the H&F Entities. Each of the Registration Rights Agreement and Amended Securityholders Agreement will terminate upon the mandatory redemption of the Series A Notes and Series A Warrants, and the Amended Securityholders Agreement will automatically be amended and restated to read in its entirety as set forth in the existing Securityholders Agreement. The foregoing description of the Amended Securityholders Agreement does not purport to be complete and is qualified in its entirety by reference to the Amended Securityholders Agreement, a copy of which is attached as Exhibit 4.5 to this Current Report on Form 8-K and is incorporated by reference into this Item 1.01.

There are no material relationships between Reuters or Instinet, on the one hand, and the Company or any of its affiliates, on the other hand, other than in respect of the Merger Agreement and the agreements relating thereto, including the Support Agreement, except Instinet owns, directly or indirectly, approximately 2% of the common stock of Nasdaq.

There are no material relationships between SLP and its affiliates, on the one hand, and the Company and its affiliates, on the other hand, other than in respect of the Merger Agreement, the Transaction Agreement, the Securities Purchase Agreement, the Indenture, the Registration Rights Agreement, the Amended Securityholders Agreement and the agreements related thereto.

There are no material relationships between the H&F Entities and their affiliates, on the one hand, and the Company and its affiliates, on the other hand, other than in respect of the Securities Purchase Agreement, the Note Amendment Agreement, the Indenture, the Registration Rights Agreement, the Amended Securityholders Agreement and the agreements related thereto.

The agreements included as exhibits to this Current Report on Form 8-K have been included to provide you with information regarding their terms. We do not intend for their text to be a source of factual or business or operational information about Instinet or the Company. Such information can be found elsewhere in the other public filings each of the Company and Instinet makes with the Securities and Exchange Commission, which are available without charge at www.sec.gov.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

See disclosure under Item 1.01 of this report, which is incorporated by reference into this Item 2.03.

Item 3.02 Unregistered Sales of Equity Securities

On April 22, 2005, the Company agreed to sell the Series A Notes and the Series A Warrants to Norway SPV in a private placement pursuant to the exemptions from the registration requirements of the Securities Act of 1933, as amended (the "Act"), afforded by Section 4(2) of the Act. The gross proceeds to the Company from the sale of the Series A Notes and Series A Warrants are $205.0 million.

On April 22, 2005, the Company agreed to issue the Series B Notes and the Series B Warrants to the H&F Entities in exchange for the Old Notes in a private placement pursuant to the exemptions from the registration requirements of the Act afforded by Section 4(2) of the Act.

The Warrants will be exercisable by Norway SPV, the H&F Entities and their respective permitted transferees on or after April 22, 2006, or earlier under certain circumstances, and will terminate on the third anniversary of the closing of the Merger unless earlier terminated or redeemed in connection with the mandatory redemption of the Series A Notes under the terms of the Indenture.

The Notes, Warrants and the underlying Common Stock issuable upon conversion of the Notes and exercise of the Warrants have not been registered under the Act, and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements.

The information provided in Item 1.01 is incorporated herein by reference.

Item 5.02 Departures of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers.

(d) In connection with the Merger Agreement, the Transaction Agreement and the sale of the Series A Notes, the Company agreed in the Amended Securityholders Agreement discussed in Item 1.01 to appoint a representative of SLP to the Board of Directors of the Company (the "Board"). Glenn Hutchins, a Managing Director of the general partner of SLP, has been approved by the Board as a Class 1 Director to serve a term that expires at the 2007 annual meeting of stockholders of the Company. The Company has agreed to appoint Mr. Hutchins to the Board's Finance and Compensation Committees.

Item 9.01 Financial Statements and Exhibits

Exhibit No.	Description
2.1	Agreement and Plan of Merger, dated April 22, 2005, by and among The Nasdaq Stock Market, Inc., Norway Acquisition Corp. and Instinet Group Incorporated. Filed without schedules. The Company agrees to furnish a copy of any such schedule to the Securities and Exchange Commission upon request.

2.2	Transaction Agreement, dated April 22, 2005 by and among The Nasdaq Stock Market, Inc., Norway Acquisition Corp. and Iceland Acquisition Corp.
4.1	Securities Purchase Agreement, dated as of April 22, 2005, between Norway Acquisition SPV, LLC and The Nasdaq Stock Market, Inc.
4.2	Note Amendment Agreement, dated as of April 22, 2005, among The Nasdaq Stock Market, Inc., Hellman & Friedman Capital Partners IV, L.P., H&F Executive Fund IV, L.P., H&F International Partners IV-A, L.P., and H&F International Partners IV-B, L.P.
4.3	Indenture, dated as of April 22, 2005, between The Nasdaq Stock Market, Inc. and Law Debenture Trust Company of New York, as Trustee.
4.4	Registration Rights Agreement, dated as of April 22, 2005, among The Nasdaq Stock Market, Inc., Hellman & Friedman Capital Partners IV, L.P., H&F Executive Fund IV, L.P., H&F International Partners IV-A, L.P., H&F International Partners IV-B, L.P., Silver Lake Partners II TSA, L.P., Silver Lake Technology Investors II, L.L.C., Silver Lake Partners TSA, L.P., Silver Lake Investors, L.P., VAB Investors, LLC and Integral Capital Partners VI, L.P.
4.5	Amended and Restated Securityholders Agreement, dated as of April 22, 2005, among Norway Acquisition SPV, LLC, Hellman & Friedman Capital Partners IV, L.P., H&F Executive Fund IV, L.P., H&F International Partners IV-A, L.P., H&F International Partners IV-B, L.P, Silver Lake Partners II TSA, L.P., Silver Lake Technology Investors II, L.L.C., Silver Lake Partners TSA, L.P., Silver Lake Investors, L.P., VAB Investors, LLC, Integral Capital Partners VI, L.P., and The Nasdaq Stock Market, Inc.
99.1	Support Agreement, dated as of April 22, 2005, by and among The Nasdaq Stock Market, Inc., Reuters C LLC, Reuters Group Overseas Holding (UK) Limited and Reuters Group, PLC.

99.2	Guarantee Agreement, dated as of April 22, 2005, by and among The Nasdaq Stock Market, Inc., Norway Acquisition SPV, LLC and JPMorgan Chase Bank, N.A., as administrative agent.
99.3	Blocked Account Control and Security Agreement, dated as of April 22, 2005, by and among The Nasdaq Stock Market, Inc., JPMorgan Chase Bank, N.A., as administrative agent, and JPMorgan Chase Bank, as depositary.

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 hereunto duly authorized.

THE NASDAQ STOCK MARKET, INC.

Date: April 28, 2005

By: /s/ Adena Friedman

Name: Adena Friedman
Title: Executive Vice President

EXHIBIT INDEX

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2.2	Transaction Agreement, dated April 22, 2005 by and among The Nasdaq Stock Market, Inc., Norway Acquisition Corp. and Iceland Acquisition Corp.
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4.3	Indenture, dated as of April 22, 2005, between The Nasdaq Stock Market, Inc. and Law Debenture Trust Company of New York, as Trustee.
4.4	Registration Rights Agreement, dated as of April 22, 2005, among The Nasdaq Stock Market, Inc., Hellman & Friedman Capital Partners IV, L.P., H&F Executive Fund IV, L.P., H&F International Partners IV-A, L.P., H&F International Partners IV-B, L.P., Silver Lake Partners II TSA, L.P., Silver Lake Technology Investors II, L.L.C., Silver Lake Partners TSA, L.P., Silver Lake Investors, L.P., VAB Investors, LLC and Integral Capital Partners VI, L.P.
4.5	Amended and Restated Securityholders Agreement, dated as of April 22, 2005, among Norway Acquisition SPV, LLC, Hellman & Friedman Capital Partners IV, L.P., H&F Executive Fund IV, L.P., H&F International Partners IV-A, L.P., H&F International Partners IV-B, L.P, Silver Lake Partners II TSA, L.P., Silver Lake Technology Investors II, L.L.C., Silver Lake Partners TSA, L.P., Silver Lake Investors, L.P., VAB Investors, LLC, Integral Capital Partners VI, L.P., and The Nasdaq Stock Market, Inc.

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99.3	Blocked Account Control and Security Agreement, dated as of April 22, 2005, by and among The Nasdaq Stock Market, Inc., JPMorgan Chase Bank, N.A., as administrative agent, and JPMorgan Chase Bank, as depositary.

Exhibit 2.1

EXECUTION COPY

AGREEMENT AND PLAN OF MERGER

Dated as of April 22, 2005

by and among

INSTINET GROUP INCORPORATED,

THE NASDAQ STOCK MARKET, INC.

AND

NORWAY ACQUISITION CORP.

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THIS AGREEMENT AND PLAN OF MERGER (this "Agreement") is made and entered into as of April 22, 2005 by and among The Nasdaq Stock Market, Inc., a Delaware corporation ("Buyer"), Norway Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Buyer ("Merger Sub"), and Instinet Group Incorporated, a Delaware corporation (the "Company").

WHEREAS, Buyer and the Company desire that Buyer combine its businesses with the businesses operated by the Company through the merger of Merger Sub with and into the Company, with the Company as the surviving corporation (the "Merger"), pursuant to which each share of common stock of the Company, par value $0.01 per share ("Company Common Stock"), issued and outstanding at the Effective Time, other than the shares of Company Common Stock owned by Buyer, Merger Sub or the Company (or any of their respective direct or indirect wholly owned Subsidiaries) and other than the Appraisal Shares, will be converted into the right to receive the Merger Consideration, all as more fully provided in this Agreement; and

WHEREAS, concurrently with the execution of this Agreement, as a condition and inducement to Buyer's willingness to enter into this Agreement, Buyer and a Company Stockholder are entering into a Support Agreement, of even date herewith, in respect of shares of Company Common Stock beneficially owned by such stockholder (the "Support Agreement"); and

WHEREAS, the board of directors (the "Company Board") of the Company and the board of directors of each of Buyer and Merger Sub have determined that the Merger upon the terms and subject to the conditions set forth in this Agreement is advisable, fair to and in the best interests of their respective stockholders; and

WHEREAS, concurrently with the execution of this Agreement, Buyer is agreeing to sell and assign on the Closing Date certain assets and liabilities of the Company pursuant to a transaction agreement (the "VAB Transaction Agreement"), dated the date hereof, by and among Buyer, Merger Sub, and Iceland Acquisition Corp., a Delaware corporation ("VAB Acquisition Sub"), a copy of which is attached as Exhibit A hereto; and

WHEREAS, Buyer, Merger Sub and the Company desire to make those representations, warranties, covenants and agreements specified herein in connection with this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, representations, warranties and agreements contained herein, the parties hereto agree as follows:

ARTICLE 1

CERTAIN DEFINITIONS

Section 1.1 Capitalized terms not otherwise defined herein shall have the following meanings when used in this Agreement:

"Accrued Commissions" shall be as defined in Section 6.7(a)(v).

"Acquisition Proposal" shall be as defined in Section 6.11(g)(i).

"Action" shall be as defined in Section 6.9(a).

"Affiliate" shall mean, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such Person.

"Agreement" shall be as defined in the preamble of this Agreement.

"Antitrust Law" means any Applicable Law that is designed or intended to prohibit, restrict or regulate actions having the purpose or effect or monopolization or restraint of trade, or the lessening of competition through merger or acquisition, specifically including, but not limited to, the Sherman Antitrust Act of 1890, as amended, the Clayton Act of 1914, as amended, the HSR Act, and the Federal Trade Commission Act of 1914, as amended.

"Applicable Authority" shall mean the Persons set forth on Schedule 1.1 of the Company Disclosure Schedule.

"Applicable Laws" shall mean any and all applicable (a) federal, territorial, state, local and foreign laws, ordinances and regulations; (b) codes, standards, rules, requirements, orders and criteria issued under any federal, territorial, state, local or foreign laws, ordinances and regulations; (c) rules, guidelines or published interpretations of any Self-Regulatory Organization; and (d) Judgments.

"Appraisal Shares" shall be as defined in Section 3.1(d).

"Assignee" shall be as defined in Section 9.4.

"Authority" shall mean any court, arbitrator, administrative or other governmental department, agency, commission, tribunal, authority or instrumentality, domestic (including federal, state or local) or foreign or any Self-Regulatory Organization, which has authority or jurisdiction over the Company or any of the Company Subsidiaries or any of their respective properties or assets.

"Benefit Plan" shall mean any "employee benefit plan," as defined in Section 3(3) of ERISA (including any "multiemployer plan" as defined in Section 3(37) of ERISA) and any profit-sharing, bonus, stock option, stock purchase, stock ownership, pension, retirement, severance, deferred compensation, excess benefit, supplemental unemployment, post-retirement medical or life insurance, welfare or incentive plan, or sick leave, long-term disability, medical, hospitalization, life insurance, other insurance plan, or other employee benefit plan, program or arrangement, whether written or unwritten, qualified or non-qualified, funded or unfunded.

"Benefits Continuation Period" shall be as defined in Section 6.7(a)(i).

"Burdensome Condition" shall be as defined in Section 6.4(h).

"Business" shall mean the business of the ECN Entities as presently conducted.

"Business Day" shall mean any day except Saturday, Sunday or other day on which commercial banks in the City of New York, New York are authorized or required to close by law.

"Buyer" shall be as defined in the Preamble.

"Buyer Benefit Plans" shall be as defined in Section 6.7(b).

"Buyer Disclosure Schedule" shall mean the schedules of Buyer attached hereto. Disclosure of any matter, fact or circumstance in any Section of the Buyer Disclosure Schedule shall provide exceptions to or otherwise qualify the representations, warranties and covenants contained in the corresponding Sections of this Agreement and such other representations, warranties and covenants solely to the extent such matter, fact or circumstance is disclosed in a way as to make its relevance to the information called for by such other Section reasonably clear on its face.

"Buyer Material Adverse Effect" shall mean any event, occurrence, fact, condition, change, or effect that has a materially adverse effect on the ability of Buyer or Merger Sub to perform its obligations hereunder or consummate the Transactions or that would materially delay or prevent the Closing.

"Certificate" shall be as defined in Section 3.1(b).

"Certificate of Merger" shall be as defined in Section 2.2.

"Change in the Company Board Recommendation" shall be as defined in Section 6.11(d).

"Closing" shall be as defined in Section 2.2.

"Closing Date" shall be as defined in Section 2.2.

"Closing Transaction Liabilities" shall be as defined in Section 3.4(b).

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Commission Employees" shall be as defined in Section 6.7(a)(v).

"Company" shall be as defined in the Preamble.

"Company Acquisition Agreement" shall be as defined in Section 6.11(d).

"Company ATS" shall mean Inet ATS, Inc.

"Company Benefit Plans" shall mean any Benefit Plan maintained or contributed to by the Company or any Company Subsidiary, but excluding any Employment Agreements. For the avoidance of doubt, Company Benefit Plans do not include Reuters Plans.

"Company Board" shall be as defined in the Recitals.

"Company Board Recommendation" shall be as defined in Section 4.20.

"Company Broker-Dealer Subsidiaries" shall mean the entities listed on Section 4.9(c) of the Company Disclosure Schedule.

"Company Bylaws" shall be as defined in Section 6.10(a).

"Company Certificate" shall be as defined in Section 6.10(a).

"Company Common Stock" shall be as defined in the Recitals.

"Company Disclosure Schedule" shall mean the schedules of the Company attached hereto. Disclosure of any matter, fact or circumstance in any Section of the Company Disclosure Schedule shall provide exceptions to or otherwise qualify the representations, warranties and covenants contained in the corresponding Sections of this Agreement and such other representations, warranties and covenants solely to the extent such matter, fact or circumstance is disclosed in a way as to make its relevance to the information called for by such other Section reasonably clear on its face.

"Company Employee" shall mean any individual employed by the Company or any Company Subsidiary as of the time in question, whether actively at work or on approved leave of absence.

"Company Intellectual Property" shall mean any Intellectual Property presently owned or held by the Company or any Company Subsidiary.

"Company Material Adverse Effect" shall mean any event, occurrence, fact, condition, change, or effect that is materially adverse to the business, results of operations, or financial condition of (a) the ECN Entities, taken as a whole, or (b) the VAB Subsidiaries, taken as a whole, other than, in the case of clauses (a) and (b), any event, occurrence, fact, condition, change, or effect arising out of or relating to (1) any changes in general economic or political conditions in the United States or any country or region in which the ECN Entities or the VAB Subsidiaries operate, as the case may be, provided that such changes do not have a materially disproportionate effect on, in the case of the ECN Entities, the Business relative to other entities operating businesses similar to the Business and, in the case of the VAB Subsidiaries, the VAB Business relative to other entities operating businesses similar to the VAB Business; (2) any events, circumstances, changes or effects that affect generally the industries in which the ECN Entities or the VAB Subsidiaries, as the case may be, operate provided that such events, circumstances, changes or effects do not have a materially disproportionate effect on, in the case of the ECN Entities, the Business relative to other entities operating businesses similar to the Business and, in the case of the VAB Subsidiaries, the VAB Business relative to other entities operating businesses similar to the VAB Business; (3) any changes in any Applicable Laws, provided that such changes do not have a materially disproportionate effect on, in the case of the ECN Entities, the Business relative to other entities operating businesses similar to the Business and, in the case of the VAB Subsidiaries, the VAB Business relative to other entities operating businesses similar to the VAB Business; (4) any outbreak or escalation of hostilities or war or

any act of terrorism to the extent such outbreak or escalation does not have materially disproportionate effect on, in the case of the ECN Entities, the Business relative to other entities operating businesses similar to the Business and, in the case of the VAB Subsidiaries, the VAB Business relative to other entities operating businesses similar to the VAB Business; or (5) the announcement or consummation of this Agreement or the Transactions.

"Company Option" shall be as defined in Section 3.3(a).

"Company Rights" shall be as defined in Section 3.1(b).

"Company Rights Plan" shall be as defined in Section 3.1(b).

"Company SEC Reports" shall mean all of the reports (including reports on Forms 8-K, 10-Q and 10-K), statements (including proxy statements), schedules and registration statements of the Company filed with the SEC since December 31, 2002.

"Company Stockholders" shall be as defined in Section 6.10(a).

"Company Stockholders Meeting" shall be as defined in Section 6.10(a).

"Company Subsidiary" shall be as defined in Section 4.3.

"Company's Knowledge" shall mean the actual knowledge of the individuals listed in Section 1 of the Company Disclosure Schedule, based on such reasonable inquiry as is consistent with their respective position (which inquiry shall include an inquiry of such individuals' direct reports).

"Compensation Committee" shall be as defined in Section 6.7(a)(ii).

"Confidentiality Agreement" shall mean, in the case of Buyer, the Confidentiality Agreement, dated as of November 22, 2004, by and between the Company and Buyer and, in the case of SLP, the Confidentiality Agreement, dated as of December 8, 2004, by and among the Company, Buyer and SLP.

"Contract" shall mean any note, bond, indenture, mortgage, deed of trust, contract, instrument, license or other agreement.

"Control" shall mean the possession, directly or indirectly, of the affirmative power to direct or cause the direction of the management and policies of a Person (whether through ownership of securities, partnership interests or other ownership interests, by contract, by membership or involvement in the board of directors, management committee or management structure of such Person, or otherwise).

"Covered Proposal" shall be as defined in Section 8.6(a)(i).

"Delaware Secretary of State" shall be as defined in Section 2.2.

"DGCL" shall be as defined in Section 2.1.

"ECN Entities" shall mean Inet Holding Company Inc., a Delaware corporation, and each of its Subsidiaries.

"Effective Time" shall be as defined in Section 2.2.

"Eligible Company Employee" shall be as defined in Section 6.7(a)(iii) and (iv), as applicable.

"Employment Agreement" shall mean a contract, offer letter, severance commitment letter or agreement of the Company or any Company Subsidiary with or addressed to any Company Employee or pursuant to which the Company or any Company Subsidiary has any actual or contingent liability or obligation to provide compensation and/or benefits in consideration for past, present or future services of a Company Employee.

"Entity Financial Statement" shall be as defined in Section 4.5(a).

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Exchange Fund" shall be as defined in Section 3.2(a).

"Financial Statements" shall be as defined in Section 4.5(a).

"GAAP" shall mean United States generally accepted accounting principles.

"HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Indebtedness" shall mean with respect to any Person any indebtedness for borrowed money.

"Indemnified Person" shall be as defined in Section 6.9(b).

"Intellectual Property" shall mean (a) trademarks, service marks, trade names, designs, logos, slogans, Internet domain names, key words and other indicia of source or origin, and general intangibles of like nature, together with all goodwill, registrations and applications related to any of the foregoing; (b) patents (including any registrations, continuations, continuations in part, renewals and applications for any of the foregoing); (c) copyrights and other works of authorship (including any registrations and applications for any of the foregoing); (d) software; data, databases and other collections of data; technology, trade secrets and other confidential information, know-how, proprietary processes, formulae, algorithms, models, and methodologies; and (e) other similar proprietary rights.

"Judgments" shall mean any and all judgments, orders, writs, directives, rulings, decisions, injunctions, decrees, assessments, settlement agreements (other than settlement agreements under which there are no continuing obligations) or awards of any Authority.

"Lien" shall mean any lien, encumbrance, pledge, mortgage, security interest, claim under bailment, or storage contract.

"LJR" shall mean Lynch, Jones & Ryan, Inc., a Delaware corporation.

"LJR Dividend" shall be as defined in Section 6.2(d).

"LJR Sale" shall mean the disposition of LJR as contemplated in the LJR Sale Agreement.

"LJR Sale Agreement" shall mean either (a) the purchase and sale agreement, dated as of April 22, 2005, by and between the Company and The Bank of New York, or (b) another agreement for the sale or other disposition of the capital stock of LJR, whether by merger, spin-off, sale or other extraordinary transaction, at a no less favorable price and on no less favorable terms to the Company and the Company Subsidiaries with respect to the obligations of the Company after the closing thereunder than those provided for in such purchase and sale agreement described in clause (a) above.

"Material Contracts" shall be as defined in Section 4.13(a).

"Merger" shall be as defined in the Recitals.

"Merger Consideration" shall be as defined in Section 3.1(b).

"Merger Sub" shall be as defined in the Preamble.

"Multiemployer Plan" means any "multiemployer plan" within the meaning of Section 3(37) of ERISA that is subject to ERISA.

"Multiple Employer Plan" shall mean a pension plan subject to ERISA that has two or more contributing sponsors at least two of whom are not under common control, within the meaning of Section 4063 of ERISA.

"NASD" shall mean the National Association of Securities Dealers, Inc.

"New Savings Plan" shall be as defined in Section 6.7(c).

"Paying Agent" shall be as defined in Section 3.2(a).

"Performance Plan" shall be as defined in Section 6.7(e).

"Permits" shall mean any and all permits, authorizations, approvals, registrations, certificates, orders, waivers, variances or other approvals and licenses relating to compliance with any Applicable Law.

"Permitted Liens" shall mean (a) Liens for Taxes or governmental assessments, charges or claims the payment of which is not yet due, or for Taxes the validity of which are being contested in good faith; (b) Liens of carriers, warehousemen, mechanics, materialmen and other similar persons and other Liens imposed by Applicable Laws incurred in the ordinary

course of business for sums not yet delinquent or being contested in good faith; (c) Liens disclosed on the consolidated balance sheet of the Company as of December 31, 2004 or notes thereto or securing liabilities reflected on the consolidated balance sheet of the Company as of December 31, 2004; and (d) other immaterial Liens incurred in the ordinary course of business which do not, individually or in the aggregate, materially impair use of the related asset as presently used in the business of the Company and the Company Subsidiaries.

"Person" shall mean an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity.

"Proxy Statement" shall be as defined in Section 6.10(b).

"Required Buyer Regulatory Approvals" shall be as defined in Section 5.3(b).

"Required Company Regulatory Approvals" shall be as defined in Section 4.6(b).

"Required Regulatory Approvals" shall be as defined in Section 5.3(b).

"Reuters" shall mean Reuters Group plc.

"Reuters Plans" shall be as defined in Section 4.12(b).

"SEC" shall mean the Securities and Exchange Commission.

"Section 262" shall be as defined in Section 3.1(b).

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Self-Regulatory Organization" shall mean the NASD, any domestic or foreign securities exchange, commodities exchange, registered securities association, the Municipal Securities Rulemaking Board, National Futures Association, and any other board or body, whether United States or foreign, that is charged with the supervision or regulation of brokers, dealers, commodity pool operators, commodity trading advisors or future commission merchants.

"Severance Benefits" shall mean any and all liabilities in respect of severance, redundancy and similar pay and benefits, salary continuation, and similar obligations, relating to the termination or alleged termination of employment, whether arising under an Employment Agreement, a Company Benefit Plan, Applicable Laws, or otherwise.

"Shares" shall be as defined in Section 3.1(b).

"SLP" shall mean Silver Lake Management Company, L.L.C.

"Subsidiary" of any Person means any corporation or other entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions are at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person.

"Superior Proposal" shall be as defined in Section 6.11(g)(ii).

"Support Agreement" shall be as defined in the Recitals.

"Surviving Corporation" shall be as defined in Section 2.1.

"Systems" shall mean all computer hardware, software and information systems used in or necessary for the operation of, in the case of the ECN Entities, the Business and, in the case of the VAB Subsidiaries, the VAB Business.

"Tax" shall mean all taxes imposed by or payable to any U.S. federal, state, local, foreign or other Tax Authority, including all income, gross receipts, gains, profits, windfall profits, gift, severance, ad valorem, capital, social security, unemployment disability, premium, recapture, credit, excise, property, sales, use, occupation, service, service use, leasing, leasing use, value added, transfer, payroll, employment, withholding, estimated, license, stamp, franchise or similar taxes of any kind whatsoever, including interest, penalties or additions thereto.

"Tax Authority" shall mean any Authority or quasi-governmental or private body having jurisdiction over the assessment, determination, collection or imposition of any Tax.

"Tax Return" shall mean any report, return, document, declaration or other information (and any supporting schedules or attachments thereto) required to be supplied to any Tax Authority or jurisdiction with respect to Taxes (including any returns or reports filed on a consolidated, unitary, or combined basis) (collectively, "returns"), amended returns and claims for refund.

"Termination Date" shall mean the date which is the first anniversary of the date of this Agreement.

"Termination Fee" shall be as defined in Section 8.6(a).

"Transaction Liabilities" shall mean the (a) liabilities, if any, of the Company and its controlled Affiliates for fees and expenses of investment bankers, attorneys, accountants and other consultants and advisors incurred in connection with the transactions contemplated by this Agreement or any transactions considered by the Company or any Company Subsidiary as alternatives to the Merger, including the LJR Sale, that arise from or relate to arrangements, agreements or commitments entered into or made by the Company or its controlled Affiliates prior to the Effective Time and (b) liabilities, if any, of the Company and its Subsidiaries arising from or relating to any Actions brought by any Person or Authority relating to the Transactions to which the Company is a party.

"Transactions" shall mean this Agreement, the transactions contemplated by this Agreement (including the Merger) and the VAB Purchase (assuming that the VAB Purchase is consummated immediately after the Merger), and the transactions contemplated by the VAB Transaction Agreement which are set forth on Section 1.3 of the Company Disclosure Schedule.

"2005 Annual Bonus" shall be as defined in Section 6.7(a)(ii).

"2005 Annual Bonus Amount" shall be as defined in Section 6.7(a)(ii).

"2006 Annual Bonus" shall be as defined in Section 6.7(a)(ii).

"2006 Annual Bonus Amount" shall be as defined in Section 6.7(a)(ii).

"VAB Acquisition Sub" shall be as defined in the Recitals.

"VAB Business" shall mean the business of the VAB Subsidiaries as presently conducted.

"VAB Corporate Subsidiaries" shall be as defined in Section 4.11(f).

"VAB Employee" shall be as defined in Section 6.7(a)(iii).

"VAB Purchase" shall mean the purchase by SLP or one of its Affiliates from Buyer of all of the assets of the Company except for its equity interests in ECN Holdings.

"VAB Subsidiaries" shall mean each direct and indirect Subsidiary of the Company, other than the ECN Entities and LJR.

"VAB Transaction Agreement" shall be as defined in the Recitals.

"Welfare Benefits" shall be as defined in Section 6.7(b).

ARTICLE 2

THE MERGER

Section 2.1 The Merger. Upon the terms and subject to the conditions of this Agreement, and in accordance with the provisions of the Delaware General Corporation Law (the "DGCL"), Merger Sub shall be merged with and into the Company at the Effective Time. As a result of the Merger, the separate corporate existence of Merger Sub shall cease and the Company shall continue its existence as a wholly owned subsidiary of Buyer under the laws of the State of Delaware. The Company, in its capacity as the corporation surviving the Merger, is hereinafter sometimes referred to as the "Surviving Corporation."

Section 2.2 Closing; Effective Time. A closing (the "Closing") shall be held at 9:00 a.m. at the offices of Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, N.Y. 10019, or such other place as the parties hereto may agree, on the first Business Day of the month following the month in which all conditions set forth in Article 7 (other than those conditions that by their nature are to be satisfied or waived at the Closing, but subject to the satisfaction or waiver of those conditions) are satisfied or waived, or at such other date as Buyer and the Company may agree (such date, the "Closing Date"). As promptly as possible on the

Closing Date, the parties hereto shall cause the Merger to be consummated by filing with the Secretary of State of the State of Delaware (the "Delaware Secretary of State") a certificate of merger (the "Certificate of Merger") in such form as is required by and executed in accordance with Section 251 of the DGCL. The Merger shall become effective when the Certificate of Merger has been filed with the Delaware Secretary of State or at such later time as shall be agreed upon by Buyer and the Company and specified in the Certificate of Merger (the "Effective Time").

Section 2.3 Effects of the Merger. From and after the Effective Time, the Merger shall have the effects set forth in Section 259 of the DGCL.

Section 2.4 Certificate of Incorporation and Bylaws. The Certificate of Merger shall provide that at the Effective Time, (a) the Company's Certificate of Incorporation as in effect immediately prior to the Effective Time shall be the Surviving Corporation's Certificate of Incorporation, and (b) Merger Sub's Bylaws as in effect immediately prior to the Effective Time shall be the Surviving Corporation's Bylaws; in each case, until amended in accordance with the DGCL.

Section 2.5 Directors and Officers of the Surviving Corporation. From and after the Effective Time, the officers of the Company shall be the officers of the Surviving Corporation and the directors of Merger Sub shall be the directors of the Surviving Corporation, in each case, until their respective successors are duly elected and qualified.

ARTICLE 3

CONVERSION OF SECURITIES

Section 3.1 Effect on Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of Buyer, Merger Sub or the Company or their respective stockholders:

(a) Each share of common stock, $0.01 par value, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into one fully paid and nonassessable share of common stock, $0.01 par value, of the Surviving Corporation. Such newly issued shares shall thereafter constitute all of the issued and outstanding Surviving Corporation capital stock.

(b) Subject to the other provisions of this Article 3, each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (excluding any shares of Company Common Stock owned by Buyer, Merger Sub or the Company or any of their respective wholly owned Subsidiaries, which shares shall be cancelled and shall cease to exist with no payment being made with respect thereto and, subject to Section 3.1(d), any shares of Company Common Stock owned by stockholders properly exercising appraisal rights pursuant to Section 262 of the DGCL ("Section 262"), as provided in Section 3.1(d)), together with the rights (the "Company Rights") issued pursuant to the Rights Agreement, dated as of May 15, 2001, between the Company and Mellon Investor Services LLC, as rights agent, as amended (together, the "Company Rights Plan") shall be converted into and represent the right to receive

an amount in cash equal to the Merger Consideration, without interest. For purposes of this Agreement, "Merger Consideration" shall mean the quotient (to the nearest ten-thousandth) obtained by dividing (i) the sum of (u) $1,878,000,000 plus (v) the aggregate exercise price of all Company Options which both have an exercise price of less than the Merger Consideration (excluding from the calculation of Merger Consideration this clause (v) and clause (z) below for purposes of determining which Company Options have an exercise price that is less than the Merger Consideration) and are outstanding and vested immediately prior to the Effective Time, minus (w) 50% of the excess (such amount not to exceed $2,500,000), if any, of the Closing Transaction Liabilities over $19,400,000, minus (x) the LJR Dividend, if any, divided by (ii) the sum of (y) the number of shares of Company Common Stock issued and outstanding immediately prior to the Effective Time (excluding any shares of Company Common Stock owned by Buyer, Merger Sub or the Company or any of their respective wholly owned Subsidiaries), plus (z) the number of shares of Company Common Stock issuable upon the exercise of Company Options which both have an exercise price of less than the Merger Consideration (excluding from the calculation of Merger Consideration clause (v) above and this clause (z) for purposes of determining which Company Options have an exercise price that is less than the Merger Consideration) and are outstanding and vested immediately prior to the Effective Time. At the Effective Time, all shares of Company Common Stock that have been converted into the right to receive the Merger Consideration as provided in this Section 3.1(b) (the "Shares") shall no longer be outstanding and automatically shall be cancelled and shall cease to exist, and each holder of a certificate that immediately prior to the Effective Time represented such shares of Company Common Stock (a "Certificate") shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration.

(c) Each share of Company capital stock held in the treasury of the Company automatically shall be cancelled and retired and no payment shall be made in respect thereof.

(d) Notwithstanding anything in this Agreement to the contrary, the shares of Company Common Stock issued and outstanding immediately prior to the Effective Time that are held by any Company Stockholder that is entitled to demand and properly demands appraisal of shares of Company Common Stock pursuant to, and complies in all respects with, the provisions of Section 262 (the "Appraisal Shares") shall not be converted into the right to receive the Merger Consideration as provided in Section 3.1(b), but, instead, such Company Stockholder shall be entitled to such rights (but only such rights) as are granted by Section 262. At the Effective Time, all Appraisal Shares shall no longer be outstanding and automatically shall be cancelled and shall cease to exist, and, except as otherwise provided by Applicable Laws, each holder of Appraisal Shares shall cease to have any rights with respect to the Appraisal Shares, other than such rights as are granted by Section 262. Notwithstanding the foregoing, if any such Company Stockholder shall fail to validly perfect or shall otherwise waive, withdraw or lose the right to appraisal under Section 262 or if a court of competent jurisdiction shall determine that such Company Stockholder is not entitled to the relief provided by Section 262, then the rights of such Company Stockholder under Section 262 shall cease, and such Appraisal Shares shall be deemed to have been converted at the Effective Time into, and shall have become, the right to receive the Merger Consideration as provided in Section 3.1(b) without interest. The Company shall give notice to Buyer as promptly as reasonably practicable of any demands for appraisal of any shares of Company Common Stock, and Buyer shall have the opportunity to participate in all negotiations and proceedings with respect to such demands. Prior to the Effective Time, the

Company shall not, without the prior written consent of Buyer and VAB Acquisition Sub, make any payment with respect to, or settle or offer to settle, any such demands, or agree to do any of the foregoing. A portion of the funds delivered to the Paying Agent pursuant to Section 3.2(a) that are not distributed to holders of shares of Company Common Stock pursuant to this Article 3 because the holders thereof properly exercised and perfected their dissenters' rights with respect thereto under the DGCL may be paid to the holders of Appraisal Shares upon written instruction from Buyer to the Paying Agent.

Section 3.2 Surrender and Payment. (a) Paying Agent; Exchange Fund. Prior to the Effective Time, for the benefit of the Company Stockholders, Buyer shall designate, or shall cause to be designated (pursuant to an agreement in form and substance reasonably acceptable to the Company), a bank or trust company that is reasonably satisfactory to the Company to act as agent for the payment of the Merger Consideration in respect of Certificates upon surrender of such Certificates in accordance with this Article 3 from time to time after the Effective Time (the "Paying Agent"). Promptly after the Effective Time, but in no event later than the next Business Day after the Closing Date, Buyer shall deposit, or cause Merger Sub to deposit, with the Paying Agent cash in an amount sufficient for the payment of the aggregate Merger Consideration pursuant to Section 3.1(b) (assuming no Appraisal Shares) upon surrender of such Certificates (such cash, the "Exchange Fund"). The Paying Agent shall invest any cash included in the Exchange Fund, as directed by Buyer, on a daily basis. Any interest and other income resulting from such investment shall be the property of, and shall be paid to, Buyer. Any portion of the Exchange Fund (including any interest and other income resulting from investments of the Exchange Fund) that remains undistributed to the Company Stockholders one year after the date of the mailing required by Section 3.2(b) shall be delivered to Buyer, upon demand by Buyer, and holders of Certificates that have not theretofore complied with this Section 3.2 shall thereafter look only to Buyer for payment of any claim to the Merger Consideration. If any Certificates shall not have been surrendered prior to such date on which any Merger Consideration would otherwise escheat to or become the property of any Authority, any such Merger Consideration, dividends or distributions in respect of such Certificate shall, to the extent permitted by Applicable Laws, become the property of Buyer, free and clear of all claims or interest of any person previously entitled thereto.

(b) Exchange Procedure. As promptly as reasonably practicable after the Effective Time, the Paying Agent shall and Buyer shall cause the Paying Agent to mail to each holder of record of a Certificate (i) a form of letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates held by such Company Stockholder shall pass, only upon proper delivery of the Certificates to the Paying Agent and shall be in such form and have such other customary provisions as Buyer may reasonably specify), and (ii) instructions for use in effecting the surrender of the Certificates in exchange for the Merger Consideration. Upon surrender of a Certificate for cancellation to the Paying Agent or to such other agent or agents as may be appointed by Buyer, together with such letter of transmittal, duly completed and validly executed, and such other documents as may reasonably be required by the Paying Agent, the holder of such Certificate shall be paid in exchange therefor the amount of cash into which the shares of Company Common Stock formerly represented by the Certificate shall have been converted pursuant to Section 3.1(b), and the Certificate so surrendered shall be cancelled. In the event of a transfer of ownership of Company Common Stock that is not registered in the stock transfer books of the Company, the proper amount of

cash may be paid in exchange therefor to a person other than the person in whose name the Certificate so surrendered is registered if the Certificate shall be properly endorsed or otherwise be in proper form for transfer and the person requesting such payment shall pay any transfer or other Taxes required by reason of the payment to a person other than the registered holder of the Certificate or establish to the satisfaction of Buyer that the Tax has been paid or is not applicable. No interest shall be paid or shall accrue on the Merger Consideration.

(c) Stock Transfer Books. After the Effective Time, the stock transfer books of the Company shall be closed, and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the shares of Company Common Stock that were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation or the Paying Agent for transfer or any other reason, they shall be cancelled and exchanged as provided in this Article 3.

(d) No Liability. To the fullest extent permitted by law, none of Buyer, Merger Sub, the Company or the Paying Agent shall be liable to any Person in respect of any cash properly delivered to a public official pursuant to any applicable abandoned property, escheat or similar law.

(e) Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming a Certificate to be lost, stolen or destroyed and, if required by Buyer or the Surviving Corporation, the posting by such Person of a bond in such reasonable amount as Buyer or the Surviving Corporation may reasonably direct as indemnity against any claim that may be made against it with respect to the Certificate, the Paying Agent shall pay in respect of the lost, stolen or destroyed Certificate the Merger Consideration.

(f) No Further Ownership Rights in Company Common Stock. The Merger Consideration paid in accordance with the terms of this Article 3 in respect of Certificates that have been surrendered in accordance with the terms of this Agreement shall be deemed to have been paid in full satisfaction of all rights pertaining to the shares of Company Common Stock represented thereby.

(g) Withholding Rights. Each of the Surviving Corporation and Buyer shall be entitled to deduct and withhold, or cause the Paying Agent to deduct and withhold, from the consideration otherwise payable pursuant to this Agreement to any Company Stockholders such amounts as it may be required to deduct and withhold with respect to the making of such payment under the Code, or any provision of state, local or foreign Tax law. To the extent that amounts are so withheld by the Surviving Corporation, Buyer or the Paying Agent, as the case may be, the withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Company Stockholders in respect of which the deduction and withholding was made by the Surviving Corporation, Buyer or the Paying Agent, as the case may be.

Section 3.3 Treatment of Stock Options. (a) At the Effective Time, each option to purchase a share of Company Common Stock (a "Company Option"), granted under the Company stock option plans in effect on the date of this Agreement, or otherwise, that is outstanding immediately prior to the Effective Time shall become immediately vested, and shall

be converted into the right to receive, from Buyer or the Surviving Corporation, as soon as practicable following the Effective Time (and in any event, no later than 10 days following the Effective Time), an amount in cash (less any applicable withholding Taxes) equal to the product of (i) the excess, if any, of (A) the Merger Consideration over (B) the per share exercise price of Company Common Stock subject to such Company Option and (ii) the number of shares of Company Common Stock subject to such Company Option immediately prior to the Effective Time.

(b) Subject to Section 3.3(a), the Company shall take any actions reasonably requested by Buyer to effectuate the vesting and termination of the Company Options, it being understood that the intention of the parties is that following the Effective Time no holder of a Company Option or any participant in any Company Benefit Plan or other employee benefit arrangement of the Company shall have any right thereunder to acquire any capital stock (including any "phantom" stock or stock appreciation rights) of the Company, the Surviving Corporation or VAB Acquisition Sub. Prior to the Effective Time, the Company shall deliver to the holders of Company Options appropriate notices, in form and substance reasonably acceptable to Buyer, setting forth such holders' rights pursuant to this Agreement.

Section 3.4 Determination of the Transaction Liabilities. The Company shall deliver to Buyer and VAB Acquisition Sub, within two Business Days prior to the Closing, a statement (the "Transaction Liabilities Statement") setting forth its good faith estimate of (a) each unpaid Transaction Liability as of the Closing Date, and (b) each Transaction Liability that has been paid prior to the Closing Date (the Transaction Liabilities contemplated by clauses (a) and (b), collectively, the "Closing Transaction Liabilities"). The Company shall (a) provide Buyer and VAB Acquisition Sub with supporting documentation evidencing the payment of each Transaction Liability listed on the Transactions Liabilities Statement as being paid and (b) at Buyer's request, use reasonable best efforts to obtain certificates from any such service providers verifying any outstanding amounts.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as disclosed in the Company Disclosure Schedule and other than with respect to LJR or the LJR Sale or any matters relating thereto (except as provided for in Section 4.28), the Company hereby represents and warrants to Buyer and Merger Sub as follows:

Section 4.1 Organization and Qualification. The Company (a) is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and (b) has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted. The Company is duly qualified or licensed to do business and in good standing in each jurisdiction in which the nature of the business conducted by it makes such qualification or licensing necessary, other than in such jurisdictions where the failure to be so qualified, individually or in the aggregate, has not had and would not reasonably be expected to have a Company Material Adverse Effect.

Section 4.2 Authorization and Validity of Agreement. The Company has all requisite power and authority to execute this Agreement, to carry out and perform its obligations under this Agreement and, subject to the approval of this Agreement by the Company Stockholders, to consummate the Transactions. The execution, delivery and performance by the Company of this Agreement, and the consummation of the Transactions, have been duly and validly authorized by all necessary action of the Company, subject to the adoption of this Agreement by the Company Stockholders and no other action on the part of the Company is necessary for the authorization, execution, delivery or performance by the Company of this Agreement and the consummation of the Transactions. This Agreement has been duly executed and delivered by the Company and, assuming the due authorization, execution and delivery by Buyer and Merger Sub, constitutes the valid and binding obligation of the Company enforceable against the Company in accordance with its terms (except insofar as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Applicable Laws affecting creditors' rights generally, or by principles governing the availability of equitable remedies).

Section 4.3 Subsidiaries. Each Subsidiary of the Company is listed on Section 4.3 of the Company Disclosure Schedule (a "Company Subsidiary"). Each Company Subsidiary is duly organized, validly existing and, where applicable, in good standing under the laws of its jurisdiction of organization and has all requisite corporate or other power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted, and each Company Subsidiary is duly qualified or licensed to do business and in good standing in each jurisdiction in which the nature of the business conducted by such Company Subsidiary makes such qualification or licensing necessary, other than in such jurisdictions where the failure to be so qualified, individually or in the aggregate, has not had and would not reasonably be expected to have a Company Material Adverse Effect. The outstanding shares of capital stock or other equity interests of each Company Subsidiary have been duly authorized and validly issued and are fully paid and non-assessable. There are no outstanding (i) securities of any Company Subsidiary convertible into or exchangeable for shares of capital stock or voting securities of any Company Subsidiary, or (ii) options or other rights to acquire from any Company Subsidiary, or other obligations of any Company Subsidiary to issue, any capital stock, voting securities or securities convertible into or exchangeable for capital stock or voting securities of any Company Subsidiary. The capital stock or equity interests of any Company Subsidiary are not subject to preemptive or similar rights. Section 4.3 of the Company Disclosure Schedule sets forth, for each Company Subsidiary, (A) the authorized capital stock, (B) the number of issued and outstanding shares of capital stock or other equity interests and (C) the holders of such capital stock or equity interests and the amounts held by such holders. Section 4.3 of the Company Disclosure Schedule sets forth any capital stock or other equity interests of any other Person owned by the Company or any Company Subsidiary (other than in connection with the ordinary course of operation of its brokerage business).

Section 4.4 Capitalization. (a) The authorized capital stock of the Company consists of (i) 950,000,000 shares of Company Common Stock, of which, as of March 31, 2005, 338,510,768 were issued and outstanding and 6,510,925 were performance shares, and (ii) 200,000 shares of preferred stock, par value $0.01 per share, of which no shares are issued and outstanding or reserved for issuance under any agreement, arrangement or understanding.

(b) Each outstanding share of Company capital stock is duly authorized and validly issued, fully paid and non-assessable and not subject to any preemptive or similar rights. Other than as set forth in Section 4.4(a) of this Agreement or in Section 4.4(b) of the Company Disclosure Schedule, and except for 31,767,033 Company Options and 6,510,925 performance shares as of March 31, 2005, there are no (i) outstanding shares of Company capital stock or Company voting securities, (ii) securities of the Company convertible into or exchangeable for shares of capital stock or voting securities of the Company or (iii) options or other rights to acquire from the Company, or other obligations of the Company to issue, any capital stock, voting securities or securities convertible into or exchangeable for capital stock or voting securities of the Company. There are no outstanding obligations of the Company to repurchase, redeem or otherwise acquire any of the securities of the Company.

Section 4.5 Financial Statements. (a) The Company has delivered to Buyer the audited financial statements as set forth on Section 4.5(a) of the Company Disclosure Schedule (each, together with the notes thereto, an "Entity Financial Statement," and, collectively, the "Financial Statements").

(b) Each Entity Financial Statement is based on the books and records of the entity to which it relates, and fairly presents in all material respects the financial condition and results of operations and cash flows of the entity to which it relates, in accordance with GAAP, as of the respective dates and for the respective periods indicated therein.

Section 4.6 No Violation; Consents and Approvals. (a) The execution, delivery and performance of this Agreement and the VAB Transaction Agreement by the Company (and in the case of the VAB Transaction Agreement, as if the Company were Merger Sub thereunder) and, assuming termination or expiration of applicable waiting periods under the HSR Act and receipt of the Required Company Regulatory Approvals, the consummation of the Transactions do not and will not violate, conflict with or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in termination of, or accelerate the performance required by, or result in a right of consent, termination or acceleration under, or require any offer to purchase or any prepayment of any debt or result in the creation of any Lien (other than Permitted Liens) upon any of the properties or assets of the Company or a Company Subsidiary under any of the terms, conditions or provisions of (i) the certificate of incorporation or by-laws or other similar organizational documents of the Company or any Company Subsidiary, (ii) any Applicable Laws, or (iii) any Material Contract, other than, in the case of clause (ii) above, such violations, conflicts, breaches, defaults, terminations, accelerations, offers, prepayments or creations of liens, security interests or encumbrances that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect or would not prevent the consummation of the Transactions.

(b) Except for (i) filings by the Company required by the HSR Act and (ii) the filings with and receipt of approvals from the Authorities listed on Section 4.6(b) of the Company Disclosure Schedule (such filings and approvals, the "Required Company Regulatory Approvals"), no declaration, filing or registration with, or notice to, or authorization, consent or approval of, any Authority is necessary for the execution and delivery of this Agreement and the VAB Transaction Agreement by the Company (and in the case of the VAB Transaction

Agreement, as if the Company were Merger Sub thereunder) or the consummation by the Company, the Surviving Corporation or any Company Subsidiary, as the case may be, of the Merger or the VAB Purchase, other than such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not made or obtained, as the case may be, would not prevent the Company from performing its obligations under this Agreement or the VAB Transaction Agreement or would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect and other than such declarations, filings, registrations, notices, authorizations, consents or approvals which are required or become applicable due to the nature or status of, or actions taken by, Buyer, Merger Sub, VAB Acquisition Sub or their respective Affiliates.

Section 4.7 Absence of Certain Changes or Events. Since December 31, 2004, (i) no event or change has occurred which, individually or in the aggregate, has had or is highly likely to have a Company Material Adverse Effect or which would materially delay or prevent the Company from consummating the Transactions, and (ii) the Company and each Company Subsidiary have, in all material respects, carried on their business in the ordinary course consistent with past practice, except as otherwise contemplated or permitted by this Agreement. From December 31, 2004 through the date hereof, the Company has not (a) declared, set aside or paid any dividends on or made any other distributions in respect of any of its capital stock, (b) purchased, redeemed or acquired any shares of its capital stock, except upon the exercise of Company Options or the vesting of performance share awards in accordance with their present terms, or (c) together with the Company Subsidiaries, made capital expenditures in excess of $10,000,000 in the aggregate.

Section 4.8 Legal Proceedings. There is no Action pending against or, to the Company's Knowledge, threatened against or affecting, the Company or any Company Subsidiary or any of their respective properties before any Authority which is, individually or in the aggregate, material to either the Business (with respect to Actions relating to the Business) or the VAB Business (with respect to Actions relating to the VAB Business). There is no Judgment currently outstanding against the Company or any Company Subsidiary, or by which the property or business of the Company or any Company Subsidiary is or was involved or affected.

Section 4.9 Compliance with Applicable Laws and Permits; Regulatory Registrations and Memberships. (a) Except as is not and would not reasonably be expected to be, individually or in the aggregate, material to either the Business (with respect to such compliance, Permits and filings relating to the Business) or the VAB Business (with respect to such compliance, Permits and filings relating to the VAB Business), since January 1, 2002, (i) the Company and the Company Subsidiaries are in compliance with all Applicable Laws and material Permits, (ii) all Permits currently used by the Company or the Company Subsidiaries are in full force and effect, and (iii) the Company and the Company Subsidiaries have, to the extent required, made all filings necessary to request the timely renewal or issuance of all Permits prior to the Closing for the Company or the Company Subsidiaries to own, operate and maintain their assets and to conduct their businesses as they are currently being conducted. The Company and the Company Subsidiaries have, since January 1, 2002, filed all registrations, reports, notices, forms or other filings required by any Authority, except where failure to do is not, and would not reasonably be expected to be, individually or in the aggregate, material to either the Business (with respect to matters applicable thereto) or the VAB Business (with respect to matters applicable thereto). As of their respective dates, all such registrations, reports, notices, forms or other filings complied with all Applicable Laws in all material respects.

(b) Except as is not and would not reasonably be expected to be, individually or in the aggregate, material to either the Business (with respect to matters applicable thereto) or the VAB Business (with respect to matters applicable thereto), none of the Company, the Company Subsidiaries or, to the Company's Knowledge, their respective directors, officers, managers, employees or other agents or representatives:

(i) since January 1, 2002, has received any written notification or communication from any Authority (A) asserting that any such Person is not in compliance in all material respects with any material Applicable Law, or has otherwise engaged in any unlawful business practice, (B) threatening to suspend, modify the terms of or revoke any such Person's material Permit, franchise, seat or membership in any securities exchange, commodities exchange or Self-Regulatory Organization, or governmental authorization, (C) requiring any such Person to enter into a cease and desist order, acceptance, waiver and consent agreement or memorandum of understanding (or requiring the managers thereof to adopt any resolution or policy), (D) restricting or disqualifying such Person's activities (except for restrictions generally imposed by (1) any rule, regulation or administrative policy on brokers or dealers generally or (2) a Self-Regulatory Organization), or (E) that such Person is the subject of any Action;

(ii) is aware of any pending or threatened Action by any Authority against the Company, any Company Subsidiary, or, to the Company's Knowledge, any manager, officer, director, employee, agent or representative thereof;

(iii) since January 1, 2002, has been nor currently is, nor is any Affiliate thereof, subject to a "statutory disqualification" as defined in Section 3(a)(39) of the Exchange Act or a disqualification that would be a basis for censure, limitations on the activities, functions or operations of, or suspension or revocation of the registration of any broker-dealer as a broker-dealer, "electronic communications network" (as defined under Rules 11Ac1-1 and 11Ac1-4 under the Exchange Act), "alternative trading system" (as defined in Rule 300 of Regulation ATS under the Exchange Act), municipal securities dealer, government securities broker or government securities dealer under Section 15, Section 15B or Section 15C of the Exchange Act, and, to the Company's Knowledge, there is no reasonable basis for a proceeding or investigation, whether formal or informal, preliminary or otherwise, that is reasonably likely to result in any such censure, limitation, suspension or revocation;

(iv) since January 1, 2002, has been nor currently is required to be registered as a broker-dealer, investment company, investment adviser, securities exchange, electronic communications network, alternative trading system, commodity trading advisor, commodity pool operator, clearing agency, municipal securities dealer, government securities dealer, futures commission merchant or exchange or transfer agent under any Applicable Law and is not so registered;

(v) since January 1, 2002, has failed to be registered, licensed or qualified where required to be registered, licensed or qualified as a broker-dealer with the SEC, the securities commission of any state or foreign jurisdiction or any Authority and is duly registered, licensed or qualified as such where required and such registrations are in full force and effect; or

(vi) since January 1, 2002, has been the subject of any written customer complaint involving an amount exceeding, individually, $500,000.

(c) The Company Broker-Dealer Subsidiaries are registered with the SEC as broker-dealers under Section 15(b) of the Exchange Act and in good standing with the NASD or other applicable Self-Regulatory Organization. Section 4.9(c) of the Company Disclosure Schedule sets forth the jurisdictions in which each Company Broker-Dealer Subsidiary is registered as a broker-dealer. Other than the Company Broker-Dealer Subsidiaries, neither the Company nor any Company Subsidiary is required to be registered with the SEC as a broker-dealer under Section 15(b) of the Exchange Act.

(d) Section 4.9(d) of the Company Disclosure Schedule lists all of the Self-Regulatory Organizations of which the Company or any Company Subsidiary is a member.

(e) Each of the Company Broker-Dealer Subsidiaries is in compliance in all material respects with Regulation T of the Board of Governors of the Federal Reserve System, NASD Rule 2520 and the margin rules or similar rules of any Self-Regulatory Organization of which it is a member, including rules governing the extension or arrangement of credit to customers. Other than the Company Broker-Dealer Subsidiaries, none of the Company or the Company Subsidiaries has or does extend or arrange credit for any customer within the meaning of Regulation U or Regulation X of the Board of Governors of the Federal Reserve System.

(f) Company ATS has received a “no action” letter from the Division of Market Regulation of the SEC confirming, based on the facts set forth in such letter, that the electronic communications network operated by Company ATS is an “electronic communications network” as defined under the Exchange Act and that the Division of Market Regulation will treat the participants in such electronic communications network as in compliance with paragraph (c)(5)(i)(A) of Rule 11Ac1-1 because such electronic communications network satisfies the requirement of paragraph (c)(5)(ii) of such Rule. The facts recited in such no-action letter relating to the electronic communications network of Company ATS have been at all times and currently are true and correct in all material respects. Neither the Company nor any Company Subsidiary is aware of any facts or circumstances that are reasonably likely to result in such no-action letter being revoked, withdrawn, superseded or suspended in whole or material part.

(g) Each of the Company Broker-Dealer Subsidiaries is in compliance with all applicable regulatory capital requirements and no distribution of cash from a Company Broker-Dealer Subsidiary after the date hereof, where such action occurs prior to the Closing, will result

in such Company Broker-Dealer Subsidiary not being in compliance with applicable regulatory capital requirements. Section 4.9(g) of the Company Disclosure Schedule sets forth, with respect to each of the Company Broker-Dealer Subsidiaries, the required capital for such Company Broker-Dealer Subsidiary as of February 28, 2005 and the actual capital of such Company Broker-Dealer Subsidiary as of February 28, 2005.

Section 4.10 No Undisclosed Liabilities. Except for liabilities (a) set forth, accrued, reserved or otherwise reflected in the Financial Statements (or referred to in the notes thereto), (b) permitted or contemplated by this Agreement or set forth or referred to in the Company Disclosure Schedule or (c) incurred in the ordinary course of business consistent with past practice since December 31, 2004, neither the Company nor any Company Subsidiary has (i) any liabilities of a nature required to be set forth or reflected in a consolidated balance sheet of the Company prepared in accordance with GAAP or (ii) as of the date hereof, any other liabilities material to the Business (with respect to the liabilities relating to such business) or the VAB Business (with respect to the liabilities relating to such business), and as of the Closing, any other liabilities which are reasonably expected to be material to the Company and the Company Subsidiaries, taken as a whole.

Section 4.11 Taxes.

(a) The Company and each Company Subsidiary has duly and timely filed all material Tax Returns required to be filed by it, and all such Tax Returns are true, complete and accurate in all material respects. The Company and each Company Subsidiary has paid all material Taxes required to be paid by it, and has withheld and paid all material Taxes that it was required to withhold and pay from amounts owing to any employee, creditor or third party. There are no pending or, to the Company's Knowledge, threatened audits, examinations, investigations, deficiencies, claims or other proceedings in respect of Taxes relating to the Company or any Company Subsidiary, and no Closing Agreement pursuant to Section 7121 of the Code (or any similar provision of state, local or foreign law) has been entered into by or with respect to the Company or any of the Company Subsidiaries. There are no material Liens for Taxes upon the assets of the Company or any Company Subsidiary, other than Liens for current Taxes not yet due and Liens for Taxes that are being contested in good faith by appropriate proceedings.

(b) Neither the Company nor any Company Subsidiary has requested any extension of time within which to file any Tax Returns in respect of any taxable year that have not since been filed, nor made any request for waivers of the time to assess any Taxes that are pending or outstanding. The consolidated U.S. federal income Tax Returns of the Company have been examined, or the statute of limitations has closed, with respect to all taxable years through and including 1999.

(c) Neither the Company nor any Company Subsidiary has any liability for Taxes of any Person (other the Company or any Company Subsidiary) under Treasury Regulation Section 1.1502-6 (or any comparable provision of U.S. state or local or foreign law). Neither the Company nor any Company Subsidiary is a party to any agreement (with any Person other than the Company and/or any Company Subsidiary) relating to the allocation or sharing of Taxes. No jurisdiction where the Company and each of the Company Subsidiaries does not file a Tax Return has made a claim in writing that either the Company or any of the Company Subsidiaries is required to file a Tax Return in such jurisdiction.

(d) Since December 31, 2004, other than in the ordinary course of business and consistent with past practice or as contemplated by this Agreement, neither the Company nor any of the Company Subsidiaries has (i) incurred any material liability for Taxes, (ii) made or changed any election or method of accounting concerning any material Taxes, (iii) filed any amended Tax Return, (iv) settled any material Tax claim or assessment or (v) surrendered any right to claim a refund of any material amount of Taxes.

(e) None of the Company or any of the Company Subsidiaries has agreed to make any adjustment under Section 481(a) of the Code (or any similar provision of state, local or foreign law) by reason of a change in accounting method or otherwise for any taxable year for which the statute of limitations has not yet expired. Neither the Company nor any of the Company Subsidiaries, as a result of any agreement with a Tax Authority, will be required to include any material item of income in, or exclude any material Tax credit or item of deduction from, any taxable period beginning on or after the Closing Date. Neither the Company nor any of the Company Subsidiaries has participated, within the meaning of Treasury regulation Section 1.6011-4(c) in (i) any "reportable transaction" within the meaning of Section 6011 of the Code and the Treasury regulations promulgated thereunder or comparable provisions of state law, (ii) any "confidential corporate tax shelter" within the meaning of Section 6111 of the Code and the Treasury regulations promulgated thereunder or comparable provisions of state law, or (iii) any "potentially abusive tax shelter" within the meaning of Section 6112 of the Code and the Treasury regulations promulgated thereunder or comparable provisions of state law.

(f) The sum of the adjusted tax basis of (i) the assets of Instinet LLC and Instinet Group LLC and (ii) the stock of the VAB Subsidiaries that are characterized as corporations for U.S. federal income tax purposes and LJR (the "VAB Corporate Subsidiaries") is not less than the sum of $207,500,000 plus the gross proceeds received by the Company from the LJR Sale. The adjusted tax basis of the stock of each VAB Corporate Subsidiary is not materially greater than the adjusted tax basis of the assets of such VAB Corporate Subsidiary.

(g) Neither the Company nor any Company Subsidiary has constituted either a "distributing corporation" or a "controlled corporation" within the meaning of Section 355(a)(1)(A) of the Code in a distribution qualifying (or intending to qualify) under Section 355 of the Code (or Section 356 to the extent Section 356 relates to Section 355) in the two years prior to the date of this Agreement.

Section 4.12 Employee Matters. (a) Section 4.12(a) of the Company Disclosure Schedule contains a true and complete list of all Company Benefit Plans and Employment Agreements and the Company has made available to Buyer and VAB Acquisition Sub true and complete copies of each material Company Benefit Plan and Employment Agreement.

(b) There does not exist, nor do any circumstances exist that would reasonably be expected to result in, any liabilities under (i) Title IV of ERISA, (ii) Section 302 of ERISA, (iii) Sections 412 and 4971 of the Code, or (iv) any Benefit Plan either currently or formerly

maintained or contributed to by Reuters Group PLC or any Affiliate for the benefit of current or former Company Employees (collectively, the "Reuters Plans"), in each case, that could reasonably be expected to be a liability of the Company or any Company Subsidiary following the Closing.

(c) With respect to each Company Benefit Plan that is a pension plan that is maintained for the benefit of Company Employees who are located outside of the United States, the present value of accrued benefits under such plan, based upon the actuarial assumptions used for funding purposes in the most recent actuarial report prepared by such plan's actuary with respect to such plan did not exceed, as of its latest valuation date, the then current value of the assets of such plan allocable to such accrued benefits.

(d) No Company Benefit Plan is subject to Title IV of ERISA or Section 412 of the Code.

(e) No Company Benefit Plan is a Multiemployer Plan or a Multiple Employer Plan.

(f) Neither the execution and delivery of this Agreement nor the consummation of the Transactions will (either alone or in conjunction with any other event such as termination of employment) (i) result in any material payment following the Closing becoming due to any Company Employee under any Company Benefit Plan or any Employment Agreement that could reasonably be expected to be a liability of the Company or any Company Subsidiary following the Closing, (ii) materially increase any benefits otherwise payable under any Company Benefit Plan or any Employment Agreement that could reasonably be expected to be a liability of the Company or any Company Subsidiary following the Closing or (iii) result in any acceleration of the time of payment, funding or vesting of any such benefits that could reasonably be expected to be a liability of the Company or any Company Subsidiary following the Closing.

(g) Each Company Benefit Plan has been materially (i) operated, (ii) established, (iii) administered, (iv) invested and (v) registered (where applicable) in accordance with its terms and Applicable Law, including but not limited to ERISA and the Code.

(h) Each Company Benefit Plan intended to be "qualified" within the meaning of Section 401(a) of the Code is so qualified and the trusts maintained thereunder are exempt from taxation under Section 501(a) of the Code.

(i) There are no pending or, to the Company's Knowledge, threatened claims by or on behalf of any Company Benefit Plan, by any employee or beneficiary covered under any such Company Benefit Plan, or otherwise involving any such Company Benefit Plan (other than routine claims for benefits). There are no material pending or, to the Company's Knowledge, material threatened claims with respect to any Employment Agreements.

(j) No amounts payable under the Company Benefit Plans or any Employment Agreement will fail to be deductible for federal income tax purposes by virtue of Section 280G of the Code.

(k) There is no and has not been within the last three years, any (i) unfair labor practice, labor dispute (other than routine individual grievances) or labor arbitration proceeding pending or, to the Company's Knowledge, threatened against the Company or a Company Subsidiary relating to the Business or the VAB Business, except as would not reasonably be expected to have a Company Material Adverse Effect, (ii) activity or proceeding by a labor union or representative thereof to organize any Company Employees, including any union organizing effort or representation petition before the National Labor Relations Board or any state or foreign board, (iii) lockouts, strikes slowdowns, work stoppages or threats thereof by or with respect to such Company Employees, or (iv) with respect to Company Employees employed in Canada, no trade unions has applied to have the Company declared a related employer pursuant to Applicable Law.

(l) None of the Company Employees have, or within the last three years have been, a member of a bargaining unit represented by a collective bargaining representative or covered by a collective bargaining agreement to which the Company or any Company Subsidiary is a party, other than with respect to Company Employees employed in countries other than the United States where statutory or other legal obligations require or otherwise mandate workplace representation.

(m) None of the Company Employees participate in or are currently accruing benefits under a pension plan that is subject to any Canadian Federal or provincial pension standards legislation or to the Income Tax Act (Canada).

Section 4.13 Contracts. (a) Neither the Company nor any Company Subsidiary is a party to (i) any Contract relating to indebtedness for borrowed money or any financial guaranty; (ii) any Contract that materially limits the ability of the Company or any Company Subsidiary to compete in any business line or in any geographic area; (iii) any Contract material to the VAB Business or the Business that is terminable by the other party or parties upon a change in control of the Company or any Company Subsidiary; (iv) any Contract that involves required future expenditures or guaranteed receipts by the Company or any Company Subsidiary of more than $1,000,000 in any one-year period; (v) any Contract with any Self-Regulatory Organization or any Contract for the clearing of securities transactions; (vi) any Contract for the lease of real property; (vii) any material Contract with respect to any Intellectual Property or System; (viii) any Employment Agreement; (ix) any Contract material to the VAB Business or the Business not made in the ordinary course of business; (x) any Contract that by its terms limits the payment of dividends or other distributions by the Company or any Company Subsidiary; (xi) any joint venture or partnership agreement; (xii) any Contract that grants any right of first refusal or right of first offer or similar right or that limits or purports to limit the ability of the Company or any Company Subsidiary to own, operate, sell, transfer, pledge or otherwise dispose of any material amount of assets or business; (xiii) any material agency, broker, sale representative, marketing or similar Contract; and (xiv) any Contract with any director, officer or Affiliate of the Company or any Company Subsidiary (collectively, "Material Contracts").

(b) True and correct copies of each Material Contract have been made available to Buyer and VAB Acquisition Sub.

(c) Each Material Contract is a valid and binding arrangement of the Company or a Company Subsidiary and is in full force and effect, and none of the Company, the Company Subsidiaries or, to the Company's Knowledge, any other party thereto is in default or breach in any material respect under the terms of any such Material Contract.

Section 4.14 Title to Properties. (a) Section 4.14(a) of the Company Disclosure Schedule lists any real property owned or leased by the Company or any Company Subsidiary. With respect to the property leased under each real property lease listed in Section 4.14(a) of the Company Disclosure Schedule, the Company and/or Company Subsidiary is in occupancy of such property pursuant to the terms of the lease governing such interest.

(b) The Company and each Company Subsidiary have good title to, or valid leasehold interests in, all real property and other material properties and assets owned or leased by the Company or such Company Subsidiary, except for such as are no longer used or useful in the conduct of their businesses, in each case free of all Liens other than Permitted Liens.

Section 4.15 Intellectual Property Rights. (a) Set forth in Section 4.15 of the Company Disclosure Schedule is a true and complete list of all registrations and applications for the material Company Intellectual Property and all material unregistered Company Intellectual Property including, as applicable, the owner, jurisdiction, and registration or application number.

(b) Section 4.15(b) of the Company Disclosure Schedule (i) lists all material software and Systems that are owned, licensed, leased, or otherwise used by the Company or any Company Subsidiary, and (ii) identifies which of such software or Systems are owned, licensed, leased, or otherwise used, as the case may be.

(c) The material Company Intellectual Property is valid and subsisting, in full force and effect, and has not been cancelled, expired, terminated, revoked or abandoned. None of the execution or delivery of the Agreement or the VAB Transaction Agreement (and, in the case of the VAB Transaction Agreement, as if the Company were Merger Sub thereunder) or the consummation by the Company, the Surviving Corporation or any Company Subsidiary, as the case may be, of the Transactions will affect the enforceability or validity of the material Company Intellectual Property. There are no claims pending or, to the Company's Knowledge, threatened, and neither the Company nor any Company Subsidiary has received any written notice of a third party claim: (i) alleging that the conduct of the Business or the VAB Business infringes upon the Intellectual Property rights of any third party or (ii) challenging the ownership, use, validity or enforceability of any Company Intellectual Property.

(d) The Company or a Company Subsidiary owns, free and clear of all Liens (other than Permitted Liens), all material Company Intellectual Property, and has a valid right to use pursuant to lease, license, sublicense, agreement or permission, all of the other material Intellectual Property used in the Business or the VAB Business.

(e) To the Company's Knowledge, no third party is infringing or otherwise violating any material Company Intellectual Property, and no such claims have been brought against any third party by the Company or any Company Subsidiary.

(f) The Company and the Company Subsidiaries have taken in all material respects all reasonably necessary steps in accordance with normal industry practice to protect the confidentiality of the Company Intellectual Property, including enforcement of the policies set forth on Section 4.15(f) of the Company Disclosure Schedule. To the Company's Knowledge, there have been no material breaches of confidentiality or loss of trade secret rights with respect to any material Company Intellectual Property.

(g) Since January 1, 2004, there has been no material security breach with respect to the Systems.

Section 4.16 Brokers. Except for UBS Securities LLC, neither the Company nor any Company Subsidiary has employed any broker or finder or incurred any liability for any broker's fees, commissions or finder's fees in connection with the Transactions. The Company has provided Buyer a true, complete and correct copy of the Company's engagement letter with UBS Securities LLC prior to the date hereof.

Section 4.17 Company SEC Reports. (a) The Company has timely filed with the SEC all Company SEC Reports. The Company SEC Reports, including any financial statements or schedules included in the Company SEC Reports, at the time filed (and, in the case of registration statements and proxy statements, on the dates of effectiveness and the dates of mailing, respectively, and, in the case of any Company SEC Report amended or superseded by a filing prior to the date of this Agreement, then on the date of such amending or superseding filing (and, with respect to clause (i) of this sentence only, only on such date)) (i) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, and (ii) complied as to form in all material respects with the applicable requirements of the Exchange Act and the Securities Act, as the case may be. The financial statements of the Company and the Company Subsidiaries included in the Company SEC Reports (i) have been prepared from, and are in accordance with, the books and records of the Company and the Company Subsidiaries, (ii) at the time filed (and, in the case of registration statements and proxy statements, on the dates of effectiveness and the dates of mailing, respectively, and, in the case of any Company SEC Report amended or superseded by a filing prior to the date of this Agreement, then on the date of such amending or superseding filing) complied as to form in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto, (iii) were prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto, or, in the case of unaudited statements, as permitted by Form 10-Q of the SEC), and (iv) fairly present in all material respects (subject, in the case of unaudited statements, to normal, recurring audit adjustments and in the case of any Company SEC Reports amended or superseded by a filing prior to the date of this Agreement, such amending or superseding filing) the consolidated financial position of the Company and the consolidated Company Subsidiaries as at the dates thereof and the consolidated results of their operations and cash flows for the periods then ended.

(b) The Company's principal executive officer and its principal financial officer have (x) devised and maintained a system of internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation

of financial statements in accordance with GAAP, and (y) disclosed to the Company's auditors and the audit committee of the Company Board (i) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the Company's or any Company Subsidiary's ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company internal controls and the Company has made available to Buyer and VAB Acquisition Sub copies of any written materials relating to the foregoing. The Company has established and maintains disclosure controls and procedures (as such term is defined in Rule 13a-14 under the Exchange Act); to the Company's Knowledge, such disclosure controls and procedures are designed to ensure that material information relating to the Company and the Company Subsidiaries required to be included in the Company's periodic reports under the Exchange Act, is made known to the Company's principal executive officer and its principal financial officer by others within the Company or any of the Company Subsidiaries, and, to the Company's Knowledge, such disclosure controls and procedures are effective in timely alerting the Company's principal executive officer and its principal financial officer to such material information required to be included in the Company's periodic reports required under the Exchange Act. There are no outstanding loans made by the Company or any Company Subsidiary to any executive officer (as defined in Rule 3b-7 under the Exchange Act) or director of the Company. Since the enactment of the Sarbanes-Oxley Act of 2002, neither the Company nor any Company Subsidiary has made any loans to any executive officer (as defined in Rule 3b-7 under the Exchange Act) or director of the Company or any Company Subsidiary. The Company has completed its process of compliance with Section 404 of the Sarbanes-Oxley Act of 2002.

Section 4.18 Information Supplied. At the date the Proxy Statement is mailed to the Company Stockholders and at the time of the Company Stockholders Meeting, the Proxy Statement will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary, in order to make the statements therein in light of the circumstances under which they are made, not misleading. No representation or warranty is made by the Company with respect to statements or omissions included in the Proxy Statement based upon information furnished to the Company by or on behalf of Buyer, Merger Sub or VAB Acquisition Sub specifically for use therein. The Proxy Statement will comply as to form in all material respects with the provisions of the Exchange Act.

Section 4.19 Opinion of Financial Advisor. The Company Board has received the oral opinion (to be confirmed in writing) of UBS Securities LLC, the Company's financial advisor, to the effect that, as of the date of such opinion, the Merger Consideration to be received by the holders of Company Common Stock (other than Reuters and its Affiliates) pursuant to this Agreement is, from a financial point of view, fair to such holders. The Company shall provide a complete and correct signed copy of such opinion to Buyer solely for informational purposes as soon as practicable after the date of this Agreement.

Section 4.20 Company Board Recommendation; Required Vote. The Company Board, at a meeting duly called and held, has unanimously (among those voting) (a) determined that this Agreement and the Merger are advisable, fair to and in the best interests of the Company Stockholders; (b) declared advisable and in all respects approved and adopted this Agreement

and the Merger; and (c) resolved to recommend that the Company Stockholders approve and adopt this Agreement and the Merger (the "Company Board Recommendation"); *provided*, *however*, that any withdrawal, modification or qualification of such recommendation in accordance with Section 6.11(c) shall not be deemed a breach of this representation. The affirmative vote of holders of a majority of the outstanding shares of Company Common Stock to adopt this Agreement is the only vote of the holders of any class or series of capital stock of the Company necessary to adopt this Agreement and approve the Merger.

Section 4.21 Section 203 of the DGCL. Prior to the date of this Agreement, the Company Board has taken all action necessary, assuming the accuracy of the representation given by Buyer and Merger Sub in Section 5.10, so that the restrictions on business combinations contained in Section 203 of the DGCL will not apply with respect to or as a result of this Agreement, the Support Agreement or the Transactions, without any further action on the part of the Company Stockholders or the Company Board. To the Company's Knowledge, no other state takeover statute is applicable to the Merger.

Section 4.22 Books and Records. The books of account, stock record books and other records, including books and records required to be made and kept pursuant to Rule 17a-3 and Rule 17a-4 of the Exchange Act, as applicable, of each of the Company and the Company Subsidiaries are complete and correct in all material respects.

Section 4.23 Transactions with Affiliates. As of the Closing, other than (a) any compensation, indemnification or other similar agreements between the Company or a Company Subsidiary and any officer or director and (b) payables and receivables for goods and services, there will be no outstanding amounts payable to or receivable from, or advances by the Company or any Company Subsidiary to, and neither the Company nor any Company Subsidiary is otherwise a creditor or debtor to, any Affiliates of the Company (other than the Company and any Company Subsidiary), or any director or officer of the Company or any of its Affiliates. Other than (i) as disclosed in the Company's proxy statement for its 2005 annual meeting of stockholders filed with the SEC on April 15, 2005, or (ii) payables and receivables for goods and services, none of the Company nor any Company Subsidiary has purchased, acquired or leased any property or services from or sold, transferred or leased any property or services to, or made any management consulting or similar fee agreement with, any Affiliates of the Company (other than the Company or a Company Subsidiary) or any director or officer of the Company or any of its Affiliates.

Section 4.24 Sufficiency of Assets. The assets, property, rights, agreements and interests in the VAB Subsidiaries constitute all of the material assets, tangible and intangible, of any nature whatsoever, used or held for use in the operation of the VAB Business in substantially the same manner as it is presently operated. The assets, property, rights, agreements and interests in the ECN Entities constitute all of the material assets, tangible and intangible, of any nature whatsoever, used or held for use in the operation of the Business in substantially the same manner as it is presently operated.

Section 4.25 Accounts Receivable. The accounts receivable of the Company as reflected in the Entity Financial Statement of the Company as of December 31, 2004, to the extent uncollected on the date hereof and other than exceptions which are not in the aggregate

material, (a) arose from bona fide transactions, represent monies due, and the Company has made reserves reasonably adequate (subject to adjustment for operations and transactions through the Closing Date in the ordinary course of business consistent with past practice in all material respects) for such accounts receivable not collectible in the ordinary course of business; and (b) subject to the reserves described in clause (a), are not subject to any refunds, discounts, rights of setoff or other adjustments, that arise out of any agreement or commitment of the Company or any of the Company Subsidiaries with or to the applicable debtors.

Section 4.26 Insurance. The Company and the Company Subsidiaries are covered by valid and currently effective insurance policies as set forth in Section 4.26 of the Company Disclosure Schedule. All premiums payable under such policy have been duly paid to date and each such insurance policy is in full force and effect. There is no material claim by the Company or any Company Subsidiary pending under any of such insurance policies and no such material claim made since January 1, 2003 has been denied or, in the case of any pending claim, questioned or disputed by the underwriters of such policies. The consummation of the Transactions will not result in the cancellation of any such insurance policies.

Section 4.27 Rights Agreement. The Company or the Company Board, as the case may be, has taken all necessary actions (a) so that the execution and delivery of this Agreement and the consummation of the Merger will not result in a "Distribution Date" or a "Stock Acquisition Date" (each as defined in the Rights Agreement) or result in Buyer or Merger Sub being an "Acquiring Person" (as defined in the Rights Agreement) and (b) to amend the Rights Agreement to render it inapplicable to this Agreement, and the Merger and to terminate it as of the Effective Time.

Section 4.28 LJR Sale Agreement. Attached as Exhibit B hereto is a true and correct copy of the LJR Sale Agreement. The Company has all requisite power and authority to enter into the LJR Sale Agreement and consummate the LJR Sale, and such agreement has been duly and validly executed by the Company and, to the Company's Knowledge, any other party thereto, and constitutes the valid and binding obligation of the Company and, to the Company's Knowledge, each party thereto, enforceable against such party in accordance with its terms (except insofar as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Applicable Laws affecting creditors' rights generally, or by principles governing the availability of equitable remedies).

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF BUYER AND MERGER SUB

Except as disclosed in the Buyer Disclosure Schedule, Buyer and Merger Sub hereby represent and warrant to the Company as follows:

Section 5.1 Organization and Qualification. Each of Buyer and Merger Sub is duly organized, validly existing and in good standing under its jurisdiction of incorporation and has all requisite corporate power and authority to own, lease and operate its assets, properties and business and to carry on its business as now being conducted and as and where the business is located.

Section 5.2 Authorization and Validity of Agreements. Each of Buyer and Merger Sub has all requisite power and authority to execute this Agreement, to carry out and perform its obligations under this Agreement and to consummate the Transactions. The execution, delivery and performance by Buyer and Merger Sub of this Agreement, and the consummation of the Transactions, have been duly and validly authorized by all necessary action of Buyer and Merger Sub, and no other action on the part of Buyer or its stockholders or Merger Sub is necessary for the authorization, execution, delivery or performance by Buyer and Merger Sub of this Agreement and the consummation of the Transactions. This Agreement has been duly executed and delivered by Buyer and Merger Sub and, assuming the due authorization, execution and delivery by the Company, constitutes the valid and binding obligation of Buyer and Merger Sub enforceable against Buyer and Merger Sub in accordance with its terms (except insofar as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Applicable Laws affecting creditors' rights generally, or by principles governing the availability of equitable remedies).

Section 5.3 No Violation; Consents and Approvals. (a) The execution, delivery and performance of this Agreement by Buyer and Merger Sub and, assuming termination or expiration of applicable waiting periods under the HSR Act and receipt of the Required Buyer Regulatory Approvals, the consummation of the Transactions do not and will not violate, conflict with or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in termination of, or accelerate the performance required by, or result in a right of consent, termination or acceleration under, or require any offer to purchase or any prepayment of any debt or result in the creation of any Lien upon any of the properties or assets of Buyer or Merger Sub under any of the terms, conditions or provisions of (i) the certificate of incorporation or by-laws or other similar organizational documents of Buyer or Merger Sub, (ii) any Applicable Law applicable to Buyer or Merger Sub or any of their respective properties or assets, or (iii) any Contract to which Buyer or Merger Sub is a party or by which Buyer or Merger Sub or any of their respective properties or assets may be bound or affected, other than, in the case of clauses (ii) and (iii) above, such violations, conflicts, breaches, defaults, terminations, accelerations, offers, prepayments or creations of liens, security interests or encumbrances that would not, individually or in the aggregate, reasonably be expected to have a Buyer Material Adverse Effect.

(b) Except for (i) filings by Buyer required by the HSR Act and (ii) the filings with and receipt of approvals from the Authorities listed on Section 5.3(b) of the Buyer Disclosure Schedule (such filings and approvals, the "Required Buyer Regulatory Approvals" and, together with the Required Company Regulatory Approvals, the "Required Regulatory Approvals"), no declaration, filing or registration with, or notice to, or authorization, consent or approval of, any Authority is necessary for the execution and delivery of this Agreement by the Company or the consummation by Buyer and Merger Sub of the Transactions, other than such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not made or obtained, as the case may be, would not prevent Buyer or Merger Sub from performing its obligations under this Agreement or would not, individually or in the aggregate, reasonably be expected to have a Buyer Material Adverse Effect and other than such declarations, filings, registrations, notices, authorizations, consents or approvals which are required or become applicable due to the nature or status of, or actions taken by the Company or its respective Affiliates.

Section 5.4 Legal Proceedings. There is no Action, pending against or, to Buyer's knowledge, threatened against or affecting, Buyer or any of its properties or Merger Sub before any court or arbitrator or any governmental body, agency or official which has had or would reasonably be expected to have a Buyer Material Adverse Effect.

Section 5.5 Brokers. Except for Thomas Weisel Partners, LLC, Keefe, Bruyette & Woods, Inc. and Credit Suisse First Boston LLC, none of Buyer, or any of its Subsidiaries or, to Buyer's knowledge, VAB Acquisition Sub or any of its Affiliates has employed any broker or finder or incurred any liability for any broker's fees, commissions or finder's fees in connection with the Transactions.

Section 5.6 Availability of Funds. Buyer's and Merger Sub's obligations hereunder are not subject to any conditions regarding Buyer's and Merger Sub's ability to obtain financing for the consummation of the Transactions. Buyer and Merger Sub have, and as of the Closing will have, cash available, existing borrowing facilities or written financial commitments or other binding agreements which together are sufficient to enable it to perform its obligations hereunder and consummate the Transactions. True and correct copies of any facilities and commitments intended to enable Buyer and Merger Sub to perform their obligations hereunder have been provided to the Company.

Section 5.7 Information Supplied. None of the information supplied or to be supplied by Buyer, Merger Sub or, to Buyer's knowledge, VAB Acquisition Sub specifically for inclusion or incorporation by reference in the Proxy Statement will, at the date the Proxy Statement is mailed to the Company Stockholders or at the time of the Company Stockholders Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statement therein, in the light of the circumstances in which they are made, not misleading.

Section 5.8 Capitalization of Merger Sub. The authorized capital stock of Merger Sub consists of 1,000 shares of common stock, par value $0.01 per share. All of the issued and outstanding capital stock of Merger Sub is, and at the Effective Time will be, owned by Buyer. Merger Sub has not conducted any business prior to the date hereof and has no, and prior to the Effective Time will have no, assets, liabilities or obligations of any nature other than those incident to its formation and pursuant to this Agreement and the Transactions.

Section 5.9 Section 203 of the DGCL. None of Buyer, Merger Sub or their respective Affiliates or associates is or ever has been an "interested stockholder" (as defined in Section 203 of the DGCL) with respect to the Company.

Section 5.10 VAB Transaction Agreement. (a) Attached as Exhibit A hereto is a true and correct copy of the VAB Transaction Agreement.

(b) Buyer has all requisite power and authority to enter into the VAB Transaction Agreement and consummate the VAB Purchase, and such agreement has been duly and validly executed by Buyer, and, assuming the due authorization, execution and delivery by

the other parties thereto, constitutes the valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms (except insofar as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Applicable Laws affecting creditors' rights generally, or by principles governing the availability of equitable remedies).

(c) To the knowledge of Buyer, based on a reasonable inquiry of VAB Acquisition Sub (with respect to matters relating to VAB Acquisition Sub), VAB Acquisition Sub has all requisite power and authority to enter into the VAB Transaction Agreement and consummate the VAB Purchase, and such agreement has been duly and validly executed by VAB Acquisition Sub and any other party thereto, has been duly executed and delivered by such parties, and constitutes the valid and binding obligation of each party thereto, enforceable against such party in accordance with its terms (except insofar as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Applicable Laws affecting creditors' rights generally, or by principles governing the availability of equitable remedies). To the knowledge of Buyer, based on reasonable inquiry and diligence, VAB Acquisition Sub has, and as of the Closing will have, cash available, existing borrowing facilities or written financial commitments which together are sufficient to enable it to perform its obligations under the VAB Transaction Agreement and consummate the VAB Purchase. An Affiliate of SLP has delivered an equity commitment letter to VAB Acquisition Sub and a contingency letter to VAB Acquisition Sub and Buyer pursuant to which such Affiliate has committed, subject to the terms and conditions set forth therein, to provide VAB Acquisition Sub with 100% of the equity required to consummate the VAB Purchase, and a true and complete copy of such letter has been provided to the Company.

ARTICLE 6

COVENANTS

Section 6.1 Access to Information. (a) From the date of this Agreement through the Closing, the Company shall afford to representatives of Buyer and VAB Acquisition Sub access to the officers, employees, accountants, counsel, offices, properties, books and records during normal business hours, as Buyer or VAB Acquisition Sub may reasonably request in order that Buyer and VAB Acquisition Sub may have an opportunity to make such investigations as they desire of the affairs of the Company and the Company Subsidiaries (including any investigations reasonably required by Buyer to determine the Tax cost to Buyer and VAB Acquisition Sub of the VAB Purchase) and to facilitate consummation of the Transactions; *provided, however*, that such investigation shall be upon reasonable notice, shall not unreasonably disrupt the personnel and operations of the Company and shall be subject to Applicable Laws. All requests for access to the offices, properties, books, and records relating to the Company and the Company Subsidiaries shall be made to such representatives of the Company as the Company shall designate, who shall be solely responsible for coordinating all such requests and all access permitted hereunder. None of Buyer, VAB Acquisition Sub or their representatives shall contact any of the employees, customers or suppliers of the Company or its respective Affiliates in connection with the Transactions, whether in person or by telephone, mail or other means of communication, without the specific prior written authorization of such representatives of the Company as the Company may designate. If, in the course of any

investigation pursuant to this Section 6.1, Buyer becomes aware of any breach of any representation or warranty contained in this Agreement or any circumstance or condition that upon the Closing would constitute such a breach, Buyer covenants that it will promptly so inform the Company and VAB Acquisition Sub. To the extent permitted under Applicable Law, from and after the date hereof, the Company shall reasonably cooperate with Buyer and VAB Acquisition Sub regarding the determination and implementation of an orderly transition following the Merger.

(b) Buyer and VAB Acquisition Sub acknowledge that all information provided to each of them or their representatives in connection with this Agreement and the consummation of the Transactions shall be deemed to be Information (as such term is used in the Confidentiality Agreement) subject to the terms of the Confidentiality Agreement. The terms of the Confidentiality Agreement are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Following the Closing, Buyer and VAB Acquisition Sub will no longer be bound by the Confidentiality Agreement.

Section 6.2 Conduct of Business. From the date of this Agreement through the Closing, except as disclosed in Section 6.2 of the Company Disclosure Schedule or expressly permitted by this Agreement, and, except as consented to or approved by each of Buyer and VAB Acquisition Sub (which consent shall not be unreasonably withheld, conditioned or delayed) in writing or required by any Applicable Laws, the Company shall, and shall cause each Company Subsidiary (other than LJR) to covenant and agree that it:

(a) shall operate its business in the ordinary course consistent with past practice in all material respects;

(b) shall not amend its certificate of incorporation, by-laws or other similar organizational documents;

(c) other than with respect to Company Options and other equity awards outstanding as of the date hereof, shall not (i) issue, sell or agree to issue or sell any shares of its capital stock or other equity interests, (ii) issue, sell or agree to issue or sell any securities convertible into, or options with respect to, or warrants to purchase or rights to subscribe for, any shares of its capital stock or other equity interests, (iii) enter into or agree to enter into any agreement with respect to the voting of any of its capital stock or other equity interests, or (iv) purchase, redeem, acquire or offer to acquire any shares of its capital stock;

(d) other than dividends and distributions of cash by a direct or indirect wholly owned Company Subsidiary to its parent (including in connection with Section 6.2(t)) or a cash dividend by the Company to the Company Stockholders, not to exceed the net after-tax proceeds of the LJR Sale (the "LJR Dividend"), shall not (i) declare, set aside or pay any dividends on, make any other distributions in respect of, or enter into any agreement with respect to the voting of, any of its capital stock, or (ii) split, reverse split, combine or reclassify any of its capital stock or issue or authorize the issuance of any securities in respect of, in lieu of, or in substitution for, shares of its capital stock, except upon the exercise of Company Options or the vesting of performance share awards that are outstanding as of the date hereof in accordance with their present terms;

(e) (i) except in the ordinary course of business consistent with past practice or in order to satisfy the obligations under the LJR Sale Agreement relating to net asset value, shall not (A) sell, lease, license, transfer or otherwise dispose of any of its material assets, or (B) create any new Lien on its properties or assets, other than Permitted Liens, (ii) make any loans, advances or capital contributions to, or investments in, any other Person, or (iii) engage in accounts receivables factoring with third parties;

(f) shall not (i) acquire or agree to acquire or merge with or into or by any other manner consolidate with or convert into, another Person or (ii) except as permitted by this Agreement, purchase any material assets or any equity interests of another Person;

(g) except in the ordinary course of business, shall not (i) enter into any material joint venture, partnership or other similar arrangement, (ii) enter into any new Material Contract, or (iii) terminate or materially amend any Material Contract;

(h) shall not make or authorize any capital expenditure or expenditures that, individually, is in excess of $1,000,000 or, in the aggregate, are in excess of $5,000,000;

(i) except for securities lending or securities borrowing in the ordinary course of business, shall not incur any indebtedness for borrowed money, issue any debt securities or assume, guarantee or endorse or otherwise become responsible for the obligations of any other Persons;

(j) shall not make any material change in any of its present financial accounting methods and practices, except as required by changes in GAAP or Applicable Laws;

(k) shall not enter into or amend any employment, severance, special pay arrangement with respect to the termination or employment or other similar arrangements or agreements with any directors or Company Employees to which the Company or any Company Subsidiary is a party or is otherwise liable, shall not enter into, amend or terminate any Company Benefit Plan or grant to any current or former Company Employee any loan, increase in compensation, bonus or other material benefits (including without limitation any bonus that is contingent upon the consummation of the Transactions) and shall not enter into any material transaction of any other nature with any Company Employee, except that the Company and each Company Subsidiary shall be permitted to (i) hire non-executive level replacement employees, on competitive market terms and conditions, (ii) pay year-end bonuses in accordance with the 2005 Bonus Plan in amounts not in excess of the 2005 Annual Bonus Amount and other scheduled bonuses in the ordinary course of business consistent with past practice, and (iii) enter into retention agreements with individual Company Employees who are not members of the executive committee that provide retention payments not in excess of $100,000 individually, or $2,000,000 in the aggregate;

(l) shall use commercially reasonable efforts to keep available the services of the current officers and key employees of the Company and the Company Subsidiaries (it being acknowledged and agreed that compliance with the terms of this Agreement, including this Section 6.2, shall be deemed to be commercially reasonable efforts);

(m) shall not waive any right of substantial value other than in the ordinary course of business;

(n) shall not (i) except in the ordinary course of business or pursuant to contractual obligations in effect on the date hereof, pay, settle, discharge or satisfy any material liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise) or any Action (A) at a cost in excess of the amount accrued or reserved in the Financial Statements with respect to such liability, obligation or Action or (B) pursuant to terms that impose material restrictions on the Business or the VAB Business and, in the case of clause (A) or (B), such settlement discharge or satisfaction includes (x) no admission by the Company or any Company Subsidiary of any wrongdoing and (y) an unconditional written release from all liability in respect of such Action; or (ii) agree or consent to any agreement or modifications of existing agreements with any Authority in respect of the operations of its business, except as required by law or as expressly contemplated by, or required to comply with, the terms of this Agreement or as would not otherwise materially impede the conduct of the Business or the VAB Business;

(o) shall not make or rescind any material election relating to Taxes, settle or compromise any material claim, action, suit, litigation, proceeding, arbitration, investigation, audit or controversy relating to Taxes, or except as may be required by Applicable Law, make any change to any of its material Tax accounting policies or procedures;

(p) except in the ordinary course of business, shall not impair the value of, or fail to use commercially reasonable efforts to maintain, any of the material Company Intellectual Property or Systems;

(q) except as required pursuant to the terms of any Company Options and other equity-based compensation awards as in effect on the date hereof, shall not accelerate, or act to accelerate, vesting of any Company Options or other equity or equity-based compensation awards;

(r) shall not change in any material respects its regulatory, investment or risk management or other similar policies of the Company or any Company Subsidiary;

(s) shall use reasonable best efforts to complete in all material respects the actions set forth on Section 6.2(s) of the Company Disclosure Schedule prior to the Closing;

(t) shall use reasonable best efforts to implement the plan set forth on Section 6.2(t) of the Company Disclosure Schedule with respect to the distribution of funds, subject to GAAP, regulatory requirements and Applicable Law; and

(u) shall not agree to take any action prohibited by this Section 6.2.

Notwithstanding any provisions of this Agreement to the contrary (including this Section 6.2), subject to the applicable regulatory capital requirements, the Company may (i) make or accept inter- or intra-company advances to, from or with one another or with the Company or any of its Subsidiaries (excluding LJR after the consummation of the LJR Sale) or (ii) engage in any transaction incident to the cash management procedures of the Company and the Company Subsidiaries (excluding LJR after the consummation of the LJR Sale).

Section 6.3 Notification of Claims. From the date hereof through the Closing Date, the Company shall, as promptly as practicable, notify each of Buyer and VAB Acquisition Sub of the commencement or threatened commencement of any material Actions against the Company and its Subsidiaries, or seeking to enjoin, modify or impose conditions upon the Transactions, and Buyer shall, as promptly as practicable, notify the Company of the commencement or threatened commencement of any material Actions against Buyer affecting the Company, or seeking to enjoin, modify or impose conditions upon the Transactions. In addition, the Company and Buyer shall give prompt notice to each other and VAB Acquisition Sub of the occurrence or nonoccurrence of any event the occurrence or nonoccurrence of which would be reasonably likely to cause any of the conditions set forth in Article 7 not to be capable of being satisfied by the Termination Date. The delivery of any notice pursuant to this Section 6.3 shall not affect, limit or otherwise qualify, or serve as an exception to, the representations or warranties or covenants in this Agreement or limit or otherwise affect the remedies available to Buyer and VAB Acquisition Sub hereunder.

Section 6.4 Reasonable Efforts; Regulatory Consents, Authorizations, etc. (a) Each of the parties to this Agreement shall use commercially reasonable and good faith efforts to consummate the Transactions as of the earliest practicable date.

(b) The Company and Buyer further agree to (i) promptly file or cause to be promptly filed, with all appropriate authorities, all notices, registrations, declarations, applications and other documents as may be necessary to consummate the Transactions and (ii) thereafter diligently pursue obtaining all Required Regulatory Approvals from such authorities as may be necessary to consummate the Transactions.

(c) Subject to the terms and conditions of this Agreement, the Company and Buyer agree that each shall use its best efforts to take, or cause to be taken and do, or cause to be done, all things necessary under applicable Antitrust Laws to consummate the Transactions as of the earliest practicable date. In furtherance and not in limitation of the above, the Company and Buyer agree that each shall (i) cause to be filed any necessary notification or report with respect to the Transactions, pursuant to any applicable Antitrust Law, as soon as practicable after the date hereof; and in any event not later than the tenth Business Day after the date hereof, (ii) supply as promptly as practicable any additional information or documentary material that may be requested by any Authority pursuant to any applicable Antitrust Law; and (iii) use, subject to the other provisions of this Section 6.4, its best efforts to take all other actions necessary to obtain all Required Regulatory Approvals or to cause the expiration or termination of the applicable waiting periods under any applicable Antitrust Law as soon as practicable. In furtherance and not in limitation of the above, it is specifically understood that the Company and Buyer shall each cause to be filed with the United States Department of Justice and Federal Trade Commission a Notification and Report Form for Certain Mergers and Acquisitions, pursuant to the HSR Act, and shall include therein a request for early termination of the waiting period specified under the HSR Act.

(d) In connection with the efforts referenced in Section 6.4(c) above, the Company and Buyer further agree that each will use its best efforts to (i) cooperate in all respects with the other parties hereto in connection with any filing or submission and in connection with any investigation or other inquiry, including any Action initiated by a private party, pursuant to

any applicable Antitrust Law (including, by sharing copies of any such filings or submissions with the other parties hereto reasonably in advance of the filing or submission thereof; provided sensitive or competitive information shall be subject to review on a counsel only basis pursuant to confidentiality undertakings); (ii) promptly inform each other party hereto and VAB Acquisition Sub of any communication received from, or given by the Company or Buyer to, any Authority regarding the Transactions, and of any communication received or given in connection with any Action by a private party, in any such case, to the extent reasonably practicable, pursuant to an applicable Antitrust Law and regarding any of the Transactions; and (iii) permit each of the parties hereto and VAB Acquisition Sub (to the extent related to the VAB Purchase) an opportunity to review in advance of any communication intended to be given by it to, and consult with the other parties hereto and VAB Acquisition Sub (to the extent related to the VAB Purchase) in advance of any meeting or conference with, any Authority or, in connection with any proceeding by a private party, with such private party, in any such case, to the extent reasonably practicable, pursuant to an applicable Antitrust Law and to the extent permitted by such Authority or other person, give the other parties hereto and VAB Acquisition Sub (to the extent related to the VAB Business) the opportunity to attend and participate in such meetings and conferences if either party and VAB Acquisition Sub (to the extent related to the VAB Purchase) reasonably believes such attendance and participation to be beneficial; *provided*, *however*, that materials concerning the valuation of the Company and materials subject to third-party confidentiality restrictions may be redacted.

(e) If, with respect to any filing contemplated by this Section 6.4, it is necessary or advisable that a single filing be made on behalf of the Company and Buyer, the Company shall closely cooperate in Buyer's preparation of such filing. If, with respect to any filing contemplated by this Section 6.4, only one filing fee is required for both parties, regardless of whether separate or joint filings are made, Buyer shall pay the appropriate filing fee. In furtherance and not in limitation of the foregoing, Buyer shall pay the filing fee pursuant to the HSR Act.

(f) Subject to Section 6.4(h), in furtherance and not in limitation of the efforts referred to above in Section 6.4(d), if any objections are asserted pursuant to any applicable Antitrust Law by any Authority or private party, or if any suit is instituted or threatened, which would otherwise prohibit or materially impair or delay the consummation of the Transactions, the Company and Buyer agree that each shall use its best efforts to resolve any such objections or suits so as to permit consummation of the Transactions, including selling or agreeing to sell, holding or agreeing to hold separate, or otherwise disposing or agreeing to dispose of assets (which may include, but shall not be required to include, any assets relating to the VAB Business), or conducting or agreeing to conduct its business in such a manner as would resolve such objections or suits, or permitting any of its Subsidiaries to take or agree to take any such action. Notwithstanding the foregoing, the parties will each use their commercially reasonable efforts to resist any action requested by any Authority to sell, divest, discontinue or limit, before or after the Closing, any assets or businesses of the VAB Business (other than the disposition contemplated by the VAB Purchase).

(g) In the event that any Action is instituted, or threatened to be instituted, by any Authority or private party, in any such case, pursuant to Antitrust Law, challenging any of the Transactions, each party to this Agreement agrees to cooperate in all respects with each other

and use its respective best efforts to defend, contest and resist any such Action and to have vacated, lifted, reversed or overturned any Judgment, whether temporary, preliminary or permanent, that is in effect and prohibits, prevents or restricts consummation of the Transactions.

(h) Notwithstanding anything in this Section 6.4 to the contrary, nothing in this Section 6.4 shall require, or be construed to require, Buyer, in connection with the receipt of any consent, waiver, approval, license or authorization by any Authority or the defense of any Action, to (i) sell, hold separate, divest, discontinue, or limit, or proffer to, or agree to, sell, hold separate, divest, discontinue or limit, before or after the Closing Date, any assets, businesses, or interest in any assets or businesses of Buyer or the Company or any Company Subsidiary or any of their respective Affiliates (or to consent to any sale, or agreement to sell or discontinuance or limitation by Buyer or the Company or any Company Subsidiary or any of their respective Affiliates, as the case may be, of any of their respective assets or businesses) or (ii) agree to any conditions or terms relating to or applying to, or requiring any changes, limitations or restrictions on, the operation of any asset or business, including the market practices and structure of Buyer, that, in the case of either clause (i) or (ii), is reasonably likely, individually or in the aggregate, to have a material adverse effect on the assets, business, long-term earning capacity or financial condition of Buyer and its Affiliates (including the ECN Entities) taken as a whole (any such requirement specified in clause (i) or (ii), a "Burdensome Condition").

Section 6.5 Restrictions on Buyer. Buyer agrees that, from and after the date hereof and prior to the Closing, and except as expressly permitted by this Agreement or as may be agreed in writing by the Company, VAB Acquisition Sub and Buyer, Buyer shall not, and shall not permit any of its Subsidiaries to agree, in writing or otherwise, to take any action which would reasonably be expected to materially impair Buyer's ability to perform its obligations under this Agreement or to prevent, impede or delay the consummation of the Transactions or result in the failure to satisfy any condition to the consummation of the Transactions.

Section 6.6 Further Assurances. The Company and Buyer agree, and Buyer, after the Closing, agrees to cause the Surviving Corporation, to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously the Transactions or effectuate the purposes and intent of this Agreement.

Section 6.7 Employee Matters. (a) (i) Until the date which is twelve months after the Closing Date (the "Benefits Continuation Period"), Buyer shall provide, or shall cause to be provided, to the Company Employees compensation and employee benefits that are, in the aggregate, substantially similar to those provided to the Company Employees immediately before the Closing, other than benefits under any bonus or other cash or equity compensation plan or retirement benefits under any Reuters Plans; *provided*, *however*, that, nothing in this Agreement shall require Buyer to continue to employ any particular Company Employee following the Closing Date, and, with respect to severance, Buyer shall cause to be provided Severance Benefits to Company Employees who are terminated from their employment within six months after the Closing Date at a level that is at least as favorable to such Company Employees as applicable to such Company Employees on the day immediately prior to the Closing Date.

(ii) Notwithstanding the foregoing, the following sets forth the treatment of the annual cash incentive bonus allocated and approved for Company Employees with respect to the calendar year in which the Closing Date occurs. The amount that is allocated and approved by the Compensation Committee of the Company Board (the "Compensation Committee") for the 2005 calendar year shall be set forth on Section 6.7(a) of the Company Disclosure Schedule (the "2005 Bonus Plan") in a payment grid and an aggregate bonus amount, which will be adjusted to exclude any accrued or budgeted amounts for LJR (such aggregate bonus amount the "2005 Annual Bonus Amount"). In the event that the Closing Date occurs in the 2006 calendar year, the annual cash incentive bonuses for the Company Employees for the 2006 calendar year shall be determined by the Compensation Committee, subject to approval by the Company's Chief Executive Officer (the "2006 Bonus Plan"), and shall in no event exceed the 2005 Annual Bonus Amount (such aggregate bonus amount the "2006 Annual Bonus Amount"). The Company's obligation with respect to the 2005 Annual Bonus Amount and the 2006 Annual Bonus Amount shall be accrued monthly, in accordance with GAAP and past practice, with all amounts accrued on the balance sheet of the Company, an ECN Entity or a VAB Subsidiary, as the case may be, up to and including the Closing Date.

(iii) In the event that the Closing Date occurs during the 2005 calendar year, an Eligible Company Employee shall be entitled to payment of his or her portion of the 2005 Annual Bonus Amount upon the earlier of (x) February 15, 2006 and (y) within 10 business days of his or her termination of employment from the Company, ECN Entity or VAB Subsidiary, as the case may be. For purposes of this paragraph, "Eligible Company Employee" means an individual (x) who is a Company Employee, including an employee of a VAB Subsidiary (a "VAB Employee") on February 15, 2006 or whose employment has been terminated following the Closing Date but prior to February 15, 2006 under circumstances which would render such Company Employee eligible for severance under the Instinet Corporation Severance Policy if such Policy were in place and applicable to such Employee at such time (it being agreed that a transfer of a Company Employee or VAB Employee in connection with the VAB Purchase shall not be deemed a termination); and (y) who is eligible to receive a payment under the 2005 Bonus Plan. Such Eligible Company Employee shall be paid an amount of bonus for the 2005 calendar year, in the discretion of the Compensation Committee, equal to either (i) a minimum of 70% of his or her allocable portion of the 2005 Annual Bonus Amount determined in the same manner and in a similar percentage as the Company's 2004 annual bonus was paid to each such Company Employee, or (ii) such greater amount as determined in the discretion of the Compensation Committee, which amount shall be prorated for the period beginning January 1, 2005 and ending on the Closing Date, but limited for any terminated Eligible Company Employee by taking into account the partial year accrual for such Employee whose employment is terminated prior to December 31, 2005 provided that in no event shall the Company and VAB Acquisition Sub in the aggregate be required to pay more than the 2005 Annual Bonus Amount. The Compensation Committee shall determine the amounts of bonuses payable to Eligible Company Employees pursuant to the previous sentence prior to the Closing Date. Buyer shall permit Company Employees to participate in any cash incentive bonus plans determined by Buyer in its discretion for the period beginning on the Closing Date and ending on December 31, 2005, it being understood that such plans provide for discretionary bonuses.

(iv) In the event that the Closing Date occurs during the 2006 calendar year, an Eligible Company Employee shall be entitled to payment of his or her portion of the 2006

Annual Bonus Amount upon the earlier of (x) February 15, 2007 and (y) within 10 business days of his or her termination of employment from the Company, ECN Entity or VAB Subsidiary, as the case may be. For purposes of this paragraph, "Eligible Company Employee" means an individual (x) who is a Company Employee (including a VAB Employee) on February 15, 2007 or whose employment has been terminated following the Closing Date and prior to February 15, 2007 under circumstances which would render such Company Employee or VAB Employee eligible for severance under the Instinet Corporation Severance Policy if such Policy were in place and applicable to such Employee at such time (it being agreed that a transfer of a Company Employee in connection with the VAB Purchase shall not be deemed a termination); and (y) who is eligible to receive a payment under the 2006 Bonus Plan determined by the Compensation Committee and approved by the Company's Chief Executive Officer. Such Eligible Company Employee shall be paid an amount of bonus for the 2006 year, in the discretion of the Compensation Committee, equal to either (i) 70% of his or her allocable portion of the 2006 Annual Bonus Amount determined in the same manner and in the same percentage as the Company's 2005 annual bonus was paid to each such Company Employee, or (ii) such greater amount of bonus as determined in the discretion of the Compensation Committee, which amount shall be prorated for the period beginning January 1, 2006 and ending on the Closing Date, but limited for any terminated Eligible Company Employee by taking into account the partial year accrual for such Employee whose employment is terminated prior to December 31, 2006 provided that in no event shall the Company and VAB Acquisition Sub in the aggregate be required to pay more than the 2006 Annual Bonus Amount. Buyer shall permit Company Employees to participate in any cash incentive bonus plans determined by Buyer in its discretion for the period beginning on the Closing Date and ending on December 31, 2005, it being understood that such plans provide for discretionary bonuses.

(v) With respect to each Company Employee who receives revenue-based commissions as a portion of his or her compensation ("Commission Employees"), such revenue-based commissions shall be accrued through the Closing Date and paid when such commissions are generally paid to such Commission Employee (i) pursuant to the relevant commission agreements, (ii) assuming 100% achievement of all relevant targets in order to receive the full amount of such commission for the period through the Effective Time and (iii) at a rate that approximates such Commission Employee's commission as a percent of revenue attributed to such Commission Employee in the most recent commission cycle (the "Accrued Commissions"); *provided*, *however*, that any Commission Employee who is terminated by Buyer after the Closing Date in the calendar year in which the Closing Date occurs shall receive a pro-rata commission based on the percentage of the 2005 year, or the 2006 year (as the case may be) that such Commission Employee was employed prior to such termination. Commissions paid to Commission Employees after the Closing Date will be under commission arrangements established by Buyer, if any.

(b) Effective as of the Closing Date, and without limiting the obligations of Buyer in Section 6.7(a) hereof, the Company Employees shall generally be eligible to participate in each of the pension, welfare and/or fringe benefit plans, funds, programs and/or arrangements, including severance, stock option and incentive compensation plans, being provided to similarly situated employees of Buyer (collectively, the "Buyer Benefit Plans"), as determined by Buyer in good faith. Except for purposes of accruing benefits under any defined benefit pension plans, on and after the Closing Date, Company Employees shall be eligible to participate in Buyer Benefit

Plans in accordance with their terms and, for purposes of eligibility for participation, vesting, and accrual of benefits within Buyer Benefit Plans, Company Employees shall receive credit for all of their service with the Company (and services with each of their predecessors or Affiliates, if applicable) to the same extent such service was recognized under the corresponding or similar Company Benefit Plan; *provided*, *however*, that no such service recognition shall result in any duplication of benefits. For purposes of any Buyer Benefit Plan which is the type of benefits described in Section 3(1) of ERISA (whether or not covered by ERISA) ("Welfare Benefits"), a Company Employee (and his or her dependents, if applicable) shall be immediately eligible to participate as of the Closing Date without regard to any otherwise applicable waiting period, and without any exclusion from coverage for any preexisting condition, to the extent such employee and his or her dependents were eligible for participation in a comparable Company Benefit Plan, subject only to the approval of the applicable insurance provider, if any, which Buyer shall use its reasonable best efforts to obtain. In addition, Buyer shall (i) waive all pre-existing condition exclusion and actively at work requirements and similar limitations, eligibility waiting periods and evidence of insurability requirements under any Buyer Benefit Plan to the extent waived or satisfied by a Company Employee or dependent under any comparable Company Benefit Plan as of the Closing Date, and (ii) take into account and provide credit for any covered expenses incurred on or before the Closing Date by any Company Employee or dependent thereof for purposes of satisfying applicable deductibles, coinsurance, maximum out of pocket, and similar provisions after the Closing Date under any applicable Buyer Benefit Plan.

(c) From and after the Closing Date, Buyer shall either cause the Company to become a participating employer in the Buyer's 401(k) Plan (the "New Savings Plan"), or to continue the applicable Company 401(k) savings plan for the benefit of Company Employees. The New Savings Plan shall accept direct rollovers from any applicable Company 401(k) plan of eligible rollover distributions (including outstanding loan balances) payable for the benefit of Company Employees who are employed by the Company as of the Closing Date and will provide for participant loans on substantially the same basis as provided in the applicable Company 401(k) plans. With respect to the plan year in which the Closing Date occurs, Buyer shall make a matching contribution for the benefit of the Company Employees under the New Savings Plan or the Company 401(k) savings plan (as the case may be) in the amount accrued on the balance sheet of the Company as of the Closing Date for the Company's matching contribution to the Company 401(k) plan with respect to the plan year in which the Closing Date occurs (provided that the percentage of the Company Employees contribution matched by the Company is consistent with the past practice of the Company).

(d) Buyer expressly agrees to assume, be bound by, honor and perform all of the Company's or their Affiliates' obligations under each of the Employment Agreements, and each such Employment Agreement shall continue in full force and effect following the Closing.

(e) Upon the Closing Date, each participant in the Instinet 2004 Performance Share Plan (the "Performance Plan") shall receive (x) the payout for any Plan Cycles (as defined under the Performance Plan) which have ended prior to the Closing Date (if any), and (y) with respect to Plan Cycles which have not been completed as of the Closing Date, a pro rata payout for each partial Plan Cycle, equal to the product of (i) a fraction, the numerator of which is the number of months which have elapsed in the Plan Cycle prior to the Closing Date and the denominator of which is the total number of months in the Plan Cycle, and (ii) the payout such

participant would have received with respect to such Plan Cycle if the Target Performance Goal (as defined under the Performance Plan) was attained with respect to each Performance Measure (as defined under the Performance Plan), as determined by the Committee under the Performance Plan prior to the Closing Date.

(f) Buyer shall cause VAB Acquisition Sub to comply with the terms of this Section 6.7 and honor the obligations of Buyer with respect to VAB Employees, from and after the closing of the VAB Purchase.

(g) Buyer and the Company shall reasonably cooperate with each other between the date of this Agreement and the Closing Date to effectuate the transactions contemplated in this Section 6.7 and provide for a smooth transition, including the provision of all notices required by Applicable Law (if any).

Section 6.8 No Additional Representations. Buyer and VAB Acquisition Sub acknowledge that each of them and their representatives have received access to such books and records, facilities, equipment, contracts and other assets of the Company which each of them and their representatives have deemed necessary or requested to review, and that each of them and their representatives have had full opportunity to meet with the management of the Company and the Company to discuss the businesses and assets of the Company. Except for the representations and warranties contained in Article 4 (which includes the Schedules thereto) and any closing certificate delivered by the Company, Buyer and VAB Acquisition Sub acknowledge that neither the Company nor any other Person has made any representation or warranty, expressed or implied, including, without limitation, as to the accuracy or completeness of any information regarding the Company or any of its businesses furnished or made available to Buyer or VAB Acquisition Sub.

Section 6.9 Directors' and Officers' Indemnification. (a) Any indemnification provisions of the Company's or any Company Subsidiary's (excluding LJR) certificate of incorporation and by-laws or similar organizational documents as in effect as of the date hereof shall not be amended, repealed or otherwise modified for a period of six years from the Closing Date in any manner that would adversely affect the rights thereunder of individuals who at the Closing were directors, officers or employees of the Company; *provided*, *however*, that all rights to indemnification in respect of any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative (an "Action") pending or asserted within such period shall continue until the disposition or resolution of such Action. From and after the Closing, Buyer shall assume, be jointly and severally liable for, and honor, guaranty and stand surety for, and shall cause the Surviving Corporation to honor, in accordance with their respective terms, each of the covenants contained in this Section 6.9, without limit as to time, except as with respect to the directors, officers or employees of the VAB Subsidiaries in their capacity as such.

(b) Each of Buyer and the Surviving Corporation, shall, to the fullest extent (i) permitted under Applicable Laws and (ii) provided in the certificate of incorporation and by-laws of the Company as in effect as of the date of this Agreement, indemnify and hold harmless (and advance funds in respect of each of the foregoing) each present and former director, officer or employee of the Company and each person who served as a director, officer, member, trustee or

fiduciary of another corporation, partnership, joint venture, trust, pension or other employee benefit plan or enterprise (each, together with such person's heirs, executors or administrators, an "Indemnified Person") against any costs or expenses (including advancing attorneys' fees and expenses in advance of the final disposition of any Action), arising out of, relating to or in connection with any action or omission occurring or alleged to have occurred before the Closing (including acts or omissions in connection with such persons serving as an officer, director or other fiduciary in any entity if such service was at the request or for the benefit of the Company) or the Transactions. In the event of any such Action, Buyer and the Company shall cooperate with the Indemnified Person in the defense of any such Action.

(c) For a period of six years after the Closing Date, Buyer shall cause to be maintained in effect the current policies of directors' and officers' liability insurance maintained for the benefit of the Company (provided that Buyer may substitute therefor third-party policies of at least the same coverage and amounts containing terms and conditions that are in other respects not materially less advantageous to the Indemnified Persons, and which coverage and amounts shall be no less than the coverage and amounts provided at that time for Buyer's directors and officers) with respect to matters arising on or before the Closing; *provided*, *however*, that Buyer shall not be required to pay annual premiums in excess of 200% of the last annual premium paid by the Company prior to the date hereof (the amount of which premium is set forth in Section 6.9(c) of the Company Disclosure Schedule), but in such case shall purchase as much coverage as reasonably practicable for such amount.

(d) In the event Buyer, the Surviving Corporation or any of their respective successors or assigns (i) consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity in such consolidation or merger, or (ii) transfers all or substantially all of its properties and assets to any person, then and in either such case, proper provision shall be made so that the successors and assigns of Buyer or the Surviving Corporation, as the case may be, shall assume the obligations set forth in this Section 6.9. The provisions of this Section 6.9 shall survive the consummation of the Transactions and expressly are intended to benefit each of the Indemnified Persons. Buyer shall pay all reasonable expenses, including reasonable attorneys' fees, that may be incurred by any Indemnified Person in enforcing the indemnity and other obligations provided in this Section 6.9.

Section 6.10 Company Stockholders Meeting. (a) As promptly as reasonably practicable following the date of this Agreement, the Company shall, in accordance with Applicable Laws and the Company's Amended and Restated Certificate of Incorporation as in effect on the date of this Agreement (the "Company Certificate") and the Company's Amended and Restated Bylaws as in effect on the date of this Agreement (the "Company Bylaws"), duly call, give notice of, convene and hold a meeting of the holders of shares of Company Common Stock (the "Company Stockholders") to consider and vote upon approval of this Agreement and the Merger (the "Company Stockholders Meeting"). The Company shall ensure that the Company Stockholders Meeting is called, noticed, convened, held and conducted, and that all proxies solicited by the Company in connection with the Company Stockholders Meeting are solicited, in material compliance with Applicable Laws, other than such non-compliance resulting from the failure of the representation set forth in Section 5.9 to be true and correct.

(b) The Company shall, as promptly as reasonably practicable, prepare and file with the SEC a proxy statement (together with any amendments thereof or supplements thereto, the "Proxy Statement"), that meets in all material respects the requirements of Applicable Laws, to seek the approval of this Agreement and the Merger. The Company shall respond as promptly as reasonably practicable to any comments made by the SEC with respect to the Proxy Statement and any preliminary version thereof filed by it and shall cause such Proxy Statement to be mailed to the Company Stockholders as promptly as reasonably practicable after the Proxy Statement is cleared by the SEC. The Company shall notify Buyer and VAB Acquisition Sub as promptly as reasonably practicable of the receipt of any comments of the SEC with respect to the Proxy Statement and shall provide to Buyer and VAB Acquisition Sub copies of any written comments received from the SEC in connection with the Proxy Statement. Each of Buyer and VAB Acquisition Sub shall be provided an opportunity to review and comment on all filings with the SEC, including the Proxy Statement, and all mailings to the Company Stockholders in connection with the Merger, and the Company shall give reasonable consideration to all comments proposed by Buyer and VAB Acquisition Sub. Buyer shall promptly provide any information or responses to comments or other assistance reasonably requested by the Company or the SEC in connection with the foregoing. If at any time prior to the Effective Time any information relating to the Company, Buyer, VAB Acquisition Sub or any of their respective Affiliates, officers or directors, should be discovered by the Company or Buyer which should be set forth in an amendment or supplement to the Proxy Statement so that such document would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party which discovers such information shall promptly notify the other party hereto and an appropriate amendment or supplement describing such information shall be promptly filed with the SEC and, to the extent required by law, disseminated to the Company Stockholders. Subject to the following sentence, the Company Board Recommendation shall be included in the Proxy Statement, and the Company Board shall use its reasonable best efforts to solicit the approval of this Agreement by the Company Stockholders. Notwithstanding any provisions of this Agreement to the contrary, the Company Board may make a Change in the Company Board Recommendation in accordance with Section 6.11(c) and, in each such event, shall not be required to call, give notice of, convene or hold the Company Stockholders Meeting.

Section 6.11 Acquisition Proposals. (a) From the date hereof until the earlier of the Effective Time and the termination of this Agreement in accordance with Article 8, the Company shall not, nor shall it permit any Company Subsidiary to, nor shall it permit any director, officer or key employee of the Company or any Company Subsidiary or any of its agents or representatives (including any investment banker, attorney or accountant retained by the Company or Company Affiliate) to, directly or indirectly, (i) initiate, solicit or knowingly encourage (including by way of furnishing information) any inquiries with respect to, or the making of, an Acquisition Proposal, (ii) engage or participate in any negotiations concerning, or provide any confidential information or data to, or have any discussions with, any Person relating to an Acquisition Proposal, (iii) approve or recommend or propose publicly to approve or recommend, any Acquisition Proposal or (iv) approve or recommend, or propose to approve or recommend, or execute or enter into, any letter of intent, agreement in principle, merger agreement, acquisition agreement, option agreement or other similar agreement relating to any Acquisition Proposal or make or authorize any statement, propose publicly or agree to do any of the foregoing relating to any Acquisition Proposal.

(b) Notwithstanding any provisions of this Agreement to the contrary, nothing contained in this Agreement shall prevent the Company or the Company Board from complying with its disclosure obligations under Sections 14d-9 and 14e-2 of the Exchange Act with regard to an Acquisition Proposal; *provided*, *however*, any such disclosure relating to an Acquisition Proposal shall be deemed to be a Change in the Company Board Recommendation unless the Company Board reaffirms the Company Board Recommendation in such disclosure (other than with respect to disclosure which expresses no view of the Acquisition Proposal other than that it is pending further consideration by the Company).

(c) Notwithstanding any provisions of this Agreement to the contrary, nothing contained in this Agreement shall prevent the Company or any officer, director, key employee or agent or representative of the Company or any Company Subsidiary acting on behalf of or at the direction of the Company or any Company Subsidiary, or the Company Board from at any time prior to, but not after, the time this Agreement is adopted by the Company Stockholders at the Company Stockholders Meeting, (i) providing information in response to a request therefor by, or engaging in any negotiations or discussions with, a Person who has made an unsolicited written Acquisition Proposal if the Company Board receives from such Person an executed customary confidentiality agreement no less favorable in the aggregate to the Company than the Confidentiality Agreement (other than with respect to the standstill provisions, which shall not be required), (ii) entering into a Company Acquisition Agreement and terminate this Agreement, and (iii) effecting a Change in the Company Board Recommendation, if and only to the extent that, (1) in each such case referred to in clause (i) or (ii) above, (A) the Company Board determines in good faith after consultation with outside legal counsel that such action is necessary in order for its directors to comply with their respective fiduciary duties under Applicable Law and (B) such Acquisition Proposal was not solicited in violation of Section 6.11(a); (2) in the case of clause (i) above, the Company Board determines in good faith after consultation with outside legal counsel and outside financial advisors that it is reasonably likely that such Acquisition Proposal would result in a Superior Proposal; and (3) in the case of clause (ii) or (iii) above, the Company Board determines in good faith that such Acquisition Proposal constitutes a Superior Proposal; *provided*, *however*, that the Company shall send written notice of its intention to take the action referred to in clause (ii) above to Buyer and VAB Acquisition Sub, at least three Business Days prior to the taking of such action by the Company, advising Buyer and VAB Acquisition Sub that the Company Board is prepared to conclude that such Acquisition Proposal constitutes a Superior Proposal and during such three business day period the Company and its advisors shall have negotiated in good faith with Buyer to make adjustments in the terms and conditions of this Agreement such that such Acquisition Proposal would no longer constitute a Superior Proposal and the Company Board fully considers any such adjustment and nonetheless concludes in good faith that such Acquisition Proposal constitutes a Superior Proposal.

(d) Except as permitted by Section 6.10 or this Section 6.11, neither the Company Board nor any committee thereof shall (i) withdraw, modify or qualify, or propose publicly to withdraw, modify or qualify, in a manner adverse to Buyer, the approval of the Agreement and the Merger or the Company Board Recommendation or take any action or make

any statement in connection with the Company Stockholders Meeting inconsistent with such approval or Company Board Recommendation (collectively, a "Change in the Company Board Recommendation"), (ii) approve or recommend, or propose publicly to approve or recommend, any Acquisition Proposal, or (iii) cause the Company to enter into any letter of intent, agreement in principle, acquisition agreement or other similar agreement (each, a "Company Acquisition Agreement") related to any Acquisition Proposal. For purposes of this Agreement, a Change in the Company Board Recommendation shall include any approval or recommendation (or publicly stated proposal to approve or recommend) by the Company Board of an Acquisition Proposal, or any failure by the Company Board to recommend against an Acquisition Proposal after the Company Board and its advisors have fully considered such proposal.

(e) The Company agrees that it will immediately cease and cause to be terminated any existing activities, discussions or negotiations with any Person (other than the parties hereto) conducted heretofore with respect to any Acquisition Proposal. The Company agrees that it will use its reasonable best efforts to inform as promptly as reasonably practicable the officers, directors, key employees and representatives of the Company and the Company Subsidiaries of the obligations undertaken in this Section 6.11.

(f) From and after the execution of this Agreement, the Company shall as promptly as reasonably practicable notify Buyer and VAB Acquisition Sub of any request for information or any inquiries, proposals or offers relating to an Acquisition Proposal, indicating, in connection with such notice, the name of such Person making such request, inquiry, proposal or offer and the material terms and conditions of any proposals or offers. The Company shall keep Buyer and VAB Acquisition Sub informed on a reasonably current basis of the status of any Acquisition Proposal, including with respect to the status and terms of any such proposal or offer and whether any such proposal or offer has been withdrawn or rejected.

(g) For purposes of this Agreement:

(i) "Acquisition Proposal" means any proposal or offer from any Person (other than the Transactions) with respect to (A) a merger, reorganization, share exchange, consolidation, business combination, recapitalization, dissolution, liquidation or similar transaction involving the Company (or any Company Subsidiary (excluding LJR) whose business constitutes 25% or more of the net revenues, net income or assets of the Company and Company Subsidiaries (excluding LJR), taken as a whole), (B) any direct or indirect purchase of an equity interest (including by means of a tender or exchange offer) representing an amount equal to or greater than a 25% voting or economic interest in the Company, or (C) any direct or indirect purchase of assets, securities or ownership interests representing an amount equal to or greater than 25% of the consolidated assets, net income or net revenues of the Company and the Company Subsidiaries (excluding LJR) taken as a whole (including stock of the Company Subsidiaries (excluding LJR)).

(ii) "Superior Proposal" means a bona fide written Acquisition Proposal (except that references in the definition of "Acquisition Proposal" to "25%" shall be replaced by "100%") made by a Person other than a party hereto

that is on terms that the Company Board (after consultation with its outside financial advisor and outside counsel) in good faith concludes, taking into account all legal, financial, regulatory and other aspects of the proposal (A) would, if consummated, result in a transaction more favorable to the Company Stockholders from a financial point of view than the transaction contemplated by this Agreement and (B) is reasonably capable of being completed on the terms proposed, including, to the extent required, financing which is then committed or which, in the good faith judgment of the Company Board, is reasonably capable of being obtained by such Person.

Section 6.12 Rights Agreement. Except as expressly required by this Agreement, the Company shall not, without the prior consent of each of Buyer and VAB Acquisition Sub, amend the Rights Agreement or take any other action with respect to, or make any determination under, the Rights Agreement, including a redemption of the Rights or any action to facilitate an Acquisition Proposal.

Section 6.13 LJR Sale; VAB Purchase. (a) The parties acknowledge that none of the provisions of this Agreement (including, but not limited to Sections 6.2 and 6.11) shall in any way restrict the Company with respect to the LJR Sale, except the provisions of this Section 6.13.

(b) The Company will not, without the prior written consent of Buyer and VAB Acquisition Sub (which consent shall not be unreasonably withheld or delayed), agree to any modification of any term or condition of, or give any consent or waiver or exercise any right of termination under, the LJR Sale Agreement, which modification, consent, waiver or exercise would be reasonably likely to adversely affect in any respect the Company, any of the Company Subsidiaries or the Transactions, including the timing thereof. The Company shall comply with the terms of the LJR Sale Agreement in all material respects. The Company will use reasonable best efforts to cause the conditions to the consummation of the LJR Sale to be satisfied as of the earliest practicable date and to consummate the LJR Sale in accordance with the terms of the LJR Sale Agreement. The Company will comply in all material respects with its obligations under the guaranty side letter with Reuters America LLC.

(c) Buyer will not, without the prior written consent of the Company (which consent shall not be unreasonably withheld or delayed), agree to any modification of any term or condition of, or give any consent or waiver or exercise any right of termination under, the VAB Transaction Agreement, which modification, consent, waiver or exercise would be reasonably likely to adversely affect in any respect the Company or any of the Company Subsidiaries (prior to the Closing) or the Transactions, including the timing thereof. Buyer shall, and shall use reasonable best efforts to cause the other parties to the VAB Transaction Agreement to, comply with the terms of the VAB Transaction Agreement in all material respects. Buyer shall use reasonable best efforts to cause the conditions to the consummation of the VAB Purchase to be satisfied as of the earliest practicable date and to consummate the VAB Purchase in accordance with the terms of the VAB Transaction Agreement.

Section 6.14 Standstill Agreements; Confidentiality Agreements. During the period from the date of this Agreement through the Effective Time, the Company shall not

terminate, amend, modify or waive any provision of any confidentiality or standstill agreement to which it or any Company Subsidiary is a party and which was entered into in connection with the sale process undertaken by the Company. Pursuant to the terms of any such confidentiality agreement, and other than with respect to the purchaser pursuant to the LJR Sale Agreement, the Company shall promptly request that each Person which has heretofore executed such a confidentiality agreement with the Company, any of its Affiliates or any of its or their representatives with respect to such Person's consideration of a possible Acquisition Proposal to promptly return or destroy all confidential information heretofore furnished by the Company or any of its Affiliates or any of its or their representatives to such Person or any of its Affiliates or any of its or their representatives.

Section 6.15 Financial Cooperation. The Company shall cooperate with Buyer, and shall, at Buyer's expense, use commercially reasonable efforts to cause its independent auditors to so cooperate, in the preparation and filing of Buyer pro forma financial statements and related information and historical financial statements of the Company or the ECN Entities as (a) reasonably requested for Buyer's filings under the Exchange Act and (b) as reasonably requested by Buyer in connection with Buyer's financing of the Transactions. The Company shall cooperate with VAB Acquisition Sub, and shall, at VAB Acquisition Sub's expense, use commercially reasonable efforts to cause its independent auditors to so cooperate, in the preparation of VAB Acquisition Sub pro forma financial statements and related information and historical financial statements of the Company or the VAB Subsidiaries as (a) reasonably requested for VAB Acquisition Sub's filings under the Exchange Act and (b) as reasonably requested by VAB Acquisition Sub in connection with VAB Acquisition Sub's financing of the Transactions.

Section 6.16 Systems. The Company agrees that from the date hereof through the Closing Date, the Company shall cause the ECN Entities to use commercially reasonable efforts to (a) execute their budgeted and forecasted plan to upgrade the System hardware and software of the ECN Entities and (b) continue the process of migrating the Company ATS' customers from SmartRouter to the Routing and Special Handling (RASH) system.

Section 6.17 Account Receivables. The Company shall, and shall cause its Subsidiaries to, use commercially reasonable efforts in accordance with past practice to collect all accounts receivable of the Business and the VAB Business.

Section 6.18 Available Cash. No less than two Business Days and no earlier than five Business Days prior to the Closing Date, the Company shall provide Buyer with reasonable supporting documentation evidencing the amount of immediately available funds, in U.S. dollars, that the Company has available to it to be used to fund Buyer and Merger Sub's obligation to pay the Merger Consideration without restriction. Notwithstanding the foregoing, the ECN Entities shall have at least $30,800,000 in cash or cash equivalents at the Closing Date. Immediately prior to the Closing, the Company will have available to it at least $534,000,000 in cash and cash equivalents plus an amount equal to the net after-tax proceeds of the LJR Sale (less the LJR Dividend if the LJR Dividend has been declared prior to the Effective Time) to be used to fund Buyer and Merger Sub's obligation to pay the Merger Consideration without restriction.

Section 6.19 Third-Party Consent. The Company will as promptly as reasonably practicable give any notices to third parties and will use commercially reasonable efforts to obtain any third party consents that are required under any Material Contracts in connection with the consummation of the Transactions.

ARTICLE 7

CONDITIONS TO CLOSING

Section 7.1 Conditions of Each Party's Obligation to Close. The obligation of the parties hereto to consummate the Transactions shall be subject to the fulfillment, at or before the Closing, of the conditions set forth below in this Section 7.1. The parties hereto may mutually agree to waive any or all of these conditions.

(a) All Required Regulatory Approvals shall have been obtained, and any applicable waiting periods in connection therewith shall have expired or been terminated, without the imposition of any Burdensome Condition.

(b) There shall be no Applicable Law of any nature of any Authority that is in effect that prohibits the consummation of the Merger or the VAB Purchase.

(c) The Agreement shall have been approved and adopted by the Company Stockholders in accordance with the DGCL.

Section 7.2 Conditions to Buyer's Obligation to Close. The obligation of Buyer to consummate the Transactions shall be subject to the fulfillment, at or before the Closing, of all of the conditions set forth below in this Section 7.2. Buyer may waive in writing any or all of these conditions in whole or in part without prior notice.

(a) Subject to Section 7.2(c), (i)(A) the representations and warranties of the Company contained herein that are not qualified as to Company Material Adverse Effect or materiality shall be true and correct in all material respects as of the date hereof and as of the Closing Date, with the same effect as if such representations and warranties had been made on and as of the Closing Date; (B) those representations and warranties of the Company contained herein (other than Sections 4.8, 4.9 and 4.10) that are qualified as to Company Material Adverse Effect or materiality shall be true and correct in all respects as of the date hereof and as of the Closing Date with the same effect as if such representations and warranties had been made on and as of the Closing Date (except for representations and warranties which are as of a particular date, which shall be true and correct as of such date); and (C) those representations and warranties of the Company contained in Sections 4.8, 4.9 and 4.10 shall be true and correct in all respects as of the date hereof and, after excluding any event, occurrence, fact, condition change or effect in each case arising or occurring after the date hereof and described in clauses (1)-(5) of the definition of "Company Material Adverse Effect," true and correct in all respects as of the Closing Date (except for representations in such sections which are as of a particular date, which shall be true and correct as of such date); and (ii) the Company and each of the Company Subsidiaries shall have performed in all material respects its obligations and complied in all material respects with its agreements (and in all respects, in the case of the agreement set forth in the last sentence of Section 6.18) and covenants required by this Agreement to be performed or complied with on its part on or prior to the Closing Date.

(b) Buyer shall have received from the Company a certificate dated as of the Closing Date and signed by an authorized officer of the Company certifying its compliance with the conditions set forth in Section 7.2(a).

(c) As of the Closing Date, (i) no Applicable Authority shall have threatened any Action under any Antitrust Law seeking to enjoin or otherwise prevent the consummation of the Merger or the VAB Purchase or to impose a Burdensome Condition, and such threat is likely to be acted upon by such Applicable Authority, and (ii) there shall not be pending any Action by an Applicable Authority under any Antitrust Law seeking to enjoin or otherwise prevent the consummation of the Merger or the VAB Purchase or to impose a Burdensome Condition, which Action either is pending in the court of first impression or is on appeal; *provided*, *however*, that if such Applicable Authority shall have been unsuccessful in its Action in the court of first impression and shall have taken reasonable steps to obtain and shall have failed to obtain a temporary (and continuing) or permanent injunction or stay pending appeal with respect to the Merger or VAB Purchase, clause (ii) of this Section 7.2(c) shall be deemed to be satisfied with respect to such Action.

(d) The Company shall have consummated the LJR Sale in accordance with the terms of the LJR Sale Agreement and this Agreement.

Section 7.3 Conditions to the Company's Obligation to Close. The obligation of the Company to consummate the Transactions shall be subject to the fulfillment, at or before Closing, of all of the conditions set forth below in this Section 7.3. The Company may waive in writing any or all of these conditions in whole or in part without prior notice.

(a) Subject to Section 7.2(c), the representations and warranties of Buyer contained herein that are not qualified as to Buyer Material Adverse Effect or materiality shall be true and correct in all material respects as of the date hereof and as of the Closing Date with the same effect as if such representations and warranties had been made on and as of the Closing Date, and those other representations and warranties of Buyer that are qualified as to Buyer Material Adverse Effect or materiality shall be true and correct in all respects as of the date hereof and as of the Closing Date with the same effect as if such representations and warranties had been made on and as of the Closing Date (except for representations and warranties which are as of a particular date, which shall be true and correct as of such date), and Buyer shall have performed in all material respects its obligations and complied in all material respects with its agreements and covenants required by this Agreement to be performed or complied with on its part on or prior to the Closing Date.

(b) The Company shall have received from Buyer a certificate dated as of the Closing Date and signed by an authorized officer of Buyer certifying Buyer's compliance with the conditions set forth in Section 7.3(a).

ARTICLE 8

TERMINATION; FEES AND EXPENSES

Section 8.1 Termination by Mutual Consent. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, whether before or after the adoption and approval of this Agreement by the Company Stockholders referred to in Section 7.1(c), by mutual written consent of the Company and Buyer by action of their respective Boards.

Section 8.2 Termination by Either Buyer or the Company. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time by action of Buyer or the Company if (a) the Merger shall not have been consummated by the Termination Date, whether such date is before or after the date of the adoption of this Agreement by the Company Stockholders; *provided*, *however*, that the right to terminate this Agreement pursuant to this Section 8.2(a) shall not be available to any party whose breach of any provision of this Agreement results in the failure of the Merger to be consummated by the Termination Date, (b) the adoption by the Company Stockholders required by Section 7.1(c) shall not have been obtained at the Company Stockholders Meeting (after giving effect to all adjournments or postponements thereof), or (c) any Authority of competent jurisdiction shall have issued an order, decree or ruling or taken any other action permanently enjoining, restraining or otherwise prohibiting the consummation of the Merger and such order, decree or ruling or other action shall have become final and nonappealable.

Section 8.3 Termination by the Company. Provided the Company is not in material breach of any of its representations, warranties, covenants or agreements in this Agreement, this Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, whether before or after the adoption and approval of this Agreement by the Company Stockholders referred to in Section 7.1(c), by the Company (a) if there has been a material breach of any representations, warranties, covenants or agreements made by Buyer or Merger Sub in this Agreement, or any such representations and warranties shall have become materially untrue or incorrect after the execution of this Agreement, such that the conditions set forth in Section 7.3(a) would not be satisfied and such breach or failure to be true and correct is not cured within 30 calendar days following receipt of written notice from the Company of such breach or failure (or such longer period to which the Company shall agree, during which Buyer or Merger Sub exercises reasonable best efforts to cure); (b) the Company Board shall have exercised its termination rights set forth in Section 6.11(c); or (c) 60 days following the date, if any, that the conditions in Section 7.1 (but only with respect to the Required Regulatory Approvals for the Merger) and Section 7.2 shall have been satisfied (other than those conditions to be satisfied at Closing, but subject to those conditions being satisfied as if the termination date was the Closing Date), unless prior to the end of such 60-day period, the condition in Section 7.1(a) with respect to the VAB Purchase shall have become satisfied.

Section 8.4 Termination by Buyer. Provided neither Buyer nor Merger Sub is in material breach of any of its representations, warranties, covenants or agreements in this Agreement, this Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, whether before or after the adoption and approval of this Agreement

by the Company Stockholders referred to in Section 7.1(c), by action of Buyer (a) if the Company Board shall have withdrawn, qualified or modified its approval of this Agreement or effected a Change in the Company Board Recommendation in a manner adverse to Buyer, or approved or recommended any Acquisition Proposal (other than this Agreement and the Merger) or shall have resolved to do any of the foregoing, or (b) if there has been a material breach of any representation, warranty, covenant or agreement made by the Company in this Agreement, or any such representation and warranty shall have become materially untrue or incorrect after the execution of this Agreement, such that the conditions set forth in Section 7.2(a) would not be satisfied and such breach or failure to be true and correct is not cured within 30 calendar days following receipt of written notice from Buyer of such breach or failure (or such longer period during which the Company exercises reasonable best efforts to cure, but in no event shall such longer period be later than 60 days).

Section 8.5 Effect of Termination and Abandonment. In the event of a termination of this Agreement and the abandonment of the Merger pursuant to this Article 8, this Agreement shall become void and of no effect, other than the provisions of this Section 8.5, Section 6.1(b), Section 8.6 and Article 9 without any liability on the part of any party hereto or its Affiliates, directors, officers, stockholders, members, managers, employees, agents and representatives; *provided*, *however*, that nothing herein shall relieve a party from liability for any willful breach by a party of any of its representations, warranties, covenants or agreements set forth in this Agreement.

Section 8.6 Fees and Expenses.

(a) In the event that:

(i) (A) Buyer or the Company shall have terminated this Agreement pursuant to Section 8.2(b), (B) at or prior to the Company Stockholders Meeting, any Person (other than Buyer, Merger Sub or their respective Affiliates) shall have made public and not withdrawn an Acquisition Proposal (substituting 50% for the 25% threshold set forth in the definition of Acquisition Proposal, a "Covered Proposal"), and (C) within six months of termination of this Agreement, the Company enters into an agreement with respect to a Covered Proposal; or

(ii) Buyer shall have terminated this Agreement pursuant to Section 8.4(a); or

(iii) the Company shall have terminated this Agreement pursuant to Section 8.3(b),

then, in any such event, the Company shall pay to Buyer a termination fee in cash of $66.5 million (the "Termination Fee"). Any Termination Fee that becomes payable shall be paid (x) in the case of clause (i) above, not later than the second Business Day after the date on which the Company enters into an agreement with respect to a Covered Proposal, and (y) in the case of clauses (ii) and (iii) above, on not later than the second Business Day after the date that this Agreement is terminated, in each case payable by wire transfer of same day funds.

(b) In the event of any termination of this Agreement as provided in this Article 8, Buyer shall forthwith return all documents and other materials received from the Company relating to the Transactions, whether so obtained before or after the execution hereof, to the Company, and all Information (as such term is used in the Confidentiality Agreement) received by Buyer or its representatives or agents shall be dealt with in accordance with the Confidentiality Agreement, which shall remain in full force and effect notwithstanding the termination of this Agreement.

ARTICLE 9

GENERAL PROVISIONS

Section 9.1 Non-Survival of Representations and Warranties. The representations, warranties, covenants and agreements in this Agreement shall not survive the consummation of the Merger or the termination of this Agreement. Notwithstanding the foregoing, the agreements and covenants which by their nature are to be performed following the Effective Time, shall survive consummation of the Merger.

Section 9.2 Jurisdiction; Venue. Except as otherwise expressly provided in this Agreement, the parties hereto agree that any Action seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the Transactions shall be brought in the Delaware Court of Chancery, and each of the parties hereby irrevocably consents to the jurisdiction of such court (and of the appropriate appellate courts therefrom) in any such Action and irrevocably waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of the venue of any such Action in such court or that any such Action which is brought in such court has been brought in an inconvenient forum. Process in any such Action may be served on any party anywhere in the world, whether within or without the jurisdiction of such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in this Section 9.2 shall be deemed effective service of process on such party.

Section 9.3 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 9.4 Successors and Assigns. This Agreement shall not be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties, except that Merger Sub may assign, in its sole discretion and without the consent of any other party, any or all of its rights, interests and obligations hereunder to Buyer or one or more direct or indirect wholly-owned subsidiaries of Buyer (each, an "Assignee"); *provided*, *however*, that (1) no such assignment shall relieve Merger Sub of any of its obligations under this Agreement and (2) to the extent required by Section 251 of the DGCL in order for this Agreement, with such rights assigned, to be valid from and after such assignment, such assignment shall be effective only after (a) an appropriate amendment to this Agreement to effectuate such assignment shall have been executed by the parties hereto and any such Assignee and (b) such amendment, or this Agreement as so amended, shall have received

all approvals required by the DGCL. Subject to the preceding sentences, this Agreement shall be binding upon, inure to the benefit of and be enforceable by, the parties hereto and their respective successors and assigns.

Section 9.5 No Waiver. No waiver by either party hereto of any breach of any covenant, agreement, representation or warranty hereunder shall be deemed a waiver of any preceding or succeeding breach of the same. The exercise of any right granted to either party herein shall not operate as a waiver of any default or breach on the part of the other party hereto. Each and all of the several rights and remedies of either party hereto under this Agreement shall be construed as cumulative and no one right as exclusive of the others.

Section 9.6 Entire Agreement; Amendments. This Agreement, including the exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous written or oral agreements between them or any of their related entities or Affiliates with respect to the subject matter hereof, except for the Confidentiality Agreement, which shall continue in full force and effect, and shall survive any termination of this Agreement or the Closing, in accordance with its terms. No change, modification, alteration, amendment or agreement to discharge in whole or in part, or waiver of any of the terms and conditions of this Agreement, shall be binding upon any party, unless the same shall be made by a written instrument signed and executed by the authorized representatives of each party and VAB Acquisition Sub, with the same formality as the execution of this Agreement.

Section 9.7 Notices. All notices, requests and demands to or upon the respective parties hereto and, to the extent required, VAB Acquisition Sub, and all statements and accountings given or required to be given hereunder, shall be made by personal service, or sent by certified mail, return receipt requested, postage prepaid, or by confirmed facsimile addressed as follows, or to such other address as may hereafter be designated in writing by the respective parties hereto and VAB Acquisition Sub, and shall be deemed received when delivered to the designated address:

(a) if to the Company, to:

Instinet Group Incorporated
3 Times Square
New York, NY 10036
Attention: Paul Merolla, Esq.
Facsimile: (646) 223-9017

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Attention: Andrew J. Nussbaum, Esq.
Facsimile: (212) 403-2000

(b) if to Buyer or Merger Sub, to:

The Nasdaq Stock Market, Inc.
One Liberty Plaza
New York, NY 10016
Attention: Office of the General Counsel
Facsimile: (301) 978-8472

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
4 Times Square
New York, New York 10036
Attention: Eric J. Friedman, Esq.
Facsimile: (212) 735-2000

(c) if to VAB Acquisition Sub, to:

c/o Silver Lake Partners
2725 Sand Hill Road
Menlo Park, CA 94025
Attention: Alan Austin
Facsimile: (650) 233-8125

with a copy to:

Ropes & Gray LLP
45 Rockefeller Plaza
New York, New York 10111
Attention: Othon A. Prounis, Esq.
Facsimile: (212) 841-5725

Section 9.8 Governing Law. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Delaware without reference to such State's principles of conflict of laws.

Section 9.9 Publicity. Prior to Closing, each party hereto agrees to use reasonable efforts, and Buyer agrees to use reasonable best efforts to cause SLP and VAB Acquisition Sub, not to issue any press release or otherwise make any public statement in any general circulation medium with respect to the Transactions, without the prior written consent, which shall not be unreasonably withheld, of the other party hereto and VAB Acquisition Sub; *provided*, *however*, that the parties hereto may, without the consent of the other, make any disclosures required to comply with Applicable Laws, except such consent shall be sought where practicable to do so. The parties agree that the initial press release to be issued with respect to the Transactions contemplated by this Agreement shall be in the form agreed to by the parties and VAB Acquisition Sub.

Section 9.10 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. In this Agreement, unless a contrary intention appears, (a) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Schedule, Exhibit or other subdivision, (b) whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation," (c) reference to any Article, Section, Schedule or Exhibit is reference to such Article or Section of, or Schedule or Exhibit to, this Agreement, (d) "days" means calendar days, (e) all defined terms in this Agreement have the defined meaning when used in any certificate or other document made or delivered pursuant to this Agreement, unless otherwise indicated therein, (f) all defined terms in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term, and in each case, vice versa, (g) references in this Agreement to specific laws (such as the Code, HSR Act and ERISA) or to specific provisions of laws include all rules and regulations promulgated thereunder, and (h) any statute defined or referred to herein or in any agreement or instrument referred to herein means such statute as from time to time amended, modified or supplemented, including by succession of comparable successor statutes. No provisions of this Agreement shall be interpreted or construed against any party hereto solely because such party or its legal representative drafted such provision.

Section 9.11 Expenses. Except as specifically provided in Section 8.6, all costs and expenses incurred in connection with this Agreement and the Transactions shall be paid by the party hereto incurring such expenses, except filing fees incurred in connection with SEC filings relating to the Transactions and printing and mailing costs related thereto, all of which shall be shared equally by Buyer and the Company.

Section 9.12 No Third Party Beneficiaries. Except as expressly provided herein, this Agreement is for the sole benefit of the parties hereto (and, with respect to Sections 3.1(d), 3.4, 6.1, 6.2, 6.3, 6.4, 6.5, 6.9, 6.10, 6.11, 6.12, 6.13, 6.15, 9.6, 9.7, 9.9, this Section 9.12 and Section 9.15, VAB Acquisition Sub) and their successors and permitted assigns, and nothing herein express or implied is intended to, or shall be construed to, provide or create any legal or equitable rights or benefits to any Person other than the parties hereto and VAB Acquisition Sub; *provided*, *however*, that, upon termination of the VAB Transaction Agreement, VAB Acquisition Sub shall no longer have any third party beneficiary rights under this Agreement, and all rights of VAB Acquisition Sub hereunder shall inure solely to the benefit of Buyer.

Section 9.13 Severability. If any provision of this Agreement is held or deemed to be or is, in fact, inoperative or unenforceable as applied in any particular case because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable.

Section 9.14 Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Section 9.15 Specific Performance. The parties agree that if for any reason any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached, immediate and irreparable harm or injury would be caused for which money damages would not be an adequate remedy. Accordingly, each party agrees that, in addition to any other available remedy at law or equity, each party and, with respect to the Sections of this Agreement specified in Section 9.12, VAB Acquisition Sub (subject to the proviso in Section 9.12), shall be entitled to an injunction restraining any violation or threatened violation of the provisions of this Agreement without the necessity of posting a bond or other form of security. In the event that any Action should be brought in equity to enforce the provisions of this Agreement, no party will allege, and each party hereby waives the defense, that there is an adequate remedy at law.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

INSTINET GROUP INCORPORATED

By: /s/ Paul Merolla

Name: Paul Merolla
Title: Executive Vice President in General

THE NASDAQ STOCK MARKET, INC.

By: /s/ Adena Friedman

Name: Adena Friedman
Title: Executive Vice President

NORWAY ACQUISITION CORP.

By: /s/ David Warren

Name: David Warren
Title: Chief Financial Officer

Exhibit 2.2

TRANSACTION AGREEMENTDated as of April 22, 2005by and amongThe Nasdaq Stock Market, Inc.,Norway Acquisition Corp.andIceland Acquisition Corp.

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Exhibit E – Retained Business Balance Sheet as of December 31, 2004

Exhibit F – Newco Business Balance Sheet as of December 31, 2004

Exhibit G – Form of First Amendment to Sublease

TRANSACTION AGREEMENT

THIS TRANSACTION AGREEMENT (this "Agreement") is made and entered into as of April 22, 2005, by and among The Nasdaq Stock Market, Inc., a Delaware corporation ("Parent"), the Company (as defined herein) and Iceland Acquisition Corp., a Delaware corporation ("Newco").

WHEREAS, concurrently with the execution of this Agreement, the Company has entered into an Agreement and Plan of Merger, dated as of the date hereof, by and among Instinet Group Incorporated, a Delaware corporation ("Instinet"), Parent and the Company (the "Merger Agreement"), pursuant to which, among other things, the Company will merge with and into Instinet (the "Merger"); and

WHEREAS, immediately after the Effective Time (as defined herein), Parent, the Company and Newco desire to consummate the sale to Newco of all the Newco Assets (as defined herein), subject to the assumption of the Newco Liabilities (as defined herein), and upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements set forth herein, the parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE IDEFINITIONS

Section 1.1 General
. As used in this Agreement, the following terms shall have the following meanings:

"Accountant" shall have the meaning set forth in Section 4.9.

"Action" means any suit, claim, action, arbitration, inquiry, proceeding or investigation by or before any Authority.

"Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

"Aged Receivable" means an accounts receivable of the Retained Business that is outstanding for more than 90 days but for less than 181 days as of the close of business on the final day of the month ending immediately prior to the Closing Date to the extent it is reflected in "Accounts Receivable, net", on the Final Retained Business Working Capital Statement.

"Aged Receivable Collection Amount" shall have the meaning set forth in Section 2.9(c).

"Aged Receivables Excess" shall have the meaning set forth in Section 2.8(a).

"Aged Receivables Percentage" means a fraction, the numerator of which equals the Aged Receivables Excess, and the denominator of which equals the aggregate amount of all Aged Receivables.

"Agreement" shall have the meaning set forth in the Recitals.

"Allocation Schedule" shall have the meaning set forth in Section 2.6.

"Ancillary Agreements" means (a) the Transition Services Agreement in the form attached as Exhibit A, (b) the Amendment to Clearing Agreement in the form attached as Exhibit B, (c) the Co-Location Agreement in the form attached as Exhibit C and (d) the Billing and VTE License Agreement in the form attached as Exhibit D.

"Antitrust Law" means any Law that is designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade, or the lessening of competition through merger or acquisition, specifically including, the Sherman Antitrust Act of 1890, the Clayton Act of 1914, the HSR Act, and the Federal Trade Commission Act of 1914.

"Applicable Authority" means the persons set forth on Part F of Schedule 1.1 of the Disclosure Schedule.

"Archipelago Offset Amount" shall have the meaning set forth in the definition of VAB Tax Attribute.

"Archipelago Sale" means any sale of shares of Archipelago Holdings Inc. held by Instinet or any of its Subsidiaries as of the date of this Agreement and sold by Instinet or any its Subsidiaries prior to the Closing Date.

"Archipelago Tax Benefit" means the economic benefit resulting from the application of the Archipelago Offset Amount against the LJR Gain pursuant to Section 4.5(b) or 4.5(c).

"Asset" means, with respect to any person, except as otherwise provided herein, any and all of its right, title and interest in and to all of the rights, properties, assets, claims, contracts and businesses of every kind, character and description, whether real, personal or mixed, tangible and intangible, whether accrued, contingent or otherwise, of every kind and description and wherever located, owned or used by such person, including (i) all cash, cash equivalents, notes and accounts receivable (whether current or non-current), deposit accounts, securities accounts and other banks accounts; (ii) all certificates of deposit, banker's acceptances and other investment securities; (iii) all patents, patent rights, trademarks, service marks, trademark and service mark rights, trade names, trade name rights, domain names, copyrights, data rights, privacy rights, publicity rights, registrations or applications for any of the foregoing, trade secrets, works of authorship, technology and know-how (including all data bases, customer lists,

confidential information, discoveries, inventions and improvements), and other proprietary rights and information; (iv) all rights existing under leases, contracts, licenses, service agreements, sales and purchase agreements, other agreements and business arrangements and all policies of insurance and proceeds, benefits and rights to coverage under insurance policies; (v) all real estate and all buildings and other improvements thereon; (vi) all leasehold improvements and all equipment (including all office equipment), fixtures, trade fixtures and furniture; (vii) all office supplies, other miscellaneous supplies and other tangible property of any kind; (viii) all computer hardware, software, computer programs and systems and documentation relating thereto, including all databases and reference and resource materials; (ix) all prepayments or prepaid expenses; (x) all claims, causes of action, rights of recovery, rights to sue for past, present and future infringement of any intellectual property rights and rights of set-off of any kind; (xi) the right to receive mail, accounts receivable payments and other communications; (xii) all customer lists and records pertaining to customers and accounts, personnel records, all lists and records pertaining to suppliers and agents, and all books, ledgers, files and business records of every kind and all minute books, stock ledgers and other corporate books and records; (xiii) all advertising materials and all other printed or written materials; (xiv) all permits, waivers, licenses, approvals and authorizations of governmental authorities or third parties relating to the ownership, possession or operation of the Assets; (xv) all capital stock, partnership interests and other equity or ownership interests or rights, directly or indirectly, in any Subsidiary of such person or other entity; (xvi) all goodwill as a going concern and all other intangible properties; (xvii) all net operating losses, tax credits, net capital losses or any other tax attributes which are held by such person as a matter of Law; and (xviii) all employee contracts, including the right thereunder to restrict the employee from competing in certain respects.

"Assumed Non-U.S. Benefit Plans" has the meaning set forth in Section 8.2(b).

"Assumed U.S. Benefit Plans" has the meaning set forth in Section 8.2(a).

"Authority" means any court, arbitrator, administrative or other governmental department, agency, commission, tribunal, authority or instrumentality, domestic (including federal, state or local) or foreign or any Self-Regulatory Organization, which has authority or jurisdiction over the Company or any of its Subsidiaries or any of their respective properties or assets.

"Available Merger Consideration Cash" means all cash held in U.S. Dollars by Instinet, including the net after-tax proceeds of the LJR Sale, at the Effective Time to the extent such cash is immediately available without restriction for use in the payment of Merger Consideration (as defined in the Merger Agreement) and the cash out of the Company Options (as defined in the Merger Agreement) pursuant to and in accordance with Article 3 of the Merger Agreement.

"Burdensome Condition" shall have the meaning set forth in Section 6.6(h).

"Carry Tax Years" shall have the meaning set forth in Section 4.5(e).

"CBX" shall have the meaning set forth in Section 6.10(a).

"Closing" shall have the meaning set forth in Section 2.4.

"Closing Date" means the date on which the Merger is consummated, provided that all of the conditions set forth in Section 9.1 have been satisfied or waived by the applicable party or parties, which date shall be the first business day following the last day of an Instinet fiscal month end unless another date is agreed upon by the parties.

"Closing Date Newco Business Working Capital Amount" shall have the meaning set forth in Section 2.7(a).

"Closing Date Receivables" means all accounts receivable of the Retained Business that are outstanding for less than 181 days as of the close of business of the final day of the month ending immediately prior to the Closing Date to the extent reflected in "Accounts Receivable, net", on the Final Retained Business Working Capital Statement.

"Closing Date Retained Business Working Capital Amount" shall have the meaning set forth in Section 2.7(a).

"Closing Date Working Capital Amounts" shall have the meaning set forth in Section 2.7(a).

"Code" means the Internal Revenue Code of 1986.

"Company" means (a) prior to the Effective Time, Norway Acquisition Corp., a Delaware corporation, and (b) after the Effective Time, Instinet, as the surviving corporation in the Merger.

"Company Indemnitees" shall have the meaning set forth in Section 5.1.

"Company Percentage" means 85.58%.

"Consolidated Return" shall have the meaning set forth in Section 4.1.

"Convertible Notes Documents" means the Convertible Notes Securities Purchase Agreement and the other Transaction Documents (as defined in the Convertible Notes Securities Purchase Agreement).

"Convertible Notes Securities Purchase Agreement" means the Securities Purchase Agreement, dated as of April 22, 2005, between Parent and Norway Acquisition SPV, LLC, a Delaware limited liability company.

"Determination Month" shall have the meaning set forth in Section 2.8(a).

"Disclosure Schedule" means the disclosure schedule dated as of the date hereof and attached hereto.

"ECN Entities" means IHCI and each of its Subsidiaries, including the entities set forth on Part A of Section 1.1 of the Disclosure Schedule.

"Effective Time" shall have the meaning provided for such term in the Merger Agreement.

"ERISA" shall have the meaning set forth in Section 8.2(a).

"Excess Dissenting Shares Liability" shall have the meaning set forth in clause (ii) of the definition of Shared Transaction Liabilities.

"Final Newco Business Working Capital Statement" shall have the meaning set forth in Section 2.7(e).

"Final Retained Business Working Capital Statement" shall have the meaning set forth in Section 2.7(e).

"First Parent Year" shall have the meaning set forth in Section 4.5(c).

"GAAP" means U.S. generally accepted accounting principles.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

"IHCI" means INET Holding Company Inc., a Delaware corporation.

"Indemnifiable Losses" means any and all losses, Liabilities, claims, damages, obligations, payments, costs and expenses (including the Liabilities, costs and expenses of any and all Actions, demands, assessments, Judgments, settlements and compromises relating thereto and reasonable attorneys' fees and expenses in connection therewith) suffered or incurred by an Indemnitee; provided, that the foregoing does not include any losses, Liabilities, claims, damages, obligations, payments, costs, fees or expenses arising out of or relating to any claim for loss of profits or earnings, diminution in value or incidental, indirect, special or consequential damages unless awarded against any Indemnitee in a Third Party Claim.

"Indemnifying Party" means any party or other person who is required to indemnify any other person pursuant to any indemnification provisions contained in this Agreement.

"Indemnitee" means any party or other person who is entitled to receive indemnification from an Indemnifying Person pursuant to any indemnification provisions contained in this Agreement.

"INET Embedded Refund" means the extent to which the Final Retained Business Working Capital Statement includes tax refunds that were filed for, but not received, in both cases prior to the Closing; for the avoidance of doubt, the Final Retained Business Working Capital Statement may reflect such filed for tax refunds that

were filed for as positive quantities within the "Deferred Tax Assets" and/or "Taxes Receivable" line items, and/or within the "Taxes Payable" line item as negative or "contra" entries.

"Information" shall have the meaning set forth in Section 7.1.

"Instinet" shall have the meaning set forth in the Recitals.

"Instinet Transaction Liabilities" means Liabilities incurred by Instinet and its Affiliates for fees and expenses of investment bankers, attorneys, accountants and other consultants and advisors and other out-of-pocket costs and expenses incurred in connection with the transactions contemplated by the Merger Agreement (or any other transactions considered by Instinet and its Subsidiaries as alternatives to the Merger since November 18, 2004) and the LJR Sale that are incurred prior to Closing or arise from or relate to arrangements, agreements or commitments entered into or made by Instinet or its Affiliates prior to the Effective Time, including Liabilities for filing fees and printing and mailing costs and other expenses incurred in connection with the Proxy Statement (as defined in the Merger Agreement) and other out-of-pocket costs and expenses incurred in connection with Instinet's and its Affiliates' efforts to comply with the pre-closing covenants and agreements contained in the Merger Agreement (in all cases, excluding Parent/NAC Transaction Liabilities and Newco Transaction Liabilities).

"IRS" shall have the meaning set forth in Section 2.6.

"Judgments" means any and all judgments, orders, writs, directives, rulings, decisions, injunctions, decrees, assessments, settlement agreements (other than settlement agreements under which there are no continuing obligations) or awards of any Authority.

"Laws" means any and all applicable (a) federal, territorial, state, local and foreign laws, ordinances and regulations; (b) codes, standards, rules, requirements, orders and criteria issued under any federal, territorial, state, local or foreign laws, ordinances or regulations; (c) rules, guidelines or published interpretations of any Self-Regulatory Organization; and (d) Judgments.

"Liabilities" means, with respect to any person, any and all liabilities and obligations of such person, whether absolute, accrued, contingent, reflected on a balance sheet (or in the notes thereto) or otherwise, including those arising under any Law or Action, and those arising under any contract, commitment or undertaking, and including Tax liabilities (other than liabilities for Newco Business Taxes, Retained Business Taxes, Unallocated Taxes, Transaction Taxes and Transfer Taxes).

"Lien" means any lien, encumbrance, pledge, mortgage, security interest, claim under bailment, or storage contract.

"Listed" means, when referring to any Liability reflected on either the Final Retained Business Working Capital Statement or the Final Newco Business Working Capital Statement, "reflected on" or "reserved for" without regard to whether bthe amount of such Liability has been overstated, understated or is properly valued on or quantified on such statement.

"LJR" means Lynch, Jones and Ryan, Inc., a Delaware corporation, and any predecessors thereof.

"LJR Assets" means the Assets of LJR at the time of the LJR Sale.

"LJR Business" means the business of LJR at the time of the LJR Sale and all former businesses of LJR.

"LJR Employees" means all employees of LJR at the time of the LJR Sale and all former employees of LJR.

"LJR Gain" means the taxable gain recognized on the LJR Sale for income tax purposes; provided, that, in the event that the Company reports both the LJR Sale and the sale of the Newco Business as occurring within the same federal income tax year of the Company pursuant to Section 4.16, the ordinary losses and capital losses from the sale of the Newco Business shall be netted against the ordinary gains and capital gains from the LJR Sale in accordance with applicable Law, and the LJR Gain may accordingly be reduced (but not below zero).

"LJR Insurance Policy" means the insurance policy contemplated to be purchased by Reuters America LLC in connection with the LJR Sale.

"LJR Liabilities" means Liabilities (other than Pre-Closing LJR Adjustment Liabilities, Shared Transaction Liabilities relating to the LJR Sale and Transaction Taxes relating to the LJR Sale) of the Company and its Subsidiaries relating directly to LJR, the LJR Assets, the LJR Sale, the LJR Sale Agreement, the LJR Business or the LJR Employees, in each case, to the extent such Liability is or becomes a Liability of the Company, any ECN Entity or any Newco Entity and is not reimbursed by Reuters Group PLC in a reasonable timely manner in accordance with the LJR Sale Agreement (as defined in the Merger Agreement) or covered by the LJR Insurance Policy and paid for by such insurance in a reasonable timely manner.

"LJR Offset Loss" shall have the meaning set forth in the definition of "VAB Tax Attributes."

"LJR Sale" has the meaning provided for such term in the Merger Agreement.

"LJR Sale Agreement" has the meaning provided for such term in the Merger Agreement.

"Merger" shall have the meaning set forth in the Recitals.

"Merger Agreement" shall have the meaning set forth in the Recitals.

"Net VAB Transaction Loss" shall have the meaning set forth in the definition of VAB Tax Attributes.

"Neutral Auditors" shall have the meaning provided in Section 2.7(d).

"Newco" shall have the meaning set forth in the Recitals.

"Newco Action" shall have the meaning set forth in Section 5.5.

"Newco Adverse Effect" means any event, occurrence, fact, condition, change, or effect that (A) would have the effect of decreasing either the Available Merger Consideration Cash or the Closing Date Retained Business Working Capital Amount or (B) is or would have an adverse effect on: (i) the VAB Purchase, (ii) Newco's rights and obligations under this Agreement, (iii) Newco's rights as a third party beneficiary of the Merger Agreement, (iv) the Newco Assets, the Newco Employees, the Newco Business or the Newco Liabilities, (v) the Final Newco Business Working Capital Statement, (vi) the probability that the transactions contemplated by this Agreement and the Merger Agreement will be consummated or (vii) the condition (financial or other) of Newco or any of the Newco Entities or any Affiliate of Newco; provided, that, notwithstanding the foregoing, none of the following shall constitute a Newco Adverse Effect: (a) Parent or the Company providing written notice to Instinet of a misrepresentation or breach of any representation, warranty, covenant or agreement made by Instinet in the Merger Agreement, (b) Parent or the Company asserting any right of termination under Article 8 of the Merger Agreement (other than Section 8.1 of the Merger Agreement) or (c) Parent or the Company asserting any right of termination under this Agreement.

"Newco Assets" means all Assets of the Company as of the Closing Date, including all cash of the Company (after giving effect to the transactions contemplated by clause (i) of Section 2.3(b) and Section 2.3(c)) not used to pay Merger Consideration (as defined in the Merger Agreement), cash out Company Options (as defined in the Merger Agreement) or make payments in respect of Appraisal Shares (as defined in the Merger Agreement) (calculated for this purpose to equal the Merger Consideration which would have otherwise been payable in respect of such Appraisal Shares) other than (a) the Retained Assets and (b) the LJR Assets. By virtue of acquiring the Newco Assets pursuant to this Agreement, after the Closing, Newco will directly or indirectly own all of the capital stock of the Newco Entities and the Assets of such entities, including the Newco Proprietary Name Rights, and such Assets of the Newco Entities will be considered Newco Assets for purposes of this Agreement; provided, that for purposes of the definition of Newco Adverse Effect and Sections 6.4(a), 6.6(b), 6.6(f) and 6.6(h), Newco Assets shall be deemed to include any Asset held by Instinet or any of its Subsidiaries that is of a type that if held by the Company on the Closing Date would constitute a Newco Asset.

"Newco Business" means all present and past businesses of Instinet and its Subsidiaries (and their respective predecessors) other than the Retained Business and the LJR Business.

"Newco Business Balance Sheet" shall have the meaning set forth in Section 2.7(a).

"Newco Business Price" means $207,500,000.

"Newco Business Working Capital Amount" means, as of the close of business on a given date, an amount equal to the "Stockholders Equity" (as such term is used and calculated in the Newco Business Balance Sheet); provided, however, that, when calculating the Newco Business Working Capital Amount, the accrual for each Specified Non-Operating Liability (and related tax accruals) reflected thereon shall be the same as the December 31, 2004 accruals, if any, reflected on the Newco Business Balance Sheet for such Specified Non-Operating Liability.

"Newco Business Working Capital Statement" shall have the meaning set forth in Section 2.7(a).

"Newco Business Working Capital Statement Proposals" shall have the meaning set forth in Section 2.7(e).

"Newco Competing Business" shall have the meaning set forth in Section 6.10(a).

"Newco Economic Tax Period" means any taxable period beginning on or after January 1, 2004 and ending no later than the Closing Date.

"Newco Employees" means:

(i) all employees of Instinet and its Subsidiaries as of immediately prior to the Effective Time (other than the Retained Employees as of immediately prior to the Effective Time);

(ii) the individual listed on Section 6.10(c) of the Disclosure Schedule; and

(iii) with respect to Liabilities, all former employees of Instinet and its Subsidiaries (other than LJR Employees) that were (at the time the applicable Liability was incurred) employed solely or primarily in connection with the Newco Business;

provided, that for purposes of the definition of Newco Adverse Effect and Section 6.4(a), Newco Employees shall be deemed to include any employee of Instinet or any of its Subsidiaries who would be a Newco Employee if such person were employed by the Company on the Closing Date.

"Newco Entities" means all of the direct and indirect Subsidiaries of Instinet other than the ECN Entities, including the entities set forth on Part B of Section 1.1 of the Disclosure Schedule, but excluding LJR.

"Newco Indemnitees" shall have the meaning set forth in Section 5.2.

"Newco Liabilities" means, without duplication:

(i) the obligations of Newco to perform and comply with its representations, warranties, covenants and agreements contained in this Agreement and Liabilities arising from or relating to any breach by Newco of such representations, warranties, covenants and agreements;

(ii) Liabilities (including indebtedness) Listed on the Final Newco Business Working Capital Statement; provided, that if a specific and unique Liability is Listed on both the Final Newco Business Working Capital Statement and the Final Retained Business Working Capital Statement (it being understood that this proviso shall not be deemed to apply to general balance sheet line items or categories of Liabilities), such specific and unique Liability will be allocated between Newco and the Newco Entities, on the one hand, and Parent, the Company and the ECN Entities, on the other hand, in proportion to the relative amounts of such Liability accrued, reflected or reserved for on such statements;

(iii) Liabilities of the Newco Entities (other than Retained Liabilities, Pre-Closing LJR Adjustment Liabilities, Unallocated Liabilities, Undisclosed Liabilities and Shared Transaction Liabilities);

(iv) Undisclosed Liabilities (whether first known to the parties before, on or after the Closing Date) to the extent directly related to the Newco Business, the Newco Assets or the Newco Employees;

(v) 50.0% of Pre-Closing Unallocated Undisclosed Liabilities;

(vi) the Newco Percentage of Unallocated Liabilities;

(vii) Newco Transaction Liabilities;

(viii) Newco Scheduled Liabilities;

(ix) the first $19,400,000 of Shared Transaction Liabilities (less the amount of Pre-Closing Shared Transaction Liabilities paid by Instinet and its Subsidiaries on or prior to the Closing Date);

(x) 50.0% of Pre-Closing Shared Transaction Liabilities in excess of the amount provided in clause (ix) above (less the amount of Pre-Closing Shared Transaction Liabilities paid by Instinet and its Subsidiaries on or prior to the Closing Date) but in no event more than $2.5 million pursuant to this clause (x);

(xi) the Newco Percentage of Post-Closing Shared Transaction Liabilities in excess of the amount provided in clause (ix) above;

(xii) 50.0% of all Pre-Closing LJR Adjustment Liabilities (less the amount of any such Pre-Closing LJR Adjustment Liabilities paid by Instinet and its Subsidiaries on or prior to the Closing Date); and

(xiii) Liabilities that arise from or relate to the conduct of the Newco Business following the Closing.

"Newco Names" shall have the meaning set forth in Section 6.2.

"Newco Percentage" means 14.42%.

"Newco Proprietary Name Rights" shall have the meaning set forth in Section 6.2.

"Newco Scheduled Liabilities" means the Liabilities set forth on Part C of Section 1.1 of the Disclosure Schedule (it being understood that such Liabilities shall be deemed to be Newco Liabilities and not Retained Liabilities irrespective of whether or not any such Liabilities would fall within any category of Retained Liabilities as set forth in the definition thereof).

"Newco Transaction Liabilities" means Liabilities incurred by Newco and its Affiliates (i) for fees and expenses of investment bankers, attorneys, accountants and other consultants and advisors and other out-of-pocket costs and expenses, in each case, to the extent incurred in connection with the transactions contemplated by this Agreement (it being understood that inclusion of such fees and expenses in this definition shall have no effect on any provision of the Convertible Notes Documents relating to the obligation of Parent to reimburse such fees and expenses in accordance with the terms thereof), (ii) that arise from or relate to any Action initiated by any Authority or private party in connection with the transactions contemplated by this Agreement and the Merger Agreement and (iii) for Newco's out-of-pocket costs and expenses, if any, associated with any attempt to transfer or failure to transfer any Newco Asset.

"Parent" shall have the meaning set forth in the Recitals.

"Parent Competing Business" shall have the meaning set forth in Section 6.10(b).

"Parent/NAC Transaction Liabilities" means Liabilities, other than Shared Transaction Liabilities, incurred by Parent, the Company and their Affiliates (i) for fees and expenses of investment bankers, attorneys, accountants and other consultants and advisors and other out-of-pocket costs and expenses, in each case, to the extent incurred in connection with the transactions contemplated by this Agreement and the Merger Agreement, (ii) that arise from or relate to any Action initiated by any Authority or private party in connection with the transactions contemplated by this Agreement and the Merger Agreement and (iii) subject to Section 6.1, the out-of-pocket costs and expenses,

if any, of Parent and the Company associated with any attempt to transfer or failure to transfer any Newco Asset.

"Parent Tax Attributes" means any net operating losses, net capital losses or tax credits (other than the VAB Tax Attributes) of Parent or any of its Subsidiaries, including if held at the time of Closing, subsequently created, subsequently acquired, or acquired as part of the Merger.

"Post-Closing Shared Transaction Liabilities" means Shared Transaction Liabilities that are either (i) Instinet Transaction Liabilities that are not paid or invoiced on or prior to the Closing Date or (ii) Shared Transaction Litigation Liabilities that are not paid by Instinet or any Subsidiary thereof on or prior to the Closing Date or which are not the subject of a settlement (whether or not definitive) as of the Closing Date.

"Post-Closing Unallocated Undisclosed Liabilities" means Undisclosed Liabilities that are incurred on or prior to the Closing Date but do not become known to the parties until after the Closing Date, to the extent not directly related to the Newco Business, the Newco Assets, the Newco Employees, the Retained Business, the Retained Assets or the Retained Employees.

"Pre-Closing LJR Adjustment Liabilities" means Liabilities incurred by Instinet and its Subsidiaries on or prior to the Closing Date pursuant to Section 2.3 or 2.4 of the LJR Sale Agreement (as defined in the Merger Agreement).

"Pre-Closing Shared Transaction Liabilities" means Shared Transaction Liabilities that are either (i) Instinet Transaction Liabilities that are paid on or prior to the Closing Date (or are the subject of an invoice delivered on or prior to the Closing Date) or (ii) all Shared Transaction Litigation Liabilities that are paid by Instinet or any Subsidiary thereof on or prior to the Closing Date or which are the subject of a settlement (whether or not definitive) as of the Closing Date.

"Pre-Closing Unallocated Undisclosed Liabilities" means Undisclosed Liabilities that are incurred and become known to the parties on or prior to the Closing Date to the extent not directly related to the Newco Business, the Newco Assets, the Newco Employees, the Retained Business, the Retained Assets or the Retained Employees.

"Pro Forma Loss Amount" means, for each taxable year beginning on or after January 1, 2005 and ending on or prior to the Closing Date and the pre-Closing portion (as determined below) of any taxable period beginning before and ending after the Closing Date, the excess, if any, of (x) the aggregate amount of deductions taken by the consolidated federal income tax group of which Instinet is the common parent for the federal income tax year in which the LJR Sale occurs less the amount of Restructuring Deductions taken by Instinet and its Subsidiaries in such tax year over (y) the gross income of such consolidated federal income tax group for such federal income tax year under Section 61 of the Code less the LJR Gain; it being understood that if Instinet has not filed its federal Tax Return for such tax year as of the Closing Date, Instinet shall

estimate in good faith the amount of the Pro Forma Loss Amount, and such estimate shall be adjusted when Instinet actually files such Tax Return. In the case of taxable periods that begin before and end after the Closing, the Pro Forma Loss Amount shall include only those amounts attributable to the portion of such taxable period ending on and including the Closing Date, determined on an "interim closing of the books" as of such date.

"Purchase Price" shall have the meaning set forth in Section 2.3.

"Reference Balance Sheets" shall have the meaning set forth in Section 2.7(a).

"Representatives" shall have the meaning set forth in Section 5.1.

"Resolution Period" shall have the meaning set forth in Section 2.7(c).

"Restructuring Deduction" means any Tax deduction of Instinet or any of its Subsidiaries taken with respect to the period from and including January 1, 2005 to and including the Closing Date and attributable to any Restructuring Tax Asset.

"Restructuring Tax Assets" means deferred tax assets of the Newco Business as of December 31, 2004 relating to (i) accrued compensation (in the amount of $2.5 million as of December 31, 2004, comprised primarily of annual bonuses); (ii) accrued restructuring (in the amount of $12.4 million as of December 31, 2004, comprised primarily of severance, termination of leases and technology write downs); and (iii) other accruals (in the amount of $7.8 million as of December 31, 2004, comprised primarily of accrued legal fees, accrued medical fees, accrued communication, accrued post-retirement benefits, prepaid insurance, deferred income, deferred rent, excess charitable deductions and supplemental employee retirement plan expense), all as noted on the Newco Business Balance Sheet and supporting 2004 tax provision.

"Retained Action" shall have the meaning set forth in Section 5.5.

"Retained Assets" means (i) all of the capital stock of IHCI, (ii) the rights of the Company under this Agreement, (iii) all net operating losses, tax credits, net capital losses or any other tax attributes which are held by the Company or the Retained Business as a matter of Law (subject to the sharing of the economic impact of such tax attributes pursuant to Article IV), (iv) the stock books, minute books and corporate records of the Company and all other books and records of the Company relating solely to the Retained Assets, the Assets of the ECN Entities, the ECN Entities, the Retained Business or the Retained Liabilities and (v) subject to Section 6.14, all of the Company's rights, if any, to coverage under the LJR Insurance Policy. By virtue of retaining all of the capital stock of IHCI after the Closing, the Company will indirectly own all of the Assets owned by IHCI, including the capital stock of the other ECN Entities and the Assets of such entities, including the Retained Proprietary Name Rights, and such Assets of the ECN Entities will be considered Retained Assets for purposes of this Agreement.

"Retained Business" means all present and past businesses of Instinet and its Subsidiaries (and their respective predecessors) to the extent, in the case of Instinet and its Subsidiaries (other than the ECN Entities) only, such businesses constituted an electronic communications network or constituted a broker-dealer to broker-dealer execution services business or the former Instinet "sell-side" business.

"Retained Business Balance Sheet" shall have the meaning set forth in Section 2.7(a).

"Retained Business Price" means the amount equal to (x) $934,500,000, plus (y) the amount (not to exceed $30,800,000) of Cash and Securities Owned (as such terms are used on the Retained Business Balance Sheet) held by the ECN Entities on the Closing Date as provided in Section 6.18 of the Merger Agreement.

"Retained Business Working Capital Adjustment" shall have the meaning set forth in Section 2.7(f).

"Retained Business Working Capital Amount" means, as of the close of business on a given date, an amount equal to the sum of (A) "Stockholder's Equity" (as such term is used in the Retained Business Balance Sheet), minus (B) the sum of (x) "Intangible assets, net" (as such term is used in the Retained Business Balance Sheet), (y) "Fixed assets, net" (as such term is used in the Retained Business Balance Sheet) and (z) "Deferred Tax Assets, net" associated with fixed assets and intangible assets, bad debt and net operating losses (as such terms are used and calculated in the Retained Business Balance Sheet); provided, however, that, for purposes of calculating the Retained Business Working Capital Amount, in no event shall accounts receivable that are outstanding for more than 90 days but for less than 181 days be reflected in an aggregate amount in excess of the product of (i) 0.35 multiplied by (ii) the aggregate amount of all accounts receivable of the Retained Business that are outstanding for less than 181 days (notwithstanding the exclusion of such accounts receivable in the calculation of the Retained Business Working Capital Amount, such excess accounts receivable shall be reflected in "Accounts Receivable, net", on the Retained Business Working Capital Statement and the Final Retained Business Working Capital Statement); provided, further, that, when calculating the Retained Business Working Capital Amount the accrual for each Specified Non-Operating Liability (and any related tax accruals) shall be the same as the December 31, 2004 accruals, if any, reflected on the Retained Business Balance Sheet for such Specified Non-Operating Liability (it being understood that if the Retained Business Balance Sheet did not contain any accrual for such Specified Non-Operating Liability, there shall be no accrual therefor when calculating the Retained Business Working Capital Amount).

"Retained Business Working Capital Statement" shall have the meaning set forth in Section 2.7(a).

"Retained Business Working Capital Statement Proposals" shall have the meaning set forth in Section 2.7(e).

"Retained Employees" means:

(i) employees of the ECN Entities as of immediately prior to the Effective Time (other than the individual listed on Section 6.10(c) of the Disclosure Schedule); and

(ii) with respect to Liabilities, former employees of Instinet and its Subsidiaries (other than LJR Employees) that were (at the time the applicable Liability was incurred) employed solely or primarily in connection with the Retained Business.

"Retained Liabilities" means, without duplication:

(i) the obligations of Parent and the Company to perform and comply with their respective representations, warranties, covenants and agreements contained in this Agreement and Liabilities arising from or relating to any breach by the Company or Parent of such representations, warranties, covenants and agreements;

(ii) Liabilities (including indebtedness) Listed on the Final Retained Business Working Capital Statement; provided, that if a specific and unique Liability is Listed on both the Final Newco Business Working Capital Statement and the Final Retained Business Working Capital Statement (it being understood that this proviso shall not be deemed to apply to general balance sheet line items or categories of Liabilities), such specific and unique Liability will be allocated between Newco and the Newco Entities, on the one hand, and Parent, the Company and the ECN Entities, on the other hand, in proportion to the relative amounts of such Liability accrued, reflected or reserved for on such statements;

(iii) Liabilities of the ECN Entities (other than Newco Liabilities, Pre-Closing LJR Adjustment Liabilities, Unallocated Liabilities, Undisclosed Liabilities and Shared Transaction Liabilities);

(iv) Undisclosed Liabilities (whether first known to the parties before, on or after the Closing Date) to the extent directly related to the Retained Business, the Retained Assets or the Retained Employees;

(v) 50.0% of Pre-Closing Unallocated Undisclosed Liabilities;

(vi) the Company Percentage of Unallocated Liabilities;

(vii) Parent/NAC Transaction Liabilities;

(viii) Retained Scheduled Liabilities;

(ix) Shared Transaction Liabilities to the extent not covered by clause (ix), (x) and/or (xi) of the definition of Newco Liabilities;

(x) 50.0% of all Pre-Closing LJR Adjustment Liabilities; and

(xi) Liabilities that arise from or relate to the conduct of the Retained Business following the Closing.

"Retained Names" shall have the meaning set forth in Section 6.2.

"Retained Proprietary Name Rights" shall have the meaning set forth in Section 6.2.

"Retained Scheduled Liabilities" means the Liabilities set forth on Part D of Section 1.1 of the Disclosure Schedule (it being understood that such Liabilities shall be deemed to be Retained Liabilities and not Newco Liabilities irrespective or whether or not any such Liabilities would fall within any category of Newco Liabilities set forth in the definition thereof).

"Reuters" shall have the meaning set forth in Section 8.2(b).

"Self-Regulatory Organization" means the National Association of Securities Dealers, Inc., any domestic or foreign securities exchange, commodities exchange, registered securities association, the Municipal Securities Rulemaking Board, National Futures Association, and any other board or body, whether United States or foreign, that is charged with the supervision or regulation of brokers, dealers, commodity pool operators, commodity trading advisors or future commission merchants.

"Shared Transaction Liabilities" means, without duplication, Liabilities incurred by Instinet and its Subsidiaries that arise out of or relate to the transactions contemplated by the Merger Agreement (or any transactions considered by Instinet and its Subsidiaries as alternatives to the Merger since November 18, 2004), including:

(i) Instinet Transaction Liabilities;

(ii) Liabilities arising from or relating to any Actions that arise from or relate to the transactions contemplated by this Agreement and the Merger Agreement, whether brought before or after the Closing and whether brought by current or former stockholders or option holders of Instinet, any Authority or third parties, including any obligation of the Company to make payments to dissenting stockholders of Instinet (but only to the extent such Liabilities to dissenting stockholders are in excess (such excess amount, the "Excess Dissenting Shares Liability") of the amount of Merger Consideration that would have been payable in respect of the Appraisal Shares (as defined in the Merger Agreement) held by such dissenting stockholders at the Effective Time if such appraisal proceeding had not been brought) (the Liabilities described in this clause (ii) being referred to as "Shared Transaction Litigation Liabilities");

provided, that notwithstanding anything to the contrary contained herein, "Shared Transaction Liabilities" shall not include:

(a) any Parent/NAC Transaction Liabilities;

(b) any Newco Transaction Liabilities; or

(c) any Liabilities of Parent or the Company to (x) pay Merger Consideration (as defined in the Merger Agreement), (y) cash out Company Options (as defined in the Merger Agreement) or (z) make payments in respect of Appraisal Shares (as defined in the Merger Agreement) except as set forth above with respect to any Excess Dissenting Shares Liability.

"Shared Transaction Litigation Liabilities" shall have the meaning set forth in clause (ii) of the definition of Shared Transaction Liabilities.

"Short Federal Tax Year" means the Company's federal income tax year ending with the date of the closing of the Merger.

"Specified Non-Operating Liabilities" means:

(i) Pre-Closing LJR Adjustment Liabilities;

(ii) LJR Liabilities;

(iii) Shared Transaction Liabilities;

(iv) Newco Scheduled Liabilities;

(v) Retained Scheduled Liabilities;

(vi) Unallocated Scheduled Liabilities; and

(vii) Undisclosed Liabilities.

"Subsidiary" means, with respect to any person, any corporation, limited liability company, partnership, trust or other organization, whether incorporated or unincorporated, of which (i) such person or any other Subsidiary of such person is a general partner (excluding partnerships, the general partnership interests of which held by such person and/or by any Subsidiary of such person do not constitute a majority of the voting interest in such partnership) or (ii) at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the Board of Directors or others performing similar functions is directly or indirectly owned or controlled by such person or by any one or more of its Subsidiaries, or by such person and one or more of its Subsidiaries.

"Target Retained Business Working Capital Amount" means the amount equal to (x) $40,527,476, plus (y) the amount (not to exceed $30,800,000) of Cash and

Securities Owned (as such terms are used on the Retained Business Balance Sheet) held by the ECN Entities on the Closing Date as provided in Section 6.18 of the Merger Agreement.

"Tax" means all (i) taxes imposed by any U.S. federal, state, local, foreign or other Tax Authority, including all income, gross receipts, gains, profits, windfall profits, gift, severance, ad valorem, capital, social security, unemployment disability, premium, recapture, credit, excise, property, sales, use, occupation, service, service use, leasing, leasing use, value added, transfer, payroll, employment, withholding, estimated, license, stamp, franchise or similar taxes of any kind whatsoever, including interest, penalties or additions thereto; (ii) liabilities of the Company, any of its Subsidiaries, or any of the Newco Entities for Taxes of any person (other than the Company, any of its Subsidiaries, or any of the Newco Entities) under Treasury Regulation Section 1.1502-6 (or any comparable provision of U.S. state or local or foreign law) and (iii) liabilities of the Company, any of its Subsidiaries, or any of the Newco Entities for the payment of any amounts pursuant to any tax-sharing, tax allocation or similar agreement; provided, that the foregoing does not include any losses, Liabilities, claims, damages, obligations, payments, costs, fees or expenses arising out of or relating to any claim for loss of profits or earnings, diminution in value or incidental, indirect, special or consequential damages unless awarded against any Indemnitee in a Third Party Claim.

"Tax Attributes" shall have the meaning provided in the definition of VAB Tax Attributes.

"Tax Authority" means any Authority or quasi-governmental or private body having jurisdiction over the assessment, determination, collection or imposition of any Tax.

"Tax Claim" means any claim with respect to Taxes made by any Tax Authority that, if pursued successfully, would reasonably be expected to serve as the basis for a claim for indemnification under Article IV.

"Tax Proceeding" shall have the meaning set forth in Section 4.3.

"Tax Return" means any report, return, documents, declaration or other information (and any supporting schedules or attachments thereto) required to be supplied to any Tax Authority or jurisdiction with respect to Taxes (including any returns or reports filed on a consolidated, unitary, or combined basis) (collectively, "Returns"), amended returns and claims for refund.

"Termination Date" means the date which is the first anniversary of the date of this Agreement.

"Transactions" means the Merger, the LJR Sale and the sale of the Newco Business.

"Transaction Taxes" shall have the meaning set forth in Section 4.1.

"Third Party Claim" shall have the meaning set forth in Section 5.4(a).

"Unallocated Action" shall have the meaning set forth in Section 5.5.

"Unallocated Liabilities" means, without duplication:

(i) LJR Liabilities;

(ii) Post-Closing Unallocated Undisclosed Liabilities;

(iii) Unallocated Scheduled Liabilities;

(iv) the costs and expenses of maintaining policies of directors' and officers' liability insurance coverage under Section 6.9(c) of the Merger Agreement and any Liabilities incurred by Parent or the Company under Section 6.9(b) of the Merger Agreement in respect of the Company; and

(v) other Liabilities of the Company to the extent such Liabilities are not (a) Liabilities of the type described in any clause of the definition of Newco Liabilities (other than clause (vi) thereof) or (b) Liabilities of the type described in any clause of the definition of Retained Liabilities (other than clause (vi) thereof).

"Unallocated Scheduled Liabilities" means the Liabilities set forth on Part E of Section 1.1 of the Disclosure Schedule (i.e., all Liabilities arising from or relating to the Unallocated Actions).

"Unallocated Taxes" shall have the meaning set forth in Section 4.1

"Undisclosed Liabilities" means any Liabilities of Instinet or any Subsidiary thereof (whether or not of a nature required to be set forth or reflected in a consolidated balance sheet of Instinet prepared in accordance with GAAP) that are incurred on or prior to the Closing Date and not (a) set forth, accrued, reserved or otherwise reflected in the December 31, 2004 balance sheets included in the Financial Statements (as defined in the Merger Agreement) or referred to in the notes thereto, (b) set forth or referred to in the Company Disclosure Schedule (as defined in the Merger Agreement) or (c) incurred since December 31, 2004 in the ordinary course of business of the Newco Business or the Retained Business on a basis consistent with past practice.

"VAB Loss Year" shall have the meaning set forth in Section 4.5(d).

"VAB Purchase" shall have the meaning set forth in the Merger Agreement.

"VAB Tax Attributes" means, without duplication, (a) any Restructuring Deduction, (b) any Pro Forma Loss Amount, (c) any net operating losses, tax credits and net capital losses (collectively, "Tax Attributes") related to or created by (x) the operation of Instinet and its Subsidiaries through the Closing Date, excluding any net operating loss

available for any state or local income tax purposes as of the close of business on December 31, 2004, or (y) the inability of the Company to utilize any portion of the Net VAB Transaction Loss in the tax year in which such Net VAB Transaction Loss is incurred, (d) any Tax deduction of Instinet or any of its Subsidiaries attributable to (i) accounting, legal, investment banking, consulting and other advisory fees and expenses incurred in anticipation of the possibility of, or in connection with, any of the Transactions or (ii) the vesting, cash-out, exercise, receipt, redemption or other disposition of any form of equity-based compensation (including, without limitation, restricted and unrestricted stock, performance shares, options and stock appreciation rights) in connection with any of the Transactions, (e) the excess, if any, of (x) any ordinary or capital loss related to or created by the Company's disposition of the Newco Business over (y) the sum of the amount of such loss that offsets or is carried back to offset any ordinary or capital gain recognized on the LJR Sale (the "LJR Offset Loss") plus the amount of such loss that offsets or is carried back to offset any net capital gain recognized on the Archipelago Sale (the "Archipelago Offset Loss"), such excess being referred to herein as the "Net VAB Transaction Loss"; it being understood that to the extent that the Net VAB Transaction Loss is not fully utilized in the tax year in which such Net VAB Transaction Loss is incurred as determined under Section 4.5(d), the unutilized portion of such Net VAB Transaction Loss shall be treated as a net operating loss and/or net capital loss described in clause (c)(y) of this definition arising in the tax year of the incurrence of the Net VAB Transaction Loss; it being further understood that neither the LJR Offset Loss nor the Archipelago Offset Loss shall be deemed to be a VAB Tax Attribute.

"VAB Tax Benefits" means any economic benefit resulting from (i) the application of any VAB Tax Attribute pursuant to Section 4.5 (whether in the form of refunds, credits, offsets to Taxes for which Parent or any of its Subsidiaries would otherwise be liable, or offsets to income that would otherwise give rise to such Taxes) or (ii) any amount payable to Newco pursuant to clause (1) of Section 4.16(b).

"Working Capital Shortfall" shall have the meaning set forth in Section 2.7(g)(i).

"Working Capital Statements" shall have the meaning set forth in Section 2.7(a).

ARTICLE IITRANSFER OF ASSETS AND LIABILITIES

Section 2.1 Sale and Transfer of Newco Assets
. Subject to the terms and conditions of this Agreement, at the Closing, the Company shall sell, convey, assign, transfer and deliver to Newco, free and clear of all Liens (other than Liens in existence immediately prior to the Effective Time), all of the Company's right, title and interest in and to all Newco Assets of the Company.

Section2.2 Transfer of Newco Liabilities
. Subject to the terms and conditions of this Agreement, at the Closing, Newco shall assume and agree to pay, perform and discharge when due, or cause to be assumed, paid, performed and discharged, in due course, all of the Newco Liabilities of the Company and the ECN Entities.

Section 2.3 Purchase Price; Payment of Merger Consideration; Reimbursement of Certain Amounts Paid By Instinet Prior to the Closing
. (a) Subject to the terms and conditions of this Agreement, in consideration of the aforesaid sale, conveyance, assignment, transfer and delivery to Newco of the Newco Assets, at the Closing, Newco shall (a) pay to the Company an amount of cash equal to the Newco Business Price (it being understood that the cash held by the Company on the Closing Date (after giving effect to Sections 2.3(b) and 2.3(c) below) and available for inclusion in the Newco Assets may be used by Newco, in Newco's sole discretion, to pay a portion of the Newco Business Price) and (b) assume and agree to pay, perform and discharge when due, or cause to be assumed, paid, performed and discharged, in due course, all of the Newco Liabilities assumed by Newco pursuant to Section 2.2 (collectively, the "Purchase Price").

(b) Subject to the terms and conditions of this Agreement, Parent agrees that (i) on the Closing Date, Parent shall deposit with the Company an amount in cash equal to the sum of (x) the Retained Business Price, plus (y) the amount required pursuant to Section 4.16 and (ii) subject to Section 6.12, Parent shall, or shall cause the Company to, (A) satisfy the obligation of Parent and the Company to pay the Merger Consideration (as defined in the Merger Agreement) and cash out the Company Options (as defined in the Merger Agreement) pursuant to and in accordance with Article 3 of the Merger Agreement out of the amounts represented by the Retained Business Price, Newco Business Price, Available Merger Consideration Cash and the amount required to be contributed by Parent to the Company pursuant to Section 4.16(a) or clause (ii) of the first sentence in Section 4.16(b), as the case may be; and (B) subject to Newco's obligation to pay the Newco Percentage of any Excess Dissenting Shares Liability as contemplated by clause (ii) of the definition of Shared Transaction Liabilities, make any payments required to be made in respect of Appraisal Shares (as defined in the Merger Agreement).

(c) At the Closing, Parent shall contribute cash in U.S. Dollars to the Company for inclusion in the Newco Assets an amount equal to the total amount (less any accruals therefor reflected on the Retained Business Balance Sheet) of all Liabilities of Instinet and its Subsidiaries that (A) are known to the parties as of the Closing Date to have been paid by Instinet or any Subsidiary thereof on or prior to the Closing Date and (B) would have been Retained Liabilities of the types referred to in clauses (iv), (v), (vi), (vii), (viii), (ix) or (x) of the definition of Retained Liabilities payable by Parent, the Company and the ECN Entities following the Closing Date if not so paid on or prior to the Closing Date. Except as provided in the foregoing, and subject to Section 6.11, the parties agree that Parent and its Subsidiaries have no responsibility for any Liabilities paid by Instinet or any Subsidiary thereof on or prior to the Closing Date. The parties agree that any payments pursuant to this Section 2.3(c) will be treated for Tax purposes as an adjustment to the Purchase Price, unless otherwise required by applicable Law.

Section2.4 The Closing
. Subject to the satisfaction or waiver of the conditions set forth in Section 9.1 of this Agreement, the sale and transfer of the Newco Assets and the assumption of the Newco Liabilities to be assumed pursuant to Section 2.2 shall take place on the Closing Date at the offices of Skadden, Arps, Slate, Meagher & Flom LLP immediately after the Effective Time (the "Closing"). The parties hereto agree that (a) the sale, conveyance, assignment and transfer of the Newco Assets contemplated pursuant to Section 2.1 shall be effected at the Closing by delivery by the Company to Newco of (i) with respect to those Newco Assets which are evidenced by capital stock certificates or similar instruments, certificates duly endorsed in blank or accompanied by stock powers or other instruments of assignment executed in blank and (ii) with respect to all other Newco Assets, such good and sufficient instruments of transfer and delivery as shall be necessary to vest in Newco all of the right, title and interest of the Company in and to such Newco Assets, and (b) the assumption of the Newco Liabilities contemplated pursuant to Section 2.2 shall be effected by delivery by Newco to the Company of such good and sufficient instruments of assumption, as shall be necessary for the assumption by Newco of the Newco Liabilities to be assumed pursuant to Section 2.2. All of the foregoing transfer or assumption instruments or other documents shall be in such form as are reasonably satisfactory to the parties hereto.

Section 2.5 Indebtedness of the Company and its Subsidiaries
. The parties agree that:

(i) (A) with respect to any Newco Liabilities that constitute obligations for money borrowed, Newco shall use its reasonable best efforts to cause the Company and the ECN Entities and their respective capital stock or other equity interests, properties and assets to be released and discharged from any and all Liabilities, Liens, guarantees, and the like under such indebtedness (and the Company shall, and shall cause the ECN Entities to, cooperate in seeking such release and discharge), and Newco shall, or shall cause a Newco Entity to, pay, perform and discharge such indebtedness pursuant to the terms thereof, and perform and abide by all other obligations, covenants and agreements therein, in each case, pending such release and discharge and (B) with respect to any Retained Liabilities that constitute obligations for money borrowed, the Company shall use its reasonable best efforts to cause the Newco Entities and their respective capital stock or other equity interests, properties and assets to be released and discharged from any and all Liabilities, Liens, guarantees and the like under such indebtedness (and Newco shall, and shall cause the Newco Entities to, cooperate in seeking such release and discharge), and the Company shall, or shall cause an ECN Entity to, pay, perform and discharge such indebtedness pursuant to the terms thereof, and perform and abide by all other obligations, covenants and agreements therein, in each case, pending such release and discharge; and

(ii) (A) if the Company or any ECN Entity is a party to or bound by any agreement or instrument governing any Newco Liabilities that constitute obligations for money borrowed or any related guaranty, security agreement or pledge, the Company shall, or shall cause such ECN Entity to, at the expense of Newco, perform and abide by all obligations, covenants and agreements contained therein pending the release and discharge contemplated by clause (i)(A) above and (B) if any Newco Entity is a party to or bound by any agreement or instrument governing any Retained Liabilities that constitute obligations for money borrowed or any related guaranty, security agreement or pledge, Newco shall, or shall cause such Newco Entity to, at the expense of the Company, perform and abide by all obligations, covenants and agreements contained therein pending the release and discharge contemplated by clause (i)(B) above.

Section 2.6 Purchase Price Allocation
. The Purchase Price (including any adjustments thereto) shall be allocated in accordance with a schedule which Newco shall provide to Parent within 30 days after the Final Retained Business Working Capital Statement shall have become final and binding on the parties pursuant to Section 2.7 and which shall be agreed upon by Parent and Newco within 15 days thereafter (the "Allocation Schedule"). The Allocation Schedule shall be prepared by an independent third-party valuation firm engaged by Newco that is reasonably acceptable to Parent. Parent and Newco shall each pay 50% of Newco's reasonable and documented out-of-pocket costs and expenses, including the fees of such valuation firm, incurred by Newco in preparing the Allocation Schedule. In the event that Parent and Newco are unable to agree on the Allocation Schedule, the tax dispute resolution procedures set forth in Section 4.9 shall apply. After the Allocation Schedule is finalized, the parties shall use the allocation and fair market value specified in the Allocation Schedule for all Tax purposes and in all filings, declarations and reports with the Internal Revenue Service (the "IRS") in respect thereof, including the reports required to be filed under Section 1060 of the Code. Newco shall prepare and deliver IRS Form 8594 to the Company within ninety (90) days the Final Retained Business Working Capital Statement shall have become final and binding on the parties pursuant to Section 2.7 to be filed with the IRS. On any Tax Return and in any Tax Proceeding (as defined in Section 4.3(b)), none of Parent, the Company, the ECN Entities, Newco or the Newco Entities shall take any position inconsistent with or represent that the allocation specified in the Allocation Schedule is not correct. In the event that the allocation is disputed by any Tax Authority, the party receiving notice of the dispute shall promptly notify and consult with the other parties and keep the other parties reasonably apprised of material developments concerning the resolution of such dispute.

Section 2.7 Working Capital.

(a) Within 30 days after the Closing Date, Newco shall deliver to Parent (i) a statement (the "Retained Business Working Capital Statement") in a form substantially similar to the sample statement (which sets forth the Retained Business Working Capital Amount as of the close of business on December 31, 2004) attached hereto as Exhibit E (the "Retained Business Balance Sheet"), together with reasonable

supporting documentation, setting forth the Retained Business Working Capital Amount (the "Closing Date Retained Business Working Capital Amount") as of the close of business on the final day of the month ending immediately prior to the Closing Date, and (ii) a statement (the "Newco Business Working Capital Statement" and, together with the Retained Business Working Capital Statement, the "Working Capital Statements") in a form substantially similar to the sample statement (which sets forth the Newco Business Working Capital Amount as of the close of business on December 31, 2004) attached hereto as Exhibit F (the "Newco Business Balance Sheet" and, together with the Retained Business Balance Sheet, the "Reference Balance Sheets"), together with reasonable supporting documentation, setting forth the Newco Business Working Capital Amount (the "Closing Date Newco Business Working Capital Amount" and, together with the Closing Date Retained Business Working Capital Amount, the "Closing Date Working Capital Amounts") as of the close of business on the final day of the month ending immediately prior to the Closing Date.

(b) The Working Capital Statements shall be prepared in accordance with GAAP applied on a basis consistent with the preparation of the Reference Balance Sheets, except that irrespective of GAAP, the method of preparation of the Reference Balance Sheets and/or the Company's policies, the Working Capital Statements shall be adjusted (i) to reflect the settlement of all inter-company receivables, payables, loans and other accounts (and settling against cash) and (ii) to reflect any inter-company dividend payments between the close of business on the final day of the month ending immediately prior to the Closing Date and the Closing.

(c) Parent and Newco shall mutually, from and after the Closing Date, provide the other party and its Representatives access to all information, books and records required or used by Newco and its advisors to prepare the Working Capital Statements, and shall consult with each other during the preparation of such statements. Unless Parent delivers written notice to Newco on or prior to the 10th business day after Parent's receipt from Newco of the Working Capital Statements specifying any disputed items and the basis therefor, Parent shall be deemed to have accepted and agreed to the Working Capital Statements. If Parent so notifies Newco of its objection to either of the Working Capital Statements, Parent and Newco shall, during 10 days following such notice (the "Resolution Period"), attempt to resolve their differences and any resolution by them as to any disputed amounts shall be final, binding and conclusive. If Parent and Newco agree on the calculation of one or more of the Closing Date Working Capital Amounts, then such agreed amount or amounts shall become final and binding on the parties.

(d) If, at the conclusion of the Resolution Period, Parent and Newco are unable to agree on the calculation of one or more of the Closing Date Working Capital Amounts, the parties will refer the matter to KPMG LLP to resolve any disputes between the parties regarding such calculation(s). If KPMG LLP is unavailable or declines to serve in such capacity, the parties will, within five days of notification by KPMG LLP that it will not accept such engagement, agree upon and jointly engage another "Big 4" firm of independent public accountants (other than PricewaterhouseCoopers LLP and Ernst & Young LLP); provided, that if Newco and \

Parent are unable to agree on a "Big 4" firm of independent public accountants within such five day period, then Parent and Newco shall each have the right to request the American Arbitration Association to appoint a "Big 4" firm of independent public accountants (other than PricewaterhouseCoopers LLP and Ernst & Young LLP) to which to refer such disputes. The "Big 4" firm of independent public accountants that is

engaged by the parties to resolve disputes pursuant to this Section 2.7(d) is referred to herein as the "Neutral Auditors". The parties hereto agree to execute, if requested by the Neutral Auditors, a reasonable engagement letter. All fees and expenses relating to the work, if any, to be performed by the Neutral Auditors shall be borne equally by Parent and Newco.

(e) At a mutually agreed time within five business days following the date that the parties engage the Neutral Auditors, each of the parties shall simultaneously submit to the Neutral Auditors its final proposal (which proposal shall specify the items as to which the parties have been able to agree pursuant to this Section 2.7 and such party's proposal as to the items in dispute) in respect of (i) the Retained Business Working Capital Statement (the "Retained Business Working Capital Statement Proposals"), to the extent items are in dispute with respect to the Retained Business Working Capital Statement and (ii) the Newco Business Working Capital Statement (the "Newco Business Working Capital Statement Proposals"), to the extent items are in dispute with respect to the Newco Business Working Capital Statement. Within 10 business days of such final submissions, (i) to the extent items are in dispute with respect to the Retained Business Working Capital Statement, the Neutral Auditors will select one of the two Retained Business Working Capital Statement Proposals as being most representative of the Closing Date Retained Business Working Capital Amount and (ii) to the extent items are in dispute with respect to the Newco Business Working Capital Statement, the Neutral Auditors will select one of the two Newco Business Working Capital Statement Proposals as being most representative of the Closing Date Newco Business Working Capital Amount, and the proposals so selected shall be final and binding on the parties, and judgment thereon may be entered by any court of competent jurisdiction. In making such determination, the Neutral Auditors shall consider only those items or amounts as to which the parties have been unable to agree pursuant to Section 2.7(c). The term "Final Retained Business Working Capital Statement" means the definitive Retained Business Working Capital Statement setting forth the Closing Date Retained Business Working Capital Amount and the calculation thereof agreed or deemed to have been agreed to by Parent and Newco in accordance with Section 2.7(c) or the definitive Retained Business Working Capital Statement resulting from the determinations made by the Neutral Auditors in accordance with this Section 2.7(e) (in addition to those items theretofore agreed to by Newco and Parent). The term "Final Newco Business Working Capital Statement" means the definitive Newco Business Working Capital Statement setting forth the Closing Date Newco Business Working Capital Amount and the calculation thereof agreed or deemed to have been agreed to by Parent and Newco in accordance with Section 2.7(c) or the definitive Newco Business Working Capital Statement resulting from the determinations made by the Neutral Auditors in accordance with this Section 2.7(e) (in addition to those items theretofore agreed to by Newco and Parent).

(f) For purposes of this Agreement, "Retained Business Working Capital Adjustment" shall equal the Closing Date Retained Business Working Capital Amount as reflected on the Final Retained Business Working Capital Statement, minus the Target Retained Business Working Capital Amount (provided, that if the Target Retained Business Working Capital Amount is greater than the Closing Date Retained Business Working Capital Amount as reflected on the Final Retained Business Working Capital Statement, the Retained Business Working Capital Adjustment shall be a negative number).

(g) If the Retained Business Working Capital Adjustment is a positive amount, then Parent shall pay to Newco such amount using the following sources (as necessary until such Retained Business Working Capital Adjustment has been paid in full):

(i) from Parent's cash on hand, an amount up to the sum of (x) $5,000,000 and (y) the excess, if any, of the amount of Cash & Securities Owned included on the Final Retained Business Working Capital Statement over $30,800,000 (any such payment to be made promptly after the final determination of the Retained Business Working Capital Adjustment in accordance with this Section 2.7) (with the amount, if any, of the Retained Business Working Capital Adjustment remaining unpaid after giving effect to such payment being referred to as the "Working Capital Shortfall"); and

(ii) using amounts collected with respect to Closing Date Receivables under procedures set forth in Section 2.9; and

(iii) on the first anniversary of the Closing Date, any amount of the Working Capital Shortfall that has not been paid shall be paid by Parent to Newco from cash on hand and Parent's obligations pursuant to Section 2.9 shall terminate.

If the Retained Business Working Capital Adjustment is a negative number, then Newco shall pay to Parent, promptly after the final determination of the Retained Business Working Capital Adjustment in accordance with this Section 2.7, an amount equal to the Retained Business Working Capital Adjustment (as if such number was a positive number). The parties agree that any payment of a Retained Business Working Capital Adjustment pursuant to this Section 2.7 will be treated for Tax purposes as an adjustment to the Purchase Price, unless otherwise required by applicable Law.

Section 2.8 Collection of Aged Receivables
. (a) In addition to the Retained Business Working Capital Adjustment, if the aggregate amount of Aged Receivables is in excess of the product of (i) 0.35 multiplied by (ii) the aggregate amount of all Closing Date Receivables (such excess, the "Aged Receivables Excess"), then within 10 business days after the end of each calendar month beginning the month during which the Final Retained Business Working Capital Statement is finally determined pursuant to Section 2.7 (each such month, a "Determination Month"), Parent shall deliver to Newco a written statement setting forth the amounts collected with respect to the Aged

Receivables during the applicable Determination Month, together with reasonable supporting documentation, and shall pay to Newco, by wire transfer of immediately available funds to an account designated by Newco for such purposes, an amount equal to the product of (i) the aggregate amount collected by Parent with respect to the Aged Receivables during the applicable Determination Month, multiplied by (ii) the Aged Receivables Percentage; provided, however, that Parent shall not have any obligation pursuant to this Section 2.8(a) to pay to Newco an aggregate amount in excess of the Aged Receivables Excess. Notwithstanding the foregoing, calculations in respect of the first Determination Month shall cover the period of time beginning on the Closing Date and ending on the last day of such Determination Month.

(b) Parent's obligations to allocate and pay to Newco amounts relating to collected Aged Receivables under Section 2.8(a) shall terminate upon the earlier of (i) 12 months after the end of the month during which the Closing Date occurs, and (ii) the determination pursuant to this Section 2.8 that Parent has allocated and paid to Newco an amount, in the aggregate, equal to the Aged Receivables Excess.

Section 2.9 Working Capital Adjustment Shortfall
. (a) If the Retained Business Working Capital Adjustment is a positive amount or there is a Working Capital Shortfall, then within 10 business days after the end of each calendar month beginning the first Determination Month, Parent shall deliver to Newco a written statement setting forth the amounts collected with respect to the Closing Date Receivables during the applicable Determination Month, together with reasonable supporting documentation, and shall pay to Newco, by wire transfer of immediately available funds to an account designated by Newco for such purposes, an amount equal to the aggregate amount collected by Parent or its Subsidiaries with respect to the Closing Date Receivables during the applicable Determination Month; provided, however, that Parent shall not have any obligation pursuant to this Section 2.9(a) to pay to Newco an aggregate amount in excess of the Working Capital Shortfall. Notwithstanding the foregoing, calculations in respect of the first Determination Month shall cover the period of time beginning on the Closing Date and ending on the last day of such Determination Month.

(b) Parent's obligations to allocate and pay to Newco amounts relating to collected Closing Date Receivables under Section 2.9(a) shall terminate upon the earlier of the making of the payment required to be made pursuant to Section 2.7(g)(iii) or the determination pursuant to this Section 2.9 that Parent has allocated and paid to Newco an amount, in the aggregate, equal to the Working Capital Shortfall.

(c) Notwithstanding anything to the contrary in this Section 2.9, if there is both an Aged Receivables Excess and a Working Capital Shortfall, and Parent or any Subsidiary thereof collects an amount relating to an Aged Receivable (such amount, an "Aged Receivable Collection Amount") and Parent is required pursuant to Section 2.8 to pay to Newco an amount in connection with such Aged Receivable Collection Amount, then, for all purposes of this Section 2.9, Parent and its Subsidiaries shall be deemed to have collected, with respect to such Aged Receivable Collection Amount, an amount equal to the difference between (i) such Aged Receivable Collection Amount, minus (ii) the amount payable to Newco pursuant to Section 2.8. For the avoidance of doubt, no payment pursuant to Section 2.8 will reduce the amount of the Working Capital Shortfall.

Section 2.10 Collection Policies
. Parent will collect the Closing Date Receivables in accordance with Parent's standard collection practices.

ARTICLE IIIREPRESENTATIONS AND WARRANTIES

Section 3.1 Representations and Warranties of Newco
. Newco represents and warrants to Parent and the Company on the date hereof and as of immediately prior to the Closing as follows:

(a) Organization and Standing. Newco is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) Authorization. Newco has all requisite corporate power and authority to execute this Agreement and to carry out and perform its obligations under this Agreement and to consummate the transactions contemplated hereunder. The execution, delivery and performance by Newco of this Agreement, and the consummation of the transactions contemplated hereunder, have been duly and validly authorized by all necessary action of Newco, and no other action on the part of Newco or its stockholders is necessary for the authorization, execution, delivery or performance by Newco of this Agreement and the consummation of the transactions contemplated hereunder.

(c) Binding Agreement. This Agreement has been duly and validly executed and delivered on behalf of Newco and, assuming due authorization, execution and delivery by Parent and the Company, constitutes the legal and binding obligation of Newco enforceable against Newco in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally and to general equity principles (whether considered in a proceeding in equity or at law).

(d) Consents. Except as set forth in the Merger Agreement, no material declaration, filing or registration with, or notice to, or authorization, consent or approval of, other action by, any Authority or any third party is required in connection with the execution and delivery by Newco of this Agreement or the consummation by Newco of the transactions contemplated under this Agreement or the Merger Agreement.

(e) Financing. An Affiliate of Newco has delivered an equity commitment letter to Newco and a contingency letter to Newco, Parent and the Company pursuant to which such Affiliate of Newco has committed, among other things, subject to the terms and conditions set forth therein, to provide Newco with up to $207,500,000 equity financing in connection with the transactions contemplated hereby. Such letter agreements are valid and in full force and effect and have not been amended or modified and such Affiliate's obligations to fund its commitments thereunder are not subject to any conditions other than as set forth in such letter.

(f) Information Supplied. None of the information supplied or to be supplied by Newco specifically for inclusion or incorporation by reference in the Proxy Statement (as defined in the Merger Agreement) will, at the date the Proxy Statement is mailed to the Company Stockholders (as defined in the Merger Agreement) or at the time of the Company Stockholders Meeting (as defined in the Merger Agreement), contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary in order to make the statement therein, in the light of the circumstances in which they are made, not misleading.

Section 3.2 Representations and Warranties of the Company
. The Company represents and warrants to Newco on the date hereof and as of immediately prior to the Closing as follows:

(a) Organization and Standing. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware.

(b) Authorization. The Company has all requisite corporate power and authority to execute this Agreement and to carry out and perform its obligations under this Agreement and to consummate the transactions contemplated hereunder. The execution, delivery and performance by the Company of this Agreement, and the consummation of the transactions contemplated hereunder, have been duly and validly authorized by all necessary action of the Company, and no other action on the part of the Company or its stockholder is necessary for the authorization, execution, delivery or performance by the Company of this Agreement and the consummation of the transactions contemplated hereunder.

(c) Binding Agreement. This Agreement has been duly and validly executed and delivered on behalf of the Company and, assuming due authorization, execution and delivery by Newco, constitutes the legal and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally and to general equity principles (whether considered in a proceeding in equity or at law).

(d) Consents. Except as set forth in the Merger Agreement, no material declaration, filing or registration with, or notice to, or authorization, consent or approval of, other action by, any Authority or any third party is required in connection with the execution and delivery by the Company of this Agreement or the consummation by the Company of the transactions contemplated under this Agreement or the Merger Agreement.

(e) Merger Agreement Representations and Warranties. The representations and warranties set forth in Article 5 of the Merger Agreement (other than Section 5.10) are true and correct on the date hereof and will be true and correct in all material respects on the Closing Date.

(f) Limited Operations of the Company Prior to Closing. The Company was formed on April 14, 2005 solely for the purpose of engaging in the transactions contemplated by this Agreement and the Merger Agreement. Except for (i)

obligations or liabilities incurred in connection with its organization and the transactions contemplated by this Agreement and the Merger Agreement and (ii) Liabilities under this Agreement, the Merger Agreement and any other agreements or arrangements contemplated hereby or thereby or entered into in furtherance hereof or thereof, the Company has not incurred any Liabilities or engaged in any business activities.

Section 3.3 Representations and Warranties of Parent
. Parent represents and warrants to Newco on the date hereof and as of immediately prior to the Closing as follows:

(a) Organization and Standing. Parent is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware.

(b) Authorization. Parent has all requisite corporate power and authority to execute this Agreement and to carry out and perform its obligations under this Agreement and to consummate the transactions contemplated hereunder. The execution, delivery and performance by Parent of this Agreement, and the consummation of the transactions contemplated hereunder, have been duly and validly authorized by all necessary action of Parent, and no other action on the part of Parent or its stockholders is necessary for the authorization, execution, delivery or performance by Parent of this Agreement and the consummation of the transactions contemplated hereunder.

(c) Binding Agreement. This Agreement has been duly and validly executed and delivered on behalf of Parent and, assuming due authorization, execution and delivery by Newco, constitutes the legal and binding obligation of Parent enforceable against Parent in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally and to general equity principles (whether considered in a proceeding in equity or at law).

(d) Consents. Except as set forth in the Merger Agreement, no material declaration, filing or registration with, or notice to, or authorization, consent or approval of, other action by, any Authority or any third party is required in connection with the execution and delivery by Parent of this Agreement or the consummation by Parent of the transactions contemplated under this Agreement or the Merger Agreement.

(e) Merger Agreement Representations and Warranties. The representations and warranties of Parent set forth in Article 5 of the Merger Agreement (other than Section 5.10) are true and correct on the date hereof and will be true and correct in all material respects on the Closing Date.

ARTICLE IVTAX MATTERS

Section 4.1 Indemnification
. The Company shall, and shall cause each of the ECN Entities to, indemnify, defend and hold harmless the Newco Indemnitees (as defined in Section 5.2) against, and shall reimburse the Newco Indemnitees for (i) any and all Taxes imposed on the Newco Indemnitees with respect to any taxable period relating to or attributable to the Retained Business or the ECN Entities (the "Retained Business Taxes"), (ii) any and all Taxes imposed on the Newco Indemnitees for Taxes of Parent or any of its Subsidiaries under Treasury Regulation Section 1.1502-6 (or any comparable provision of U.S. state or local or foreign law) but not any such Taxes relating to the consolidated group of corporations of which Instinet is the common parent (the "Parent Consolidated Tax") and (iii) any and all Taxes imposed on the Newco Indemnitees that arise from or relate to any taxable gain recognized on the LJR Sale, the sale of the Newco Business or the transactions contemplated by the Merger Agreement ("Transaction Taxes"). Newco shall indemnify, defend and hold harmless the Company Indemnitees (as defined in Section 5.1) against, and shall reimburse the Company Indemnitees for, any and all Taxes imposed on the Company Indemnitees with respect to any taxable period relating to or attributable to the Newco Business or the Newco Entities other than Transaction Taxes (the "Newco Business Taxes"). Newco and the Company shall each use its reasonable best efforts to recover any Retained Business Taxes or Newco Business Taxes from any Taxing Authority or any third party with respect to which either Newco or the Company has a tax-sharing, tax allocation or similar agreement, and any such recovered Retained Business Taxes shall be for the account of the Company and any such recovered Newco Business Taxes shall be for the account of Newco. With respect to any Taxes that are paid or owed in connection with any consolidated, unitary, combined or similar Tax Return that is required to be filed by or with respect to the Company and that includes any of the Newco Entities for any taxable period ending on or before the Closing Date (a "Consolidated Return") but which are neither Retained Business Taxes, Parent Consolidated Taxes or Transaction Taxes on the one hand nor Newco Business Taxes on the other hand ("Unallocated Taxes"), (x) the Company shall, and shall cause each of the ECN Entities to, indemnify, defend and hold harmless the Newco Indemnitees against, and shall reimburse the Newco Indemnitees for, the Company Percentage of such Unallocated Taxes and (y) Newco shall indemnify, defend and hold harmless the Company Indemnitees against, and shall reimburse the Company for, the Newco Percentage of such Unallocated Taxes (it being understood that such Unallocated Taxes shall not include any Transaction Taxes because the Company is intended to have sole responsibility for any Transaction Taxes; it being further understood that Newco and the Company shall each use its reasonable best efforts to recover any Unallocated Taxes from any Tax Authority or any third party with respect to which either Newco or the Company has a tax-sharing, tax allocation or similar agreement and that any such recovered Unallocated Taxes shall be divided by the Company and Newco in proportion to the Company Percentage and the Newco Percentage respectively). It is understood that this Section 4.1 does not address Transfer Taxes which are exclusively addressed in Section 4.10.

Section 4.2 Tax Returns and Certain Refunds

. (a) The Company shall timely file or cause to be timely filed when due (taking into account all extensions properly obtained) all Consolidated Returns and shall timely remit or cause to be remitted to the relevant Tax Authority any Taxes due in respect of such Consolidated Returns. In preparing any Consolidated Return, the Company shall utilize to the maximum extent allowable by Law any available net operating losses, tax credits, net capital losses and any other tax attributes to offset the amount of Taxes that would otherwise be due with respect to such Consolidated Return. The Company shall deliver to Newco, at least 30 days prior to the due date of any such Consolidated Return (taking into account all extensions properly obtained), a draft of such Consolidated Return as proposed to be filed (together with any related work papers), and Newco shall have the right to review such Consolidated Return and work papers and comment on such draft Consolidated Return. At least ten days prior to the due date of such Consolidated Return, the Company shall deliver to Newco a schedule detailing the Company's calculation of the Newco Business Taxes related to such Consolidated Return, and Newco shall pay to the Company such amount in accordance with the provisions of Section 4.11. In the event that Parent and Newco are unable to agree on any matter (including the resolution of any comments made by Newco to any draft Consolidated Return provided to it as contemplated above) relating to a Consolidated Return, the tax dispute resolution procedures set forth in Section 4.9 shall apply, with the exception that Parent and Newco shall each pay 50% of any costs associated with such procedures. The Company shall timely file or cause to be timely filed when due (taking into account all extensions properly obtained) all other Tax Returns that are required to be filed by or with respect to the Retained Business or the Company or any ECN Entity for any taxable period ending on or before the Closing Date (the "Company Separate Returns"). The Company shall timely remit or cause to be remitted to the relevant Tax Authority any Taxes due in respect of such Company Separate Returns, provided, however, that procedures similar to those governing Consolidated Returns above shall apply to Company Separate Returns with respect to which Newco is responsible for Newco Business Taxes. Newco shall timely file or cause to be timely filed when due (taking into account all extensions properly obtained) all other Tax Returns that are required to be filed by or with respect to the Newco Business or any Newco Entity for any taxable period or a portion thereof ending on or before the Closing Date (the "Newco Separate Returns") and Newco shall timely remit or cause to be remitted to the relevant Tax Authority any Taxes due in respect of such Newco Separate Returns.

(b) The parties agree that the closing of the Merger and the Closing shall occur on the same day. The parties further agree to treat the sale by the Company to Newco of the Newco Assets and the assumption by Newco of the Newco Liabilities as occurring for federal income tax purposes prior to the close of business on the day on which the closing of the Merger and the Closing occur, provided that Parent and Newco agree that such position will more likely than not be sustained if challenged by the Internal Revenue Service.

(c) Refunds of Taxes shall be allocated as provided below between Parent and Newco in the following order of priority:

(i) any INET Embedded Refund shall be for the account of Parent;

(ii) any refund resulting from the utilization of any net operating loss available for any state or local income tax purposes as of the close of business on December 31, 2004 shall be for the account of Parent and shall not be treated as a VAB Tax Benefit;

(iii) any refund resulting from the carry back of the LJR Offset Amount shall be for the account of Parent, and any refund resulting from the carry back of the Archipelago Offset Amount shall be for the account of Newco, neither of which shall be treated as a VAB Tax Benefit;

(iv) any refund of any estimated taxes to which the Company is entitled under Section 4.16 shall be for the account of Parent and shall not be treated as a VAB Tax Benefit;

(v) any refund of overpayments of Taxes made with respect to any Newco Economic Tax Period to the extent attributable to Taxes paid in cash not pursuant to (iv) above with respect to any such tax period (as opposed to resulting from the carryback or carryforward of losses into any such tax period) shall be for the account of Newco;

(vi) any refund attributable to the realization of a VAB Tax Benefit under Section 4.5(b), (c) or (e) shall be allocated between Parent and Newco as provided in Section 4.6;

(vii) any refund attributable to Retained Business Taxes and Newco Business Taxes shall be for the account of Parent and Newco respectively;

(viii) any refund attributable to Unallocated Taxes shall be divided by the Company and Newco in proportion to the Company Percentage and the Newco Percentage respectively; and

(ix) any other refund shall be for the account of Newco.

Section 4.3 Contest Provisions

. (a) If any Tax Authority asserts a Tax Claim in writing, then the party hereto first receiving notice of such Tax Claim promptly shall provide written notice thereof to the other party or parties hereto; provided, however, that the failure of such party to give such prompt notice shall not relieve the other party of any of its obligations under this Article IV, except to the extent that the other party is actually prejudiced thereby. Such notice shall specify in reasonable detail the basis for such Tax Claim and shall include a copy of the relevant portion of any correspondence received from the Tax Authority.

(b) Subject to Sections 4.3(c) and (d), the Company shall have the right to control, at its own expense, any audit, examination, contest or other Action by

or against any Tax Authority (a "Tax Proceeding") in respect of any Consolidated Return or Company Separate Return; provided, however, that if such Tax Proceeding could materially increase the liability for Taxes of Newco or any of its Affiliates, (i) the Company shall provide Newco with prompt notice of such Tax Proceeding and a timely and reasonably detailed account of each phase of such Tax Proceeding, (ii) the Company shall consult with Newco before taking any significant action in connection with such Tax Proceeding, (iii) the Company shall consult with Newco and offer Newco an opportunity to comment before submitting any written materials prepared or furnished in

connection with such Tax Proceeding, (iv) the Company shall defend such Tax Proceeding diligently and in good faith, (v) Newco shall be entitled to participate, at its own expense, in such Tax Proceeding and receive copies of any written materials relating to such Tax Proceeding received from the relevant Tax Authority, and (vi) the Company shall not settle, compromise or abandon any such Tax Proceeding without obtaining the prior written consent of Newco, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) Newco shall have the right to control, at its own expense, any Tax Proceeding solely in respect of any Newco Business Taxes; provided, however, that if such Tax Proceeding could materially increase the liability for Taxes of the Company or any of its Affiliates, (i) Newco shall provide the Company with a timely and reasonably detailed account of each phase of such Tax Proceeding, (ii) Newco shall consult with the Company before taking any significant action in connection with such Tax Proceeding, (iii) Newco shall consult with the Company and offer the Company an opportunity to comment before submitting any written materials prepared or furnished in connection with such Tax Proceeding, (iv) Newco shall defend such Tax Proceeding diligently and in good faith, (v) the Company shall be entitled to participate, at its own expense, in such Tax Proceeding and receive copies of any written materials relating to such Tax Proceeding received from the relevant Tax Authority, and (vi) Newco shall not settle, compromise or abandon any such Tax Proceeding without obtaining the prior written consent of the Company, which consent shall not be unreasonably withheld, conditioned or delayed.

(d) In the event of a Tax Proceeding that involves (i) issues relating to any Consolidated Return or Company Separate Return and (ii) issues relating to any Newco Business Taxes, to the extent permitted under applicable Law, (x) the Company shall have the right to control, subject to Section 4.3(a) and at its own expense, the Tax Proceeding with respect to the former issues and (y) Newco shall have the right to control, subject to Section 4.3(a) and at its own expense, the Tax Proceeding with respect to the latter issues.

Section 4.4 Assistance and Cooperation
. After the Closing Date, each of Parent, the Company and Newco shall, and shall cause their respective Affiliates to:

(a) timely sign and deliver such certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce), or file Tax Returns or other reports with respect to, Transfer Taxes;

(b) reasonably assist the other party in preparing any Tax Returns which such other party is responsible for preparing and filing in accordance with Section 4.2, and in connection therewith provide the other party necessary powers of attorney;

(c) cooperate reasonably in preparing for and conducting any Tax Proceedings regarding any Taxes;

(d) make available to the other and to any Tax Authority as reasonably requested all information, records, and documents relating to Taxes; and furnish the other with copies of all correspondence received from any Tax Authority in connection with any Tax audit or information request with respect to any such taxable period.

(e) use reasonable best efforts and cooperate with each other to file for any available refund of Taxes as promptly as practicable;

(f) acknowledge the strong mutual interest of Parent and Newco to maximize the value of VAB Tax Attributes and utilize the VAB Tax Attributes as expeditiously as possible to create VAB Tax Benefits, and share all information that Parent reasonably determines to be relevant to identifying and utilizing VAB Tax Attributes; specifically, (i) Parent shall provide Newco with a copy of any filed Tax Return that includes Parent or the Company excluding any portion of any such Tax Return that Parent reasonably determines does not relate to any VAB Tax Attribute and (ii) Parent and Newco agree to consult with each other in good faith to explore strategic and structural initiatives, including during Parent's annual review of potential strategic and structural initiatives with its tax advisors, to maximize the value and utilization rate of the VAB Tax Attributes; provided, however, that Parent shall have the sole discretion to determine whether or not to pursue any such strategic and structural initiatives; and

(g) use reasonable best efforts and cooperate with each other to execute the Archipelago Sale on or prior to the Closing Date if such sale is requested by Newco in its sole discretion.

Section 4.5 Application of VAB Tax Attributes
. (a) Any Restructuring Deduction shall be applied to reduce Taxes that would otherwise be payable in any taxable year in which such Restructuring Deduction is incurred (a "Restructuring Year"), as determined on a modified with and without basis with regard to any items of income or loss incurred in such Restructuring Year but treating any net operating losses, net capital losses or tax credits incurred in such Restructuring Year and any VAB Tax Attributes carried into such Restructuring Year as utilized prior to the utilization of any Parent Tax Attributes carried into such Restructuring Year. For the avoidance of doubt, if the Company agrees to file its Tax Return for the Short Federal Tax Year reporting both the Closing and the LJR Sale as occurring in the Short Federal Tax Year pursuant to Section 4.16(a), both the LJR Offset Loss and the Archipelago Offset Loss shall be deemed to be utilized prior to the utilization of any Restructuring Deductions.

(b) As soon as practicable, but in any event within 30 days of the last day of the Short Federal Tax Year, Parent, the Company and any of their respective Subsidiaries, as applicable, shall file for any available refund of (x) any federal estimated income taxes paid or applied toward such Short Federal Tax Year and (y) any state and local estimated income taxes paid or applied toward the corresponding state or local income tax year in which the Closing occurs, to the extent that such quick refund mechanisms ("Quick State-Local Filings") are available for overpaid state and local estimated taxes. To the extent Quick State-Local Filings are not available to recover any overpaid state or local estimated taxes, Parent, the Company or any their respective Subsidiaries, as applicable, shall file their state and local income tax returns for the state or local taxable year in which the Closing occurs as soon as practicable, but in any event within 150 days of the first date on which such returns may be filed under applicable law; it being understood that the LJR Offset Loss (if the Company agrees to file its Tax Return with a Short Federal Tax Year reporting both the Closing and the LJR Sale as occurring in the Short Federal Tax Year pursuant to Section 4.16(a)) and the Archipelago Offset Loss (which is anticipated to occur within such Short Federal Tax Year) shall be given priority over any Tax Attribute in offsetting the LJR Gain.

(c) As soon as practicable, but in any event within 150 days of the close of the Short Federal Tax Year and 180 days of the close of the first tax year in which Parent and the Company are members of the same federal income tax consolidated tax group (the "First Parent Year") (or, in the case of state and local taxes, any corresponding state or local tax year), as applicable, Parent, the Company or their respective Subsidiaries, as applicable, shall carry back any VAB Tax Attributes so available to be carried back (it being understood that the LJR Offset Loss and the Archipelago Offset Loss, which are not VAB Tax Attributes, will be carried back to offset the LJR Gain prior to the Net VAB Transaction Loss, and any refund obtained from the carryback of the LJR Offset Loss and the Archipelago Offset Loss shall be for the account of Parent and Newco respectively, and neither the LJR Offset Loss nor the Archipelago Loss shall be deemed to be the realization of a VAB Tax Attribute).

(d) If the Closing is not considered to occur for federal income tax purposes within the same taxable year in which the LJR Sale occurs, subject to applicable limitations under applicable Laws, the Net VAB Transaction Loss, to the extent not carried back pursuant to Section 4.5(c), shall be applied to reduce Taxes that would otherwise be payable by Parent, the Company or their respective Subsidiaries, as applicable, in the taxable year in which such Net VAB Transaction Loss is incurred (the "VAB Loss Year"), as determined on a modified with and without basis with regard to any items of income or loss incurred in such VAB Loss Year treating any net operating losses, net capital losses or tax credits incurred in such VAB Loss Year and any VAB Tax Attributes carried into such VAB Loss Year as utilized prior to the utilization of any Parent Tax Attributes carried into such VAB Loss Year. To the extent that the availability of the Net VAB Transaction Loss reduces the amount of any federal, state or local estimated tax payable by Parent or any of its Subsidiaries with respect to such VAB Loss Year determined on such modified with and without basis, a VAB Tax Benefit shall be deemed to be created in the amount of such reduction as of the due date of such estimated tax payment. As soon as practicable, but in any event within 180 days of the

close of such VAB Loss Year, the aggregate VAB Tax Benefit deemed to be realized with respect to such VAB Loss Year shall be appropriately adjusted, and cash payments shall be made between Newco and Parent to the extent necessary to reflect the appropriate allocation of VAB Tax Benefits attributable to the Net VAB Transaction Loss created during such entire VAB Loss Year, and the amount of VAB Tax Benefits so created will be adjusted appropriately.

(e) In addition to any carry back of VAB Tax Attributes under Section 4.5(c), Parent, the Company and their respective Subsidiaries, as applicable, shall carry back or carry forward VAB Tax Attributes, subject to applicable limitations under applicable Laws, to offset, in each applicable preceding or successive tax year, any taxable income or gain with respect to which Parent, Company or any of their respective Subsidiaries would be liable for Taxes in any such tax year (collectively, the "Carry Tax Years"); it being understood that any VAB Tax Attributes so carried back or carried forward shall be deemed utilized in any Carry Tax Year prior to the utilization of Parent Tax Attributes. As soon as practicable, but in any event within 180 days of any Carry Tax Year (or, in the case of state and local taxes, any corresponding state or local tax year), as applicable, Parent, the Company or their respective Subsidiaries, as applicable, shall carry back or carry forward any VAB Tax Attributes so available to be carried back or carried forward to offset net taxable capital gain or ordinary income in such Carry Year.

(f) A VAB Tax Benefit allocable to Newco shall be created on the Closing Date upon Parent's cash contribution to the Company pursuant to Section 4.16(b) in an amount equal to the amount referred to in subclause (1) of such Section; it being understood that the creation of any VAB Tax Benefit under this Section 4.5(f) shall result in a corresponding reduction in the next VAB Tax Benefits that would otherwise be for Newco's account in an amount equal to the amount of the VAB Tax Benefit created under this Section 4.5(f).

Section 4.6 Allocation of VAB Tax Benefits
. VAB Tax Benefits shall be allocated as follows:

(a) First, an aggregate of $30 million of VAB Tax Benefits shall be allocated to Newco.

(b) Second, for VAB Tax Benefits in excess of those in (a) above (if any), the sum of $22 million plus the amount of cash contributed by Parent to the capital of the Company pursuant to Section 4.16 as a reimbursement for estimated Taxes to the extent not already recovered through the carryback of the LJR Offset Loss shall be allocated to the Company.

(c) Third, for VAB Tax Benefits in excess of those in (a) and (b) above, (if any), the sum of $10 million plus the Pro Forma Loss Amount, if any, shall be allocated to Newco.

(d) Fourth, for VAB Tax Benefits in excess of those in (a), (b) and (c) above, (if any), the next $18 million shall be allocated to the Company.

(e) Any remaining VAB Tax Benefits in excess of those in (a), (b), (c) and (d) above (if any), shall be allocated 50% to the Company and 50% to Newco.

Section 4.7 Remittance of VAB Tax Benefit Payments; Payment of Archipelago Tax Benefit
. (a) Subject to Section 4.16, Parent shall pay (and shall cause its Affiliates and Subsidiaries to pay, as appropriate) cash to Newco equal in amount to VAB Tax Benefits

allocable to Newco within five business days after such VAB Tax Benefits have been realized by the Company. Refunds shall be deemed to be realized when they are received by the Company. Credits and offsets to Taxes shall be deemed to be realized when such amounts are offset against any Taxes for the applicable year for which Parent or any of its Subsidiaries would otherwise be liable, which utilization shall be deemed to occur on the date that the applicable Tax Return is filed. With respect to any VAB Tax Benefit realized with respect to (x) a Net VAB Transaction Loss that reduces any estimated tax payment in the First Parent Year (or any corresponding state or local tax year) or (y) a Restructuring Deduction that reduces any estimated tax payment in any Restructuring Year (or any corresponding state or local tax year), such VAB Tax Benefit shall be realized on the due date of such estimated tax payment. Parent's obligation to remit under this Section 4.7 shall be reduced by any Taxes paid in cash by Parent and its Affiliates (and/or the economic cost of the utilization by Parent and its Affiliates of any Tax Attributes, measured by the amount of Taxes that Parent and its Affiliates would have otherwise paid if such Parent Tax Attributes, other than VAB Tax Attributes, were not utilized, after giving priority to any available VAB Tax Attributes) as a result of utilizing or receiving such VAB Tax Benefits, and Newco's entitlement to the VAB Tax Benefits allocated to it under Section 4.6 shall be credited by the net amount of cash paid to Newco pursuant to this Section 4.7 (i.e., after reduction by such cash Taxes paid and/or such economic cost of such utilization of such Tax Attributes). In determining the Company's entitlement to VAB Tax Benefits allocated to it under Section 4.6(a), principles similar to the preceding sentence shall be used (i.e., using the net amount of VAB Tax Benefits realized after reduction for cash Taxes paid and/or the economic cost of the utilization by Parent and its Affiliates of any Tax Attributes, measured by the amount of Taxes that Parent and its Affiliates would have otherwise paid if such Parent Tax Attributes, other than VAB Tax Attributes, were not utilized after giving priority to any available VAB Tax Attributes). Parent shall provide Newco with notification of the anticipated utilization of the VAB Tax Attributes on or before the original filing date of any Tax Return.

(b) Parent shall pay (and shall cause its Affiliates and Subsidiaries to pay, as appropriate) cash to Newco equal in amount to Archipelago Tax Benefit within five business days after the Archipelago Tax Benefit has been realized by the Company. Any refund attributable to the Archipelago Tax Benefit shall be deemed realized when received by the Company. Any offset to Taxes attributable to the Archipelago Tax Benefit shall be deemed to be realized when such amounts are offset against any Taxes for the applicable year for which Parent or any of its Subsidiaries would otherwise be liable, which utilization shall be deemed to occur on the date that the applicable Tax Return is filed. With respect to any Archipelago Tax Benefit that reduces any estimated tax payment in any tax year, such Archipelago Tax Benefit shall be realized on the due date of such estimated tax payment.

Section 4.8 Look-Back Mechanism. In the event Parent or any of its Subsidiaries pay cash to Newco in respect of VAB Tax Benefits, and any Tax Authority subsequently audits or otherwise commences a proceeding contesting the validity or utilization of any VAB Tax Attribute underlying the allocation of such VAB Tax Benefits, then the Company (i) shall have the right to control, at its own expense, any such proceeding, (ii) shall promptly give notice to Newco of such proceeding and shall provide Newco with a timely and reasonably detailed account of each phase of such proceeding, (iii) shall consult with Newco before taking any significant action in connection with such proceeding, (iv) shall consult with Newco and offer Newco an opportunity to comment before submitting any written materials prepared or furnished in connection with such proceeding, (v) shall defend such proceeding diligently and in good faith, (vi) shall allow Newco to participate, at its own expense, in such proceeding and shall provide Newco with copies of any written materials relating to such proceeding received from the relevant Tax Authority and (vii) shall not settle or otherwise compromise such proceeding without the prior written consent of Newco, which consent shall not be unreasonably withheld, conditioned or delayed. In the event that after following the procedure set forth in the preceding sentence, the proceeding is resolved in a manner (x) that does not fully preserve the economic value of the applicable VAB Tax Benefit, and (y) that results in a cash payment of Taxes by the Company to the applicable Tax Authority or the utilization of Tax Attributes, other than VAB Tax Attributes, the Company shall, subject to the review of Newco, recalculate the aggregate amount of VAB Tax Benefits cumulatively realized as of the time of such cash payment or utilization and including such cash payment or the Tax cost of such utilization as a reduction of such aggregate amount. Such recalculated cumulative amount of VAB Tax Benefits shall then be reallocated between Newco and the Company (the "Modified Allocations") on a first-dollar basis by redoing the calculations as provided in Section 4.6 as if for the first time, starting with Section 4.6(a) and moving sequentially to 4.6(b), (c), (d), (e) and (f). To the extent the Modified Allocations are not sufficient to cover the previously allocated aggregate amount of VAB Tax Benefits, each recipient of an uncovered previously allocated amount of VAB Tax Benefits shall be responsible for an amount of cash equal to its calculated share of such uncovered amount. The Company shall discharge its responsibility for its calculated share of such uncovered amount in any event by making the cash payment to the Tax Authority referred to above, whereas Newco shall discharge its responsibility for its calculated share of such uncovered amount by making a cash payment to the Company. To the extent that there are remaining unrealized VAB Tax Attributes subsequent to any tax challenge for which a cash payment has been made to a Tax Authority, VAB Tax Benefits resulting from such remaining VAB Tax Attributes shall be subsequently allocated as provided in Section 4.6 as though only an amount of VAB Tax Benefits equal to the Modified Allocations had previously been allocated.

Section 4.9 Resolution of All Tax Related Disputes. With respect to any dispute or a disagreement relating to Taxes and the allocation of Taxes pursuant to

this Agreement between the parties, the parties shall cooperate in good faith to resolve such dispute between them; but if the parties are unable to resolve such dispute, the parties shall submit the dispute for resolution to a "Big 4" accounting firm selected by mutual agreement of Newco and Parent; provided, that if Newco and Parent are unable to agree on such accounting firm, then Newco and Parent shall each have the right to request the American Arbitration Association to appoint a "Big 4" accounting firm (such firm, the "Accountant"). Resolution by the Accountant shall be final, conclusive and binding on the parties, and judgment thereon may be entered by any court of competent jurisdiction. Notwithstanding anything in this Agreement to the contrary, the fees and expenses relating to any dispute as to the amount of Taxes owed by either of the parties shall be paid by the Company, on the one hand, and Newco, on the other hand, in proportion to each party's respective liability for the portion of the Taxes in dispute, as determined by the Accountant.

Section 4.10 Transfer Taxes
. The Company and Newco shall be proportionately responsible (in accordance with the Company Percentage and the Newco Percentage) for and shall pay all sales (including bulk sales), use, value added, documentary, stamp, gross receipts, registration, transfer, conveyance, excise, recording, license and other similar fees or Taxes or governmental charges, if any, as levied by any Tax Authority arising out of, in connection with or attributable to the transactions contemplated by this Agreement (collectively, "Transfer Taxes"). The party hereto with primary responsibility under applicable Law for filing Tax Returns related to Transfer Taxes shall be responsible for preparing and timely filing any Tax Returns required with respect to any Transfer Taxes.

Section 4.11 Payments
. Whenever in accordance with this Article IV one of the parties is required to pay an amount to the other party, such payment shall be made as of the later of (x) five business days after the date such payment was requested or (y) five business days before the requesting party is required to pay the related Tax, and any amount not paid by such date shall accrue interest at the rate of 8% per annum (which shall not limit any other rights the receiving party may have). The parties agree that any indemnity payments pursuant to this Article IV will be treated for Tax purposes as an adjustment to the Purchase Price, unless otherwise required by applicable Law.

Section 4.12 Survival Limitations
. Notwithstanding any provisions of this Agreement to the contrary, the obligations of a party to indemnify and hold harmless another party pursuant to this Article IV shall survive until the expiration of the applicable Tax statute of limitations, and the indemnification provisions of this Article IV shall not be subject to any of the provisions of, or limitations contained in, Article V.

Section 4.13 Exclusivity
. Notwithstanding anything to the contrary contained in this Agreement or in any agreement or instrument of assumption delivered in connection with this Agreement, this Article IV and Section 9.18 shall exclusively govern all indemnification claims for Taxes under this Agreement.

Section 4.14 Termination of Tax Sharing Agreements
. Any tax sharing, tax allocation or similar agreement to which any Newco Entity, on the one hand, and the

Company or any of its other Affiliates, on the other hand, are parties shall terminate and shall cease to have any effect as of the Closing Date; it being understood that this Section 4.14 shall not purport to terminate any tax sharing, tax allocation or similar agreement to which Reuters plc or any of its Affiliates is a party.

Section 4.15 338 Elections
. Newco, and the Company shall work together in good faith to determine the tax consequences to Newco and the Company of jointly making an election under Section 338(h)(10) of the Code, or comparable provision of state, local or other Law, with respect to any Newco Entity that is a member of the Company's consolidated group for federal income tax purposes. At Newco's request, the Company

shall join Newco in making such an election if Newco agrees to hold the Company Indemnitees harmless from any adverse Tax consequences resulting from such elections. At least 10 days prior to making any election under Section 338(g) of the Code, or comparable provision of state, local or other Law, with respect to any Subsidiary of the Company, Newco shall notify the Company in writing of its intent to make such elections. Newco shall hold the Company Indemnitees harmless from any adverse Tax consequences resulting from any such elections.

Section 4.16 Parent Capital Contributions
. (a) If Parent and Newco agree, at least 45 days prior to the Closing, that the Closing and the LJR Sale are more likely than not to be treated as occurring in the same taxable year for federal income tax purposes, (i) the Company shall file its Tax Return for the Short Federal Tax Year reporting both the Closing and the LJR Sale as occurring in the Short Federal Tax Year (unless there has been a subsequent change in Law which prohibits such treatment, in which case section 4.16(b) shall apply) and (ii) immediately prior to the Closing, Parent shall contribute to the capital of the Company an amount of cash equal to any payments of federal, state and local estimated taxes made by the Company with respect to such taxable year, and the Company shall be entitled to file for a refund of such overpaid estimated taxes to the extent of such contribution.

(b) If subparagraph (a) above does not apply, immediately prior to the Closing, Parent shall contribute to the capital of the Company an amount of cash equal to the sum of (1) the amount of Restructuring Deductions taken by the Company and its Subsidiaries from January 1, 2005 through the Closing Date multiplied by the highest marginal federal income tax rate then in effect plus any applicable state and local income tax rates plus (2) any payments of federal, state and local estimated taxes made by the Company with respect to such Tax Period, and the Company shall be entitled to file for a refund to the extent of any such overpaid estimated taxes to the extent of such contribution. The amount referred to in (1) above shall be treated as the realization of, and remittance to Newco with respect to, a VAB Tax Benefit and shall count toward the satisfaction of the first $30 million of VAB Tax Benefits that are allocated to Newco under Section 4.6(a). Accordingly, the available amount of VAB Tax Benefits shall be reduced by the amount referred to in clause (1) above. At least 30 days prior to the Closing, Parent shall provide Newco with a schedule calculating in reasonable detail the amounts described in (1) and (2) above. Newco shall provide Parent with any objections to such calculations within 10 days of receiving such calculation and the parties shall in good faith attempt to agree on such calculation. In the event that the parties are unable to agree on such calculation, the tax dispute resolution procedures set forth in Section 4.9 shall apply with each of Parent and Newco bearing 50% of the Accountant's fees.

ARTICLE VINDEMNIFICATION

Section 5.1 Newco's Agreement to Indemnify
. In addition to any other indemnification provided hereunder, subject to the terms and conditions set forth herein,

from and after the Closing Date, Newco shall, and shall cause each of the Newco Entities to, indemnify, defend and hold harmless Parent, the Company and IHCI and each of their respective directors, officers, partners, members, employees and other representatives, advisors and agents (collectively, "Representatives"), Subsidiaries and Affiliates and all direct and indirect Representatives of such Representatives, Subsidiaries and Affiliates (collectively, the "Company Indemnitees") from and against any and all Indemnifiable Losses of the Company Indemnitees arising out of or resulting from, directly or indirectly, the Newco Liabilities.

Section 5.2 Parent's and the Company's Agreement to Indemnify. In addition to any other indemnification provided hereunder, subject to the terms and conditions set forth herein, from and after the Closing Date, Parent and the Company shall jointly and severally, and shall cause each of the ECN Entities to, indemnify, defend and hold harmless Newco and each of its Representatives, Subsidiaries and Affiliates, and all direct and indirect Representatives of such Representatives, Subsidiaries and Affiliates (collectively, the "Newco Indemnitees") from and against any and all Indemnifiable Losses of the Newco Indemnitees arising out of or resulting from, directly or indirectly, the Retained Liabilities.

Section 5.3 Reduction of Indemnifiable Losses for Tax Benefits and Insurance Benefits Received. For purposes of this Article V, Section 8.2 and Section 8.5, the calculation of any Indemnifiable Loss will reflect (i) the amount of any Tax benefit actually recognized by the Indemnitee for United States federal, state or local income tax purposes in respect of such Indemnifiable Loss (net of any tax cost incurred by the Indemnitee for United States federal, state or local income tax purposes arising from the receipt of any indemnification payment hereunder in respect of such Indemnifiable Loss (grossed up to reflect such increase)), in each case, in the year in which such Tax benefit is recognized and (ii) the amount of any insurance proceeds or indemnification payments received by the Indemnitee in respect of such Indemnifiable Loss (net of all reasonable costs and expenses incurred by the Indemnitee in recovering such insurance proceeds). Each Indemnitee shall use its commercially reasonable efforts to recover from its insurers or other sources of reimbursement or recovery the maximum portion of any Indemnifiable Loss that is recoverable from such sources. In the event any indemnification payment is made by an Indemnifying Party to an Indemnitee in respect of an Indemnifiable Loss and the Indemnitee thereafter receives any such Tax benefit, net insurance proceeds or indemnification payments, the Indemnitee shall promptly reimburse such Indemnifying Party an amount equal to the amount of such Tax benefit, net insurance proceeds or indemnification payments.

Section 5.4 Procedure for Indemnification.

(a) If an Indemnitee shall receive notice of the assertion by a person who is not a party to this Agreement of any claim or of the commencement by any such person of any Action (a "Third Party Claim") with respect to which an Indemnifying Party may be obligated to provide indemnification under Section 5.1 or Section 5.2, such Indemnitee shall give such Indemnifying Party prompt notice thereof after becoming aware of such Third Party Claim; provided, that the failure of any Indemnitee to give

notice as provided in this Section 5.4 shall not relieve the related Indemnifying Party of its obligations under this Article V, except to the extent that such Indemnifying Party is actually prejudiced by such failure to give notice. Such notice shall describe the Third Party Claim in reasonable detail, and, if practicable, shall indicate the estimated amount of the Indemnifiable Loss that has been or may be sustained or asserted by such Indemnitee.

(b) If an Indemnitee gives notice of a Third Party Claim to an Indemnifying Party, the Indemnifying Party shall have 30 days after receipt of notice to elect, at its option, to take responsibility for resolving, and assume and control the defense of, at its own expense and by its own counsel, any such Third Party Claim and shall be entitled to assert any and all defenses available to the Indemnitee to the fullest extent permitted by Law. If the Indemnifying Party shall undertake to defend and resolve any such Third Party Claim, it shall promptly notify the Indemnitee of its intention to do so, and the Indemnitee agrees to cooperate as reasonably requested by the Indemnifying Party and its counsel in the resolution of, or defense against, any such Third Party Claim; provided, however, that the Indemnifying Party shall not admit any liability with respect to such Third Party Claim without the prior written consent of the Indemnitee, and shall not resolve, settle, compromise or discharge any such Third Party Claim without the prior written consent of the Indemnitee (which consent will not be unreasonably withheld or delayed) unless the relief consists solely of the payment of money and includes a provision whereby the plaintiff or claimant in the matter releases the Indemnitees from all liability with respect thereto. Notwithstanding the foregoing, the Indemnitee shall have the right to defend (but not admit liability, compromise, settle or otherwise resolve such Third Party Claim without the prior written consent of the Indemnifying Party) any Third Party Claim as to itself by its own separate counsel, and the Indemnifying Party shall pay the reasonable fees, costs and expenses of such separate counsel, as incurred, if the Indemnitee shall have determined in good faith that an actual or potential conflict of interest makes representation by the same counsel or the counsel selected by the Indemnifying Party inappropriate. Further, the Indemnitee shall have the right to employ separate counsel and to participate in the defense of any Third Party Claim (though such separate counsel shall not appear of record), at the expense of the Indemnitee (unless the Indemnifying Party agrees to pay the fees and expenses of such separate counsel). In any event, the Indemnitee and Indemnifying Party and their counsel shall cooperate in the defense of any Third Party Claim and keep such persons informed of all developments relating to any such Third Party Claim, and provide copies of all relevant correspondence

and documentation relating thereto consistent with applicable rules of privilege and legal ethics. All costs and expenses incurred in connection with the Indemnitee's cooperation shall be paid by the Indemnifying Party, as incurred. If the Indemnifying Party receiving a notice of Third Party Claim does not elect timely to take responsibility for resolving, and defend, such Third Party Claim or does not defend such Third Party Claim in good faith, the Indemnitee shall have the right, in addition to any other right or remedy it may have hereunder, at the Indemnifying Party's expense, to defend such Third Party Claim; provided, however, that (i) the Indemnitee shall not have any obligation to participate in the defense of, or defend, any such Third Party Claim; (ii) the Indemnitee's defense of or participation in the defense of any such claim shall not in any way diminish or lessen the obligations of the Indemnifying Party under this Article V; and (iii) the Indemnitee shall not resolve, settle, compromise or discharge any such Third Party Claim without the prior written consent of the Indemnifying Party.

Section 5.5 Pending Litigation
. Following the Closing Date, (a) the Company shall have exclusive authority and control over the investigation, prosecution, defense and appeal of all Actions listed on Part A of Section 5.5 of the Disclosure Schedule and all pending Actions relating to the Retained Business, the Retained Assets, the Retained Employees or the Retained Liabilities and not relating to the Newco Business, the Newco Assets, the Newco Employees or the Newco Liabilities (each, a "Retained Action"), and may settle or compromise, or consent to the entry of any Judgment with respect to, any such Action without the consent of Newco, and (b) Newco shall have exclusive authority and control over the investigation, prosecution, defense and appeal of all pending Actions listed on Part B of Section 5.5 of the Disclosure Schedule and all pending Actions relating to the Newco Business, the Newco Assets, the Newco Employees or the Newco Liabilities and not relating to the Retained Business, the Retained Assets, the Retained Employees or the Retained Liabilities (each, a "Newco Action"), and may settle or compromise, or consent to the entry of any Judgment with respect to, any such Action without the consent of the Company; provided, that, notwithstanding anything to the contrary, neither the Company nor Newco (nor any of their respective Subsidiaries) may settle or compromise, or consent to the entry of any Judgment with respect to, any Retained Action or Newco Action, without the prior written consent of the other party if such settlement, compromise or consent to such Judgment (i) includes any form of relief binding upon such other party or its Affiliates or their respective businesses or assets or (ii) does not include as an unconditional term thereof the giving by the claimant or plaintiff to such other party (and any Affiliate of such other party subject to such Action) of a full and final release from all Liability in respect of such claim or litigation. For the avoidance of doubt, neither any of the Actions listed on Part C of Section 5.5 of the Disclosure Schedule (each, an "Unallocated Action") nor any Action in respect of any Shared Transaction Liabilities shall be a Retained Action or Newco Action.

Section 5.6 Remedies Exclusive
. From and after the Closing and except as otherwise specifically provided herein (including Articles IV and VIII), the rights to indemnification provided in this Article V shall be the exclusive monetary remedy for any Newco Liabilities or Retained Liabilities; provided that nothing herein shall preclude assertion by any Indemnitee of any other rights or the seeking of any and all other remedies against any Indemnifying Party in the event of fraud or in the event of an Indemnifying Party's failure to comply with its indemnification obligations hereunder.

Section 5.7 Purchase Price Adjustment
. The parties agree that any indemnity payments pursuant to this Agreement will be treated for Tax purposes as an adjustment to the Purchase Price, unless otherwise required by applicable Law.

ARTICLE VICERTAIN ADDITIONAL MATTERS

Section 6.1 Further Assurances; Subsequent Transfers.

(a) To the extent that any of the transfers, distributions, deliveries and assumptions required to be made pursuant to Article II shall not have been so consummated at or prior to Closing, the parties shall cooperate and use their reasonable best efforts to effect such consummation as promptly thereafter as reasonably practicable. Each of the parties hereto will execute and deliver such further instruments of transfer, distribution and assumption and will take such other actions as Newco or any of its Subsidiaries may reasonably request in order to effectuate the purposes of this Agreement and to carry out the terms hereof. Without limiting the generality of the foregoing, at any time and from time to time after Closing, at the request of Newco or any of its Subsidiaries, the Company and its Subsidiaries will execute and deliver such other instruments of transfer and distribution, and take such action as Newco or any of its Subsidiaries may reasonably deem necessary or desirable in order to more effectively transfer, convey and assign to Newco or any of its Subsidiaries and to confirm Newco's or any of its Subsidiaries', as the case may be, right, title to or interest in, all of the Newco Assets, to put Newco and its Subsidiaries in actual possession and operating control thereof and to permit Newco and its Subsidiaries to exercise all rights with respect thereto (including rights under contracts and other arrangements as to which the consent of any third party to the transfer thereof shall not have previously been obtained) and to properly assume and discharge the related Newco Liabilities.

(b) In the event and to the extent that the Company is unable to obtain any consents required to transfer and assign to Newco any agreements, licenses and other rights included in the Newco Assets, the Company (i) shall continue to be bound thereby pending assignment to Newco or a Newco Entity designated by Newco and (ii) shall, at the direction and expense of Newco, pay, perform and discharge fully all of its obligations thereunder from and after the Closing and prior to assignment to Newco or a Newco Entity, and Newco will indemnify the Company for any Liabilities (other than Tax Liabilities) of the Company arising out of such Assets, any reasonable out-of-pocket expenses associated with any attempt to transfer or failure to transfer such Asset, which shall constitute Newco Transaction Liabilities, or any Liabilities arising out of or resulting from the Company's actions taken in accordance with any such directions of Newco. The Company shall, without further consideration therefor, pay, assign and remit to Newco promptly all monies, rights and other consideration received in respect of such agreements. The Company shall exercise or exploit its rights and options under all such

agreements, leases, licenses and other rights and commitments referred to in this Section 6.1(b) when and only as reasonably directed by Newco. If and when any such consent shall be obtained or such agreement, lease, license or other right shall otherwise become assignable, the Company shall promptly assign all its rights and obligations thereunder to Newco or a Newco Entity designed by Newco without payment of further consideration and Newco shall, without the payment of any further consideration therefor, assume such rights and obligations.

(c) In the event that, subsequent to the Closing Date, the Company or Parent shall either (i) receive written notice from Newco that certain specified Assets of the Company or any Subsidiary of the Company which properly constitute Newco Assets were not transferred to Newco on or prior to the Closing Date or (ii) determine that certain Assets of the Company or any Subsidiary of the Company

which properly constitute Newco Assets were not transferred to Newco on or prior to the Closing Date, then (assuming the accuracy of such notice or demand) as promptly as practicable thereafter, the Company shall take all steps reasonably necessary to transfer and deliver any and all of such Assets to Newco without the payment by Newco of any further consideration therefor. In the event that, subsequent to the Closing Date, Newco shall either (i) receive written notice from the Company or Parent that certain specified Assets which properly constitute Retained Assets were transferred to Newco or included with the Newco Entities, or (ii) determine that certain Assets of Newco which properly constitute Retained Assets were transferred to Newco or included with the Newco Entities, then (assuming the accuracy of such notice or demand) as promptly as practicable thereafter, Newco shall, and shall cause its Subsidiaries to, take all steps reasonably necessary to transfer and deliver any and all of such Assets to the Company or its Subsidiaries without the payment by the Company of any further consideration therefor.

Section 6.2 Use of Names
. Following the Closing Date, the Company and the ECN Entities shall have the sole and exclusive ownership of and right to use, as between the Company and the ECN Entities, on the one hand, and Newco and its Subsidiaries, on the other hand, each of the names that are (i) set forth in Part A of Section 6.2 of the Disclosure Schedule or (ii) used solely in connection with the Retained Business (the "Retained Names"), and each of the trade marks, trade names, service marks and other proprietary rights related to such Retained Names (the "Retained Proprietary Name Rights"). Following the Closing Date, Newco and its Subsidiaries shall have the sole and exclusive ownership of and right to use, as between Newco and its Subsidiaries, on the one hand, and the Company and the ECN Entities, on the other hand, all names used by the Company and its Subsidiaries other than the Retained Names, including the Names set forth on Part B of Section 6.2 of the Disclosure Schedule (the "Newco Names"), and all other trade marks, trade names, service marks and other proprietary rights related to such Newco Names (the "Newco Proprietary Name Rights"). Notwithstanding the foregoing, neither the Company and the ECN Entities, nor Newco and its Subsidiaries, shall use any names that are confusingly similar to the Retained Names or the Newco Names, as applicable, without the prior written consent of the other party, provided that the parties agree that none of the Names set forth on Part A of Section 6.2 of the Disclosure Schedule, on the one hand, and the Names set forth on Part

B of Section 6.2 of the Disclosure Schedule, on the other hand, shall be deemed to be "confusingly similar." As promptly as practicable following the Closing Date but in no event later than one hundred eighty (180) days following the Closing Date, the parties hereto shall, and shall cause their respective Subsidiaries and other Affiliates to, take all action necessary to cease using, and change (including by amending any charter documents), any corporate or other names which are the same as or confusingly similar to any of the Newco Names and the Newco Proprietary Name Rights or the Retained Names and the Retained Proprietary Name Rights, as the case may be.

Section 6.3 Payment of Intercompany Accounts
. To the extent not previously paid and settled in full, the parties shall use best efforts to cause Instinet on or prior to the Closing Date to pay and settle in full for cash (or, failing such payment prior to Closing, shall pay and settle in full for cash at Closing) all intercompany receivables, payables,

loans and other accounts in existence as of the Effective Time between the Company and the ECN Entities, on the one hand, and the Newco Entities, on the other hand.

Section 6.4 Merger Agreement Provisions
. (a) Parent and the Company shall provide Newco with as much prior written notice as is reasonably practicable (which, if the circumstances permit, shall be not less than three business days' notice) of any proposed agreement or consent by both or either of them to any modifications of the terms and conditions of, or proposed delivery by both or either of them of any consent or waiver or any exercise of any right of termination under, the Merger Agreement. Parent and the Company will (i) use their best efforts to allow Newco to participate directly in any negotiations or discussions with Instinet relating to any such proposed modification, consent, waiver or termination unless such action would not reasonably be expected to have a Newco Adverse Effect and (ii) keep Newco informed of the status and any developments with respect to any such proposed modification, consent, waiver or termination. Neither Parent nor the Company will, without the prior written consent of Newco, terminate the Merger Agreement pursuant to Section 8.1 thereof or agree to any modification of any of the terms or conditions of, or give any consent or waiver under, any provision of the Merger Agreement if such modification, consent or waiver would reasonably be expected to have a Newco Adverse Effect. Upon Newco's request, but subject to Instinet's willingness, Parent and the Company will enter into such modifications of the terms and conditions of, or give any consent or waiver under, the Merger Agreement relating solely to the Newco Entities, the Newco Assets, the Newco Employees, the Newco Business or the Newco Liabilities unless such action would reasonably be expected to have an adverse effect on the probability that the transactions contemplated by this Agreement or the Merger Agreement will be consummated.

(b) Prior to the Closing, Newco will promptly notify Parent and Parent will promptly notify Newco, in the event that Newco or Parent, as the case may be, becomes aware of (i) the occurrence or nonoccurrence of any event the occurrence or nonoccurrence of which could reasonably be expected to cause (x) any representation or warranty of Parent,

the Company or Instinet contained in the Merger Agreement to be untrue or inaccurate or (y) any covenant, condition or agreement of Parent, the Company or Instinet or any Subsidiary of Instinet contained in the Merger Agreement to not be complied with or satisfied and (ii) any failure of Parent, the Company, Instinet or any Subsidiary of Instinet to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it under the Merger Agreement.

(c) Prior to the Closing, Parent agrees to use its reasonable best efforts to ensure that Newco and its accountants, attorneys, consultants, financing sources and other Representatives are provided access pursuant to Section 6.1 of the Merger Agreement. Prior to the Closing, Newco agrees that it shall, and shall cause its Affiliates to, comply with the obligations under Section 6.1 of the Merger Agreement.

(d) After the Closing, Newco shall, and shall cause each Newco Entity to, as the case may be, honor the applicable obligations under Section 6.7 of the Merger Agreement with respect to the Newco Employees. After the Closing, the Company shall, and shall cause each ECN Entity to, as the case may be, honor the applicable obligations under Section 6.7 of the Merger Agreement with respect to the Retained Employees.

(e) After the Closing, Newco shall, and shall cause each Newco Entity to, honor the applicable obligations under Section 6.9 of the Merger Agreement as such obligations relate to such Newco Entity. After the Closing, the Company shall, and shall cause each ECN Entity to, honor the applicable obligations under Section 6.9 of the Merger Agreement as such obligations relate to such ECN Entity.

(f) The parties agree that the representations, warranties, covenants and agreements in the Merger Agreement or in any certificate delivered pursuant thereto shall not survive the consummation of the Merger or the termination of the Merger Agreement (except for the covenants set forth in Sections 6.7 and 6.9 of the Merger Agreement).

Section 6.5 No Additional Representations
. Newco acknowledges that it and its representatives have received access to such books and records, facilities, equipment, contracts and other assets of Instinet which it and its representatives have deemed necessary and requested to review, and that it and its representatives have had full opportunity to meet with the management of Instinet to discuss the businesses and assets of Instinet. Newco acknowledges that neither Instinet nor any other person has made any representation or warranty, expressed or implied, as to the accuracy or completeness of any information regarding Instinet furnished or made available to Parent, Newco and their representatives except as expressly set forth in Article 4 of the Merger Agreement (which includes the Schedules thereto) or in any certificate delivered pursuant to Section 7.2 thereof.

Section 6.6 Reasonable Efforts; Regulatory Consents, Authorizations, etc
. (a) Each of the parties to this Agreement shall use commercially reasonable and good faith efforts to consummate the transactions contemplated under this Agreement and the Merger Agreement as of the earliest practicable date; provided, that, unless otherwise agreed to by the parties, such date is the first business day following the last day of an Instinet fiscal month end.

(b) Newco and Parent further agree to (i) promptly file or cause to be promptly filed, with all appropriate Authorities, all notices, registrations, declarations, applications and other documents as may be necessary to consummate the transactions contemplated under this Agreement and the Merger Agreement and (ii) thereafter diligently pursue obtaining all Required Regulatory Approvals (as defined in the Merger Agreement) from such Authorities as may be necessary to consummate the transactions contemplated under this Agreement and the Merger Agreement. Newco and Parent further agree to use their commercially reasonable efforts to seek and obtain all third party consents required to give effect to the transfer and assignment of the Newco Assets or otherwise in connection with the transactions contemplated by this Agreement.

(c) Subject to the terms and conditions of this Agreement, Newco and Parent agree that each shall use its best efforts to take, or cause to be taken and do, or cause to be done, all things necessary under applicable Antitrust Laws to consummate the transactions contemplated under this Agreement and the Merger Agreement as of the earliest practicable date. In furtherance and not in limitation of the above, Newco and Parent agree that each shall (i) cause to be filed any necessary notification or report with respect to the transactions contemplated under this Agreement and the Merger Agreement, pursuant to any applicable Antitrust Law, as soon as practicable after the date hereof; and with respect to the HSR Act, in any event not later than the tenth business day after the date hereof, (ii) supply as promptly as practicable any additional information or documentary material that may be requested by any Authority pursuant to any applicable Antitrust Law; and (iii) use, subject to the other provisions of this Section 6.6, its best efforts to take all other actions necessary to obtain all Required Regulatory Approvals or to cause the expiration or termination of the applicable waiting periods under any applicable Antitrust Law as soon as practicable. In furtherance and not in limitation of the above, it is specifically understood that Newco and Parent shall each cause to be filed with the United States Department of Justice and Federal Trade Commission a Notification and Report Form for Certain Mergers and Acquisitions, pursuant to the HSR Act, and shall include therein a request for early termination of the waiting period specified under the HSR Act.

(d) In connection with the efforts referenced in Section 6.6(c) above, Newco and Parent further agree that each will use its best efforts to (i) cooperate in all respects with the other parties hereto in connection with any filing or submission and in connection with any investigation or other inquiry, including any Action initiated by a private party, pursuant to any applicable Antitrust Law (including, by sharing copies of any such filings or submissions with the other parties hereto reasonably in advance of the filing or submission thereof; provided, that sensitive or competitive information shall be subject to review on a counsel only basis pursuant to confidentiality undertakings); (ii) promptly inform each other party hereto and Instinet of any communication received from, or given by Newco or Parent to, any Authority regarding the transactions contemplated under this Agreement and the Merger Agreement, and of any communication received or given in connection with any Action by a private

party, in any such case, to the extent reasonably practicable, pursuant to an applicable Antitrust Law and regarding any of the transactions contemplated under this Agreement and the Merger Agreement; and (iii) permit each of the parties hereto and Instinet an opportunity to review in advance of any communication intended to be given by it to, and consult with the other parties hereto and Instinet in advance of any meeting or conference with, any Authority or, in connection with any proceeding by a private party, with such private party, in any such case, to the extent reasonably practicable, pursuant to an applicable Antitrust Law and to the extent permitted by such Authority or other person, give the other parties hereto and Instinet the opportunity to attend and participate in such meetings and conferences if either party and Instinet reasonably believes such attendance and participation to be beneficial; provided, however, that materials concerning the valuation of the Company and materials subject to third-party confidentiality restrictions may be redacted.

(e) If, with respect to any filing contemplated by this Section 6.6, it is necessary or advisable that a single filing be made on behalf of Newco and Parent, each party shall closely cooperate in the preparation of such filing. If, with respect to any filing contemplated by this Section 6.6, only one filing fee is required for both parties, regardless of whether separate or joint filings are made the party required to make such payment under applicable Law shall pay the appropriate filing fee. In furtherance and not in limitation of the foregoing, Newco shall be required to pay the filing fee pursuant to the HSR Act with respect to the VAB Purchase and Parent shall be required to pay the filing fee pursuant to the HSR Act with respect to the Merger.

(f) Subject to Section 6.6(h), in furtherance and not in limitation of the efforts referred to above in Section 6.6(d), if any objections are asserted pursuant to any applicable Antitrust Law by any Authority or private party, or if any suit is instituted or threatened, which would otherwise prohibit or materially impair or delay the consummation of the transactions contemplated under this Agreement and the Merger Agreement, Newco and Parent agree that each shall use its best efforts to resolve any such objections or suits so as to permit consummation of the transactions contemplated under this Agreement and the Merger Agreement, including selling or agreeing to sell, holding or agreeing to hold separate, or otherwise disposing or agreeing to dispose of assets (which may include any assets relating to the Newco Business), or conducting or agreeing to conduct its business in such a manner as would resolve such objections or suits, or permitting any of its Subsidiaries to take or agree to take any such action. Notwithstanding the foregoing, the parties will each use their commercially reasonable efforts to resist any action requested by any Authority to sell, divest, discontinue or limit, before or after the Closing, any of the Newco Assets or all or any portion of the Newco Business (other than the disposition contemplated by the VAB Purchase).

(g) In the event that any Action is instituted, or threatened to be instituted, by any Authority or private party, in any such case, pursuant to Antitrust Law, challenging any of the transactions contemplated under this Agreement and the Merger Agreement, each party to this Agreement agrees to cooperate in all respects with each other and use its respective best efforts to defend, contest and resist any such Action and to have vacated, lifted, reversed or overturned any Judgment, whether temporary, preliminary or permanent, that is in effect and prohibits, prevents or restricts consummation of the transactions contemplated under this Agreement and the Merger Agreement.

(h) Notwithstanding anything in this Section 6.6 to the contrary, nothing in this Section 6.6 shall require, or be construed to require Instinet, Newco, Parent or the Company or any of their respective Subsidiaries to, in connection with the receipt of any consent, waiver, approval, license or authorization by any Authority or the defense of any Action, to (A) in the case of Parent and its Affiliates, (i) sell, hold separate, divest, discontinue, or limit, or proffer to, or agree to, sell, hold separate, divest, discontinue or limit, before or after the Closing Date, any assets, businesses, or interest in any assets or businesses of Parent or Instinet or any Instinet Subsidiary or any of their respective Affiliates (or to consent to any sale, or agreement to sell or discontinuance or limitation by Parent or Instinet or any Instinet Subsidiary or any of their respective Affiliates, as the case may be, of any of their respective assets or businesses) or (ii) agree to any conditions or terms relating to or applying to, or requiring any changes, limitations or restrictions on, the operation of any asset or business, including the market practices and structure of Parent, that, in the case of either clause (A)(i) or (A)(ii), is reasonably likely, individually or in the aggregate, to have a material adverse effect on the assets, business, long-term earning capacity or financial condition of Parent and its Affiliates (including the ECN Entities) taken as a whole or (B) in the case of Newco and its Affiliates, (i) sell, hold separate, divest, discontinue, or limit, or proffer to, or agree to, sell, hold separate, divest, discontinue or limit, before or after the Closing Date, any assets, businesses, or interest in any assets or businesses of Instinet or any Instinet Subsidiary or any of their respective Affiliates to the extent any such assets or businesses are part of the Newco Business or constitute Newco Assets (or to consent to any sale, or agreement to sell or discontinuance or limitation by Instinet or any Instinet Subsidiary or any of their respective Affiliates, as the case may be, of any of their respective assets or businesses to the extent any such assets or businesses are part of the Newco Business or constitute Newco Assets) or (ii) agree to any conditions or terms relating to or applying to, or requiring any changes, limitations or restrictions on, the operation of any Newco Asset or the Newco Business, including the market practices and structure of Newco and its Affiliates, that, in the case of either clause (B)(i) or (B)(ii), is reasonably likely, individually or in the aggregate, to have a material adverse effect on (x) the assets, business, long-term earning capacity or financial condition of Newco and its Affiliates (including the Newco Entities) taken as a whole, (y) the Newco Assets or (z) the Newco Business (any such requirement specified in clause (B)(i) or (B)(ii), a "Burdensome Condition").

Section 6.7 Ancillary Agreements
. (a) On the Closing Date, the parties shall execute (and/or cause their respective Subsidiaries party thereto to execute) the Ancillary Agreements.

(b) On the Closing Date, Parent shall cause the Company to execute and deliver the First Amendment to Sublease in the form attached as Exhibit G. In addition, on the Closing Date, the parties agree that the Company shall sublease to Newco and Newco shall sublease from the Company on substantially the same terms as the Sublease (as amended) (or an assignment of the Sublease from the Company to Newco; provided, that the Company shall remain obligated under the Sublease) pursuant to which Newco shall, among other things, pay Parent a special payment of $3,500,000, which shall be used by Parent to satisfy the consideration due sublessor pursuant to Section 5 of the First Amendment to Sublease in the form attached as Exhibit G.

Section 6.8 Sharing of Certain Payments
. In the event that Parent receives a Termination Fee (as defined in the Merger Agreement), Parent shall pay Newco an amount equal to (i) (A) the Termination Fee less (B) any out-of-pocket fees and expenses incurred by Newco or any of its Affiliates and subject to payment by Parent pursuant to the Convertible Notes Securities Purchase Agreement less (C) any fees and expenses subject to payment by Parent in connection with the bridge financing from JPMorgan Chase in connection with the Convertible Notes Securities Purchase Agreement, multiplied by (ii) the Newco Percentage. Such amount shall be paid within five business days of the receipt by Parent of such Termination Fee.

Section 6.9 Certain Restrictions Pending the Closing
. (a) Newco agrees that, from and after the date hereof and prior to the Closing, except (i) as otherwise expressly permitted by this Agreement, (ii) for any action that constitutes an exercise of Newco's rights under Section 6.4, Section 9.1 or Section 9.2 or (iii) as agreed in writing by Newco and Parent, Newco shall not, and shall not permit any of its Subsidiaries to, take or agree, in writing or otherwise, to take any action which could reasonably be expected to materially impair Newco's ability to perform its obligations under this Agreement or to prevent, impede or delay the consummation of the transactions contemplated under this Agreement or the Merger Agreement or result in the failure to satisfy any condition to the consummation of the transactions hereunder or thereunder.

(b) Parent agrees that, from and after the date hereof and prior to the Closing, except (i) as otherwise expressly permitted by this Agreement, (ii) for any action that constitutes an exercise of Parent's rights under Article 7 of the Merger Agreement, Article 8 of the Merger Agreement, Section 9.1 or Section 9.2 or (iii) as agreed in writing by Parent and Newco, Parent shall not, and shall not permit any of its Subsidiaries to, take or agree, in writing or otherwise, to take any action which could reasonably be expected to materially impair Parent's or the Company's ability to perform its obligations under this Agreement or the Merger Agreement or to prevent, impede or delay the consummation of the transactions contemplated under this Agreement or the Merger Agreement or result in the failure to satisfy any condition to the consummation of the transactions hereunder or thereunder.

Section 6.10 Noncompetition and Non-Solicitation
. (a) During the period beginning on the Closing Date and ending on the date which is three (3) years following the Closing Date, neither Newco nor any Subsidiary thereof shall, with respect to equity securities traded on any U.S. securities exchange or over-the-counter market, without the prior written consent of Parent (i) own or operate any (A) "electronic communications network" (as defined under Rules 11Ac1-1 and 11Ac1-4 under the Exchange Act), (B) Self-Regulatory Organization or (C) "alternative trading system" (as defined in Rule 300 of Regulation ATS under the Exchange Act) that (x) is required to

comply with Rule 301(b)(5) of Regulation ATS under the Exchange Act (as in effect on the date of this Agreement); provided, that each reference to "20 percent" in Rule 301(b)(5)(i) shall be read as if such reference is "5 percent" and (y) provides execution services directly to registered broker-dealers (each a "Newco Competing Business"); (ii) license, sell or provide the Continuous Block Crossing software and systems ("CBX") to any person that operates or, to the knowledge of Newco, intends to operate a Newco Competing Business, (iii) use CBX to develop, facilitate, enhance or operate a securities order execution or matching system to be used by a Newco Competing Business, (iv) employ, engage or utilize any Retained Employees (other than those individuals set forth in Section 6.10(c) of the Disclosure Schedule) in the development, facilitation, enhancement or operation of a securities order execution or matching system to be used by a Newco Competing Business, or (v) enter into a transaction the primary purpose of which is to acquire one (1) percent or more of the equity interests or voting power of any person (other than the securities held as of the Closing Date (as such may be adjusted and including stock dividends thereon or securities issued in exchange therefor) by Instinet and its Subsidiaries and listed on Section 6.10(a) of the Disclosure Schedule) that is principally engaged in a Newco Competing Business. Notwithstanding the foregoing, a Newco Competing Business shall not be deemed to include and Newco and its Subsidiaries shall not be prohibited from (A) continuing to operate (in substantially the same manner as currently operated) any business operated by the Newco Entities as of the date hereof or as of the Closing Date, growing any such existing business (other than by engaging in a Competing Business) or holding any of the Newco Assets, (B) owning or operating any business that consists solely or primarily of providing (1) matching or crossing services to buy-side customers, (2) direct market access, (3) trade execution services for securities other than cash equity securities (e.g., options or other derivative securities) or (4) trade execution services in cash equity securities directly to institutional customers or (C) acquiring any business that includes operations the conduct of which by Newco and its Subsidiaries would, but for this sentence, otherwise violate the restrictions of this Section 6.10(a), if the primary purpose of such acquisition is not to acquire any Newco Competing Business; provided, that if more than fifteen (15) percent of such acquired entity's gross revenues are derived from the Newco Competing Business during the twelve (12) calendar months immediately preceding the month in which such acquisition occurs, then within one (1) year after the date of such acquisition, Newco and its Subsidiaries shall have ceased conducting such business or shall have entered a binding agreement (which may be an agreement with Parent or an Affiliate thereof) for the disposition of the Newco Competing Business. If any such binding agreement shall terminate prior to the completion of the sale of such Newco Competing Business, Newco and its Subsidiaries shall cease conducting such business or enter into a new binding agreement for its disposition within three (3) months after the date of such termination.

(b) During the period beginning on the Closing Date and ending on the date which is three (3) years following the Closing Date, neither Parent nor any Subsidiary thereof shall, within the United States or any foreign jurisdiction in which the Newco Business is conducted as of the Closing Date (but only so long as Newco or a Newco Entity conducts business in such jurisdiction), without the prior written consent of Newco: (i) directly or indirectly, engage in the business of providing trade execution services in cash equity securities directly to institutional customers, other than products

or services that are sponsored by broker-dealer customers; or (ii) enter into a transaction the primary purpose of which is to acquire one (1) percent or more of the equity interests or voting power of any person principally engaged in any of the businesses described in clause (i) (a "Parent Competing Business"). Notwithstanding the foregoing, Parent and its Subsidiaries shall not be prohibited from acquiring any business that includes operations the conduct of which by Parent and its Subsidiaries would, but for this sentence, otherwise violate the restrictions of this Section 6.10(b), if the primary purpose of such acquisition is not to acquire any Parent Competing Business; provided, that if more than fifteen (15) percent of such acquired entity's gross revenues are derived from the Parent Competing Business during the twelve (12) calendar months immediately preceding the month in which such acquisition occurs, then within one (1) year after the date of such acquisition, Parent and its Subsidiaries shall have ceased conducting such business or shall have entered a binding agreement (which may be an agreement with Newco or an Affiliate thereof) for the disposition of the Parent Competing Business. If any such binding agreement shall terminate prior to the completion of the sale of such Parent Competing Business, Parent and its Subsidiaries shall cease conducting such business or enter into a new binding agreement for its disposition within three (3) months after the date of such termination.

(c) Newco agrees that, for a period beginning on the date of this Agreement and ending on the date two (2) years following the Closing Date, neither Newco nor its Subsidiaries will solicit for employment or hire any of the Retained Employees (other than the individual listed in Section 6.10(c) of the Disclosure Schedule); provided, however, that it is understood that this Section 6.10(c) shall not prohibit: (i) generalized solicitations by advertising and the like that are not directed to the Retained Employees; (ii) solicitations or hires of Retained Employees whose employment was terminated by Parent, the Company or any ECN Entity or (iii) solicitations or hires of Retained Employees who have terminated their employment with Parent, the Company or any ECN Entity without any prior solicitation (which would otherwise violate this Section 6.10(c)) by Newco or any Subsidiary thereof.

(d) Parent agrees that, for a period beginning on the date of this Agreement and ending on the date two (2) years following the Closing Date, neither Parent nor its Subsidiaries will solicit for employment or hire any of the Newco Employees; provided, however, that it is understood that this Section 6.10(d) shall not prohibit: (i) generalized solicitations by advertising and the like that are not directed to the Newco Employees; (ii) solicitations or hires of Newco Employees whose employment was terminated by Newco or any Newco Entity or (iii) solicitations or hires of Newco Employees who have terminated their employment with Newco or any Newco Entity without any prior solicitation (which would otherwise violate this Section 6.10(d)) by Parent or any Subsidiary thereof.

(e) It is the intent and understanding of each party hereto that if, in any action before any Authority legally empowered to enforce this Section 6.10, any term, restriction, covenant, or promise is found to be unreasonable and for that reason unenforceable, then such term, restriction, covenant, or promise shall not thereby be terminated but that it shall be deemed modified to the extent necessary to make it enforceable by such Authority and, if it cannot be so modified, that it shall be deemed amended to delete therefrom such provision or portion adjudicated to be invalid or unenforceable, such modification or amendment in any event to apply only with respect to the operation of this Section 6.10 in the particular jurisdiction in which such adjudication is made.

(f) Notwithstanding anything to the contrary contained in this Section 6.10, in no event shall this Section 6.10 be deemed to apply to any Affiliate of Newco or Parent (other than a Subsidiary of Newco or Parent, as applicable) solely because such person is an Affiliate of Newco or Parent.

Section 6.11 Reimbursement of Certain Amounts Paid By Instinet Prior to the Closing. Following the Closing, from time to time upon written notice by Newco to Parent and

receipt by Parent of evidence reasonably satisfactory to it of the payment of such amounts by Instinet or any Subsidiary thereof prior to Closing, Parent shall pay to Newco an amount (less any accruals therefor reflected on the Retained Business Balance Sheet) equal to the amount of any Liabilities of Instinet and its Subsidiaries that (A) were paid on or prior to the Closing Date but not known to the parties as of the Closing Date to have been so paid (and therefore not paid to Newco pursuant to Section 2.3(c)) and (B) would have been Retained Liabilities of the types referred to in clauses (iv), (v), (vi), (vii), (viii), (ix) or (x) of the definition of Retained Liabilities payable by Parent, the Company and the ECN Entities following the Closing Date if not so paid on or prior to the Closing Date. The parties agree that any payments pursuant to this Section 6.11 will be treated for Tax purposes as an adjustment to the Purchase Price, unless otherwise required by applicable Law.

Section 6.12 Sharing of Amounts Payable In Respect of the Exchange Fund. Parent and the Company agree that promptly upon receipt (and in any event within five business days thereof) of any amounts payable under Section 3.2 of the Merger Agreement with respect to the Exchange Fund (as defined in the Merger Agreement), including in connection with any interest payments thereon or release thereof, Parent or the Company shall pay by wire transfer of immediately available funds to an account designated by Newco for such purposes, an amount without duplication equal to the product of (i) the total amount received by the Parent or the Company in respect of the Exchange Fund and (ii) the Newco Percentage. At any time after the Exchange Fund is delivered to Buyer pursuant to Section 3.2 of the Merger Agreement, Parent shall notify Newco of any payment of Merger Consideration to any holder of Certificates that had not theretofore been surrendered for Merger Consideration. Promptly following written notice thereof accompanied by evidence of such payment, Newco shall pay by wire transfer of immediately available funds to an account designated by Parent for such purpose (or by check with respect to any amounts under $10,000), an amount equal to the product of (i) the Merger Consideration paid in respect of such Certificates and (ii) the Newco Percentage.

Section 6.13 Settlement of Litigation Constituting Shared Transaction Liabilities. (a) None of Newco, Parent or the Company shall, and shall not agree to, admit liability in, resolve, settle or compromise any Action that constitutes a Shared

Transaction Litigation Liability without the prior written consent of the other parties hereto unless the relief consists solely of the payment of money by the settling party, which is not subject to reimbursement by any other party, does not admit liability and includes a provision whereby the plaintiff or claimant in the matter releases the other parties from all liability with respect thereto.

(b) In the event any appraisal proceeding brought under Section 262 of the General Corporation Law of the State of Delaware results in the payment of an amount per share in respect of shares of Company Common Stock (as defined in the Merger Agreement) outstanding prior to the Effective Time that is less than the per share Merger Consideration (as defined in the Merger Agreement) (after taking into account the costs and expenses of defending such Action), the difference between the

amount of such payment and the Merger Consideration shall be split between Parent and Newco based on the Company Percentage and the Newco Percentage.

Section 6.14 LJR Insurance Policy
. Notwithstanding anything to the contrary contained in this Agreement, including the definition of Retained Assets, in the event that the Company shall receive any proceeds from the LJR Insurance Policy following the Closing in respect of any LJR Liability paid by Instinet or any of its Subsidiaries prior to the Closing, the Company shall assign and pay over to Newco for no additional consideration 100% of such insurance proceeds.

ARTICLE VIIACCESS TO INFORMATION AND SERVICES

Section 7.1 Access to Information
. From and after the Closing (i) the Company shall (A) afford to Newco and its authorized accountants, counsel and other designated Representatives reasonable access (including using reasonable efforts to give access to persons or firms possessing Information) and duplicating rights during normal business hours and upon reasonable advance notice to all records, books, contracts, instruments, computer data and other data and information (collectively, "Information") within the Company's possession insofar as such access is reasonably required by Newco and (B) at the request and expense of Newco, use its reasonable efforts to cooperate with Newco and its accountants and other Representatives in connection with the preparation of any audits (and related financial statement preparation) and with the transition of the Newco Business to a "stand-alone" business following the Closing, including by assisting Newco in connection with any efforts by Newco to obtain insurance coverage for the Newco Business, and (ii) Newco shall (A) afford to the Company and its authorized accountants, counsel and other designated Representatives reasonable access (including using reasonable efforts to give access to persons or firms possessing Information) and duplicating rights during normal business hours and upon reasonable advance notice to all Information within Newco's possession insofar as such access is reasonably required by the Company and (B) at the request and expense of Parent, use its reasonable efforts to cooperate with Parent and its accountants and other Representatives in connection with the preparation of any audits (and related financial statement preparation) and with the transition of the Retained Business to Parent. Information may be requested under this Section 7.1 for, without limitation, audit, accounting, claims, litigation and tax purposes, as well as for purposes of fulfilling disclosure and reporting obligations.

Section 7.2 Litigation Cooperation
. With respect to any Action that involves any of the parties to this Agreement or any of the ECN Entities or Newco Entities and relates to (x) the transactions contemplated by this Agreement or the Merger Agreement or (y) Instinet or any current or former Subsidiary of Instinet or any Liabilities or current or former Assets, employees or businesses thereof, whether or not such Action is subject to indemnification hereunder, Parent and the Company, on the one hand, and Newco, on the other hand, shall, upon written request by the other, and at the expense of the requesting party (subject to the indemnification and expense sharing provisions of this Agreement, to the extent applicable), provide all cooperation and assistance, and shall furnish such records and information, as may be reasonably requested by the other in connection therewith, including, by using reasonable efforts to make available to the other, its officers, directors, employees and agents as witnesses and to attend such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested by the other in connection therewith. With respect to (i) any such Action involving Shared Transaction Liabilities or (ii) any Action initiated by any Authority or private party pursuant to any applicable Antitrust Law and relating to the transactions contemplated by this Agreement or the Merger Agreement, the parties agree, consistent with applicable rules of privilege and legal ethics, to provide each other with timely and reasonably detailed updates with respect to all material developments, consult with each other before taking any significant actions in connection therewith and offer each other the opportunity to comment before submitting to any Authority or adverse party any written materials prepared or furnished in connection with such Action.

Section 7.3 Retention of Records
. Except as otherwise required by Law or agreed to in writing, Newco and the Company shall each retain, for a period of at least seven years following the Closing Date, all Information relating to (i) in the case of Newco, the Retained Assets, the Retained Business and the Retained Liabilities, and (ii) in the case of the Company, the Newco Assets, the Newco Business and the Newco Liabilities. Notwithstanding the foregoing, except as otherwise required by Law, either Newco or the Company may destroy or otherwise dispose of any of such Information at any time, provided, that prior to such destruction or disposal, (a) Newco or the Company, as the case may be, shall provide no less than 90 or more than 120 days' prior written notice to the other party, specifying the Information proposed to be destroyed or disposed of and (b) if the other party shall request in writing prior to the scheduled date for such destruction or disposal that any of the Information proposed to be destroyed or disposed of be delivered to the other party, Newco or the Company, as the case may be, shall promptly arrange for the delivery of such of the Information as was requested, at the expense of the requesting party.

Section 7.4 Confidentiality
. Each party (which, for these purposes shall include the Newco Entities, the Newco Business, the ECN Entities and the Retained Business) shall hold, and shall cause its officers, employees, agents, consultants, advisors and other Representatives to hold, in strict confidence, unless compelled to disclose by judicial or administrative process or at the direction of any Self-Regulatory Authority or,

in the opinion of its counsel, by other requirements of Law, all non-public Information concerning the other parties (which, for these purposes shall include the Newco Entities, the Newco Business, the ECN Entities and the Retained Business) furnished it by any such other party or its representatives or otherwise in its possession (except to the extent that such Information can be shown to have been (a) in the public domain through no fault of the party to which it was furnished or (b) later lawfully acquired on a non-confidential basis from other sources by the party to which it was furnished), and each party shall not, without the prior written consent of the party that furnished such Information, release or disclose such Information to any other person, except its auditors, attorneys, financial advisors, financing sources, bankers and other consultants, advisors and other representatives who have a need to know such Information and who agree to be bound by the provisions of this Section 7.4. Each party shall be deemed to have satisfied its obligation to hold confidential Information concerning or supplied by any other party if it exercises the same care as it takes to preserve confidentiality for its own similar confidential Information.

Section 7.5 Publicity
. Parent and the Company, on the one hand, and Newco, on the other hand, each agree not to issue any press release or otherwise make any public statement in any general circulation medium with respect to the transactions contemplated under this Agreement or the Merger Agreement, without the prior written consent of the other, which shall not be unreasonably withheld; provided, however, that such parties may, without the consent of the other, make any disclosures required to comply with applicable Laws and stock listing requirements, except such consent shall be sought where practicable to do so. The parties agree that the initial press release to be issued with respect to the transactions contemplated under this Agreement and the Merger Agreement shall be in the form agreed to by the parties.

ARTICLE VIIIEMPLOYEE BENEFITS; LABOR MATTERS

Section 8.1 Officers and Employees
. The Newco Employees who are employed by the Company or any of the Newco Entities immediately prior to the Closing Date shall become employees of Newco or its Subsidiaries. The Retained Employees who are employed by the Company or any of the ECN Entities immediately prior to the Closing Date (other than the individual listed on Section 6.10(c) of the Disclosure Schedule, who shall be deemed a Newco Employee) shall become employees of the Parent or its Subsidiaries.

Section 8.2 Employee Benefits.

(a) U.S. Plans. Effective as of the Closing Date, Newco or a Subsidiary thereof shall assume each "employee pension benefit plan" (as defined in Section 3(2) of the Employee Retirement Income Security Act of 1974 ("ERISA")) and each "employee welfare benefit plan" (as defined in Section 3(1) of ERISA) maintained by the Company and all other employment, severance and benefit plans, contracts or arrangements covering Newco Employees, including those plans, contracts and

arrangements listed on Section 8.2(a) of the Disclosure Schedule (regardless of whether they are funded or unfunded), other than any plans, contracts or arrangements relating to equity-based compensation (the "Assumed U.S. Benefit Plans") and, for the avoidance of doubt, excluding any plans, contracts or arrangements substantially for the benefit of Newco Employees who are located outside of the United States. The Company and Newco shall take all such action as may be necessary or appropriate in order to establish Newco as successor to the Company as to all rights, duties, liabilities and obligations under or with respect to each of the Assumed U.S. Benefit Plans, including obtaining the written release of the Company and IHCI from such rights, duties, liabilities and obligations under or with respect to the Assumed U.S. Benefit Plans. Effective as of the Closing Date, all active participants other than Newco Employees shall cease to participate actively in such plans. Newco shall succeed the Company as the sponsor of the Assumed U.S. Benefit Plans, and agrees to indemnify and hold the Company Indemnitees harmless from and against all Indemnifiable Losses assessed against, resulting from, imposed upon or incurred by the Company with respect to the Assumed U.S. Benefit Plans, other than any Indemnifiable Losses with respect to Retained Employees.

(b) Non-U.S. Plans. Effective as of the Closing Date, Newco or a Subsidiary thereof shall assume each employee benefit plan and all other employment, severance and benefit plans, contracts or arrangements maintained by the Company for the benefit of Newco Employees located in France, Germany and Japan, including those plans, contracts and arrangements listed on Section 8.2(b) of the Disclosure Schedule, other than plans, contracts or arrangements relating to equity-based compensation (the "Assumed Non-U.S. Benefit Plans"). It is the intention that, effective as of the Closing Date, Newco Employees who are located in Hong Kong, Zurich and Spain will (to the extent permitted by Law) continue their participation in those employee benefit plans sponsored by any Affiliate or Affiliates of Reuters Group PLC (collectively with Reuters Group PLC, "Reuters") in which such Newco Employees participate immediately prior to the Closing Date, and Newco or a Subsidiary thereof shall cooperate with Reuters in order to effectuate such continued participation. It is the intention that, effective as of the Closing Date, Newco Employees who are located in the UK will continue their participation in The Reuters UK Healthcare Scheme (managed by Norwich Union), the PPP Healthcare Scheme (available to Instinet UK expatriate employees only), and the Reuters UK Retirement Plan, all of which are sponsored by Reuters, and Newco or a Subsidiary thereof shall cooperate with Reuters in order to effectuate such continued participation. For the avoidance of doubt, Newco and its Subsidiaries shall not continue participation in the Reuters Pension Fund, Reuters Unapproved Life Assurance Scheme or Reuters Unfunded Unapproved Retirement Benefit Scheme on or after the Closing Date. Effective as of the Closing Date, all employees of the Company other than Newco Employees shall cease to participate actively in the each of the plans described in this Section 8.2(b). Newco agrees to indemnify and hold the Company Indemnitees harmless from and against all Indemnifiable Losses assessed against, resulting from, imposed upon or incurred by the Company with respect to the Assumed Non-U.S. Benefit Plans or any of the Reuters plans described in this Section 8.2(b) (including Newco's obligations as a participating employer therein), other than any Indemnifiable Losses with respect to Retained Employees.

Section 8.3 Other Liabilities and Obligations
. As of the Closing Date, with respect to claims relating to any employee Liability or obligations not otherwise provided for in this Agreement, including earned salary, wages or other compensation and accrued holiday, vacation, health, dental or retirement benefits, (a) Newco shall assume and be solely responsible for Liabilities and obligations whatsoever of the Company for such claims made by all Newco Employees and (b) the Company shall be solely responsible for Liabilities and obligations whatsoever for claims made by all Retained Employees whether arising out of events, occurrences or services performed before or following the Closing Date.

Section8.4 Preservation of Rights to Amend or Terminate Plans
. Except as set forth below, no provision of this Agreement shall be construed as a limitation on the right of the Company or Newco to amend any plan or terminate its participation therein which the Company or Newco would otherwise have under the terms of such plan or otherwise, and no provision of this Agreement shall be construed to create a right in any employee or beneficiary of such employee under a plan that such employee or beneficiary would not otherwise have under the terms of such plan itself. Notwithstanding the foregoing, the Company shall not, and shall not permit any Subsidiary of the Company to, amend or terminate (or commit or agree to amend or terminate) any Assumed U.S. Benefit Plans, Assumed Non-U.S. Benefit Plans or other plans, contracts or arrangements covering Newco Employees without the prior written consent of Newco.

Section 8.5 Reimbursement; Indemnification
. Newco and the Company acknowledge that the Company, on the one hand, and Newco, on the other hand, and their respective Subsidiaries, may incur costs and expenses (including contributions to plans and the payment of insurance premiums) pursuant to any of the employee benefit or compensation plans, programs or arrangements which are, as set forth in this Agreement, the responsibility of the other. Accordingly, the Company and Newco agree to reimburse each other, as soon as practicable but in any event within five business days of receipt from the other party of appropriate verification, for all such costs and expenses reduced by the amount of any tax reduction or recovery of tax benefit realized by the Company or Newco or any such Subsidiary, as the case may be, in respect of the corresponding payment made by it (as described in Section 5.3). Liabilities retained, assumed or indemnified by Newco pursuant to this Article VIII shall in each case be deemed to be Newco Liabilities, and Liabilities retained, assumed or indemnified by the Company pursuant to this Article VIII shall in each case be deemed to be Retained Liabilities, and, in each case, shall be subject to the indemnification provisions set forth in Article V.

ARTICLE IXMISCELLANEOUS

Section 9.1 Conditions to Closing.

(a) Conditions to Newco's Obligation to Close. The obligation of Newco to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or before the Closing, of all of the conditions set forth below in this Section 9.1(a). Newco may (in its sole and absolute discretion) waive in writing any or all of these conditions in whole or in part without prior notice.

(i) The representations and warranties of Parent and the Company contained herein that are not qualified as to materiality shall be true and correct in all material respects as of the date hereof and as of the Closing Date with the same effect as if such representations and warranties had been made on and as of the Closing Date, and those representations and warranties of Parent and the Company contained herein that are qualified as to materiality shall be true and correct in all respects as of the date hereof and as of the Closing Date with the

same effect as if such representations and warranties had been made on and as of the Closing Date, and each of Parent and the Company shall have performed in all material respects its obligations and complied in all material respects with the agreements and covenants required by this Agreement to be performed or complied with on its part on or prior to the Closing Date.

(ii) Except as has not had, and would not reasonably be expected to have, a Newco Adverse Effect (A) (x) the representations and warranties of Instinet contained in the Merger Agreement that are not qualified as to Company Material Adverse Effect (as defined in the Merger Agreement) or materiality shall be true and correct in all material respects as of the date hereof and as of the Closing Date, with the same effect as if such representations and warranties had been made on and as of the Closing Date, (y) those representations and warranties of Instinet contained in the Merger Agreement (other than Sections 4.8, 4.9 and 4.10 thereof) that are qualified as to Company Material Adverse Effect (as defined in the Merger Agreement) or materiality shall be true and correct in all respects as of the date hereof and as of the Closing Date with the same effect as if such representations and warranties had been made on and as of the Closing Date (except for representations and warranties which are as of a particular date, which shall be true and correct as of such date) and (z) those representations and warranties of Instinet contained in Sections 4.8, 4.9 and 4.10 of the Merger Agreement shall be true and correct in all respects as of the date hereof and, after excluding any event, occurrence, fact, condition, change or effect in each case arising or occurring after the date hereof and described in clauses (1) through (5) of the definition of "Company Material Adverse Effect" contained in the Merger Agreement, true and correct in all respects as of the Closing Date (except for representations in such sections which are as of a particular date, which shall be true and correct as of such date) and (B) Instinet and each of its Subsidiaries shall have performed in all material respects its obligations and complied in all material respects with its agreements (and in all respects, in the case of the agreement set forth in the last sentence of Section 6.18 of the Merger Agreement) and covenants required by the Merger Agreement to be performed or complied with on its part on or prior to the Closing Date.

(iii) Parent shall have received from Instinet a certificate dated as of the Closing Date and signed by an authorized officer of Instinet certifying its compliance with the conditions set forth in Section 7.2(a) of the Merger Agreement (other than any non-compliance which has not had, and would not be expected to have, a Newco Adverse Effect), and Parent shall have delivered a copy of such certificate to Newco.

(iv) All Required Regulatory Approvals (as defined in the Merger Agreement) shall have been obtained, and any applicable waiting periods in connection therewith shall have expired or been terminated, without the imposition of any Burdensome Condition.

(v) There shall be no Law of any nature of any Authority that is in effect that prohibits the consummation of the Merger or the VAB Purchase.

(vi) As of the Closing Date, (A) no Applicable Authority shall have threatened any Action under any Antitrust Law seeking to enjoin or otherwise prevent the consummation of the Merger or the VAB Purchase or to impose a Burdensome Condition, and such threat is likely to be acted upon by such Applicable Authority, and (B) there shall not be pending any Action by an Applicable Authority under any Antitrust Law seeking to enjoin or otherwise prevent the consummation of the Merger or the VAB Purchase or to impose a Burdensome Condition, which Action either is pending in the court of first impression or is on appeal, provided, however, that if such Applicable Authority shall have been unsuccessful in its Action in the court of first impression and shall have taken reasonable steps to obtain and shall have failed to obtain, a temporary (and continuing) or permanent injunction or stay pending appeal (which decree is continuing) with respect to the Merger or the VAB Purchase, clause (B) of this Section 9.1(a)(vi) shall be deemed to be satisfied with respect to such Action.

(vii) Instinet shall have consummated the LJR Sale in accordance with the terms of the LJR Sale Agreement (as defined in the Merger Agreement) and the Merger Agreement.

(viii) The Merger shall have become effective pursuant to Section 251 of the General Corporation Law of the State of Delaware.

(b) Conditions to Parent's and the Company's Obligations to Close. The obligation of each of Parent and the Company to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or before the Closing, of all of the conditions set forth below in this Section 9.1(b). Parent and the Company may (in their sole and absolute discretion) waive in writing any or all of these conditions in whole or in part without prior notice.

(i) The representations and warranties of Newco contained herein that are not qualified as to materiality shall be true and correct in all material respects as of the date hereof and as of the Closing Date, with the same effect as if such representations and warranties had been made on and as of the Closing Date and those representations and warranties of Newco contained herein that are qualified as to materiality shall be true and correct in all respects as of the date hereof and as of the Closing Date with the same effect as if such representations and warranties had been made on and as of the Closing Date.

(ii) The Merger shall have become effective pursuant to Section 251 of the General Corporation Law of the State of Delaware.

Section 9.2 Termination Prior to the Closing.

(a) Termination By Mutual Consent. This Agreement may be terminated at any time prior to the Closing upon the mutual written consent of Parent, the Company and Newco.

(b) Automatic Termination. This Agreement shall terminate automatically upon any termination of the Merger Agreement as provided in Article 8 thereof.

(c) Termination by Newco. This Agreement may be terminated at any time prior to the Closing by written notice from Newco to Parent if (i) the Closing shall not have been consummated by the Termination Date; provided, however, that the right to terminate this Agreement pursuant to clause (i) of this Section 9.2(c) shall not be available to Newco if its breach of any provision of this Agreement results in the failure of the Closing to be consummated by the Termination Date, (ii) the adoption by the Company Stockholders (as defined in the Merger Agreement) required by Section 7.1(c) of the Merger Agreement shall not have been obtained at the Company Stockholders Meeting (as defined in the Merger Agreement), after giving effect to all adjournments or postponements thereof, or (iii) any Authority of competent jurisdiction shall have issued an order, decree or ruling or taken any other action permanently enjoining, restraining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement or the Merger Agreement and such order, decree or ruling or other action shall have become final and nonappealable.

(d) Termination by Parent. Provided that neither the Parent nor the Company is in material breach of any of its representations, warranties, covenants or agreements in this Agreement, this Agreement may be terminated at any time prior to the Closing, by written notice from Parent to Newco if there has been a material breach of any representations, warranties, covenants or agreements made by Newco in this Agreement, or any such representations and warranties shall have become materially untrue or incorrect after the execution of this Agreement, such that the conditions set forth in Section 9.1(b)(i) would not be satisfied and such breach or failure to be true and correct is not cured within 30 calendar days following receipt of written notice from Parent to Newco of such breach or failure (or such longer period to which Parent shall agree, during which Newco exercises reasonable best efforts to cure).

(e) Termination by Newco. Provided that Newco is not in material breach of any of its representations, warranties, covenants or agreements in this Agreement, this Agreement may be terminated at any time prior to the Closing, by written notice from Newco to Parent if there has been a material breach of any representations, warranties, covenants or agreements made by Parent or the Company in this Agreement, or any such representations and warranties shall have become materially untrue or incorrect after the execution of this Agreement, such that the conditions set forth in Section 9.1(a)(i) would not be satisfied and such breach or failure to be true and correct is not cured within 30 calendar days following receipt of written notice from Newco to Parent of such breach or failure (or such longer period to which Newco shall agree, during which Parent exercises reasonable best efforts to cure). In addition, provided neither Parent nor the Company is in material breach of any of its

representations, warranties, covenants or agreements in the Merger Agreement, this Agreement may be terminated at any time prior to Closing, by written notice from Newco to Parent if there has been a material breach of any representation, warranty, covenant or agreement made by Instinet in the Merger Agreement, or any such representation and warranty shall have become materially untrue or incorrect after the execution of the Merger Agreement, such that the conditions set forth in Section 9.1(a)(ii) would not be satisfied and such breach or failure to be true and correct is not cured within 30 calendar days following receipt by Parent of written notice from Newco to Parent stating Newco's intention to terminate this Agreement under this Section 9.2(e) (or such longer period during which Instinet exercises reasonable best efforts to cure, but in no event later than 60 days).

Section 9.3 Effect of Termination
. In the event of a termination of this Agreement pursuant to Section 9.2, this Agreement shall become void and of no effect, other than the provisions of Section 6.8 and Article IX without any liability on the part of any party hereto or its Affiliates, directors, officers, stockholders, members, managers, employees, agents and Representatives; provided, however, that nothing herein shall relieve a party from liability for any breach by such party of any of its representations, warranties, covenants or agreements set forth in this Agreement, including wrongful termination of this Agreement.

Section 9.4 Survival
. The representations and warranties made in Article III and the covenants and agreements of the parties in this Agreement which contemplate performance prior to the Closing shall survive the Closing Date and the consummation of the transactions contemplated by this Agreement for six months; provided, that, if notice of an indemnification claim shall have been delivered before the aforementioned time period has elapsed with respect to any breach of any such representation, warranty, covenant or agreement such representation, warranty, covenant or agreement shall survive until such claim is finally resolved. Any covenant or agreement of the parties in this Agreement which contemplates performance at or after the Closing shall survive in accordance with its terms.

Section 9.5 Entire Agreement; Third Party Beneficiaries
. This Agreement (together with the documents and instruments referred to herein, including the Merger Agreement and the Convertible Notes Documents) (a) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, and (b) is not intended to confer upon any person other than the parties hereto and thereto any rights or remedies; provided, however, that (i) the Indemnitees are intended to be third party beneficiaries of the provisions of Articles IV and V and each of such persons shall have the right to enforce such provisions as if they were parties hereto and (ii) Instinet is intended to and shall be a third-party beneficiary with respect to Sections 6.4(b) (with respect to notices regarding the failure to satisfy a condition to be satisfied by it under the Merger Agreement), 6.6, 6.9, 7.5, this Section 9.5, 9.8 (to the extent relating to Instinet's other rights herein), 9.10(a) and 9.13.

Section9.6 Fees and Expenses
. Except as otherwise specifically provided in this Agreement, and subject to the terms of the Convertible Notes Documents, all costs, expenses or other Liabilities incurred by the parties hereto in connection with this Agreement, the Merger Agreement and the transactions contemplated hereunder and thereunder shall be paid by the party hereto or thereto incurring such costs, expenses or other Liabilities.

Section 9.7 No Waiver
. No waiver by any party hereto of any breach of any covenant, agreement, representation or warranty hereunder shall be deemed a waiver of any preceding or succeeding breach of the same. The exercise of any right granted to any party herein shall not operate as a waiver of any default or breach on the part of the other parties hereto. Each and all of the several rights and remedies of any party hereto under this Agreement shall be construed as cumulative and no one right as exclusive of the others.

Section 9.8 Amendments
. No change, modification, alteration, amendment or agreement to discharge in whole or in part, or waiver of, any of the terms and conditions of this Agreement, shall be binding upon any party, unless the same shall be made by a written instrument signed and executed by the authorized representatives of each party, with the same formality as the execution of this Agreement.

Section 9.9 Governing Law
. This Agreement and all claims and Actions arising from or relating to this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware without reference to such State's principles of conflict of laws.

Section 9.10 Notices
. (a) All notices, requests and demands to or upon the respective parties hereto, and all statements and accountings given or required to be given hereunder, shall be made by personal service, or sent by certified mail, return receipt requested, postage prepaid, or by facsimile addressed as follows, or to such other address as may hereafter be designated in writing by the respective parties hereto, and shall be deemed received when delivered to the designated address (and only if confirmed if delivered by facsimile):

	if to Parent or the Company, to
(i)	
	The Nasdaq Stock Market, Inc.
	One Liberty Plaza
	New York, New York 10006
	Attn: Office of General Counsel
	Facsimile: (301) 978-8472
	with a copy to
	Skadden, Arps, Slate, Meagher & Flom LLP
	Four Times Square
	New York, New York 10036
	Attn: Eric J. Friedman, Esq.
	Facsimile: (212) 735-2000
	and
(ii)	if to Newco, to it c/o
	Silver Lake Partners
	2725 Sand Hill Road, Suite 150
	Menlo Park, CA 94025
	Attention: Alan Austin
	Facsimile: (650) 233-8125
	with a copy to
	Ropes & Gray LLP
	45 Rockefeller Plaza
	New York, New York 10111
	Attention: Othon A. Prounis, Esq.
	Facsimile: (212) 841-5725
	and
(iii)	if to Instinet, to
	Instinet Group Incorporated
	3 Times Square
	New York,

New York 10036
Attention: Paul Merolla, Esq.
Facsimile: (646) 223-9017
with a copy to
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Attention: Andrew J. Nussbaum, Esq.
Facsimile: (212) 403-2000

(b) To the extent not otherwise to be provided under the Merger Agreement, each of Parent and the Company agrees to deliver to Newco copies of all notices, requests and demands to or from the parties to the Merger Agreement, and all certificates, statements and accountings delivered or given or required to be delivered or given under the Merger Agreement, each such delivery to be made in accordance with the procedures set forth in Section 9.10(a); provided, however, that if Parent or the Company elects to deliver any such notice, request, demand or certificate, statement or accounting by certified mail as permitted by Section 9.10(a), a copy thereof will also be delivered to Newco by personal service or by confirmed facsimile in accordance with Section 9.10(a).

Section 9.11 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. In this Agreement, unless a contrary intention appears, (a) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Schedule, Exhibit or other subdivision, (b) whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation,” (c) reference to any Article, Section, Schedule or Exhibit is reference to such Article or Section of, or Schedule or Exhibit to, this Agreement, (d) “days” means calendar days and “business day” means any day other than a Saturday or Sunday or day on which banks in New York, New York are required or authorized to close, (e) all defined terms in this Agreement have the defined meaning when used in any certificate or other document made or delivered pursuant to this Agreement, unless otherwise indicated therein, (f) all defined terms in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term, and in each case, vice versa, (g) references in this Agreement to specific Laws (such as the Code, HSR Act and ERISA) or to specific provisions of Laws include all rules and regulations promulgated thereunder, (h) “person” means any natural person or any corporation, association, partnership, joint venture, limited liability, joint stock or other company or trust, (i) references to the “Company and each of its Subsidiaries,” the “Subsidiaries of the Company,” “Instinet and its Subsidiaries” or the “Subsidiaries of Instinet” and other similar phrases shall be deemed to include reference to each of the Subsidiaries of Instinet without giving effect to the transfer of ownership of the Newco Entities at Closing, (j) items listed or included within a definition are so listed or included without duplication and (k) any statute defined or referred to herein or in any agreement or instrument referred to herein means such statute as from time to time amended, modified or supplemented, including by succession of comparable successor statutes. No provisions of this Agreement shall be interpreted or construed against any party hereto solely because such party or its legal representative drafted such provision.

Section 9.12 Counterparts
. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Section 9.13 Specific Performance
. The parties agree that if for any reason any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached, immediate and irreparable harm or injury would be caused for which money damages would not be an adequate remedy. Accordingly, each party and, with respect to the Sections of this Agreement specified in Section 9.5, Instinet agrees that, in addition to any other available remedy at law or equity, each party shall be entitled to an injunction restraining any violation or threatened violation of the provisions of this Agreement without the necessity of posting a bond or other form of security. In the event that any Action should be brought in equity to enforce the provisions of this Agreement, no party will allege, and each party hereby waives the defense, that there is an adequate remedy at law.

Section 9.14 Successors and Assigns
. (a) This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto, but any such assignment by any party hereto shall not relieve such assigning party of any of its obligations or agreements hereunder unless expressly agreed to in writing by each other party hereto in its sole discretion; provided, however, that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other party hereto; provided, further, that nothing contained in this Section 9.14(a) shall prevent Newco, Parent or the Company from assigning (i) all or any part of its rights hereunder by way of collateral assignment to any bank or financing institution or (ii) from transferring or assigning this Agreement or its rights and obligations hereunder to an Affiliate, in either case, so long as such assignment or transfer does not purport to relieve the assignee of its obligations hereunder. Any attempted assignment in violation of the foregoing shall be null and void.

(b) To the extent that Parent or its Subsidiaries, directly or indirectly, whether by transfer of assets, transfer of stock, license or otherwise, transfers, licenses or otherwise disposes of, in one or more transactions, to any other person all or substantially all of the Retained Assets or the Retained Business, Parent will cause the transferee of such Retained Assets or Retained Business to assume specifically the Parent's and the Company's obligations under this Agreement with respect thereto. Such assumption will not relieve Parent or the Company of its obligations in respect thereof. To the extent that Newco or its Subsidiaries, directly or indirectly, whether by transfer of assets, transfer of stock, license or otherwise, transfers, licenses or otherwise disposes of, in one or more transactions, to any other person all or substantially all of the Newco Assets or the Newco Business, Newco will cause the direct transferee of such Newco Assets or Newco Business to assume specifically its obligations under this Agreement with respect thereto. Such assumption will not relieve Newco of its obligations in respect thereof. Newco, on the one hand, and Parent and the Company, on the other hand, agree that such transferee may exercise all of Newco's or Parent's or the Company's rights hereunder, as the case may be, with respect to such Assets or businesses. Notwithstanding anything to the contrary contained in this Section 9.14, in

no event shall any parent company or other Affiliate (other than a Subsidiary) of any such transferee of all or a portion of the Retained Assets, the Retained Business, the Newco Assets or the Newco Business, as the case may be, be required to assume any obligations under this Agreement. For purposes of this Section 9.14(b), "all or substantially all" shall mean 50% or more of the Retained Assets or Retained Business, in the case of a transfer by Parent or its Subsidiaries, or 50% or more of the Newco Assets or Newco Business, in the case of a transfer by Newco or its Subsidiaries. Notwithstanding anything to the contrary contain herein, none of the matters set forth in Section 9.14 of the Disclosure Schedule will be deemed to be dispositions of Newco Assets or Newco Business for purposes of this Section 9.14.

Section 9.15 Severability
. If any term or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner.

Section 9.16 Jurisdiction; Venue; Consent to Service of Process
. (a) Except as otherwise provided in Sections 2.6, 2.7 or 4.9, each of the parties hereto (a) consents to submit itself to the exclusive personal jurisdiction of the Delaware Court of Chancery and any Federal court located in the State of Delaware in the event of any Action arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (c) agrees that it will not bring any Action arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the Delaware Court of Chancery or a Federal court sitting in the State of Delaware. In any Action arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, each party irrevocably and unconditionally waives and agrees not to assert by way of motion, as a defense or otherwise any claims that it is not subject to the jurisdiction of the above courts, that such Action is brought in an inconvenient forum or that the venue of such Action is improper. Each of the parties also hereby agrees that any final and unappealable Judgment against a party in connection with any such Action shall be conclusive and binding on such party and that such award or Judgment may be enforced in any court of competent jurisdiction, either within or outside of the United States. A certified or exemplified copy of such Judgment shall be conclusive evidence of the fact and amount of such Judgment.

(b) Each party hereto irrevocably consents to service of process in the manner provided for the giving of notices pursuant to Section 9.10 of this Agreement. Nothing in this Section 9.16 shall affect the right of any party to serve process in any other manner permitted by applicable Law.

Section 9.17 Waiver of Jury Trial
. To the fullest extent permitted by Law, each of the parties irrevocably waives all right to trial by jury in any Action or counterclaim arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement.

Section 9.18 Company and ECN Entity Obligations
. Notwithstanding anything to the contrary contained in this Agreement, whenever this Agreement requires the Company or, following the Closing, any ECN Entity, to take any action, such requirement shall be deemed to include an undertaking on the part of Parent to cause the Company or such ECN Entity to take such action and a guarantee of performance thereof. In addition, at Closing, Parent shall cause Instinet to execute and deliver to Newco a written instrument of assumption in a form reasonably satisfactory to Newco pursuant to which Instinet (as surviving corporation in the Merger and successor to Norway Acquisition Corp.) acknowledges that it has succeeded to all of the rights and Liabilities of the Company under this Agreement.

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

THE NASDAQ STOCK MARKET, INC.

By:	/s/ Adena Friedman
Name:	Adena Friedman
Title:	Executive Vice President

NORWAY ACQUISITION CORP.

By:	/s/ Ronald Hassen
Name:	Ronald Hassen
Title:	Treasurer

ICELAND ACQUISITION CORP.

By:	/s/ Michael Bingle
Name:	Michael Bingle
Title:	President

Exhibit 4.1

SECURITIES PURCHASE AGREEMENT

dated as of

April 22, 2005

between

THE NASDAQ STOCK MARKET, INC.

and

NORWAY ACQUISITION SPV, LLC

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SCHEDULES AND EXHIBITS

SECURITIES PURCHASE AGREEMENT

SECURITIES PURCHASE AGREEMENT (this "Agreement") dated as of April 22, 2005 among The Nasdaq Stock Market, Inc., a Delaware corporation (together with any successor entity thereto, the "Issuer"), and Norway Acquisition SPV, LLC, a Delaware limited liability company (the "Purchaser").

WHEREAS, immediately following the execution of this Agreement, the Issuer is entering into an Agreement and Plan of Merger in the form previously provided to the Purchaser (as amended, supplemented or otherwise modified from time to time to the extent permitted by this Agreement, the "Merger Agreement"), among the Issuer, Norway Acquisition Corp., a Delaware corporation ("Merger Sub"), and Instinet Group Incorporated, a Delaware corporation ("Instinet"), providing for the merger (the "Merger") of Merger Sub into Instinet; and

WHEREAS, in connection with the entry by the Issuer into the Merger Agreement, the Issuer has authorized the sale and issuance of $205,000,000 of its 3.75% Series A Convertible Notes due 2012 (the "Series A Notes" or the "Notes") pursuant to an indenture in the form previously provided to the Purchaser (as amended, supplemented or otherwise modified from time to time, the "Indenture"), and the Issuer has authorized the issuance of warrants to acquire 2,209,052 shares of common stock (the "Common Stock"), par value $0.01 per share, of the Issuer, in the form previously provided to the Purchaser (as amended, supplemented or otherwise modified from time to time, the "Warrants") (the Notes and the Warrants collectively referred to herein as the "Securities"); and

WHEREAS, in connection with the entry by the Issuer into the Merger Agreement, on the date hereof the Issuer is entering into a Note Amendment Agreement among the Issuer and the H&F Entities (as defined below) in the form previously provided to the Purchaser (as amended, supplemented or otherwise modified from time to time to the extent permitted by this Agreement, the "Note Amendment Agreement"), to amend the terms and conditions of the Issuer's outstanding 4.0% Convertible Subordinated Notes due 2006 held by the H&F Entities to reflect the terms of the 3.75% Series B Convertible Notes due 2012 of the Issuer (the "Series B Notes") pursuant to the Indenture and to issue the Series B Warrants to acquire 2,753,448 shares of Common Stock in the form previously provided to the Purchaser (as amended, supplemented or otherwise modified from time to time, the "Series B Warrants") (the Series B Notes and the Series B Warrants collectively referred to herein as the "Series B Securities"); and

WHEREAS, in connection with the entry of the Purchaser into this Agreement, on the date hereof the Purchaser is obtaining a senior bridge loan (the "Bridge Loan") from certain lenders pursuant to a Secured Term Loan Agreement among the Purchaser, Norway Holdings SPV, LLC, such lenders and JPMorgan Chase Bank, N.A., as administrative agent ("JPM"), in the form previously provided to the Issuer (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"); and

WHEREAS, in consideration of the Purchaser entering into this Agreement and purchasing the Securities, on the date hereof the Issuer is entering into a Guarantee Agreement

among the Issuer, the Purchaser and JPM (as amended, supplemented or otherwise modified from time to time, the "Guarantee"), pursuant to which the Issuer is unconditionally guaranteeing the obligations of the Purchaser relating to the Bridge Loan; and

WHEREAS, in consideration of the Purchaser entering into this Agreement and purchasing the Securities, on the date hereof the Issuer is entering into a Blocked Account Control and Security Agreement in the form previously provided to the Purchaser (as amended, supplemented or otherwise modified from time to time, the "Security Agreement") between the Issuer and JPM, pursuant to which the Issuer will secure the Guarantee with a pledge of the Blocked Account Collateral (as defined in the Security Agreement); and

WHEREAS, the Purchaser desires to purchase the Securities, and the Issuer desires to issue and sell the Securities to the Purchaser, on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual promises hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. (a) The following terms, as used herein, have the following meanings:

"Affiliate" of any Person means any other Person directly or indirectly controlling, controlled by or under common control with such Person. For the purposes of this definition, "control" when used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing. Notwithstanding the foregoing, (i) the Affiliates of the H&F Entities or the SLP Entities will not include any of the portfolio companies in which such Persons have investments and (ii) the Issuer will not be deemed to be an Affiliate of any of the H&F Entities or the SLP Entities.

"Authority" means any domestic (including federal, state or local) or foreign court, arbitrator, administrative, regulatory or other governmental department, agency, official, commission, tribunal, authority or instrumentality, non-government authority or Self-Regulatory Organization.

"Balance Sheet Date" means December 31, 2004.

"Benefit Plan" means each "employee benefit plan" (within the meaning of Section 3(3) of ERISA, including, without limitation, multiemployer plans within the meaning of Section 3(37) of ERISA), and all stock purchase, stock option, severance, employment, change-in-control, fringe benefit, collective bargaining, bonus, incentive, deferred compensation,

employee loan and all other employee benefit plans, agreements, programs, policies or other arrangements, whether or not subject to ERISA (including any funding mechanism therefor now in effect or required in the future as a result of the transaction contemplated by this Agreement or otherwise), whether formal or informal, oral or written, legally binding or not, under which (i) any current or former employee, director or consultant of the Issuer or its Subsidiaries has any present or future right to benefits and which are contributed to, sponsored by or maintained by the Issuer or any of its Subsidiaries or (ii) the Issuer or any of its Subsidiaries has had or has any present or future liability.

"Board of Directors" means the board of directors of the Issuer.

"Charter Amendment" means an amendment to the Issuer's restated certificate of incorporation, in the form attached hereto as Exhibit A with such changes as may be required by the Commission that are reasonably acceptable to the Issuer and the Purchaser, to grant certain voting rights in the Series A Notes and the Series B Notes.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commission" means the Securities and Exchange Commission.

"DGCL" means the Delaware General Corporation Law.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"H&F Entities" means Hellman & Friedman Capital Partners IV, L.P., a California limited partnership, H&F Executive Fund IV, L.P., a California limited partnership, H&F International Partners IV-A, L.P., a California limited partnership and H&F International Partners IV-B, L.P., a California limited partnership, and any of their respective Affiliates.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Intellectual Property" means patents (and any renewals and extensions thereof), patent rights (and any applications therefor), rights of priority and other rights in inventions; trademarks, service marks, trade names and trade dress, and all registrations and applications therefor; copyrights and rights in mask works (and any applications or registrations for the foregoing, and all renewals and extensions thereof) and rights of authorship; industrial design rights, and all registrations and applications therefor; rights in data, collections of data and databases; rights in domain names and domain name reservations; and rights in trade secrets, proprietary information and know-how.

"Lien" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset. For the purposes of this Agreement, any Person will be deemed to own subject to Lien any asset that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

"Material Adverse Effect" means a material adverse effect on the business, assets, condition (financial or otherwise) or results of operations of the Issuer and its Subsidiaries, taken as a whole.

"NASD" means the National Association of Securities Dealers, Inc. and its successors.

"Person" means an individual or a corporation, partnership, association, trust, or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Preferred Stock" means the preferred stock, par value $0.01 per share, of the Issuer.

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of the date hereof, among the Issuer, the H&F Entities, the SLP Entities, Integral Capital Partners VI, L.P. and VAB Investors, LLC, in the form previously provided to the Purchaser, as amended, supplemented or otherwise modified from time to time.

"Regulation D" means Regulation D under the Securities Act.

"Securities Act" means the Securities Act of 1933, as amended.

"Securityholders Agreement" means the Amended and Restated Securityholders Agreement, dated as of the date hereof, among the Issuer, the Purchaser, the H&F Entities and the SLP Entities, as amended, supplemented or otherwise modified from time to time.

"Self-Regulatory Organization" means the NASD, any domestic or foreign securities exchange, commodities exchange, registered securities association, the Municipal Securities Rulemaking Board, National Futures Association, and any other board or body, whether United States or foreign, that regulates brokers, dealers, commodity pool operators, commodity trading advisors or future commission merchants.

"Series B Preferred Stock" means the Preferred Stock designated in the Certificate of Designations, Preferences and Rights of the Series B Preferred Stock dated as of March 8, 2002.

"Series C Cumulative Preferred Stock" means the Preferred Stock designated in the Certificate of Designations, Preferences and Rights of the Series C Cumulative Preferred Stock dated as of November 29, 2004.

"SLP Entities" means Silver Lake Partners TSA, L.P., a Delaware limited partnership, Silver Lake Investors, L.P., a Delaware limited partnership, Silver Lake Partners II TSA, L.P., a Delaware limited partnership and Silver Lake Technology Investors II, L.L.C., a Delaware limited liability company, Integral Capital Partners VI, L.P. and VAB Investors, LLC, and any of their respective Affiliates.

"Subsidiary" means, with respect to any Person, any corporation or other entity of which a majority of the capital stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

"Tax Returns" means returns, reports, information statements and other documentation (including any additional or supporting material) filed or maintained, or required to be filed or maintained, in connection with the calculation, determination, assessment or collection of any Tax and will include any amended returns required as a result of examination adjustments made by the Internal Revenue Service or other Tax authority.

"Taxes" means any and all federal, state, local, foreign and other taxes, levies, fees, imposts, duties and charges of whatever kind (including any interest, penalties or additions to the tax imposed in connection therewith or with respect thereto) including, without limitation, taxes imposed on, or measured by, income, franchise, profits or gross receipts, and also ad valorem, value added, sales, use, service, real or personal property, capital stock, license, payroll, withholding, employment, social security, workers' compensation, unemployment compensation, utility, severance, production, excise, stamp, occupation, premium, windfall profits, transfer and gains taxes and customs duties.

"Transactions" means the transactions contemplated by the Transaction Documents.

"Transaction Documents" means this Agreement, the Note Amendment Agreement, the Indenture, the Loan Agreement, the Security Agreement, the Guarantee, the Registration Rights Agreement and the Securityholders Agreement.

"VAB Acquisition" means the transactions contemplated by the VAB Agreement.

"VAB Agreement" means the Transaction Agreement in the form previously provided to the Issuer, as amended, supplemented or otherwise modified from time to time to the extent permitted by the Note Amendment Agreement, dated as of the date hereof, among the Issuer, Norway Acquisition Corp. and Iceland Acquisition Corp., providing for the acquisition of certain assets and liabilities by the Company from Newco.

(b) Each of the following terms is defined in the Section set forth opposite such term:

Term	Section
Agreement	Preamble
Bridge Loan	Recitals
Common Stock	Recitals
Commitment Letters	3.10
Closing	2.03(a)
Closing Date	2.03(a)

Damages	9.04(a)
Financial Statements	3.08(b)
Fundamental Representation	9.03
GAAP	3.08(b)
Guarantee	Recitals
Holdings	4.06
Holdings Commitment	4.06
Indemnified Person	9.04(c)
Indemnifying Person	9.04(c)
Indenture	Recitals
Instinet	Recitals
Issuer	Preamble
Issuer Securities	3.06(b)
JPM	Recitals
Loan Agreement	Recitals
Merger	Recitals
Merger Agreement	Recitals
Merger Closing	5.01(a)
Merger Sub	Recitals
Merger Termination	5.01(a)
Notes	Recitals
Note Amendment Agreement	Recitals
Proceeds	2.03(b)
Purchaser	Preamble
SEC Reports	3.08(a)
Securities	Recitals
Security Agreement	Recitals
Series A Notes	Recitals
Series B Notes	Recitals
Series B Securities	Recitals
Series B Warrants	Recitals
SLP Board Designee	5.03
Sponsor Commitments	4.06
Subsidiary Securities	3.07(b)
Warrants	Recitals

ARTICLE II

PURCHASE AND SALE OF SECURITIES

Section 2.01. Commitment to Purchase. Upon the basis of the representations and warranties contained herein of the Purchaser, but subject to the terms and conditions hereinafter stated, the Issuer agrees to issue and sell to the Purchaser, and the Purchaser, upon the basis of the representations and warranties herein contained of the Issuer but subject to the terms and conditions hereinafter stated, agrees to purchase from the Issuer the Securities in the aggregate purchase price of $205,000,000.

Section 2.02. Restrictive Legends. The Notes purchased pursuant to the commitments set forth in Section 2.01, when issued, will bear a legend as set forth in the Indenture. The Warrants purchased pursuant to the commitments set forth in Section 2.01, when issued, will bear a legend as set forth in the form of Warrant.

Section 2.03. The Closing. (a) The purchase and sale of the Securities will take place at a closing (the "Closing") at 9:00 a.m. New York City time at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 4 Times Square, New York, New York on the date hereof, or at such other time or location as the Issuer and the Purchaser may agree. The date and time of Closing are referred to herein as the "Closing Date".

(b) At the Closing, the Purchaser will deliver to the Issuer, by wire transfer to the Blocked Account (as defined in the Security Agreement), an amount, in immediately available funds, equal to the aggregate purchase price (the "Proceeds") of the Securities being purchased by the Purchaser.

(c) At the Closing, the Issuer will deliver to the Purchaser, against payment of the Purchaser's purchase price pursuant to Section 2.03(b), one or more certificates in the denominations as the Purchaser may request evidencing the Securities in definitive form and registered in the name of the Purchaser.

Section 2.04. Use of Proceeds. The Proceeds will initially be placed into the Blocked Account (as defined in the Security Agreement) and pledged by the Issuer to JPM pursuant to the Security Agreement. Thereafter, the Proceeds will be used by the Issuer either (i) to finance the Merger or (ii) to redeem the Notes.

Section 2.05. Purchase Price Allocation. The Issuer and the Purchaser agree that for United States federal income tax purposes the aggregate issue price of the Notes and the Warrants is $200,520,750 and $4,479,250, respectively, and that such allocation of the purchase price shall be binding on all holders of the Notes and the Warrants.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE ISSUER

The Issuer represents and warrants to the Purchaser and its permitted assigns as follows:

Section 3.01. Corporate Existence and Power. The Issuer is a corporation duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all corporate powers and all material governmental licenses, authorizations, permits, consents and approvals required to carry on its business as now conducted. The Issuer is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified would not, individually or in the aggregate, have a Material Adverse Effect.

Section 3.02. Corporate Authorization. (a) The execution, delivery and performance by the Issuer of this Agreement, the Notes, the Warrants and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby are within the Issuer's corporate powers and have been duly authorized by all necessary corporate action on the part of the Issuer.

(b) Each of this Agreement and the other Transaction Documents to which the Issuer is a party has been duly executed and delivered by the Issuer and assuming due authorization, execution and delivery by the other parties to such agreements constitutes a legal, valid and binding agreement of the Issuer enforceable against the Issuer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws relating to or affecting creditors generally or by general equity principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) Each of the Notes and the Warrants will be duly executed and delivered by the Issuer and, when issued and delivered pursuant to this Agreement and, in the case of the Notes, the Indenture, will constitute legal, valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws relating to or affecting creditors generally or by general equity principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(d) Each of the Notes and the Warrants will, when issued, be validly issued, free and clear of any Lien and free of any other restriction or limitation (including any restriction on the right to vote, sell or otherwise dispose of the Notes or the Warrants) except as provided under applicable securities laws or as set forth in the Security Agreement, the Indenture, the Registration Rights Agreement, the Securityholders Agreement or the Issuer's restated certificate of incorporation and bylaws. The shares of Common Stock issuable upon conversion of the Notes or exercise of the Warrants will, when issued, be validly issued, fully paid and nonassessable, free and clear of any Lien and free of any other restriction or limitation (including any restriction on the right to vote, sell or otherwise dispose of such shares of Common Stock) except as provided under applicable securities laws or as set forth in the Indenture, the Registration Rights Agreement, the Securityholders Agreement or the Issuer's restated certificate of incorporation and bylaws.

(e) The Issuer has received the consent of the holder of the Issuer's Series C Cumulative Preferred Stock permitting (i) the incurrence by the Issuer and its Subsidiaries of the senior debt financing contemplated by the Commitment Letters (as defined below) and (ii) the issuance by the Issuer of the Securities hereunder and the Series B Securities pursuant to the Note Amendment Agreement.

(f) The Board of Directors has authorized the officers of the Issuer to seek approval of the Charter Amendment by the Commission and the stockholders of the Issuer.

Section 3.03. Governmental Authorization. The execution, delivery and performance by the Issuer of this Agreement, the Notes, the Warrants and the other Transaction

Documents and the consummation of the transactions contemplated hereby and thereby require no action by or in respect of, or filing with, any Authority other than (i) compliance with any applicable requirements of the HSR Act; (ii) the Commission permitting the Charter Amendment to take effect under Section 19 of the Securities Act; and (iii) such other actions or filings which have been taken or made prior to the date hereof.

Section 3.04. Noncontravention. The execution, delivery and performance by the Issuer of this Agreement, the Notes, the Warrants and the other Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate the certificate of incorporation or bylaws of the Issuer or any of its Subsidiaries; (ii) assuming compliance with the matters referred to in Section 3.03, violate any applicable law, rule, regulation, judgment, injunction, order or decree; (iii) require any consent or other action by any Person under, constitute a default under, or give rise to any right of termination, cancellation or acceleration of any right or obligation of the Issuer or any of its Subsidiaries or to a loss of any benefit to which the Issuer or any of its Subsidiaries is entitled under any provision of any material agreement or other instrument binding upon the Issuer or any of its Subsidiaries; or (iv) result in the creation or imposition of any Lien on any asset of the Issuer or any of its Subsidiaries except in the cases of clauses (ii), (iii) and (iv) above for such conflicts, breaches, violations or defaults that would not have a Material Adverse Effect.

Section 3.05. Section 203 of the DGCL. Prior to the execution of this Agreement, the Board of Directors has taken all action necessary so that the restrictions on business combinations contained in Section 203 of the DGCL will not apply with respect to or as a result of this Agreement, the Transactions and/or the distribution by the Purchaser of the Notes and the Warrants to the H&F Entities and the SLP Entities without any further action on the part of the stockholders of the Issuer or the Board of Directors. To the Issuer's knowledge, no other state takeover statute is applicable to the Transactions.

Section 3.06. Capitalization. (a) The authorized capital stock of the Issuer consists of (i) 300,000,000 shares of Common Stock and (ii) 30,000,000 shares of Preferred Stock. As of March 31, 2005, there were (i) 79,453,556 shares of Common Stock outstanding, all of which were validly issued, fully paid and nonassessable and were issued free of preemptive rights; (ii) one share of Series B Preferred Stock authorized and outstanding; (iii) 1,338,402 shares of Series C Cumulative Preferred Stock authorized and outstanding; (iv) 12,000,000 shares of Common Stock reserved for issuance pursuant to the H&F Entities' 4.0% Convertible Subordinated Notes due 2006; (v) 26,500,000 shares of Common Stock reserved for issuance pursuant to the Issuer's equity incentive plan and employee stock purchase plan; and (vi) 16,442,817 shares of Common Stock (including shares underlying options to purchase shares of Common Stock) granted under the Issuer's equity incentive plan.

(b) Except as set forth in Section 3.06(a) and as contemplated by this Agreement, there are no outstanding (i) shares of capital stock or voting securities of the Issuer, (ii) securities of the Issuer convertible into or exchangeable for shares of capital stock or voting securities of the Issuer or (iii) options or other rights to acquire from the Issuer, or any other obligation of the Issuer to issue, any capital stock, voting securities or securities convertible into or exchangeable for capital stock or voting securities of the Issuer (the items in clauses 3.06(b)(i), 3.06(b)(ii) and 3.06(b)(iii) being referred to collectively as the "Issuer Securities"). Except as set forth in Schedule 3.06(b), there are no outstanding obligations of the Issuer or any of its Subsidiaries to repurchase, redeem or otherwise acquire any Issuer Securities.

Section 3.07. Subsidiaries. (a) Each Subsidiary of the Issuer is a corporation duly incorporated, validly existing and in good standing (to the extent the jurisdiction recognizes the concept) under the laws of its jurisdiction of incorporation, has all corporate powers and all material governmental licenses, authorizations, permits, consents and approvals required to carry on its business as now conducted. Each Subsidiary of the Issuer is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified would not, individually or in the aggregate, have a Material Adverse Effect.

(b) Except as disclosed in the SEC Reports (as defined below), all of the outstanding capital stock or other equity securities of each Subsidiary of the Issuer (except for any directors' qualifying shares) is owned by the Issuer, directly or indirectly, free and clear of any Lien and free of any other limitation or restriction (including any restriction on the right to vote, sell or otherwise dispose of such capital stock or other voting securities). There are no outstanding (i) securities of the Issuer or any Subsidiary of the Issuer convertible into or exchangeable for shares of capital stock or voting securities of any Subsidiary of the Issuer or (ii) options or other rights to acquire from the Issuer or any Subsidiary of the Issuer, or other obligation of the Issuer or any Subsidiary of the Issuer to issue, any capital stock, voting securities or securities convertible into or exchangeable for capital stock or voting securities of any Subsidiary of the Issuer (the items in clauses 3.07(b)(i) and 3.07(b)(ii) being referred to collectively as the "Subsidiary Securities"). There are no outstanding obligations of the Issuer or any Subsidiary of the Issuer to repurchase, redeem or otherwise acquire any outstanding Subsidiary Securities.

(c) Except as set forth in the SEC Reports, the Issuer has no ownership interest or other investment convertible into or exchangeable for an ownership interest in any Person.

Section 3.08. SEC Reports; Financial Statements. (a) The Issuer has timely filed all required registration statements, prospectuses, reports, schedules, forms, statements and other documents required to be filed by it with the Commission since January 1, 2003 (collectively, the "SEC Reports"). No Subsidiary of the Issuer is required to file any form, report, registration statement, prospectus or other document with the Commission. The information contained or incorporated by reference in the SEC Reports was true and correct in all material respects as of the respective dates of the filing thereof with the Commission (and if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing); and, as of such respective dates, the SEC Reports did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. All of the SEC Reports, as of their respective dates, complied as to form in all material respects with the applicable requirements of the Securities Act and the Exchange Act and the rules and regulations promulgated thereunder.

(b) The audited financial statements (the "Financial Statements") of the Issuer included in the Issuer's Annual Report on Form 10-K for the year ended December 31, 2004,

together with the related notes and schedules, present fairly in all material respects the consolidated financial position of the Issuer and its Subsidiaries and the results of its operations and cash flows for the periods specified and have been prepared in compliance with the Exchange Act and in accordance with generally accepted accounting principles applied on a consistent basis ("GAAP") during the periods involved.

(c) Except for liabilities (i) set forth or reflected in the Financial Statements (or referred to in the notes thereto) or (ii) incurred in the ordinary course of business consistent with past practice, since the Balance Sheet Date, neither the Issuer nor any of its Subsidiaries has (x) any liabilities of a nature required to be set forth or reflected in a balance sheet prepared in accordance with GAAP or (y) any other material liabilities.

(d) Since January 1, 2003, the Issuer's principal executive officer and its principal financial officer have (x) devised and maintained a system of internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and preparation of financial statements in accordance with GAAP, and has evaluated such system on a quarterly basis and concluded that it is effective and (y) disclosed to the Issuer's management, auditors and the audit committee of the Board of Directors (i) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the Issuer's or any of its Subsidiaries' ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of the Issuer and the Issuer has provided to the Purchaser copies of any written materials relating to the foregoing. The Issuer has established and maintains disclosure controls and procedures (as such term is defined in Rule 13a-14 under the Exchange Act); such disclosure controls and procedures are designed to ensure that material information relating to the Issuer and its Subsidiaries required to be included in the Issuer's periodic reports under the Exchange Act, is made known to the Issuer's principal executive officer and its principal financial officer by others within those entities, and, to the knowledge of the Issuer, such disclosure controls and procedures are effective in timely alerting the Issuer's principal executive officer and its principal financial officer to such material information required to be included in the Issuer's periodic reports required under the Exchange Act. Except as disclosed in the SEC Reports, there are no outstanding loans made by the Issuer or any of its Subsidiaries to any executive officer (as defined in Rule 3b-7 under the Exchange Act) or director of the Issuer. Since the enactment of the Sarbanes-Oxley Act of 2002, neither the Issuer nor any of its Subsidiaries has made any loans to any executive officer (as defined in Rule 3b-7 under the Exchange Act) or director of the Issuer or any of its Subsidiaries.

Section 3.09. Absence of Certain Changes. Except as set forth in the SEC Reports or on Schedule 3.09 and for the transactions contemplated by this Agreement, the Note Amendment Agreement, the Merger Agreement, the VAB Agreement, the Guarantee and the Commitment Letters (as defined below), (i) since the Balance Sheet Date, the business of the Issuer and its Subsidiaries has been conducted in the ordinary course of business consistent with past practices and (ii) there has not been:

(a) any event, occurrence or facts which, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect;

(b) any declaration, setting aside or payment of any dividend or other distribution with respect to any shares of capital stock of the Issuer, or any repurchase, redemption or other acquisition by the Issuer or any of its Subsidiaries of any outstanding shares of capital stock or other securities of the Issuer or any of its Subsidiaries;

(c) any incurrence, assumption or guarantee by the Issuer or any of its Subsidiaries of any indebtedness for borrowed money other than in the ordinary course of business and in amounts and on terms consistent with past practices; or

(d) any change in any method of accounting or accounting practice by the Issuer or any of its Subsidiaries except for any such change after the date hereof required by reason of a concurrent change in GAAP.

Section 3.10. Commitment Letters. On the date hereof, the Issuer has entered into the Commitment Letters in the form previously provided to the Purchaser (as amended, supplemented or otherwise modified from time to time to the extent permitted by this Agreement, the "Commitment Letters") with JPMorgan Chase Bank, N.A., J.P. Morgan Securities Inc. and Merrill Lynch Capital Corporation and Merrill Lynch, Pierce, Fenner & Smith Incorporated to provide senior financing in connection with the Merger. The Issuer's entry into and execution of each of the Commitment Letters was duly authorized by all necessary corporate action on the part of the Issuer.

Section 3.11. Legal Proceedings; Violations of Law. There is no claim, action, suit, proceeding or investigation, whether civil, criminal, administrative, regulatory or investigative pending against or, to the Issuer's knowledge, threatened against or affecting, the Issuer, its Subsidiaries or any of their respective properties before any Authority which has had or would reasonably be expected to have a Material Adverse Effect. Neither the Issuer nor its Subsidiaries is in violation of, and the Issuer and its Subsidiaries have not received any notices of violations with respect to, any laws, statutes, ordinances, rules or regulations of any Authority, except for violations which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

Section 3.12. Intellectual Property. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (i) the Issuer and its Subsidiaries own, or possess sufficient rights to use, all Intellectual Property necessary for the conduct of its business as currently conducted; (ii) to the knowledge of the Issuer, the use by the Issuer and its Subsidiaries of any Intellectual Property used in the conduct of the Issuer's and its Subsidiaries' businesses as currently conducted does not infringe on or otherwise violate the rights of any Person; (iii) the use of any licensed Intellectual Property by the Issuer or its Subsidiaries is in accordance with applicable licenses pursuant to which the Issuer or such Subsidiary acquired the right to use such Intellectual Property; and (iv) to the knowledge of the Issuer, no Person is challenging, infringing on or otherwise violating any right of the Issuer or any of its Subsidiaries with respect to any Intellectual Property owned by and/or licensed to the Issuer or its Subsidiaries.

Section 3.13. Employee Benefits. With respect to each Benefit Plan, no material liability has been incurred and no condition or circumstances exist that would subject the Issuer

or its Subsidiaries to any material tax, fine, Lien, penalty or other liability imposed by ERISA, the Code or other applicable laws, rules and regulations. The Issuer and its Subsidiaries are in compliance with all federal, state, local and foreign requirements regarding employment, except for any failures to comply that are not reasonably likely, individually or in the aggregate, to have a Material Adverse Effect. As of the date hereof, there is no material labor dispute, strike or work stoppage against the Issuer or any of its Subsidiaries pending or, to the knowledge of the Issuer, threatened which may interfere with the business activities of the Issuer or any of its Subsidiaries, except where such dispute, strike or work stoppage is not reasonably likely, individually or in the aggregate, to have a Material Adverse Effect. Neither the Issuer nor any of its Subsidiaries has any material collective bargaining agreements relating to its employees. There is no material labor union organizing activity pending or, to the knowledge of the Issuer, threatened with respect to the Issuer or any of its Subsidiaries.

Section 3.14. Taxes. Except as would not reasonably be expected to have a Material Adverse Effect: (a) all Tax Returns required to be filed by, or on behalf of, Issuer or any of its Subsidiaries have been timely filed, or will be timely filed, in accordance with all applicable laws, and all such Tax Returns are, or will be at the time of filing, complete and correct in all material respects; (b) the Issuer and each of its Subsidiaries has timely paid (or has had paid on its behalf) in full all Taxes due and payable (whether or not shown on such Tax Returns), or, where payment is not yet due, has made adequate provision for all Taxes in the Financial Statements of the Issuer in accordance with GAAP; and (c) there are no Liens with respect to Taxes upon any of the assets or properties of either Issuer or its Subsidiaries, other than with respect to Taxes not yet due and payable.

Section 3.15. No Brokers or Finders. Except for Thomas Weisel Partners LLC, the fees and expenses which will be paid by the Issuer, neither the Issuer nor its Subsidiaries has incurred, or will incur, directly or indirectly, any liability for any brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement, the Notes or the Warrants.

Section 3.16. Issuer is Not an "Investment Company". The Issuer has been advised of the rules and requirements under the Investment Company Act of 1940, as amended. The Issuer is not, and immediately after receipt of payment for the Securities will not be, an "investment company" or an entity "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

Section 3.17. General Solicitation; No Integration. Neither the Issuer nor any other person or entity authorized by the Issuer to act on its behalf has engaged in a general solicitation or general advertising (within the meaning of Regulation D of the Securities Act) of investors with respect to offers or sales of the Securities. The Issuer has not, directly or indirectly, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of any security (as defined in the Securities Act) which, to its knowledge, is or will be integrated with the Securities sold pursuant to this Agreement.

Section 3.18. Issuer Representations in the Merger Agreement. Each of the representations and warranties of the Issuer contained in the Merger Agreement is true and correct in all material respects.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser hereby represents and warrants to the Issuer as follows:

Section 4.01. Private Placement. (a) The Purchaser understands that the offering and sale of the Securities is intended to be exempt from registration under the Securities Act pursuant to Section 4(2) of the Securities Act.

(b) The Securities to be acquired by the Purchaser pursuant to this Agreement are being acquired for its own account and without a view to the resale or distribution of such Securities or any interest therein other than in a transaction exempt from registration under the Securities Act.

(c) The Purchaser is an "accredited investor" as such term is defined in Regulation D.

(d) The Purchaser has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Securities and the Purchaser is capable of bearing the economic risks of such investment, including a complete loss of its investment in the Securities.

(e) The Purchaser has been given the opportunity to ask questions of, and receive answers from, the Issuer concerning the terms and conditions of the Securities and other related matters. The Purchaser further represents and warrants that the Issuer has made available to the Purchaser or its agents all documents and information relating to an investment in the Securities requested by or on behalf of the Purchaser. In evaluating the suitability of an investment in the Securities, the Purchaser has not relied upon any other representations or other information (whether oral or written) made by or on behalf of the Issuer other than as set forth in this Agreement.

Section 4.02. Corporate Existence and Power. The Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has all limited liability company power to carry on its business as now conducted.

Section 4.03. Authority; No Other Action. (a) The execution, delivery and performance of this Agreement and the other Transaction Documents to which the Purchaser is a party are within the Purchaser's powers and have been duly authorized on its part by all requisite limited liability company action and assuming due authorization, execution and delivery by the other parties to such agreements, each agreement constitutes a legal, valid and binding agreement of the Purchaser enforceable against the Purchaser in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws relating to or affecting creditors generally or by general equity principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(b) No action by or in respect of, or filing with, any Authority is required for the execution, delivery and performance by the Purchaser of this Agreement and the other Transaction Documents to which it is a party other than compliance with the applicable requirements of the HSR Act.

Section 4.04. Noncontravention. The execution, delivery and performance by the Purchaser of this Agreement and the other Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate the organizational documents of the Purchaser; (ii) violate any applicable law, rule, regulation, judgment, injunction, order or decree; or (iii) require any consent or other action by any other Person.

Section 4.05. Limited Purpose of the Purchaser. The Purchaser is a newly-formed special purpose entity which has been formed solely for the purposes of this Agreement, the Notes, the Warrants and the other Transaction Documents to which it is a party. The Purchaser is not a party to any agreements other than this Agreement, the Notes, the Warrants and the other Transaction Documents to which it is a party and has not conducted any activities other than in connection with the organization of the Purchaser, the negotiation and execution of this Agreement, the Notes, the Warrants and the other Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby.

Section 4.06. Sponsor Commitments. As of the date hereof, the Purchaser has entered into a Subscription Agreement with Norway Holdings SPV, LLC ("Holdings") in the form previously provided to the Issuer (the "Holdings Commitment") and Holdings has entered into a Subscription Agreement with the H&F Entities set forth on Schedule 4.06 and the SLP Entities set forth on Schedule 4.06 in the form previously provided to the Issuer (collectively with the Holdings Commitments, the "Sponsor Commitments").

Section 4.07. Binding Effect. Each of this Agreement and the other Transaction Documents to which the Purchaser is a party has been duly executed by the Purchaser and constitutes a legal, valid and binding agreement of the Purchaser.

Section 4.08. No Brokers or Finders. The Purchaser has not incurred, and will not incur, directly or indirectly, any liability for any brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement or the Transactions.

ARTICLE V
COVENANTS OF THE ISSUER

The Issuer agrees with the Purchaser that:

Section 5.01. Notices of Certain Events. (a) From the date hereof until the earlier of (i) the Closing Date (as defined in the Merger Agreement, the "Merger Closing") and (ii) the Termination Date (as defined in the Merger Agreement, the "Merger Termination"), the Issuer will promptly notify the Purchaser of:

(i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(ii) any notice or other communication from any Authority in connection with the transactions contemplated by this Agreement; and

(iii) any claims, actions, suits, proceedings or investigations, whether civil, criminal, administrative, regulatory or investigative, commenced or, to its knowledge, threatened against, relating to or involving or otherwise affecting the Issuer or any of its Subsidiaries or that relate to the transactions contemplated by this Agreement, the other Transaction Documents, the Merger Agreement and/or the VAB Agreement that, if determined or resolved adversely in accordance with the plaintiff's demands, would reasonably be expected to have a Material Adverse Effect.

(b) At least twelve (12) business days prior to the Merger Closing, the Issuer will provide the Purchaser with written notice specifying the Closing Date (as defined in the Merger Agreement).

Section 5.02. Voting Rights; Charter Amendment. As soon as practicable, but in no event earlier than three (3) months after the date hereof, the Issuer will take all action necessary in accordance with its restated certificate of incorporation, bylaws and applicable law and regulation to convene a meeting of the stockholders of the Issuer for the purpose of approving the Charter Amendment. The Issuer will use its reasonable best efforts to obtain from its stockholders a vote approving the Charter Amendment, and the Board of Directors will recommend that the stockholders of the Issuer approve the Charter Amendment.

Section 5.03. SLP Board Designee. On the Closing Date, the Issuer will expand its Board of Directors by one member and Silver Lake Partners II TSA, L.P. will have the right to designate one nominee (the "SLP Board Designee") to the Board of Directors, who will be reasonably acceptable to the Issuer (it being acknowledged that Glenn H. Hutchins is reasonably acceptable to the Issuer). The Company will cause the SLP Board Designee to become a member of the Board of Directors on the Closing Date, subject to the execution of a letter by the SLP Board Designee in the form attached hereto as Exhibit C.

Section 5.04. Guarantee and Block Account. Prior to the Closing, the Issuer will execute the Guarantee and the Security Agreement. Simultaneous with the Closing, the Issuer will deposit, or cause to be deposited, the Blocked Account Collateral (as defined in the Security Agreement) in the Blocked Account (as defined in the Security Agreement).

Section 5.05. Compliance with Merger Agreement. The Issuer will comply in all material respects with all of its obligations under the Merger Agreement and, subject to the terms of the Merger Agreement and this Agreement, will use its reasonable best efforts to consummate the Merger and the other transactions contemplated thereby. The Issuer will not amend, supplement or otherwise modify, grant a consent under or waive any provision of the Merger Agreement without obtaining the prior written consent of the

Purchaser, which consent shall not be unreasonably withheld or delayed. Without the prior written consent of the Purchaser, which shall not be unreasonably withheld or delayed, the Issuer will not consummate the Merger unless all of the Issuer's conditions to closing the Merger under the Merger Agreement have been satisfied without waiver.

Section 5.06. Senior Financing. The Issuer will comply in all material respects with all of its obligations under the Commitment Letters. Without the prior written consent of the Purchaser, the Issuer will not amend, supplement or otherwise modify or waive any provision of the Commitment Letters (other than pursuant to any market flex provisions of the fee letter thereto) in any manner that is materially adverse to the Issuer (including any modifications of the economic or other terms of the senior secured debt contemplated thereby that is materially adverse to the Issuer). The Issuer will finance the Merger solely with the proceeds of the issuance of the Securities pursuant to this Agreement and the incurrence of senior secured indebtedness in an amount not to exceed that contemplated by the Commitment Letters and having economic and other terms that are not materially less favorable to the Issuer than those contemplated by the Commitment Letters.

Section 5.07. Note Amendment Agreement. The Issuer will not amend, supplement or otherwise modify or waive any provision of the Note Amendment Agreement without obtaining the prior written consent of the Purchaser, which consent shall not be unreasonably withheld or delayed.

ARTICLE VI

COVENANTS OF THE PURCHASER

The Purchaser agrees with the Issuer that:

Section 6.01. Confidentiality. The Purchaser and its Affiliates will hold, and will use their reasonable best efforts to cause their respective officers, directors, members, employees, accountants, counsel, consultants, advisors and agents to hold, in confidence, unless compelled to disclose by judicial or administrative process or by other requirements of law, all confidential documents and information concerning the Issuer or any of its Subsidiaries furnished to the Purchaser or its Affiliates in connection with this Agreement or the Transactions, except to the extent that such information can be shown to have been (i) previously known on a nonconfidential basis by the Purchaser, (ii) in the public domain through no fault of the Purchaser or (iii) acquired by the Purchaser from sources other than the Issuer or any of its Subsidiaries which sources, to the Purchaser's knowledge, lawfully acquired such information; provided that the Purchaser may disclose such information to its officers, directors, members, employees, accountants, counsel, consultants, advisors and agents in connection with the transactions contemplated by this Agreement so long as such Persons are informed by the Purchaser of the confidential nature of such information and are directed by the Purchaser to treat such information confidentially. The Purchaser will be responsible for the breach by any such Persons of this Section 6.01. If this Agreement is terminated, the Purchaser and its Affiliates will cause, and will use their reasonable best efforts to cause, each of their respective officers, directors, members, employees, accountants, counsel, consultants, advisors and agents to, destroy or deliver to the Issuer, upon request, all documents and other materials, and all copies thereof, obtained by the Purchaser or its Affiliates or on their behalf from the Issuer or

any of its Subsidiaries in connection with this Agreement that are subject to such confidence; provided, that the obligation to destroy or deliver to the Issuer shall not apply to the extent otherwise required by (A) any law or regulation, (B) any internal document retention policy or procedure or (C) any internal policy or procedure relating to the backup storage of electronic data, provided that the confidentiality obligations under this Section 6.01 will continue to apply to any information retained accordingly.

Section 6.02. Limited Operations of the Purchaser. From the date hereof until the repayment in full of the Bridge Loan, the Purchaser will not enter into any transactions or agreements or engage in any activities other than those directly related to the transactions contemplated by this Agreement, the Notes, the Warrants and the other Transaction Documents.

Section 6.03. Sponsor Commitments. The Purchaser will not amend, supplement or otherwise modify or waive any provision of the Sponsor Commitments without obtaining the prior written consent of the Issuer.

Section 6.04. Guarantee Reimbursement; No Subrogation.

(a) The Purchaser will promptly reimburse the Issuer on demand for any payments made by the Issuer to JPM pursuant to and in accordance with the terms of the Guarantee or the Security Agreement on or after the principal amount of the Bridge Loan becoming due on a day other than the Series A Redemption Date (as defined in the Indenture) in respect of (a) the principal amount of the Bridge Loan and (b) any interest accruing on the Bridge Loan after the principal amount of the Bridge Loan becomes due, provided that the Purchaser will not be obligated to reimburse the Issuer under this Section 6.04(a) if the Bridge Loan becomes due as a result of (x) Issuer's breach of its obligations under the Transaction Documents or any related agreement or (y) an event of default relating to the Issuer or any of its Subsidiaries.

(b) Notwithstanding anything to the contrary in the Guarantee or the Security Agreement, if the Issuer makes any payment to JPM pursuant to and in accordance with the terms of the Guarantee or the Security Agreement (including any payment from the Blocked Account (as defined in the Security Agreement)), the Issuer hereby irrevocably waives any and all rights against the Purchaser or Holdings arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise; provided that such waiver shall not apply if the Purchaser is otherwise required to reimburse the Issuer pursuant to Section 6.04(a).

ARTICLE VII

COVENANTS OF THE ISSUER AND THE PURCHASER

The Issuer and the Purchaser agree that:

Section 7.01. Reasonable Best Efforts; Further Assurances. Subject to the terms and conditions of this Agreement, the Issuer and the Purchaser will use their reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things

necessary or desirable under applicable laws and regulations to consummate the Transactions. The Issuer and the Purchaser agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously this Agreement or the Transactions.

Section 7.02. Certain Filings. (a) The Issuers and the Purchaser will cooperate with one another (i) in determining whether any action by or in respect of, or filing with, any Authority is required, or any actions, consents, approvals or waivers are required to be obtained from parties to any material contracts, in connection with the consummation of the Transactions and (ii) in taking such actions or making any such filings, furnishing information required in connection therewith and seeking timely to obtain any such actions, consents, approvals or waivers.

(b) The Issuer and the Purchaser acknowledge and agree that one or more filings under the HSR Act will be necessary in connection with the issuance of Common Stock upon conversion or exercise of the Securities and/or the adoption of the Charter Amendment. Promptly upon the request of the Issuer or any holder of the Securities, to the extent a filing is required under the HSR Act in connection with a proposed conversion of the Notes or exercise of the Warrants by such holder or the Issuer, the Issuer and each Holder of such securities (or its ultimate parent entity) will file with the proper authorities all forms and other documents necessary to be filed pursuant to the HSR Act, and the regulations promulgated thereunder, in connection with the issuance of Common Stock upon conversion of the Notes or exercise of the Warrants and/or the adoption of the Charter Amendment and will cooperate with each other in promptly producing such additional information as those authorities may reasonably require to allow early termination of the notice period provided by the HSR Act or as otherwise necessary to comply with statutory requirements of the Federal Trade Commission or the Department of Justice. The Issuer will pay all filing fees associated with the filing of the HSR Act notifications on behalf of itself, the Purchaser and any H&F Entities or SLP Entities.

Section 7.03. Public Announcements. The parties agree to consult with each other before issuing any press release or making any public statement with respect to this Agreement or the transactions contemplated hereby and, except for any press releases and public statements the making of which may be required by applicable law or any listing agreement with any national securities exchange or The Nasdaq Stock Market, will not issue any such press release or make any such public statement prior to such consultation.

ARTICLE VIII

CONDITIONS PRECEDENT TO CLOSING

Section 8.01. Conditions to Each Party's Obligations. The obligations of each party hereto to consummate the transactions contemplated by Article II to occur at the Closing are subject to the satisfaction, at or prior to the Closing Date, of the following conditions:

(a) The purchase and sale of the Securities will not be prohibited by any applicable law, court order or governmental regulation; and

(b) The Merger Agreement and the VAB Agreement will have been entered into by the parties thereto.

Section 8.02. Conditions to the Purchaser's Obligations. The obligation of the Purchaser to purchase the Securities to be purchased by it hereunder is subject to the satisfaction, at or prior to the Closing Date, of the following conditions:

(a) The Purchaser will have received duly executed certificates representing the Securities being purchased by the Purchaser hereunder against payment for Securities in accordance with Article II;

(b) The Purchaser will have received all documents reasonably requested by it relating to the existence of the Issuer, the corporate authority for entering into, and the validity of, this Agreement, the Notes, the Warrants and the other Transaction Documents, all in form and substance reasonably satisfactory to it;

(c) The SLP Board Designee will have been appointed to the Board of Directors effective as of the Closing;

(d) The Purchaser will have received from (i) Edward Knight, Esq., the Issuer's general counsel, an opinion in the form attached hereto as Exhibit D-1 and (ii) Skadden, Arps, Slate, Meagher & Flom LLP, the Issuer's counsel, an opinion in the form attached hereto as Exhibit D-2; and

(e) Each of the Transaction Documents to which the Issuer is a party will have been executed by the Issuer with a copy thereof delivered to the Purchaser.

Section 8.03. Conditions to Issuer's Obligations. The obligations of the Issuer to issue and sell the Securities to the Purchaser pursuant to this Agreement are subject to the satisfaction, at or prior to the Closing Date, of the following condition:

(a) The Issuer will have received all documents reasonably requested by it relating to the existence of the Purchaser, the authority for entering into, and the validity of this Agreement and the Transaction Documents, all in form and substance reasonably satisfactory to it.

ARTICLE IX

MISCELLANEOUS

Section 9.01. Notices. All notices, requests and other communications to any party hereunder will be in writing (including telecopier or similar writing) and will be given to the Issuer at The Nasdaq Stock Market, 9513 Key West Avenue, Rockville, MD 20850,

Attention: John Zecca, Fax: (301) 978-5296 and to the Purchaser care of both Hellman & Friedman LLC, One Maritime Plaza, 12th Floor, San Francisco, CA 94111, Attention: Patrick Healy and Erik Ragatz, Fax: (415) 788-0176 and Silver Lake Partners, 2725 Sand Hill Road, Menlo Park, CA 94025, Attention: Alan Austin, Fax: (650) 233-8125, or such other address or telecopier number as such party may hereinafter specify for the purpose to the party giving such notice. Each such notice, request or other communication will be effective (i) if given by telecopy, when such telecopy is transmitted to the telecopy number specified pursuant to this Section 9.01 and confirmation of receipt is received or, (ii) if given by mail, 72 hours after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid or, (iii) if given by any other means, when delivered at the address specified in this Section 9.01.

Section 9.02. No Waivers; Amendments. (a) No failure or delay on the part of any party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(b) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and signed by all parties hereto.

Section 9.03. Survival of Provisions. The representations and warranties contained in this Agreement will survive and remain in full force and effect in accordance with their terms until the date which is three months after the date on which the Issuer delivers to the Purchaser full audited financial statements of the Issuer and its Subsidiaries for fiscal year 2006; provided that the representations and warranties contained in Sections 3.01, 3.02, 3.05, 3.06, 3.16 and 3.17 and Sections 4.01, 4.02, 4.03, 4.05 and 4.07 (each, a "Fundamental Representation") will survive indefinitely. Notwithstanding the foregoing, an indemnification claim brought pursuant to Section 9.04 with respect to a breach of a representation or warranty will not be precluded hereby if the claim is initiated in accordance with Section 9.04(c) prior to the expiration of the respective survival period described in the preceding sentence.

Section 9.04. Indemnification. (a) The Issuer hereby agrees to indemnify and hold harmless the Purchaser, the H&F Entities and the SLP Entities, any Person controlling the Purchaser, H&F Entity or the SLP Entity, and their respective directors, members, officers, agents and employees from and against any losses, claims, damages, expenses and liabilities (including, without limitation, reasonable expenses of investigation and reasonable attorneys' fees and expenses in connection with any investigation, action, suit or proceeding) ("Damages") to which such person may become subject as the result of (i) any breach of any representation or warranty contained in Article 3; (ii) any breach of any covenant made or to be performed on the part of the Issuer under this Agreement, the Notes, the Warrants, the Indenture, the Registration Rights Agreement or the Securityholders Agreement; or (iii) any third-party action, claim or proceeding directly resulting from the matters or transactions which are the subject of or contemplated by this Agreement, the Merger Agreement, the Notes, the Warrants and/or any of the other Transaction Documents or any use made or proposed to be made by the Issuer of the proceeds from the sale of the Securities, and the Issuer will reimburse any such person for all reasonable expenses (including reasonable counsel fees and expenses) as they are incurred by any such person in connection with any such breach of representation, warranty or covenant or investigating, preparing or defending any such action or proceeding, pending or threatened,

whether or not such person is a party thereto; provided that with respect to indemnification or reimbursement by the Issuer pursuant to this Section 9.04, (x) in the case of any indemnification pursuant to clause (i) other than in respect of a Fundamental Representation (which will not be subject to the limits of this clause (x)), the Issuer will not be liable unless the aggregate amount of Damages exceeds $855,000, and the Issuer will only be liable for Damages in excess of such amount, and (y) the Issuer's maximum liability to the Purchaser will not exceed the purchase price of the Securities paid by the Purchaser. Notwithstanding anything herein to the contrary, the Issuer will not be required to indemnify any SLP Entity under clause (i) (but only with respect to the representation made in Section 3.18) and clause (iii) of this Section 9.04(a) to the extent that the claim for indemnity is based on events, actions or failure by an SLP Entity to take action which has given rise to a claim by the Issuer under the Merger Agreement or the related Transactions against any SLP Entity and that has been successfully asserted by the Issuer to final judgment.

(b) The Purchaser hereby agrees to indemnify, defend and hold harmless the Issuer, its Affiliates, any Person controlling the Issuer or its Affiliates, and their respective directors, members, officers, agents and employees from and against any Damages to which such person may become subject as a result of (i) any breach of any representation or warranty of the Purchaser contained in Article IV; or (ii) any breach of any covenant made or to be performed on the part of the Purchaser under this Agreement and/or the other Transaction Documents, and the Purchaser will reimburse any such person for all reasonable expenses (including reasonable counsel fees and expenses) as they are incurred by any such person in connection with any such breach of representation, warranty or covenant or investigating, preparing or defending any such action or proceeding, pending or threatened, whether or not such person is a party thereto; provided that with respect to indemnification or reimbursement by the Purchaser pursuant to this Section 9.04, (x) in the case of any indemnification pursuant to clause (i) other than in respect of a Fundamental Representation (which will not be subject to the limits of this clause (x)), the Purchaser will not be liable unless the aggregate amount of Damages exceeds $855,000, and the Purchaser will only be liable for Damages in excess of such amount, and (y) the Purchaser's maximum liability will not exceed the aggregate purchase price of the Securities.

(c) Promptly after receipt by any person (the "Indemnified Person") of notice of any demand, claim or circumstances which would or might give rise to a claim or the commencement of any action, proceeding or investigation in respect of which indemnity may be sought pursuant to Section 9.04(a) or (b), such Indemnified Person will give notice thereof to the person against whom such indemnity may be sought (the "Indemnifying Person"). Notwithstanding the foregoing, the failure so to give prompt notice to such person will not relieve such Indemnifying Person from liability, except to the extent such failure or delay materially prejudices such Indemnifying Person. The Indemnifying Person will be entitled to participate in any such action and to assume the defense thereof, at the Indemnifying Person's expense and with counsel reasonably satisfactory to the Indemnified Person. After notice from the Indemnifying Person to such Indemnified Person of its election so to assume the defense thereof, the Indemnified Person will have the right to participate in such action and to retain its own counsel, but the Indemnifying Person will not be liable to such Indemnified Person hereunder for any legal expenses of other counsel or any other expenses, in each case, subsequently incurred by such Indemnified Person, in connection with the defense thereof other than reasonable costs of investigation, unless (i) the Indemnifying Person has agreed to pay such

fees and expenses, (ii) the Indemnifying Person will have failed to employ counsel reasonably satisfactory to the Indemnified Person in a timely manner or (iii) the Indemnified Person will have been advised by outside counsel that representation of the Indemnified Person by counsel provided by the Indemnifying Person pursuant to the foregoing would be inappropriate due to an actual or potential conflicting interest between the Indemnifying Person and the Indemnified Person, including situations in which there are one or more legal defenses available to the Indemnified Person that are different from or additional to those available to the Indemnifying Person; provided however, that the Indemnifying Person will not, in connection with any one such action or proceeding or separate but substantially similar actions or proceedings arising out of the same general allegations, be liable for the fees and expenses of more than one firm of attorneys at one time for any Indemnified Person and its Affiliates.

(d) Except in the case of fraud, or with respect to matters for which the remedy of specific performance or injunctive relief or other equitable remedies are appropriate or available, the respective rights to indemnification as provided for in this Section 9.04, will constitute each party's sole remedy and no party will have any other liability or damages to the other party; provided, however, that nothing contained herein will prevent the Indemnified Person from pursuing remedies as may be available to such party under applicable law in the event of an Indemnifying Person's failure to comply with its indemnification obligations hereunder.

Section 9.05. Fees and Expenses. (a) At the earlier of the Merger Closing or the termination of the Merger Agreement, the Issuer will reimburse each of the H&F Entities and the SLP Entities for their reasonable documented out-of-pocket fees and expenses incurred by the H&F Entities and the SLP Entities in connection with this Agreement, the other Transactions, the Merger and the VAB Acquisition (excluding out-of-pocket fees and expenses relating to the Bridge Loan) up to a total of (i) $4,000,000 in the aggregate for all the H&F Entities and the SLP Entities if the Merger is consummated or (ii) $2,000,000 in the aggregate for all the H&F Entities and the SLP Entities if the Merger is not consummated, including without limitation, in each case, the fees, disbursements and expenses of counsel, accountants, financial advisors, bankers, consultants and other experts retained by the H&F Entities and the SLP Entities in connection therewith. As a condition to such reimbursement, the H&F Entities and the SLP Entities must provide invoices and receipts or other reasonable evidence of having incurred said expenses. To the extent the fees and expenses covered by this Section 9.05 are paid in accordance with Section 9.05 of the Note Amendment Agreement, the Issuer shall not be obligated to pay such fees and expenses under this Section 9.05.

(b) At the earlier of the Merger Closing or the termination of the Merger Agreement, the Issuer will reimburse the Purchaser for the reasonable documented out-of-pocket fees and expenses incurred by the Purchaser (except to the extent that such payments are made out of the Blocked Account Collateral (as defined in the Security Agreement)) in connection with the Bridge Loan as well as the amount equal to the sum of (if positive) (i) the aggregate amount of interest payable in respect of the Bridge Loan minus (ii) the aggregate amount of interest paid in respect of the Series A Notes. In addition, the Issuer agrees as promptly as possible to pay to the Purchaser the amount of any payments required to be made by Purchaser under Section 2.08, 2.09, 2.10, 2.15 or 8.5 (except for any indemnification obligation arising out of a breach by Purchaser that does not relate to Issuer's breach of any of its obligations) of the Loan Agreement except to the extent that such payments are made out of the Blocked Account Collateral (as defined in the Security Agreement).

Section 9.06. Documentary Taxes. The Issuer will pay any and all documentary stamp or similar issue or transfer taxes payable in respect of the execution and delivery of this Agreement and/or the other Transaction Documents, the issuance or delivery of the Notes and the Warrants and the issuance or delivery of the shares of Common Stock on conversion of the Notes or the exercise of the Warrants; provided, that the Issuer shall not be required to pay any tax which may be payable in respect of any transfer involved in the issue or delivery of shares of Common Stock in a name other than that of the holder of the Notes to be converted and no such issue or delivery shall be made unless and until the person requesting such issue or delivery has paid to the Issuer the amount of any such tax or has established, to the satisfaction of the Issuer, that such tax has been paid.

Section 9.07. Termination. (a) This Agreement may be terminated at any time prior to the Closing:

(i) by mutual written agreement of the Issuer and the Purchaser;

(ii) by the Issuer or the Purchaser if the Closing will not have been consummated on or before April 22, 2005;

(iii) by the Issuer or the Purchaser if there will be any law or regulation that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited or if consummation of the transactions contemplated hereby would violate any nonappealable final order, decree or judgment of any court or governmental body having competent jurisdiction;

(iv) by the Issuer or the Purchaser, if there has been a material misrepresentation, breach of warranty or breach of covenant or other obligation hereunder on the part of the Purchaser (in the case of termination by the Issuer) or the Issuer (in the case of termination by the Purchaser); or if any condition to such party's obligations hereunder becomes incapable of fulfillment through no fault of such party; or

(v) by the Issuer or the Purchaser, if the Merger Agreement is terminated for any reason.

The party desiring to terminate this Agreement pursuant to Sections 9.07(a)(ii), (iii), (iv) or (v) will give notice of such termination to the other parties.

(b) If this Agreement is terminated as permitted by Section 9.07(a), such termination will be without liability of either party (or any stockholder, director, officer, employee, agent, consultant or representative of such party) to the other parties to this Agreement; provided that if such termination will result from the willful (i) failure of any party to fulfill a condition to the performance of the obligations of the other parties, (ii) failure to perform a covenant of this Agreement or (iii) breach by any party hereto of any representation or warranty or agreement contained herein, such party will be liable for damages incurred or suffered by the other party as a result of such failure or breach.

Section 9.08. Successors and Assigns. The Issuer may not assign any of its rights and obligations hereunder without the prior written consent of the Purchaser. The Purchaser may not assign any of its rights and obligations hereunder without the prior written consent of the Issuer, except to the H&F Entities or the SLP Entities; provided, however, that the H&F Entities, the SLP Entities or their respective Affiliate assignees shall be required to agree in writing, reasonably satisfactory to the Issuer, to be bound by the terms of this Agreement. This Agreement will be binding upon the Issuer and the Purchaser and their respective successors and assigns. Neither this Agreement nor any provision hereof will be construed so as to confer any right or benefit upon any Person other than parties to this Agreement, the H&F Entities and the SLP Entities and their respective successors and assigns. The Issuer and the Purchaser expressly intend and agree that the H&F Entities and the SLP Entities and their respective successors and assigns are intended third party beneficiaries of all representations, warranties, covenants and agreements in favor of the Purchaser and shall be entitled to enforce all of the provisions of this Agreement.

Section 9.09. Headings. The headings in this Agreement are for convenience of reference only and will not control or affect the meaning or construction of any provisions hereof.

Section 9.10. Severability. The invalidity or unenforceability of any provisions of this Agreement in any jurisdiction will not affect the validity, legality or enforceability of the remainder of this Agreement in such jurisdiction or the validity, legality or enforceability of this Agreement, including any such provision, in any other jurisdiction, it being intended that all rights and obligations of the parties hereunder will be enforceable to the fullest extent permitted by law.

Section 9.11. Specific Performance. The parties hereto agree that if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, irreparable damage would occur, no adequate remedy at law would exist and damages would be difficult to determine, and that the parties will be entitled to specific performance of the terms hereof and immediate injunctive relief, without the necessity of proving the inadequacy of money damages as a remedy, in addition to any other remedy at law or equity.

Section 9.12. New York Law. This Agreement will be governed and construed in accordance with the laws of the State of New York applicable to contracts executed and performed within such state.

Section 9.13. Counterparts; Effectiveness. This Agreement may be executed in any number of counterparts each of which will be an original with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 9.14. Entire Agreement. This Agreement together with the other Transaction Documents constitute the entire agreement and understanding among the parties hereto and supersedes any and all prior agreements and understandings, written or oral, relating to the subject matter hereof.

Section 9.15. Repurchase Option.

(a) Subject to the terms and conditions of this Section 9.15, at any time on or prior to October 24, 2005 (or, if later, five Business Days (as defined in the Indenture) following the Stockholder Meeting (as defined below)) the Company, at its option, may repurchase $3,817,342.50 aggregate principal amount (the "Optional Repurchase Note Amount") of the Series A Notes initially represented by Note Certificate A-1 (the "Optional Repurchase Note") for a repurchase price in cash equal to 105% of the Optional Repurchase Note Amount, plus any accrued and unpaid interest (as defined in the Indenture) on the Optional Repurchase Note Amount to, but not including, the Repurchase Date (as defined below). If the Repurchase Date is after a Regular Record Date (as defined in the Indenture) and on or prior to the corresponding Interest Payment Date (as defined in the Indenture), the Interest accrued as of the Repurchase Date which would otherwise be payable on such Interest Payment Date on the Optional Repurchase Note Amount will be paid on the Repurchase Date to the holder on the Regular Record Date.

(b) Subject to the terms and conditions of this Section 9.15, if a majority of the votes cast by the stockholders of the Company entitled to vote in the Stockholder Meeting are voted against the potential issuance of the Subject Shares (an "Adverse Shareholder Vote") then the Company shall repurchase $3,969,012.50 aggregate principal amount (the "Mandatory Repurchase Note Amount") of the Series A Notes initially represented by Note Certificate A-2 (the "Mandatory Repurchase Note") for a repurchase price in cash equal to 105% of the Mandatory Repurchase Note Amount, plus any accrued and unpaid Interest on the Mandatory Repurchase Note Amount to, but not including, the Repurchase Date. If the Repurchase Date is after a Regular Record Date and on or prior to the corresponding Interest Payment Date, the Interest accrued as of the Repurchase Date on the Mandatory Repurchase Note Amount which would otherwise be payable on such Interest Payment Date will be paid on the Repurchase Date to the holder on the Regular Record Date.

(c) If the Company intends to repurchase the Optional Repurchase Note Amount pursuant to Section 9.15(a), the Company shall provide irrevocable written notice to the holder of the Optional Repurchase Note of the Company's exercise of such optional repurchase right neither fewer than two nor more than five Business Days prior to the Repurchase Date for the Optional Repurchase Note Amount, which notice shall specify the Repurchase Date. Upon the occurrence of an Adverse Shareholder Vote, the Company will promptly provide irrevocable written notice to the holder of the Mandatory Repurchase Note of the Repurchase Date for the Mandatory Repurchase Note Amount, which notice shall specify the Repurchase Date (which shall be neither fewer than two nor more than five Business Days after the date of the Stockholder Vote). On the applicable Repurchase Date, the holder of the Optional Repurchase Note or the Mandatory Repurchase Note, as applicable, will deliver to the Company a Series A Note in the aggregate principal amount of the Optional Repurchase Note Amount or the Mandatory Repurchase Note Amount, as applicable, against payment by the Company in immediately available funds of the repurchase price specified in Section 9.15(a) or 9.15(b), as applicable.

(d) For purposes of this Section 9.15, the following terms have the following meanings:

(i) "Repurchase Date" means any day on which the Optional Repurchase Note Amount or the Mandatory Repurchase Note Amount is being repurchased pursuant to this Section 9.15, which day must be a Business Day.

(ii) "Stockholders Meeting" shall mean a meeting of the Company's stockholders duly called to consider the approval of the issuance of the Subject Shares.

(iii) "Subject Shares" means the shares of Common Stock issuable upon conversion of the Optional Repurchase Note Amount and the Mandatory Repurchase Note Amount.

(e) The Company agrees that it will hold the Stockholders Meeting as promptly as reasonably practicable and in any event not later than three months after the date of this Agreement.

(f) For as long as the optional repurchase may be exercised pursuant to Section 9.15(a), the Purchaser agrees it will not sell, transfer or otherwise encumber or dispose of all or a portion of the Optional Repurchase Note unless (i) the transferee agrees to be bound by this Section 9.15 in a writing delivered to the Company in form and substance reasonably satisfactory to the Company or (ii) the Purchaser transfers only a portion of the Optional Repurchase Note and retains the Optional Repurchase Note Amount. Any Series A Note evidencing the Optional Repurchase Note Amount following a transfer of all or a portion of the Optional Repurchase Note will be deemed to be the "Optional Repurchase Note" for all purposes of this Section 9.15 following such transfer. For the avoidance of doubt, any transfer must also comply with Section 2.01 of the Securityholders Agreement.

(g) Until such time as the Stockholders Meeting has been held, and if (and only if) there is an Adverse Shareholder Vote, until the Company has repurchased the Mandatory Repurchase Note Amount, the Purchaser agrees it will not sell, transfer or otherwise encumber or dispose of all or a portion of the Mandatory Repurchase Note unless (i) the transferee agrees to be bound by this Section 9.15 in a writing delivered to the Company in form and substance reasonably satisfactory to the Company or (ii) the Purchaser transfers only a portion of the Mandatory Repurchase Note and retains the Mandatory Repurchase Note Amount. Any Series A Note evidencing the Mandatory Repurchase Note Amount following a transfer of all or a portion of the Mandatory Repurchase Note will be deemed to be the "Mandatory Repurchase Note" for all purposes of this Section 9.15 following such transfer. For the avoidance of doubt, any transfer must also comply with Section 2.01 of the Securityholders Agreement.

(h) Notwithstanding anything to the contrary in this Agreement or any Transaction Documents, the Warrants may not be exercised, and the Notes may not be converted until five Business Days after the Stockholders Meeting has taken place. Any exercise or conversion in contravention of this Section 9.15(h) shall be null and void *ab initio*.

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

THE NASDAQ STOCK MARKET, INC.

By: _____

Name: Adena T. Friedman
Title: Executive Vice President
Address: One Liberty Plaza, 50th Floor
New York, NY 10036
Telephone:
Telecopier:

[Signature pages continue on next page]

NORWAY ACQUISITION SPV, LLC

By: NORWAY HOLDINGS SPV, LLC, as Managing Member

By: SILVER LAKE PARTNERS II TSA, L.P.,
its Managing Member

By: SILVER LAKE TECHNOLOGY
ASSOCIATES II, L.L.C.,
its General Partner

By: /s/ Alan K. Austin

Name: Alan K. Austin
Title: Managing Director and Chief Operating Officer

AND

By: HELLMAN & FRIEDMAN CAPITAL
PARTNERS IV, L.P., as Managing Member

By: H&F INVESTORS IV, LLC,
its General Partner

By: H&F ADMINISTRATION IV, LLC, its
Administrative Manager

By: H&F INVESTORS III, INC.,
its Manager

By: /s/ Mitchell R. Cohen

Name: Mitchell R. Cohen
Title: Vice President

SCHEDULE 3.06(b)

Repurchase Obligations

In connection with the Closing under the Agreement, the Company has agreed to purchase $40 million principal amount of Series C Cumulative Preferred Stock.

SCHEDULE 3.09

Description of Changes

The Company pays a quarterly dividend on its Series C Cumulative Preferred Stock.

SCHEDULE 4.06

Sponsor Commitments

The H&F Entities

Hellman & Friedman Capital Partners IV, L.P.
H&F Executive Fund IV, L.P.
H&F International Partners IV-A, L.P.
H&F International Partners IV-B, L.P.

The SLP Entities

Silver Lake Partners II TSA, L.P.
Silver Lake Technology Investors II, L.L.C.
Silver Lake Partners TSA, L.P.
Silver Lake Investors, L.P.
Integral Capital Partners VI, L.P.
VAB Investors, LLC

EXHIBIT C

Glenn H. Hutchins
c/o Silver Lake Partners
2725 Sand Hill Road, Suite 150
Menlo Park, CA 94025

April 22, 2005

The Board of Directors
The Nasdaq Stock Market, Inc.
One Liberty Plaza, New York, NY 10006

Ladies and Gentlemen;

This letter is provided pursuant to Section 5.03 of the Securities Purchase Agreement dated as of the date hereof (the "Agreement") between The Nasdaq Stock Market, Inc. (the "Company") and Norway Acquisition SPV, LLC.

In the event the Notes (as defined in the Agreement) are redeemed pursuant to Section 3.04 of the Indenture, dated as of the date hereof, between the Company and Law Debenture Trust Company of New York, as Trustee, I, Glenn H. Hutchins, will resign from all positions held by me as a member of the board of directors of the Company (the "Board of Directors"), effective as of the date the Notes are so redeemed, unless otherwise requested by the Board of Directors.

Very truly yours,

By: /s/ Glenn H. Hutchins

Name: Glenn H. Hutchins

Exhibit 4.2

NOTE AMENDMENT AGREEMENT

dated as of

April 22, 2005

among

THE NASDAQ STOCK MARKET, INC.,

HELLMAN & FRIEDMAN CAPITAL PARTNERS IV, L.P.,

and

THE OTHER HOLDERS LISTED ON THE SIGNATURE PAGE HERETO

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SCHEDULES AND EXHIBITS

NOTE AMENDMENT AGREEMENT

NOTE AMENDMENT AGREEMENT (this "Agreement"), dated as of April 22, 2005, among The Nasdaq Stock Market, Inc., a Delaware corporation (together with any successor entity thereto, the "Issuer"), and Hellman & Friedman Capital Partners IV, L.P., a California limited partnership ("H&F-1"), H&F Executive Fund IV, L.P., a California limited partnership ("H&F-2"), H&F International Partners IV-A, L.P., a California limited partnership ("H&F-3"), and H&F International Partners IV-B, L.P., a California limited partnership ("H&F-4" and together with H&F-1, H&F-2 and H&F-3, each a "Holder", and collectively the "Holders" or the "H&F Entities").

WHEREAS, the Issuer and the Holders previously entered into a Securities Purchase Agreement, dated as of March 23, 2001 (the "Purchase Agreement"), and a Securityholders Agreement, dated as of May 3, 2001 (as amended, supplemented or otherwise modified from time to time, the "Securityholders Agreement"), pursuant to which the Holders purchased $240,000,000 in aggregate principal amount of 4.0% Convertible Subordinated Notes due 2006 (the "Original Notes"); and

WHEREAS, immediately following the execution of this Agreement, the Issuer is entering into an Agreement and Plan of Merger in the form previously provided to the Issuer, (as amended, supplemented or otherwise modified from time to time to the extent permitted by this Agreement, the "Merger Agreement") among the Issuer, Norway Acquisition Corp., a Delaware corporation ("Merger Sub"), and Instinet Group Incorporated, a Delaware corporation ("Instinet"), providing for the merger (the "Merger") of Merger Sub into Instinet; and

WHEREAS, in connection with the entry by the Issuer into the Merger Agreement, the Issuer has authorized the sale and issuance of $205,000,000 of its 3.75% Series A Convertible Notes due 2012 (as amended, supplemented or otherwise modified from time to time, the "Series A Notes") pursuant to an indenture in the form previously provided to the Holders (as amended, supplemented or otherwise modified from time to time, the "Indenture") and the Issuer has authorized the issuance of Series A Warrants to acquire 2,209,052 shares of common stock (the "Common Stock"), par value $0.01 per share, of the Issuer, in the form previously provided to the Holders (as amended, supplemented or otherwise modified from time to time, the "Series A Warrants") (the Series A Notes and the Series A Warrants collectively referred to herein as the "Series A Securities"); and

WHEREAS, in connection with the entry by the Issuer into the Merger Agreement, on the date hereof the Issuer is entering into a Securities Purchase Agreement in the form previously provided to the Holders (as amended, supplemented or otherwise modified from time to time, the "Securities Purchase Agreement"), between the Issuer and Norway Acquisition SPV, LLC, a Delaware limited liability company (the "SPV"), providing for the sale and purchase of the Series A Notes in an aggregate principal amount of $205,000,000 and the Series A Warrants to acquire 2,209,052 shares of Common Stock; and

WHEREAS, in connection with the amendment of the Original Notes to reflect the terms of the Series B Notes (as defined below) and the issuance of the Series B Warrants (as

defined below) as provided in this Agreement and the issuance and sale of the Series A Securities, the Issuer and the Holders will amend and restate the Securityholders Agreement (as amended, supplemented or otherwise modified from time to time, the "Securityholders Agreement") and the SPV and the SLP Entities (as defined below) will become parties to the Securityholders Agreement; and

NOW THEREFORE, in consideration of the foregoing recitals and the mutual promises hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. (a) The following terms, as used herein, have the following meanings:

"Affiliate" of any Person means any other Person directly or indirectly controlling, controlled by or under common control with such Person. For the purposes of this definition, "control" when used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing. Notwithstanding the foregoing, (i) the Affiliates of the H&F Entities or the SLP Entities will not include any of the portfolio companies in which such Persons have investments and (ii) the Issuer will not be deemed to be an Affiliate of any of the H&F Entities or the SLP Entities.

"Authority" means any domestic (including federal, state or local) or foreign court, arbitrator, administrative, regulatory or other governmental department, agency, official, commission, tribunal, authority or instrumentality, non-government authority or Self-Regulatory Organization.

"Balance Sheet Date" means December 31, 2004.

"Benefit Plan" means each "employee benefit plan" (within the meaning of Section 3(3) of ERISA, including, without limitation, multiemployer plans within the meaning of Section 3(37) of ERISA), and all stock purchase, stock option, severance, employment, change-in-control, fringe benefit, collective bargaining, bonus, incentive, deferred compensation, employee loan and all other employee benefit plans, agreements, programs, policies or other arrangements, whether or not subject to ERISA (including any funding mechanism therefor now in effect or required in the future as a result of the transaction contemplated by this Agreement or otherwise), whether formal or informal, oral or written, legally binding or not, under which (i) any current or former employee, director or consultant of the Issuer or its Subsidiaries has any present or future right to benefits and which are contributed to, sponsored by or maintained by the Issuer or any of its Subsidiaries or (ii) the Issuer or any of its Subsidiaries has had or has any present or future liability.

"Board of Directors" means the board of directors of the Issuer.

"Charter Amendment" means an amendment to the Issuer's restated certificate of incorporation, in the form attached hereto as Exhibit A with such changes as may be required by the Commission that are reasonably acceptable to the Issuer and the Holders, to grant certain voting rights in the Series A Notes and the Series B Notes.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commission" means the Securities and Exchange Commission.

"DGCL" means the Delaware General Corporation Law.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Guarantee" means the Guarantee Agreement, dated as of the date hereof, among the Issuer, the SPV and JPM in the form previously provided to the Holders, as amended, supplemented or otherwise modified from time to time.

"H&F Entities" means Hellman & Friedman Capital Partners IV, L.P., a California limited partnership, H&F Executive Fund IV, L.P., a California limited partnership, H&F International Partners IV-A, L.P., a California limited partnership, and H&F International Partners IV-B, L.P., a California limited partnership, and any of their respective Affiliates.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Intellectual Property" means patents (and any renewals and extensions thereof), patent rights (and any applications therefor), rights of priority and other rights in inventions; trademarks, service marks, trade names and trade dress, and all registrations and applications therefor; copyrights and rights in mask works (and any applications or registrations for the foregoing, and all renewals and extensions thereof) and rights of authorship; industrial design rights, and all registrations and applications therefor; rights in data, collections of data and databases; rights in domain names and domain name reservations; and rights in trade secrets, proprietary information and know-how.

"JPM" means JPMorgan Chase Bank, N.A., as administrative agent under the Loan Agreement.

"Lien" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset. For the purposes of this Agreement, any Person will be deemed to own subject to Lien any asset that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

"Loan Agreement" means the Secured Term Loan Agreement, dated as of the date hereof, among the SPV, Norway Holdings SPV, LLC, the lenders parties thereto and JPM,

in the form previously provided to the Holders, as amended, supplemented or otherwise modified from time to time, pursuant to which the SPV is obtaining a senior bridge loan in connection with the Securities Purchase Agreement.

"Material Adverse Effect" means a material adverse effect on the business, assets, condition (financial or otherwise) or results of operations of the Issuer and its Subsidiaries, taken as a whole.

"NASD" means the National Association of Securities Dealers, Inc. and its successors.

"Person" means an individual or a corporation, partnership, association, trust, or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Preferred Stock" means the preferred stock, par value $0.01 per share, of the Issuer.

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of the date hereof, among the Issuer, the Holders, the SLP Entities (as defined therein), Integral Capital Partners VI, L.P. and VAB Investors, LLC, in the form previously provided to the Holders, as amended, supplemented or otherwise modified from time to time.

"Regulation D" means Regulation D under the Securities Act.

"Security Agreement" means the Blocked Account Control and Security Agreement in the form previously provided to the Holders, as amended, supplemented or otherwise modified from time to time, pursuant to which the Issuer will secure the Guarantee with a pledge of the Block Account Collateral (as defined in the Security Agreement).

"Securities Act" means the Securities Act of 1933, as amended.

"Self-Regulatory Organization" means the NASD, any domestic or foreign securities exchange, commodities exchange, registered securities association, the Municipal Securities Rulemaking Board, National Futures Association, and any other board or body, whether United States or foreign, that regulates brokers, dealers, commodity pool operators, commodity trading advisors or future commission merchants.

"Series B Preferred Stock" means the Preferred Stock designated in the Certificate of Designations, Preferences and Rights of the Series B Preferred Stock dated as of March 8, 2002.

"Series C Cumulative Preferred Stock" means the Preferred Stock designated in the Certificate of Designations, Preferences and Rights of the Series C Cumulative Preferred Stock dated as of November 29, 2004.

"SLP Entities" means Silver Lake Partners TSA, L.P., a Delaware limited partnership, Silver Lake Investors, L.P., a Delaware limited partnership, Silver Lake Partners II

TSA, L.P., a Delaware limited partnership, Silver Lake Technology Investors II, L.L.C., a Delaware limited liability company, Integral Capital Partners VI, L.P., a Delaware limited partnership, and VAB Investors, LLC, a Delaware limited liability company, and any of their respective Affiliates.

"Subsidiary" means, with respect to any Person, any corporation or other entity of which a majority of the capital stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

"Tax Returns" means returns, reports, information statements and other documentation (including any additional or supporting material) filed or maintained, or required to be filed or maintained, in connection with the calculation, determination, assessment or collection of any Tax and will include any amended returns required as a result of examination adjustments made by the Internal Revenue Service or other Tax authority.

"Taxes" means any and all federal, state, local, foreign and other taxes, levies, fees, imposts, duties and charges of whatever kind (including any interest, penalties or additions to the tax imposed in connection therewith or with respect thereto) including, without limitation, taxes imposed on, or measured by, income, franchise, profits or gross receipts, and also ad valorem, value added, sales, use, service, real or personal property, capital stock, license, payroll, withholding, employment, social security, workers' compensation, unemployment compensation, utility, severance, production, excise, stamp, occupation, premium, windfall profits, transfer and gains taxes and customs duties.

"Transactions" means the transactions contemplated by the Transaction Documents.

"Transaction Documents" means this Agreement, the Securities Purchase Agreement, the Indenture, the Loan Agreement, the Security Agreement, the Guarantee, the Registration Rights Agreement and the Securityholders Agreement.

"VAB Agreement" means the Transaction Agreement in the form previously provided to the Issuer, as amended, supplemented or otherwise modified from time to time, dated as of the date hereof, among the Issuer, Norway Acquisition Corp. and Iceland Acquisition Corp., providing for the acquisition of certain assets and liabilities by the Company from Newco.

(b) Each of the following terms is defined in the Section set forth opposite such term:

Term	Section
Agreement	Preamble
Closing	2.03(a)
Closing Date	2.03(a)
Commitment Letters	3.10
Common Stock	Recitals
Damages	9.04(a)
Financial Statements	3.08(b)

Fundamental Representation	9.03
GAAP	3.08(b)
H&F-1	Preamble
H&F-2	Preamble
H&F-3	Preamble
H&F-4	Preamble
H&F Entities	Preamble
Holder	Preamble
Indemnified Person	9.04(c)
Indemnifying Person	9.04(c)
Indenture	Recitals
Instinet	Recitals
Issuer	Preamble
Issuer Securities	3.06(b)
Merger	Recitals
Merger Agreement	Recitals
Merger Closing	5.01(a)
Merger Sub	Recitals
Merger Termination	5.01(a)
Original Notes	Recitals
Purchase Agreement	Recitals
SEC Reports	3.08(a)
Securities	2.01(a)
Securities Purchase Agreement	Recitals
Securityholders Agreement	Recitals
Series A Notes	Recitals
Series A Securities	Recitals
Series A Warrants	Recitals
Series B Notes	2.01(a)
Series B Securities	2.01(a)
Series B Warrants	2.01(a)
SPV	Recitals
Subsidiary Securities	3.07(b)
VAB Acquisition	5.05

ARTICLE II

AMENDMENT OF THE ORIGINAL NOTES

Section 2.01. Amendment of the Original Notes; Issuance of Series B Warrants. (a) Upon the basis of the representations and warranties contained herein, but subject to the terms and conditions hereinafter stated, at the Closing (as defined below), the Issuer and the Holders agree to (i) amend and restate the Original Notes to reflect the terms of the 3.75% Series B Convertible Notes due 2012 (as amended, supplemented or otherwise modified from time to time, the "Series B Notes") as set forth in the Indenture and (ii) to issue the Series B Warrants to

acquire 2,753,448 shares of Common Stock of the Issuer, in the form previously provided to the Holders (as amended, supplemented or otherwise modified from time to time, the "Series B Warrants") (the Series B Note and the Series B Warrants collectively referred to herein as the "Series B Securities", and with the Series A Securities, the "Securities") to each Holder in the amounts set forth opposite such Holder's name on Schedule 1. As a result of such amendment and restatement, at and after the Closing, each $1.00 in principal amount of the Original Notes will constitute $1.00 in principal amount of the Series B Notes.

(b) The amendments of the Original Notes and the issuance of the Series B Warrants are intended to qualify as a recapitalization under Section 368(a)(1)(E) of the Code.

Section 2.02. Restrictive Legends. The Series B Notes, when issued, will bear a legend as set forth in the Indenture. The Series B Warrants, when issued, will bear a legend as set forth in the form of Warrant.

Section 2.03. The Closing. (a) The amendment of the Original Notes and the issuance of the Series B Warrants will take place at a closing (the "Closing") at 9:00 a.m. New York City time at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 4 Times Square, New York, New York on the date hereof, or at such other time or location as the Issuer and the Holders may agree. The date and time of Closing are referred to herein as the "Closing Date".

(b) At the Closing, the Issuer will issue the Series B Notes and the Series B Warrants to such Holder in definitive form registered in the name of such Holder and in the amounts set forth opposite such Holder's name on Schedule 1. Each Holder covenants that it will surrender, as soon as practicable after the Closing, Original Notes to the Issuer in the principal amount set forth opposite such Holder's name on Schedule 1.

(c) The amendment and restatement of the Original Notes pursuant to this Agreement will be effective upon the issuance and delivery of the Series B Securities by the Issuer to each Holder at the Closing.

Section 2.04. Issue Price. The Issuer and each Holder agree that for United States federal income tax purposes the aggregate issue price of the Series B Notes is $239,688,000 and that the issue price of the Series B Notes shall be binding on all holders of the Series B Notes.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE ISSUER

The Issuer represents and warrants to each Holder and its permitted assigns as follows:

Section 3.01. Corporate Existence and Power. The Issuer is a corporation duly incorporated, validly existing and in good standing under the laws of its jurisdiction of

incorporation and has all corporate powers and all material governmental licenses, authorizations, permits, consents and approvals required to carry on its business as now conducted. The Issuer is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified would not, individually or in the aggregate, have a Material Adverse Effect.

Section 3.02. Corporate Authorization. (a) The execution, delivery and performance by the Issuer of this Agreement, the Series B Notes, the Series B Warrants and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby are within the Issuer's corporate powers and have been duly authorized by all necessary corporate action on the part of the Issuer.

(b) Each of this Agreement and the other Transaction Documents to which the Issuer is a party has been duly executed and delivered by the Issuer and assuming due authorization, execution and delivery by the other parties to such agreements constitutes a legal, valid and binding agreement of the Issuer enforceable against the Issuer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws relating to or affecting creditors generally or by general equity principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) Each of the Series B Notes and the Series B Warrants will be duly executed and delivered by the Issuer and, when issued and delivered pursuant to this Agreement and, in the case of the Series B Notes, the Indenture, will constitute legal, valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws relating to or affecting creditors generally or by general equity principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(d) Each of the Series B Notes and the Series B Warrants will, when issued, be validly issued, free and clear of any Lien and free of any other restriction or limitation (including any restriction on the right to vote, sell or otherwise dispose of the Series B Notes or the Series B Warrants) except as provided under applicable securities laws or as set forth in the Indenture, the Registration Rights Agreement, the Securityholders Agreement or the Issuer's restated certificate of incorporation and bylaws. The shares of Common Stock issuable upon conversion of the Series B Notes or exercise of the Series B Warrants will, when issued, be validly issued, fully paid and nonassessable, free and clear of any Lien and free of any other restriction or limitation (including any restriction on the right to vote, sell or otherwise dispose of such shares of Common Stock) except as provided under applicable securities laws or as set forth in the Indenture, the Registration Rights Agreement, the Securityholders Agreement or the Issuer's restated certificate of incorporation and bylaws.

(e) The Issuer has received the consent of the holder of the Issuer's Series C Cumulative Preferred Stock permitting (i) the incurrence by the Issuer and its Subsidiaries of the senior debt financing contemplated by the Commitment Letters (as defined below) and (ii) the issuance by the Issuer of the Securities hereunder and the Series A Securities pursuant to the Securities Purchase Agreement.

(f) The Board of Directors has authorized the officers of the Issuer to seek approval of the Charter Amendment by the Commission and the stockholders of the Issuer.

Section 3.03. Governmental Authorization. The execution, delivery and performance by the Issuer of this Agreement, the Series B Notes, the Series B Warrants and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby require no action by or in respect of, or filing with, any Authority other than (i) compliance with any applicable requirements of the HSR Act; (ii) the Commission permitting the Charter Amendment to take effect under Section 19 of the Securities Act; and (iii) such other actions or filings which have been taken or made prior to the date hereof.

Section 3.04. Noncontravention. The execution, delivery and performance by the Issuer of this Agreement, the Series B Notes, the Series B Warrants and the other Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate the certificate of incorporation or bylaws of the Issuer or any of its Subsidiaries; (ii) assuming compliance with the matters referred to in Section 3.03, violate any applicable law, rule, regulation, judgment, injunction, order or decree; (iii) require any consent or other action by any Person under, constitute a default under, or give rise to any right of termination, cancellation or acceleration of any right or obligation of the Issuer or any of its Subsidiaries or to a loss of any benefit to which the Issuer or any of its Subsidiaries is entitled under any provision of any material agreement or other instrument binding upon the Issuer or any of its Subsidiaries; or (iv) result in the creation or imposition of any Lien on any asset of the Issuer or any of its Subsidiaries except in the cases of clauses (ii), (iii) and (iv) above for such conflicts, breaches, violations or defaults that would not have a Material Adverse Effect.

Section 3.05. Section 203 of the DGCL. Prior to the execution of this Agreement, the Board of Directors has taken all action necessary so that the restrictions on business combinations contained in Section 203 of the DGCL will not apply with respect to or as a result of this Agreement, the Transactions and/or the distribution by the SPV of the Series A Notes and the Series A Warrants to the H&F Entities and the SLP Entities without any further action on the part of the stockholders of the Issuer or the Board of Directors. To the Issuer's knowledge, no other state takeover statute is applicable to the Transactions.

Section 3.06. Capitalization. (a) The authorized capital stock of the Issuer consists of (i) 300,000,000 shares of Common Stock and (ii) 30,000,000 shares of Preferred Stock. As of March 31, 2005, there were (i) 79,453,556 shares of Common Stock outstanding, all of which were validly issued, fully paid and nonassessable and were issued free of preemptive rights; (ii) one share of Series B Preferred Stock authorized and outstanding; (iii) 1,338,402 shares of Series C Cumulative Preferred Stock authorized and outstanding; (iv) 12,000,000 shares of Common Stock reserved for issuance pursuant to the H&F Entities' Original Notes; (v) 26,500,000 shares of Common Stock reserved for issuance pursuant to the Issuer's equity incentive plan and employee stock purchase plan; and (vi) 16,442,817 shares of Common Stock (including shares underlying options to purchase shares of Common Stock) granted under the Issuer's equity incentive plan.

(b) Except as set forth in Section 3.06(a) and as contemplated by this Agreement, there are no outstanding (i) shares of capital stock or voting securities of the Issuer, (ii) securities of the Issuer convertible into or exchangeable for shares of capital stock or voting securities of the Issuer or (iii) options or other rights to acquire from the Issuer, or any other obligation of the Issuer to issue, any capital stock, voting securities or securities convertible into or exchangeable for capital stock or voting securities of the Issuer (the items in clauses 3.06(b)(i), 3.06(b)(ii) and 3.06(b)(iii) being referred to collectively as the "Issuer Securities"). Except as set forth in Schedule 3.06(b), there are no outstanding obligations of the Issuer or any of its Subsidiaries to repurchase, redeem or otherwise acquire any Issuer Securities.

Section 3.07. Subsidiaries. (a) Each Subsidiary of the Issuer is a corporation duly incorporated, validly existing and in good standing (to the extent the jurisdiction recognizes the concept) under the laws of its jurisdiction of incorporation, has all corporate powers and all material governmental licenses, authorizations, permits, consents and approvals required to carry on its business as now conducted. Each Subsidiary of the Issuer is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified would not, individually or in the aggregate, have a Material Adverse Effect.

(b) Except as disclosed in the SEC Reports (as defined below), all of the outstanding capital stock or other equity securities of each Subsidiary of the Issuer (except for any directors' qualifying shares) is owned by the Issuer, directly or indirectly, free and clear of any Lien and free of any other limitation or restriction (including any restriction on the right to vote, sell or otherwise dispose of such capital stock or other voting securities). There are no outstanding (i) securities of the Issuer or any Subsidiary of the Issuer convertible into or exchangeable for shares of capital stock or voting securities of any Subsidiary of the Issuer or (ii) options or other rights to acquire from the Issuer or any Subsidiary of the Issuer, or other obligation of the Issuer or any Subsidiary of the Issuer to issue, any capital stock, voting securities or securities convertible into or exchangeable for capital stock or voting securities of any Subsidiary of the Issuer (the items in clauses 3.07(b)(i) and 3.07(b)(ii) being referred to collectively as the "Subsidiary Securities"). There are no outstanding obligations of the Issuer or any Subsidiary of the Issuer to repurchase, redeem or otherwise acquire any outstanding Subsidiary Securities.

(c) Except as set forth in the SEC Reports, the Issuer has no ownership interest or other investment convertible into or exchangeable for an ownership interest in any Person.

Section 3.08. SEC Reports; Financial Statements. (a) The Issuer has timely filed all required registration statements, prospectuses, reports, schedules, forms, statements and other documents required to be filed by it with the Commission since January 1, 2003 (collectively, the "SEC Reports"). No Subsidiary of the Issuer is required to file any form, report, registration statement, prospectus or other document with the Commission. The information contained or incorporated by reference in the SEC Reports was true and correct in all material respects as of the respective dates of the filing thereof with the Commission (and if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing); and, as of such respective dates, the SEC Reports did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the

statements therein, in light of the circumstances under which they were made, not misleading. All of the SEC Reports, as of their respective dates, complied as to form in all material respects with the applicable requirements of the Securities Act and the Exchange Act and the rules and regulations promulgated thereunder.

(b) The audited financial statements (the "Financial Statements") of the Issuer included in the Issuer's Annual Report on Form 10-K for the year ended December 31, 2004, together with the related notes and schedules, present fairly in all material respects the consolidated financial position of the Issuer and its Subsidiaries and the results of its operations and cash flows for the periods specified and have been prepared in compliance with the Exchange Act and in accordance with generally accepted accounting principles applied on a consistent basis ("GAAP") during the periods involved.

(c) Except for liabilities (i) set forth or reflected in the Financial Statements (or referred to in the notes thereto) or (ii) incurred in the ordinary course of business consistent with past practice, since the Balance Sheet Date, neither the Issuer nor any of its Subsidiaries has (x) any liabilities of a nature required to be set forth or reflected in a balance sheet prepared in accordance with GAAP or (y) any other material liabilities.

(d) Since January 1, 2003, the Issuer's principal executive officer and its principal financial officer have (x) devised and maintained a system of internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and preparation of financial statements in accordance with GAAP, and has evaluated such system on a quarterly basis and concluded that it is effective and (y) disclosed to the Issuer's management, auditors and the audit committee of the Board of Directors (i) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the Issuer's or any of its Subsidiaries' ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of the Issuer and the Issuer has provided to each Holder copies of any written materials relating to the foregoing. The Issuer has established and maintains disclosure controls and procedures (as such term is defined in Rule 13a-14 under the Exchange Act); such disclosure controls and procedures are designed to ensure that material information relating to the Issuer and its Subsidiaries required to be included in the Issuer's periodic reports under the Exchange Act, is made known to the Issuer's principal executive officer and its principal financial officer by others within those entities, and, to the knowledge of the Issuer, such disclosure controls and procedures are effective in timely alerting the Issuer's principal executive officer and its principal financial officer to such material information required to be included in the Issuer's periodic reports required under the Exchange Act. Except as disclosed in the SEC Reports, there are no outstanding loans made by the Issuer or any of its Subsidiaries to any executive officer (as defined in Rule 3b-7 under the Exchange Act) or director of the Issuer. Since the enactment of the Sarbanes-Oxley Act of 2002, neither the Issuer nor any of its Subsidiaries has made any loans to any executive officer (as defined in Rule 3b-7 under the Exchange Act) or director of the Issuer or any of its Subsidiaries.

Section 3.09. Absence of Certain Changes. Except as set forth in the SEC Reports or on Schedule 3.09 and for the transactions contemplated by this Agreement, the

Securities Purchase Agreement, the Merger Agreement, the VAB Agreement, the Guarantee and the Commitment Letters (as defined below), (i) since the Balance Sheet Date, the business of the Issuer and its Subsidiaries has been conducted in the ordinary course of business consistent with past practices and (ii) there has not been:

(a) any event, occurrence or facts which, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect;

(b) any declaration, setting aside or payment of any dividend or other distribution with respect to any shares of capital stock of the Issuer, or any repurchase, redemption or other acquisition by the Issuer or any of its Subsidiaries of any outstanding shares of capital stock or other securities of the Issuer or any of its Subsidiaries;

(c) any incurrence, assumption or guarantee by the Issuer or any of its Subsidiaries of any indebtedness for borrowed money other than in the ordinary course of business and in amounts and on terms consistent with past practices; or

(d) any change in any method of accounting or accounting practice by the Issuer or any of its Subsidiaries except for any such change after the date hereof required by reason of a concurrent change in GAAP.

Section 3.10. Commitment Letters. On the date hereof, the Issuer has entered into the Commitment Letters in the form previously provided to the Holders (as amended, supplemented or otherwise modified from time to time to the extent permitted by this Agreement, the "Commitment Letters") with JPMorgan Chase Bank, N.A., J.P. Morgan Securities Inc., Merrill Lynch Capital Corporation and Merrill Lynch, Pierce, Fenner & Smith Incorporated to provide senior financing in connection with the Merger. The Issuer's entry into and execution of each of the Commitment Letters was duly authorized by all necessary corporate action on the part of the Issuer.

Section 3.11. Legal Proceedings; Violations of Law. There is no claim, action, suit, proceeding or investigation, whether civil, criminal, administrative, regulatory or investigative pending against or, to the Issuer's knowledge, threatened against or affecting, the Issuer, its Subsidiaries or any of their respective properties before any Authority which has had or would reasonably be expected to have a Material Adverse Effect. Neither the Issuer nor its Subsidiaries is in violation of, and the Issuer and its Subsidiaries have not received any notices of violations with respect to, any laws, statutes, ordinances, rules or regulations of any Authority, except for violations which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

Section 3.12. Intellectual Property. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (i) the Issuer and its Subsidiaries own, or possess sufficient rights to use, all Intellectual Property necessary for the conduct of its business as currently conducted; (ii) to the knowledge of the Issuer, the use by the Issuer and its Subsidiaries of any Intellectual Property used in the conduct of the Issuer's and its Subsidiaries' businesses as currently conducted does not infringe on or otherwise violate the rights of any Person; (iii) the use of any licensed Intellectual Property by the Issuer or its

Subsidiaries is in accordance with applicable licenses pursuant to which the Issuer or such Subsidiary acquired the right to use such Intellectual Property; and (iv) to the knowledge of the Issuer, no Person is challenging, infringing on or otherwise violating any right of the Issuer or any of its Subsidiaries with respect to any Intellectual Property owned by and/or licensed to the Issuer or its Subsidiaries.

Section 3.13. Employee Benefits. With respect to each Benefit Plan, no material liability has been incurred and no condition or circumstances exist that would subject the Issuer or its Subsidiaries to any material tax, fine, Lien, penalty or other liability imposed by ERISA, the Code or other applicable laws, rules and regulations. The Issuer and its Subsidiaries are in compliance with all federal, state, local and foreign requirements regarding employment, except for any failures to comply that are not reasonably likely, individually or in the aggregate, to have a Material Adverse Effect. As of the date hereof, there is no material labor dispute, strike or work stoppage against the Issuer or any of its Subsidiaries pending or, to the knowledge of the Issuer, threatened which may interfere with the business activities of the Issuer or any of its Subsidiaries, except where such dispute, strike or work stoppage is not reasonably likely, individually or in the aggregate, to have a Material Adverse Effect. Neither the Issuer nor any of its Subsidiaries has any material collective bargaining agreements relating to its employees. There is no material labor union organizing activity pending or, to the knowledge of the Issuer, threatened with respect to the Issuer or any of its Subsidiaries.

Section 3.14. Taxes. Except as would not reasonably be expected to have a Material Adverse Effect; (a) all Tax Returns required to be filed by, or on behalf of, the Issuer or any of its Subsidiaries have been timely filed, or will be timely filed, in accordance with all applicable laws, and all such Tax Returns are, or will be at the time of filing, complete and correct in all material respects; (b) the Issuer and each of its Subsidiaries has timely paid (or has had paid on its behalf) in full all Taxes due and payable (whether or not shown on such Tax Returns), or, where payment is not yet due, has made adequate provision for all Taxes in the Financial Statements of the Issuer in accordance with GAAP; and (c) there are no Liens with respect to Taxes upon any of the assets or properties of either Issuer or its Subsidiaries, other than with respect to Taxes not yet due and payable.

Section 3.15. No Brokers or Finders. Except for Thomas Weisel Partners LLC, the fees and expenses which will be paid by the Issuer, neither the Issuer nor its Subsidiaries has incurred, or will incur, directly or indirectly, any liability for any brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement, the Series B Notes or the Series B Warrants.

Section 3.16. Issuer is Not an "Investment Company". The Issuer has been advised of the rules and requirements under the Investment Company Act of 1940, as amended. The Issuer is not, and immediately after the amendment and restatement of the Original Notes and the issuance of the Series B Securities will not be, an "investment company" or an entity "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

Section 3.17. General Solicitation; No Integration. Neither the Issuer nor any other person or entity authorized by the Issuer to act on its behalf has engaged in a general

solicitation or general advertising (within the meaning of Regulation D of the Securities Act) of investors with respect to offers or sales of the Series B Securities. The Issuer has not, directly or indirectly, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of any security (as defined in the Securities Act) which, to its knowledge, is or will be integrated with the Series B Securities amended and/or issued pursuant to this Agreement.

Section 3.18. Issuer Representations in the Merger Agreement. Each of the representations and warranties of the Issuer contained in the Merger Agreement is true and correct in all material respects.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF EACH HOLDER

Each Holder hereby severally, but not jointly, represents and warrants to the Issuer as follows:

Section 4.01. Ownership of Original Notes. (a) Such Holder owns one or more Original Notes in the aggregate principal amount set forth opposite such Holder's name on Schedule 1.

(b) Such Holder holds such Original Notes free and clear of any Liens and free of any other restriction or limitation (including any restriction on the right to vote, sell or otherwise dispose of the Original Notes) except as provided under applicable securities laws or as set forth in the Securityholders Agreement and the Issuer's certificate of incorporation and bylaws.

Section 4.02. Private Placement. (a) Such Holder understands that the amendment and restatement of the Original Notes and the issuance of the Series B Warrants is intended to be exempt from registration under the Securities Act pursuant to Section 4(2) of the Securities Act.

(b) The Series B Securities to be received by such Holder pursuant to this Agreement are being received for its own account and without a view to the resale or distribution of such Series B Securities or any interest therein other than in a transaction exempt from registration under the Securities Act.

(c) Such Holder is an "accredited investor" as such term is defined in Regulation D.

(d) Such Holder has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Series B Securities and such Holder is capable of bearing the economic risks of such investment, including a complete loss of its investment in the Series B Securities.

(e) Such Holder has been given the opportunity to ask questions of, and receive answers from, the Issuer concerning the terms and conditions of the Series B Securities and other

related matters. Such Holder further represents and warrants that the Issuer has made available to such Holder or its agents all documents and information relating to an investment in the Series B Securities requested by or on behalf of such Holder. In evaluating the suitability of an investment in the Series B Securities, such Holder has not relied upon any other representations or other information (whether oral or written) made by or on behalf of the Issuer other than as set forth in this Agreement.

Section 4.03. Corporate Existence and Power. Such Holder is a corporation, partnership or limited liability company duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has all corporate, partnership or limited liability company power to carry on its business as now conducted.

Section 4.04. Authority; No Other Action. (a) The execution, delivery and performance of this Agreement and the other Transaction Documents to which such Holder is a party are within such Holder's powers and have been duly authorized on its part by all requisite corporate, limited liability company or partnership or other action and assuming due authorization, execution and delivery by the other parties to such agreements, each agreement constitutes a legal, valid and binding agreement of such Holder enforceable against such Holder in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws relating to or affecting creditors generally or by general equity principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(b) No action by or in respect of, or filing with, any Authority is required for the execution, delivery and performance by such Holder of this Agreement and the other Transaction Documents to which it is a party other than compliance with the applicable requirements of the HSR Act.

Section 4.05. Noncontravention. The execution, delivery and performance by such Holder of this Agreement, the Series B Notes, the Series B Warrants and the other Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate the certificate of incorporation or bylaws or other organizational documents of such Holder; (ii) violate any applicable law, rule, regulation, judgment, injunction, order or decree; or (iii) require any consent or other action by any other Person.

Section 4.06. Binding Effect. Each of this Agreement and the other Transaction Documents to which such Holder is a party has been duly executed by such Holder and constitutes a legal, valid and binding agreement of such Holder.

Section 4.07. No Brokers or Finders. Such Holder has not incurred, and will not incur, directly or indirectly, any liability for any brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement or the Transactions.

ARTICLE V

COVENANTS OF THE ISSUER

The Issuer agrees with each Holder that:

Section 5.01. Notices of Certain Events. (a) From the date hereof until the earlier of (i) the Closing Date (as defined in the Merger Agreement, the "Merger Closing") and (ii) the Termination Date (as defined in the Merger Agreement, the "Merger Termination"), the Issuer will promptly notify Holder of:

(i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(ii) any notice or other communication from any Authority in connection with the transactions contemplated by this Agreement; and

(iii) any claims, actions, suits, proceedings or investigations, whether civil, criminal, administrative, regulatory or investigative, commenced or, to its knowledge, threatened against, relating to or involving or otherwise affecting the Issuer or any of its Subsidiaries or that relate to the transactions contemplated by this Agreement, the other Transaction Documents, the Merger Agreement and/or the VAB Agreement that, if determined or resolved adversely in accordance with the plaintiff's demands, would reasonably be expected to have a Material Adverse Effect.

(b) At least twelve (12) business days prior to the Merger Closing, the Issuer will provide each of the Holders with written notice specifying the Closing Date (as defined in the Merger Agreement).

Section 5.02. Voting Rights Charter Amendment. As soon as practicable, but in no event earlier than three (3) months after the date hereof, the Issuer will take all action necessary in accordance with its restated certificate of incorporation, bylaws and applicable law and regulation to convene a meeting of the stockholders of the Issuer for the purpose of approving the Charter Amendment. The Issuer will use its reasonable best efforts to obtain from its stockholders a vote approving the Charter Amendment, and the Board of Directors will recommend that the stockholders of the Issuer approve the Charter Amendment.

Section 5.03. Guarantee and Block Account. Prior to the Closing, the Issuer will execute the Guarantee and the Security Agreement. Simultaneous with the Closing, the Issuer will deposit, or cause to be deposited, the Blocked Account Collateral (as defined in the Security Agreement) in the Blocked Account (as defined in the Security Agreement).

Section 5.04. Compliance with Merger Agreement. The Issuer will comply in all material respects with all of its obligations under the Merger Agreement and, subject to the terms of the Merger Agreement and this Agreement, will use its reasonable best efforts to consummate the Merger and the other transactions contemplated thereby. The Issuer will not amend, supplement, consent to or otherwise modify or waive any provision of the Merger

Agreement without obtaining the prior written consent of each Holder, which consent shall not be unreasonably withheld or delayed. Without the prior written consent of each Holder, which shall not be unreasonably withheld or delayed, the Issuer will not consummate the Merger unless all of the Issuer's conditions to closing the Merger under the Merger Agreement have been satisfied without waiver.

Section 5.05. Compliance with VAB Agreement. The Issuer will comply in all material respects with all of its obligations under the VAB Agreement and, subject to the terms of the VAB Agreement and this Agreement, will use its reasonable best efforts to consummate the transactions contemplated thereby (the "VAB Acquisition"). The Issuer will not amend, supplement or otherwise modify, grant a consent under or waive any provision of the VAB Agreement without obtaining the prior written consent of each Holder, which consent shall not be unreasonably withheld or delayed. Without the prior written consent of each Holder, which shall not be unreasonably withheld or delayed, the Issuer will not consummate the VAB Acquisition unless all of the Issuer's conditions to closing the VAB Acquisition under the VAB Agreement have been satisfied without waiver.

Section 5.06. Senior Financing. The Issuer will comply in all material respects with all of its obligations under the Commitment Letters. Without the prior written consent of each Holder, the Issuer will not amend, supplement or otherwise modify or waive any provision of the Commitment Letters (other than pursuant to any market flex provisions of the fee letter thereto) in any manner that is materially adverse to the Issuer (including any modifications of the economic or other terms of the senior secured debt contemplated thereby that is materially adverse to the Issuer). The Issuer will finance the Merger solely with the proceeds of the issuance of the Series A Notes and Series A Warrants pursuant to the Securities Purchase Agreement and the incurrence of senior secured indebtedness in an amount not to exceed that contemplated by the Commitment Letters and having economic and other terms that are not materially less favorable to the Issuer than those contemplated by the Commitment Letters.

Section 5.07. Securities Purchase Agreement. The Issuer will not amend, supplement or otherwise modify or waive any provision of the Securities Purchase Agreement without obtaining the prior written consent of each of the Holders, which consent shall not be unreasonably withheld or delayed.

ARTICLE VI

COVENANTS OF THE HOLDERS

Each Holder severally, but not jointly, agrees with the Issuer that:

Section 6.01. Confidentiality. Such Holder and its Affiliates will hold, and will use their reasonable best efforts to cause their respective officers, directors, members, employees, accountants, counsel, consultants, advisors and agents to hold, in confidence, unless compelled to disclose by judicial or administrative process or by other requirements of law, all confidential documents and information concerning the Issuer or any of its Subsidiaries furnished to such Holder or its Affiliates in connection with this Agreement or the Transactions,

except to the extent that such information can be shown to have been (i) previously known on a nonconfidential basis by such Holder, (ii) in the public domain through no fault of such Holder or (iii) acquired by such Holder from sources other than the Issuer or any of its Subsidiaries which sources, to such Holder's knowledge, lawfully acquired such information; provided that such Holder may disclose such information to its officers, directors, members, employees, accountants, counsel, consultants, advisors and agents in connection with the transactions contemplated by this Agreement so long as such Persons are informed by such Holder of the confidential nature of such information and are directed by such Holder to treat such information confidentially. Such Holder will be responsible for the breach by any such Persons of this Section 6.01. If this Agreement is terminated, such Holder and its Affiliates will cause, and will use their reasonable best efforts to cause, each of their respective officers, directors, members, employees, accountants, counsel, consultants, advisors and agents to, destroy or deliver to the Issuer, upon request, all documents and other materials, and all copies thereof, obtained by such Holder or its Affiliates or on their behalf from the Issuer or any of its Subsidiaries in connection with this Agreement that are subject to such confidence; provided, that the obligation to destroy or deliver to the Issuer shall not apply to the extent otherwise required by (A) any law or regulation, (B) any internal document retention policy or procedure or (C) any internal policy or procedure relating to the backup storage of electronic data, provided that the confidentiality obligations under this Section 6.01 will continue to apply to any information retained accordingly.

ARTICLE VII

COVENANTS OF THE ISSUER AND EACH HOLDER

The Issuer and each Holder severally, but not jointly, agree that:

Section 7.01. Reasonable Best Efforts; Further Assurances. Subject to the terms and conditions of this Agreement, the Issuer and each Holder will use their reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable laws and regulations to consummate the Transactions. The Issuer and each Holder agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously this Agreement or the Transactions.

Section 7.02. Certain Filings. (a) The Issuers and each Holder will cooperate with one another (i) in determining whether any action by or in respect of, or filing with, any Authority is required, or any actions, consents, approvals or waivers are required to be obtained from parties to any material contracts, in connection with the consummation of the Transactions and (ii) in taking such actions or making any such filings, furnishing information required in connection therewith and seeking timely to obtain any such actions, consents, approvals or waivers.

(b) The Issuer and each Holder acknowledge and agree that one or more filings under the HSR Act will be necessary in connection with the issuance of Common Stock upon conversion or exercise of the Securities and/or the adoption of the Charter Amendment.

Promptly upon the request of the Issuer or any holder of the Securities, to the extent a filing is required under the HSR Act in connection with a proposed conversion of the Series B Notes or exercise of the Series B Warrants by such holder or the Issuer, the Issuer and each Holder (or its ultimate parent entity) will file with the proper authorities all forms and other documents necessary to be filed pursuant to the HSR Act, and the regulations promulgated thereunder, in connection with the issuance of Common Stock upon conversion of the Series B Notes or exercise of the Series B Warrants and/or the adoption of the Charter Amendment and will cooperate with each other in promptly producing such additional information as those authorities may reasonably require to allow early termination of the notice period provided by the HSR Act or as otherwise necessary to comply with statutory requirements of the Federal Trade Commission or the Department of Justice. The Issuer will pay all filing fees associated with the filing of the HSR Act notifications on behalf of itself, each Holder and any holder from time to time of the Securities.

Section 7.03. Public Announcements. The parties agree to consult with each other before issuing any press release or making any public statement with respect to this Agreement or the transactions contemplated hereby and, except for any press releases and public statements the making of which may be required by applicable law or any listing agreement with any national securities exchange or The Nasdaq Stock Market, will not issue any such press release or make any such public statement prior to such consultation.

Section 7.04. Subsequent Events Upon the Amendment Date. If and upon the occurrence of the Amendment Date (as defined in the Indenture):

(a) the Issuer will make a cash payment equal to 0.25% per annum (compounded on a quarterly basis) on the principal amount of each Holder's Series B Notes, for the period commencing on the Closing Date and ending on the Amendment Date (as defined in the Indenture), by wire transfer in immediately available federal funds to an account or accounts designated by such Holder;

(b) the Series B Notes will be amended and restated in accordance with the terms thereof and as set forth in the Indenture;

(c) the Series B Warrants will be redeemed and terminated in accordance with their terms; and

(d) the Securityholders Agreement will automatically and without further action of the parties be amended and restated to read in its entirety as set forth in the Securityholders Agreement, dated as of May 3, 2001, as in effect on the date hereof.

ARTICLE VIII

CONDITIONS PRECEDENT TO CLOSING

Section 8.01. Conditions to Each Party's Obligations. The obligations of each party hereto to consummate the transactions contemplated by Article II to occur at the Closing are subject to the satisfaction, at or prior to the Closing Date, of the following conditions:

(a) The amendment of the Original Notes into the Series B Notes and the issuance of the Series B Warrants will not be prohibited by any applicable law, court order or governmental regulation; and

(b) The Merger Agreement and the VAB Agreement will have been entered into by the parties thereto.

Section 8.02. Conditions to Each Holder's Obligations. The obligation of each Holder to consummate the transactions contemplated by Article II to occur at the Closing is subject to the satisfaction, at or prior to the Closing Date, of the following conditions:

(a) Such Holder will have received duly executed certificates representing the New Securities being issued to such Holder hereunder against surrender of the Original Notes in accordance with Article II;

(b) Such Holder will have received all documents reasonably requested by it relating to the existence of the Issuer, the corporate authority for entering into, and the validity of, this Agreement, the Series B Notes, the Series B Warrants and the other Transaction Documents, all in form and substance reasonably satisfactory to it;

(c) Such Holder will have received from (i) Edward Knight, Esq., the Issuer's general counsel, an opinion in the form attached hereto as Exhibit D-1 and (ii) Skadden, Arps, Slate, Meagher & Flom LLP, the Issuer's counsel, an opinion in the form attached hereto as Exhibit D-2; and

(d) Each of the Transaction Documents to which the Issuer is a party will have been executed by the Issuer with a copy thereof delivered to such Holder.

Section 8.03. Conditions to Issuer's Obligations. The obligations of the Issuer to consummate the transactions contemplated by Article II to occur at the Closing is subject to the satisfaction, at or prior to the Closing Date, of the following condition:

(a) The Issuer will have received all documents reasonably requested by it relating to the existence of each Holder, the authority for entering into, and the validity of this Agreement and the Transaction Documents, all in form and substance reasonably satisfactory to it.

ARTICLE IX

MISCELLANEOUS

Section 9.01. Notices. All notices, requests and other communications to any party hereunder will be in writing (including telecopier or similar writing) and will be given to the Issuer at The Nasdaq Stock Market, 9513 Key West Avenue, Rockville, MD 20850, Attention: John Zecca, Fax: (301) 978-5296, and to each Holder at its address or telecopier number set forth in Schedule 1, or such other address or telecopier number as such party may hereinafter specify for the purpose to the party giving such notice. Each such notice, request or

other communication will be effective (i) if given by telecopy, when such telecopy is transmitted to the telecopy number specified pursuant to this Section 9.01 and confirmation of receipt is received or, (ii) if given by mail, 72 hours after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid or, (iii) if given by any other means, when delivered at the address specified in this Section 9.01.

Section 9.02. No Waivers; Amendments. (a) No failure or delay on the part of any party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(b) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and signed by all parties hereto.

Section 9.03. Survival of Provisions. The representations and warranties contained in this Agreement will survive and remain in full force and effect in accordance with their terms until the date which is three months after the date on which the Issuer delivers to each Holder full audited financial statements of the Issuer and its Subsidiaries for fiscal year 2006; provided that the representations and warranties contained in Sections 3.01, 3.02, 3.05, 3.06, 3.16 and 3.17 and Sections 4.01, 4.02, 4.03, 4.04 and 4.06 (each, a "Fundamental Representation") will survive indefinitely. Notwithstanding the foregoing, an indemnification claim brought pursuant to Section 9.04 with respect to a breach of a representation or warranty will not be precluded hereby if the claim is initiated in accordance with Section 9.04(c) prior to the expiration of the respective survival period described in the preceding sentence.

Section 9.04. Indemnification. (a) The Issuer hereby agrees to indemnify and hold harmless each Holder, any Affiliate of such Holder, any Person controlling such Holder or such Affiliate, and their respective directors, members, officers, agents and employees from and against any losses, claims, damages, expenses and liabilities (including, without limitation, reasonable expenses of investigation and reasonable attorneys' fees and expenses in connection with any investigation, action, suit or proceeding) ("Damages") to which such person may become subject as the result of (i) any breach of any representation or warranty contained in Article 3; (ii) any breach of any covenant made or to be performed on the part of the Issuer under this Agreement, the Series B Notes, the Series B Warrants, the Indenture, the Registration Rights Agreement or the Securityholders Agreement; or (iii) any third-party action, claim or proceeding directly resulting from the matters or transactions which are the subject of or contemplated by this Agreement, the Merger Agreement, the Series B Notes, the Series B Warrants and/or any of the other Transaction Documents or any use made or proposed to be made by the Issuer of the proceeds from the sale of the Securities, and the Issuer will reimburse any such person for all reasonable expenses (including reasonable counsel fees and expenses) as they are incurred by any such person in connection with any such breach of representation, warranty or covenant or investigating, preparing or defending any such action or proceeding, pending or threatened, whether or not such person is a party thereto; provided that with respect to indemnification or reimbursement by the Issuer pursuant to this Section 9.04, (x) in the case of any indemnification pursuant to clause (i) other than in respect of a Fundamental Representation (which will not be subject to the limits of this clause (x)), the Issuer will not be liable unless the aggregate amount of Damages exceeds $1,000,000, and the Issuer will only be liable for Damages in excess of such amount, and (y) the Issuer's maximum liability will not exceed the aggregate principal amount of the Original Securities.

(b) Each Holder hereby agrees to indemnify, defend and hold harmless the Issuer, its Affiliates, any Person controlling the Issuer or its Affiliates, and their respective directors, members, officers, agents and employees from and against any Damages to which such person may become subject as a result of (i) any breach of any representation or warranty of such Holder contained in Article IV; or (ii) any breach of any covenant made or to be performed on the part of such Holder under this Agreement, the Series B Notes, the Series B Warrants and/or the other Transaction Documents, and such Holder will reimburse any such person for all reasonable expenses (including reasonable counsel fees and expenses) as they are incurred by any such person in connection with any such breach of representation, warranty or covenant or investigating, preparing or defending any such action or proceeding, pending or threatened, whether or not such person is a party thereto; provided that with respect to indemnification or reimbursement by such Holder pursuant to this Section 9.04, (x) in the case of any indemnification pursuant to clause (i) other than in respect of a Fundamental Representation (which will not be subject to the limits of this clause (x)), the Holders will not be liable unless the aggregate amount of Damages exceeds $1,000,000, and the Holders will only be liable for Damages in excess of such amount, and (y) each Holder's maximum liability will not exceed the aggregate principal amount of the Series B Notes set forth opposite such Holder's name on Schedule 1.

(c) Promptly after receipt by any person (the "Indemnified Person") of notice of any demand, claim or circumstances which would or might give rise to a claim or the commencement of any action, proceeding or investigation in respect of which indemnity may be sought pursuant to Section 9.04(a) or (b), such Indemnified Person will give notice thereof to the person against whom such indemnity may be sought (the "Indemnifying Person"). Notwithstanding the foregoing, the failure so to give prompt notice to such person will not relieve such Indemnifying Person from liability, except to the extent such failure or delay materially prejudices such Indemnifying Person. The Indemnifying Person will be entitled to participate in any such action and to assume the defense thereof, at the Indemnifying Person's expense and with counsel reasonably satisfactory to the Indemnified Person. After notice from the Indemnifying Person to such Indemnified Person of its election so to assume the defense thereof, the Indemnified Person will have the right to participate in such action and to retain its own counsel, but the Indemnifying Person will not be liable to such Indemnified Person hereunder for any legal expenses of other counsel or any other expenses, in each case, subsequently incurred by such Indemnified Person, in connection with the defense thereof other than reasonable costs of investigation, unless (i) the Indemnifying Person has agreed to pay such fees and expenses, (ii) the Indemnifying Person will have failed to employ counsel reasonably satisfactory to the Indemnified Person in a timely manner or (iii) the Indemnified Person will have been advised by outside counsel that representation of the Indemnified Person by counsel provided by the Indemnifying Person pursuant to the foregoing would be inappropriate due to an actual or potential conflicting interest between the Indemnifying Person and the Indemnified Person, including situations in which there are one or more legal defenses available to the Indemnified Person that are different from or additional to those available to the Indemnifying Person; provided however, that the Indemnifying Person will not, in connection with any one such action or proceeding or separate but substantially similar actions or proceedings arising out of the same general allegations, be liable for the fees and expenses of more than one firm of attorneys at one time for any Indemnified Person and its Affiliates.

(d) Except in the case of fraud, or with respect to matters for which the remedy of specific performance or injunctive relief or other equitable remedies are appropriate or available, the respective rights to indemnification as provided for in this Section 9.04, will constitute each party's sole remedy and no party will have any other liability or damages to the other party; provided, however, that nothing contained herein will prevent the Indemnified Person from pursuing remedies as may be available to such party under applicable law in the event of an Indemnifying Person's failure to comply with its indemnification obligations hereunder.

Section 9.05. Fees and Expenses. Unless reimbursed in connection with the Securities Purchase Agreement, at the earlier of the Merger Closing or the termination of the Merger Agreement, the Issuer will reimburse each of the H&F Entities and the SLP Entities for their reasonable documented out-of-pocket fees and expenses incurred by the H&F Entities and the SLP Entities in connection with this Agreement, the other Transactions, the Merger and the VAB Acquisition (excluding out-of-pocket fees and expenses relating to the Bridge Loan) up to a total of (i) $4,000,000 in the aggregate for all the H&F Entities and the SLP Entities if the Merger is consummated or (ii) $2,000,000 in the aggregate for all the H&F Entities and the SLP Entities if the Merger is not consummated, including without limitation, in each case, the fees, disbursements and expenses of counsel, accountants, financial advisors, bankers, consultants and other experts retained by the H&F Entities and the SLP Entities in connection therewith. As a condition to such reimbursement, the H&F Entities and the SLP Entities must provide invoices and receipts or other reasonable evidence of having incurred said expenses.

Section 9.06. Documentary Taxes. The Issuer will pay any and all documentary stamp or similar issue or transfer taxes payable in respect of the execution and delivery of this Agreement and/or the other Transaction Documents, the amendment, issuance and/or delivery of the Series B Securities and the issuance or delivery of the shares of Common Stock on conversion of the Series B Notes or the exercise of the Series B Warrants; provided, that the Issuer shall not be required to pay any tax which may be payable in respect of any transfer involved in the issue or delivery of shares of Common Stock in a name other than that of the holder of the Series B Notes to be converted and no such issue or delivery shall be made unless and until the person requesting such issue or delivery has paid to the Issuer the amount of any such tax or has established, to the satisfaction of the Issuer, that such tax has been paid.

Section 9.07. Termination. (a) This Agreement may be terminated at any time prior to the Closing:

(i) by mutual written agreement of the Issuer and each Holder;

(ii) by the Issuer or any Holder if the Closing will not have been consummated on or before April 22, 2005;

(iii) by the Issuer or any Holder if there will be any law or regulation that makes consummation of the transactions contemplated hereby illegal or

otherwise prohibited or if consummation of the transactions contemplated hereby would violate any nonappealable final order, decree or judgment of any court or governmental body having competent jurisdiction;

(iv) by the Issuer or any Holder, if there has been a material misrepresentation, breach of warranty or breach of covenant or other obligation hereunder on the part of any Holder (in the case of termination by the Issuer) or the Issuer (in the case of termination by any Holder); or if any condition to such party's obligations hereunder becomes incapable of fulfillment through no fault of such party; or

(v) by the Issuer or any Holder, if the Merger Agreement is terminated for any reason.

The party desiring to terminate this Agreement pursuant to Sections 9.07(a)(ii), (iii), (iv) or (v) will give notice of such termination to the other parties.

(b) If this Agreement is terminated as permitted by Section 9.07(a), such termination will be without liability of either party (or any stockholder, director, officer, employee, agent, consultant or representative of such party) to the other parties to this Agreement; provided that if such termination will result from the willful (i) failure of any party to fulfill a condition to the performance of the obligations of the other parties, (ii) failure to perform a covenant of this Agreement or (iii) breach by any party hereto of any representation or warranty or agreement contained herein, such party will be liable for damages incurred or suffered by the other party as a result of such failure or breach.

Section 9.08. Holders' Obligations. Notwithstanding anything to the contrary contained herein, all obligations that apply to more than one Holder are assumed by each applicable Holder on a several, but not joint, basis.

Section 9.09. Successors and Assigns. The Issuer may not assign any of its rights and obligations hereunder without the prior written consent of each Holder. The Holders may not assign their rights and obligations hereunder without the prior written consent of the Issuer except to any Affiliate of such Holders; provided, however, that such Affiliate assignees shall be required to agree in writing, reasonably satisfactory to the Issuer, to be bound by the terms of this Agreement. This Agreement will be binding upon the Issuer and each Holder and their respective successors and assigns. Neither this Agreement nor any provision hereof will be construed so as to confer any right or benefit upon any Person other than parties to this Agreement and their respective successors and assigns. The Issuer and each Holder expressly intend and agree that each Holder and their respective successors and assigns are intended third party beneficiaries of all representations, warranties, covenants and agreements in favor of the Holders and shall be entitled to enforce all provisions of this Agreement.

Section 9.10. Headings. The headings in this Agreement are for convenience of reference only and will not control or affect the meaning or construction of any provisions hereof.

Section 9.11. Severability. The invalidity or unenforceability of any provisions of this Agreement in any jurisdiction will not affect the validity, legality or enforceability of the

remainder of this Agreement in such jurisdiction or the validity, legality or enforceability of this Agreement, including any such provision, in any other jurisdiction, it being intended that all rights and obligations of the parties hereunder will be enforceable to the fullest extent permitted by law.

Section 9.12. Specific Performance. The parties hereto agree that if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, irreparable damage would occur, no adequate remedy at law would exist and damages would be difficult to determine, and that the parties will be entitled to specific performance of the terms hereof and immediate injunctive relief, without the necessity of proving the inadequacy of money damages as a remedy, in addition to any other remedy at law or equity.

Section 9.13. New York Law. This Agreement will be governed and construed in accordance with the laws of the State of New York applicable to contracts executed and performed within such state.

Section 9.14. Counterparts; Effectiveness. This Agreement may be executed in any number of counterparts each of which will be an original with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 9.15. Entire Agreement. This Agreement together with the other Transaction Documents constitute the entire agreement and understanding among the parties hereto and supersedes any and all prior agreements and understandings, written or oral, relating to the subject matter hereof.

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

THE NASDAQ STOCK MARKET, INC.

By: /s/ Adena T. Friedman

Name: Adena T. Friedman
Title: Executive Vice President

[Signature pages continue on next page]

HELLMAN & FRIEDMAN CAPITAL PARTNERS IV, L.P.

By: H&F INVESTORS IV, LLC, its General Partner

By: H&F ADMINISTRATION IV, LLC, its Administrative Manager

By: H&F INVESTORS III, INC., its Manager

By: /s/ Georgia Lee

Name: Georgia Lee
Title: Vice President

H&F EXECUTIVE FUND IV, L.P.

By: H&F INVESTORS IV, LLC, its General Partner

By: H&F ADMINISTRATION IV, LLC, its Administrative Manager

By: H&F INVESTORS III, INC., its Manager

By: /s/ Georgia Lee

Name: Georgia Lee
Title: Vice President

H&F INTERNATIONAL PARTNERS IV-A, L.P.

By: H&F INVESTORS IV, LLC, its General Partner

By: H&F ADMINISTRATION IV, LLC, its Administrative Manager

By: H&F INVESTORS III, INC., its Manager

By: /s/ Georgia Lee

Name: Georgia Lee
Title: Vice President

[Signature pages continue on next page]

H&F INTERNATIONAL PARTNERS IV-B, L.P.

By: H&F INVESTORS IV, LLC, its General Partner

By: H&F ADMINISTRATION IV, LLC, its Administrative Manager

By: H&F INVESTORS III, INC., its Manager

By: /s/ Georgia Lee

Name: Georgia Lee
Title: Vice President

SCHEDULE 1

HOLDER	SECURITIES		
	Aggregate Principal Amount of Original Notes	Aggregate Principal Amount of Series B Notes	Number of Series B Warrants
HELLMAN & FRIEDMAN CAPITAL PARTNERS IV, L.P. Patrick J. Healy Erik D. Ragatz Hellman & Friedman LLC One Maritime Plaza, 12th Floor San Francisco, CA 94111 (415) 788-5111 (Telephone) (415) 391-4648 (Telecopier)	$ 193,463,369	$ 193,463,369	2,219,547
H & F EXECUTIVE FUND IV, L.P. Patrick J. Healy Erik D. Ragatz Hellman & Friedman LLC One Maritime Plaza, 12th Floor San Francisco, CA 94111 (415) 788-5111 (Telephone) (415) 391-4648 (Telecopier)	$ 4,302,898	$ 4,302,898	49,366
H & F INTERNATIONAL PARTNERS IV-A, L.P. Patrick J. Healy Erik D. Ragatz Hellman & Friedman LLC One Maritime Plaza, 12th Floor San Francisco, CA 94111 (415) 788-5111 (Telephone) (415) 391-4648 (Telecopier)	$ 31,757,949	$ 31,757,949	364,349

HOLDER	SECURITIES		
	Aggregate Principal Amount of Original Notes	Aggregate Principal Amount of Series B Notes	Number of Series B Warrants
H & F INTERNATIONAL PARTNERS IV-B, L.P.	$ 10,475,784	$ 10,475,784	120,186

Patrick J. Healy
Erik D. Ragatz
Hellman & Friedman LLC
One Maritime Plaza, 12th Floor
San Francisco, CA 94111

(415) 788-5111 (Telephone)
(415) 391-4648 (Telecopier)

SCHEDULE 3.06(b)

Repurchase Obligations

In connection with the Closing under the Agreement, the Company has agreed to purchase $40 million principal amount of Series C Cumulative Preferred Stock.

SCHEDULE 3.09

Description of Changes

The Company pays a quarterly dividend on its Series C Cumulative Preferred Stock.

Exhibit 4.3

THE NASDAQ STOCK MARKET, INC.

TO

LAW DEBENTURE TRUST COMPANY OF NEW YORK,

as Trustee

INDENTURE

Dated as of

April 22, 2005

3.75% Convertible Notes due 2012

CROSS-REFERENCE TABLE*

Trust Indenture Act Section	Indenture Section
§310(a)(1)	8.09
(a)(2)	8.09
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	N.A.
(b)	8.08
(c)	N.A.
§311(a)	8.13
(b)	8.13
(c)	N.A.
§312(a)	6.01; 6.02
(b)	N.A.
(c)	N.A.
§313(a)	6.03
(b)	N.A.
(c)	6.03
(d)	6.03
§314(a)	6.04
(b)	N.A.
(c)(1)	16.05
(c)(2)	16.05
(c)(3)	N.A.
(d)	N.A.
(e)	16.05
(f)	N.A.
§315(a)	8.01; 8.02
(b)	7.08
(c)	7.06
(d)	8.01; 806
(e)	7.09
§316(a)(1)	7.07
(a)(2)	11.02
(b)	N.A.
(c)	9.01
§317(a)(1)	7.02
(a)(2)	7.02
(b)	5.04
§318(a)	16.08

N.A. means not applicable.

* This Cross-Reference Table shall not, for any purpose, be deemed to be part of this Indenture.

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ARTICLE 8
THE TRUSTEE

ARTICLE 9
THE NOTEHOLDERS

ARTICLE 10
MEETINGS OF NOTEHOLDERS

ARTICLE 11
SUPPLEMENTAL INDENTURES

INDENTURE

INDENTURE dated as of April 22, 2005 (the "**Issue Date**") between The Nasdaq Stock Market, Inc., a Delaware corporation (hereinafter called the "**Company**"), having its principal office at One Liberty Plaza, New York, NY 10006 and Law Debenture Trust Company of New York, as trustee hereunder (hereinafter called the "**Trustee**").

WITNESSETH:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issue of its 3.75% Series A Convertible Notes due 2012 (the "**Series A Notes**") and its 3.75% Series B Convertible Notes due 2012 (the "**Series B Notes**", together with the Series A Notes, the "**Notes**"), in an aggregate Principal Amount not to exceed $445,000,000 and, to provide the terms and conditions upon which each series of the Notes are to be authenticated, issued and delivered, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, the Notes, the certificate of authentication to be borne by the Notes, a form of assignment, a form of fundamental change repurchase election and a form of conversion notice to be borne by the Notes are to be substantially in the forms hereinafter provided for; and

WHEREAS, all acts and things necessary to make the Notes set forth herein when executed by the Company, and authenticated and delivered by the Trustee or a duly authorized authenticating agent, as in this Indenture provided, the valid, binding and legal obligations of the Company, and to constitute this Indenture a valid agreement according to its terms, have been done and performed, and the execution of this Indenture and the issue hereunder of the Notes set forth herein have in all respects been duly authorized,

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Notes are, and are to be, authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Notes by the holders thereof, the Company covenants and agrees with the Trustee for the equal and proportionate benefit of the respective holders from time to time of the Notes (except as otherwise provided below), as follows:

ARTICLE 1
DEFINITIONS

Section 1.01. *Definitions.* The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. All other terms used in this Indenture that are defined in the Trust Indenture Act or which are by reference therein defined in the Securities Act (except as herein otherwise expressly provided or unless the context otherwise requires) shall have the meanings assigned to such terms in the Trust Indenture Act and in the Securities Act as in force at the date of the execution of this Indenture. The words "**herein**", "**hereof**", "**hereunder**" and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other Subdivision. The terms defined in this Article include the plural as well as the singular.

References to Articles and Sections herein are references to Articles and Sections of this Indenture.

"**Acquisition**" means the acquisition of Instinet Group Incorporated pursuant to the Merger Agreement.

"Acquisition Closing Date" means the "Closing Date" as defined in the Merger Agreement.

"**Adjusted Issue Price**" means the adjusted issue price of the Series A Notes, at the time of determination, as calculated under Sections 1272 and 1273 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"**Adjustment Event**" has the meaning specified in Section 15.05(l).

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "**control**", when used with respect to any specified Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing.

"**Affiliate Transaction**" has the meaning specified in Section 5.10(a).

"**Agent Members**" has the meaning specified in Section 2.05(b)(v).

"**Agent Office**" means the office of the Paying Agent, Note Registrar, Custodian or Conversion Agent, as applicable, at which any particular time its corporate agency business as it relates to this Indenture shall be principally administered, which office is, at the date as of which this Indenture is dated, located at 4 New York Plaza, 15th Floor, New York, New York 10004, attn: Institutional Trust Services, or at any other address as any such agent or custodian may designate from time to time by notice to the holders.

"**Amendment Date**" means the Series A Redemption Date.

"**Applicable Stock**" means in the event of a Fundamental Change, the common stock of such surviving corporation or its direct parent corporation.

"**Board of Directors**" means the Board of Directors of the Company or a committee of such Board duly authorized to act for it hereunder.

"**Business Day**" means any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which commercial banks are authorized or required by law, regulation or executive order to close in The City of New York or the city in which the Corporate Trust Office of the Trustee is located.

"**capital stock**" of any Person means any and all shares (including ordinary shares or American Depositary Shares), interests, participations or other equivalents however designated of corporate stock or other equity participations, including partnership interests, whether general or limited, of such Person and any rights (other than debt securities convertible or exchangeable into an equity interest), warrants or options to acquire an equity interest in such Person.

"**Cash Election Notice**" has the meaning set forth in Section 15.01(b).

"**Commission**" means the Securities and Exchange Commission, as from time to time constituted under the Exchange Act, or, if at any time after the execution of this Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"**Common Stock**" means any stock of any class of the Company which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which is not subject to redemption by the Company. Subject to the provisions of Section 15.06, however, shares issuable on conversion of Notes shall include only shares of the class designated as common stock of the Company at the date of this Indenture (namely, the Common Stock, par value of $0.01 per share) or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which are not subject to redemption by the Company; *provided* that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable on conversion shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

"**Company**" means the corporation named as the "**Company**" in the first paragraph of this instrument, and, subject to the provisions of Article 12 and Section 15.06, shall include its successors and assigns.

"**Continuing Director**" means a director who was a member of the Board of Directors on the date of this Indenture or who becomes a director subsequent to such date and whose election, appointment or nomination for election by the stockholders of the Company is duly approved by a majority of the Continuing Directors on the Board of Directors at the time of such approval, either by a specific vote or by approval of the proxy statement issued by the Company on behalf of the entire Board of Directors in which such individual is named as nominee for director.

"**Conversion Agent**" means JPMorgan Chase Bank, N.A. or such other office or agency designated by the Company where Notes may be presented for conversion.

"**Conversion Date**" has the meaning specified in Section 15.02.

"**Conversion Notice**" has the meaning set forth in Section 15.01(b).

"**Conversion Price**" as of any day means the Principal Amount divided by the Conversion Rate as of such date and rounded to the nearest cent. The initial Conversion Price shall be approximately $14.50 per share of Common Stock.

"**Conversion Rate**" has the meaning specified in Section 15.04.

"**Conversion Value**" means the product of (i) the applicable Conversion Rate and (ii) the average of the Last Reported Sale Price of the Common Stock for the Trading Day on which a Conversion Notice is delivered.

"**Corporate Trust Office**" means the office of the Trustee at which at any particular time its corporate trust business as it relates to this Indenture shall be principally administered, which office is, at the date as of which this Indenture is dated, located at 767 Third Avenue, 31st Floor, New York, New York 10017, Attn: Corporate Trust Administration or at any other address as the Trustee may designate from time to time by notice to the holders.

"**Credit Facility**" means the loan agreement which evidences the senior secured credit facilities contemplated by the commitment letter dated April 22, 2005 between (i) JPMorgan Chase Bank, N.A., J. P. Morgan Securities Inc., Merrill Lynch Capital Corporation and Merrill Lynch, Pierce, Fenner & Smith Incorporated and (ii) the Company, as such agreement may be amended, supplemented or otherwise modified, or refinanced or replaced with senior secured indebtedness, from time to time; *provided* that such amendment, supplement or other modification or refinancing or replacement does not (a) increase the aggregate principal amount of Designated Senior Indebtedness in excess of $800,000,000 (less any repayments of any term loan and any permanent reduction of any revolving credit commitment thereunder) or (b) impose any limitations on payments in respect of the Notes that are more restrictive than the provisions of the Credit Facility as in effect on the Issue Date.

"**Custodian**" means JPMorgan Chase Bank, N.A., as custodian for The Depository Trust Company with respect to the Global Notes, or any successor entity thereto.

"**Default**" means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

"**Defaulted Interest**" has the meaning specified in Section 2.03.

"**Depositary**" means, with respect to the Notes of any series issuable in whole or in part in the form of one or more Global Notes, the clearing agency registered under the Exchange Act that is designated to act as the Depositary for the Global Notes. The Depository Trust Company shall be the initial Depositary, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter, "**Depositary**" shall mean or include such successor.

"**Designated Senior Indebtedness**" means Indebtedness of the Company outstanding under the Credit Facility pursuant to the documentation governing the Credit Facility.

"**Determination Date**" has the meaning specified in Section 15.05(l).

"**EBITDA**" means, for any fiscal period, the Net Income for such fiscal period, after restoring thereto amounts deducted for, without duplication, (i) interest expense, whether paid or accrued, including, without limitation, amortization of debt issuance costs and original issue discount, non-cash interest expense, accretion on discounted debt and the interest component of all payments associated with capital leases or deferred payment obligations, (ii) income tax expense, (iii) depreciation and amortization, (iv) costs related to the expensing of stock options and (v) expense relating to early extinguishments of debt, *provided*, *however*, that there shall in any event be excluded from EBITDA any portion thereof attributable to the income of any Person (other than a consolidated subsidiary) in which the Company or any of its consolidated subsidiaries has any ownership interest except to the extent that any such income has actually been received by the Company or such consolidated subsidiary in the form of cash dividends or similar distributions.

"**Event of Default**" means any event specified in Section 7.01 as an Event of Default.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

"**Expiration Time**" has the meaning specified in Section 15.05(e).

"**Fundamental Change**" means the occurrence of any of the following:

(i) a "person" or "group" within the meaning of Section 13(d)(3) of the Exchange Act other than the NASD acquires beneficial ownership, directly or indirectly, through purchase, merger or other acquisition transactions of (A) 50% or more of the Common Stock or (B) shares of the Company's capital stock entitling such person or group to exercise 50% or more of the total voting power of all shares of the Company's capital stock that are entitled to vote generally in the election of directors, *provided* that this provision shall not apply to a transaction that is solely to implement a holding company structure pursuant to which the Company becomes a wholly-owned subsidiary of another corporation (a "**Holding Company**") if (x) the stockholders of the Holding Company immediately after the implementation of such holding company structure consist entirely of the former stockholders of the Company, (y) each outstanding share of capital stock of the Company is converted into or exchanged for a share of capital stock of the Holding Company having substantially the same rights and preferences as the share of capital stock of the Company so converted or exchanged and (z) each of the Holding Company and the Company executes and delivers to the Trustee a supplemental indenture (accompanied by an Opinion of Counsel that such supplemental indenture complies with the Trust Indenture Act as in force at the date of execution of such supplemental indenture) in form reasonably satisfactory to the Trustee which provides for the Holding Company's full and unconditional guarantee of the Company's obligations under the Notes, this Indenture and the Registration Rights Agreement and that the Notes shall become convertible into shares of the Holding Company's common stock in a manner consistent with the conversion rights contained in this Indenture and the Notes;

(ii) consummation of any consolidation or merger of the Company or any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its subsidiaries, to any person other than the Company or one or more of its subsidiaries pursuant to which the Common Stock will be converted into

cash, securities or other property; *provided, however*, that in the event of a consolidation or a merger, a transaction where the holders of the Company's voting capital stock immediately prior to such transaction have, directly or indirectly, more than 50% of the aggregate voting power of all shares of capital stock of the continuing or surviving corporation or transferee entitled to vote generally in the election of directors of the continuing or surviving corporation, or in any parent of the continuing or surviving corporation, immediately after such event shall not be a Fundamental Change; notwithstanding the foregoing, a consolidation or merger of the Company in which the NASD retains voting control of the Company's capital stock and another Person owns 50% or more of the Common Stock shall be deemed a Fundamental Change;

(iii) Continuing Directors cease to constitute at least a majority of the Board of Directors (or any applicable continuing or surviving corporation);

(iv) the stockholders of the Company approve any plan or proposal relating to the liquidation or dissolution of the Company; or

(v) the Common Stock or such other capital stock into which the Notes are convertible is neither listed for trading on a U.S. national securities exchange nor approved for trading on The Nasdaq Stock Market.

Notwithstanding the foregoing, a Fundamental Change will not be deemed to have occurred in respect of (x) the lapse of the NASD's control, direct or indirect, of the Company in connection with the Company's application to become a national securities exchange or (y) any changes in the composition of the Company's Board of Directors explicitly required by the applicable self-regulatory organization regulations (but not including changes or modifications to the Board of Directors made in connection with any corporate transaction).

"**Fundamental Change Repurchase Date**" has the meaning specified in Section 3.07(a).

"**Fundamental Change Repurchase Election**" has the meaning specified in Section 3.07(c)(i).

"**Fundamental Change Repurchase Notice**" has the meaning specified in Section 3.07(b).

"**Fundamental Change Repurchase Price**" has the meaning provided in Section 3.07(a).

"**Global Note**" has the meaning specified in Section 2.02.

"**Guarantee Agreement**" means the Guarantee Agreement, dated as of April 22, 2005, among the Company, Norway Acquisition SPV, LLC and JPMorgan Chase Bank, N.A., as administrative agent.

"**H&F Entities**" means Hellman & Friedman Capital Partners IV, L.P., H&F Executive Fund IV, L.P., H&F International Partners IV-A, L.P. and H&F International Partners IV-B, L.P.

"**Incur**" means issue, assume, guarantee, incur or otherwise become liable for. The term "**Incurrence**" when used as a noun shall have a correlative meaning.

"**Indebtedness**" means, and without duplication, whether recourse is to all or a portion of the assets of the Company and whether or not contingent, (i) all indebtedness, obligations and other liabilities of the Company for borrowed money (including obligations of the Company in respect of overdrafts, foreign exchange contracts, currency exchange agreements, interest rate protection agreements, and any loans or advances from banks, whether or not evidenced by notes or similar instruments) or evidenced by bonds, debentures, notes or similar instruments, other than any account payable or other accrued current liability or obligation incurred in the ordinary course of business in connection with the obtaining of materials or services; (ii) all reimbursement obligations and other liabilities of the Company with respect to letters of credit, bank guarantees or bankers' acceptances; (iii) all obligations and liabilities in respect of leases of the Company required, in conformity with generally accepted accounting principles, to be accounted for as capitalized lease obligations on the balance sheet of the Company and all obligations and other liabilities under any lease or related document (including a purchase agreement) in connection with the lease of real property which provides that the Company is contractually obligated to purchase or cause a third party to purchase the leased property and thereby guarantee a minimum residual value of the leased property to the lessor and the obligations of the Company under such lease or related document to purchase or to cause a third party to purchase such leased property; (iv) all net obligations of the Company with respect to an interest rate or other swap, cap or collar agreement or other similar instrument or agreement or foreign currency hedge, exchange, purchase or similar instrument or agreement; (v) all direct or indirect guaranties or similar agreements by the Company in respect of, and obligations or liabilities of the Company to purchase or otherwise acquire or otherwise assure a creditor against loss in respect of, indebtedness, obligations or liabilities of another Person of the kind described in clauses (i) through (iv); (vi) any indebtedness or other obligations described in clauses (i) through (vi) secured by any mortgage, pledge, lien or other encumbrance existing on property which is owned or held by the Company, regardless of whether the indebtedness or other obligation secured thereby shall have been assumed by the Company; and (vii) any and all deferrals, supplements to, any indebtedness, obligation or liability of the kind described in clauses (i) through (vi).

"**Indenture**" means this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented.

"**Independent Financial Adviser**" means an investment banking firm, accounting firm or appraisal firm of national standing selected by the Company; *provided*, however, that such firm is not an Affiliate of the Company.

"**Interest**" means, when used with reference to the Notes, any regular interest payable under the terms of the Notes.

"**Interest Payment Date**" means (i) the Acquisition Closing Date and (ii) January 22, April 22, July 22 and October 22 of each year, commencing on the earlier to occur of the Acquisition Closing Date and July 22, 2005.

"**Issue Date**" has the meaning specified in the preamble hereto.

"**Junior Securities**" has the meaning specified in Section 4.15.

"**Last Reported Sale Price**" of the Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and asked prices or, if more than one in either case, the average of the average bid and the average asked prices) on that date as reported by The Nasdaq National Market, or if the Common Stock is not listed on The Nasdaq National Market, as reported in composite transactions for the principal U.S. securities exchange on which the Common Stock is traded. If the Common Stock is not listed for trading on The Nasdaq National Market or a U.S. national or regional securities exchange on the relevant date, the "Last Reported Sale Price" will be the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date as reported by the National Quotation Bureau Incorporated or similar organization. If the Common Stock is not so quoted, the "Last Reported Sale Price" will be the average of the mid-point of the last bid and asked prices for the Common Stock on the relevant date quoted by each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

"**Merger Agreement**" means the Agreement and Plan of Merger, dated as of April 22, 2005, by and among the Company, Norway Acquisition Corp. and Instinet Group Incorporated.

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

"**Net Income**" means, for any fiscal period, the amount which, in conformity with generally accepted accounting principles in the United States, would constitute the net income or net loss, as the case may be, of the Company and its subsidiaries on a consolidated basis for such fiscal period (after adjustment for minority interests), *provided* that Net Income shall exclude extraordinary, unusual or non-recurring gains or expenses.

"**non-electing share**" has the meaning specified in Section 15.06.

"**Note**" or "**Notes**" means any Note or Notes, as the case may be, authenticated and delivered under this Indenture, including any Global Note.

"**Note Payment**" has the meaning specified in Section 4.02(a).

"**Note Register**" has the meaning specified in Section 2.05(a).

"**Note Registrar**" has the meaning specified in Section 2.05(a).

"**Noteholder**" or "**holder**" as applied to any Note, or other similar terms (but excluding the term "beneficial holder"), means any Person in whose name the relevant Note is registered in the Note Register.

"**Obligations**" means any obligations for principal, premium, interest, penalties, fees, indemnifications, reimbursement obligations (including in respect of letter of credit disbursements) and other amounts payable under the documentation governing any Indebtedness.

"**Officers' Certificate**" means a certificate signed by any two of the Chairman of the Board, the Chief Executive Officer, the Chief Operating Officer, the President, the Chief Financial Officer, any Vice President (whether or not designated by a number or numbers or word or words added before or after the title "Vice President"), the Treasurer or the Secretary of the Company; *provided* that the Officers' Certificate delivered on the date hereof pursuant to Section 17.05 in connection with the issuance of the Notes may be signed by any one of the foregoing.

"**Opinion of Counsel**" means an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company and who shall be satisfactory to the Trustee.

"**Outstanding**", when used with reference to Notes and subject to the provisions of Section 9.04, means, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

(i) Notes previously canceled by the Trustee or delivered to the Trustee for cancellation;

(ii) Notes, or portions thereof, (a) for the redemption of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or (b) which shall have been otherwise discharged in accordance with Article 13;

(iii) Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.06;

(iv) Notes converted into cash or a combination of cash and Common Stock, as the case may be, pursuant to Article 15 and Notes deemed not outstanding pursuant to Article 3; and

(v) Notes paid pursuant to Section 2.06.

"**Paying Agent**" means JPMorgan Chase Bank, N.A. or such other office or agency designated by the Company where Notes may be presented for payment.

"**Payment Blockage Notice**" has the meaning specified in Section 4.02(a).

"**Payment Blockage Period**" has the meaning specified in Section 4.02(a).

"**Person**" means a corporation, an association, a partnership, a limited liability company, an individual, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

"**Predecessor Note**" of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note, and, for the purposes of this definition, any Note authenticated and delivered under Section 2.06 in lieu of a lost, destroyed or stolen Note shall be deemed to evidence the same debt as the lost, destroyed or stolen Note that it replaces.

"**Principal Amount**" of a Note means the stated Principal Amount as set forth on the face of such Note.

"**Purchase Agreement**" means the Securities Purchase Agreement, dated as of April 22, 2005, between the Company and Norway Acquisition SPV, LLC.

"**Redemption Date**" has the meaning specified in Section 3.02(a).

"**Redemption Notice**" has the meaning specified in Section 3.02(a).

"**Redemption Price**" has the meaning specified in Section 3.01.

"**Registration Rights Agreement**" means the Registration Rights Agreement, dated as of April 22, 2005, among the Company, the H&F Entities, the SLP Entities (as defined therein), Integral Capital Partners VI, L.P. and VAB Investors, LLC, as amended from time to time in accordance with its terms.

"**Regular Record Date**" means, with respect to each Interest Payment Date, 5:00 p.m., New York City time, on the date which is 15 days prior to the Acquisition Closing Date and the January 7, April 7, July 7 and October 7 next preceding such Interest Payment Date (whether or not a Business Day).

"**Responsible Officer**" means, when used with respect to the Trustee, any officer of the Trustee within the corporate trust department (or any successor unit, department or division of the Trustee) located at the Corporate Trust Office of the Trustee who has direct responsibility for the administration of this Indenture and, for the purposes of (i) the proviso of Sections 7.08 and (ii) Section 8.01(b), also means any other officer or person performing similar functions to whom any corporate trust matter is referred because of such person's knowledge of any familiarity with the particular subject.

"**Restricted Securities**" has the meaning specified in Section 2.05(c).

"**Revocation Notice**" has the meaning specified in Section 15.01(b).

"**Rule 144A**" means Rule 144A as promulgated under the Securities Act.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

"**Securityholders Agreement**" means the Amended and Restated Securityholders Agreement, dated as of April 22, 2005, by and among the Company, Norway Acquisition SPV, LLC, the H&F Entities and the SLP Entities, as amended from time to time in accordance with its terms.

"**Senior Indebtedness**" means, whether outstanding on the date of this Indenture or thereafter issued, all Obligations of the Company under the Credit Facility and any other Indebtedness of the Company which, in each case, is secured by any mortgage, pledge, lien or other encumbrance existing on assets or other property which is owned by the Company, unless

the instrument creating or evidencing such Indebtedness expressly provides that such Indebtedness is not senior or superior in right of payment to the Notes; *provided*, that in no event shall Senior Indebtedness include (i) to the extent that it may constitute Indebtedness, any Obligation for federal, state, local or other taxes; (ii) any Indebtedness among or between the Company and any Subsidiary; (iii) to the extent that it may constitute Indebtedness, any Obligations in respect of any trade payable incurred for the purchase of goods or materials, or for services obtained in the ordinary course of business; (iv) any unsecured Indebtedness; (v) Indebtedness that is expressly subordinate or junior in right of payment to any other Indebtedness; (vi) to the extent that it may constitute Indebtedness, any Obligation owing under leases (other than capital lease obligations) or management agreements; (vii) any Obligation that by operation of law is subordinate to any general unsecured Obligations; and (viii) that portion of any Indebtedness (other than Indebtedness under the Credit Facility) which at the time of Incurrence would result in the Company having a ratio of (A) aggregate principal amount of Senior Indebtedness (after giving effect to such Incurrence) to (B) EBITDA for the period of the most recent four consecutive fiscal quarters ended for which financial statements of the Company are publicly available of greater than 4.0 to 1.0.

"**Series A Notes**" means the "3.75% Series A Convertible Notes due 2012" issued under Article 2.

"**Series A Redemption Date**" means the date which is the earlier to occur (if at all) of:

(i) October 24, 2005, but only if each of the following conditions have been satisfied on October 24, 2005: (a) the termination of the Merger Agreement on or prior to October 24, 2005, and (b) (x) the Company has not entered into a transaction or agreement that remains in effect on October 24, 2005 which, if consummated, would result in a Fundamental Change described in clause (ii) of the definition of Fundamental Change for consideration equal to or greater than $26.00 per share of Common Stock (determined in the event of non-cash consideration based on the closing price of the acquiror's applicable shares on October 23, 2005) or (y) if the Company has entered into a transaction or agreement that remains in effect on October 24, 2005 which, if consummated, would result in a Fundamental Change described in clause (ii) of the definition of Fundamental Change for consideration less than $26.00 per share of Common Stock (determined in the event of non-cash consideration based on the closing price of the acquiror's applicable shares on the day prior to entering into such transaction), and no third party has commenced and has outstanding on October 24, 2005 a tender or exchange offer for all of the Company's outstanding Common Stock for consideration equal to or greater than $26.00 per share of Common Stock (determined in the event of non-cash consideration based on the closing price of the acquiror's applicable shares on October 23, 2005);

and (ii) if the Merger Agreement has not terminated on or prior to October 24, 2005, the date which is the earlier to occur of (a) the date that the Merger Agreement has terminated and (b) April 22, 2006 (unless the Acquisition Closing Date has occurred prior to such date, in which event the Series A Redemption Date will not occur).

"**Series A Redemption Notice**" has the meaning specified in Section 3.05(a).

"**Series A Redemption Price**" has the meaning specified in Section 3.04.

"**Series A Warrants**" means the warrants to acquire shares of Common Stock issued under the Purchase Agreement.

"**Series B Notes**" means the "3.75% Series B Convertible Notes due 2012" issued under Article 2.

"**Settlement Amount**" has the meaning specified in Section 15.03(a).

"**Significant Subsidiary**" means any Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such Regulation is in effect on the date hereof.

"**SLP Entities**" means Silver Lake Partners II TSA, L.P., Silver Lake Technology Investors II, L.L.C., Silver Lake Partners TSA, L.P., Silver Lake Investors, L.P., Integral Capital Partners IV, L.P. and VAB Investors, LLC.

"**Special Record Date**" has the meaning specified in Section 2.03.

"**Spin-Off**" has the meaning specified in Section 15.05(c).

"**Stated Maturity**" means October 22, 2012.

"**Stock Record Date**" means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

"**Subsidiary**" means, with respect to any Person, (i) any corporation, association or other business entity of which more than 50% of the total voting power of shares of capital stock or other equity interest entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other subsidiaries of that Person (or a combination thereof) and (ii) any partnership (a) the sole general partner or managing general partner of which is such Person or a subsidiary of such Person or (b) the only general partners of which are such Person or of one or more subsidiaries of such Person (or any combination thereof).

"**Term Loan Agreement**" means the Secured Term Loan Agreement, dated as of April 22, 2005, among Norway Holdings SPV, LLC, Norway Acquisition SPV, LLC, the lenders parties thereto and JPMorgan Chase Bank, N.A., as administrative agent, as the same may be amended, supplemented or otherwise modified from time to time.

"**Trading Day**" means a day during which trading in the Common Stock generally occurs and a closing price for the Common Stock is provided on The Nasdaq National Market or, if the Common Stock is not listed on The Nasdaq National Market, on the principal other U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded.

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, as amended, as it was in force at the date of this Indenture, except as provided in Sections 11.03 and 15.06; *provided* that if the Trust Indenture Act of 1939 is amended after the date hereof, the term "**Trust Indenture Act**" shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939 as so amended.

"**Trustee**" means Law Debenture Trust Company of New York and shall also include any successor trustee at the time serving as successor trustee hereunder pursuant to Article 8 hereof.

ARTICLE 2
ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01. *Issuable in Series; Designation Amount.* The Notes shall be issued in two series and designated as "3.75% Series A Convertible Notes due 2012" and "3.75% Series B Convertible Notes due 2012", respectively. Series A Notes not to exceed the aggregate Principal Amount of $205,000,000 and Series B Notes not to exceed the aggregate Principal Amount of $240,000,000 (with respect to each series, except pursuant to Sections 2.05, 2.06, 3.07, and 15.02 hereof) upon the execution of this Indenture, or from time to time thereafter, may be executed by the Company and delivered to the Trustee for authentication, and the Trustee shall thereupon authenticate and deliver said Notes to or upon the written order of the Company, signed by its Chief Executive Officer, its President, its Chief Operating Officer or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title "Vice President"), without any further action by the Company hereunder.

Section 2.02. *Forms of Notes.* The Series A Notes and the Trustee's certificate of authentication to be borne by such Series A Notes shall be substantially in the form set forth in Exhibit A. The Series B Notes and the Trustee's certificate of authentication to be borne by such Series B Notes shall be substantially in the form set forth in Exhibit B. The terms and provisions contained in the respective forms of Note attached as Exhibit A and Exhibit B hereto shall constitute, and are hereby expressly made, a part of this Indenture and, to the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends, endorsements (which may include a schedule to reflect increases or decreases in Principal Amount of a Global Note) or changes as the officers executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required by the Custodian, the Depositary or by the NASD as may be required to comply with any applicable law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed, or to conform to usage, or to indicate any special limitations or restrictions to which any particular Notes are subject.

At any time after the Notes cease to be Restricted Securities pursuant to Section 2.05(c) and so long as the Notes are eligible for book-entry settlement with the Depositary, or unless otherwise required by law, or otherwise contemplated by Section 2.05(a), all of the Notes may be represented by one or more Notes in global form registered in the name of the Depositary or the nominee of the Depositary (each, a "**Global Note**"). The transfer and exchange of beneficial interests in any such Global Note shall be effected through the Depositary in accordance with this Indenture and the applicable procedures of the Depositary. Except as provided in Section 2.05(a), beneficial holders of a Global Note will not receive or be entitled to receive physical delivery of certificates in definitive form and will not be considered holders of such Global Note.

Any Global Note shall represent such of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate Principal Amount of outstanding Notes from time to time endorsed thereon and that the aggregate Principal Amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect redemptions, repurchases, conversions, transfers or exchanges permitted hereby. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the Principal Amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in such manner and upon instructions given by the holder of such Notes in accordance with this Indenture. Payment of the Principal Amount of and Interest on any Global Note shall be made to the holder of such Note.

Section 2.03. *Date and Denomination of Notes; Payments of Interest.* The Notes shall be issuable in fully registered form without interest coupons in denominations of $1.00 Principal Amount and integral multiples thereof. Each Note shall be dated the date of its authentication and shall bear Interest from the date specified on the face of the forms of Note attached as Exhibit A and Exhibit B hereto, respectively. Interest on the Notes shall be computed on the basis of a 360-day year comprised of twelve 30-day months.

The Person in whose name any Note (or its Predecessor Note) is registered on the Note Register at 5:00 p.m., New York City time, on the Regular Record Date with respect to an Interest Payment Date (whether or not such day is a Business Day) shall be entitled to receive the Interest payable on such Interest Payment Date, except that (i) Interest payable at the Stated Maturity will be payable to the Person to whom the Principal Amount is payable and (ii) the Interest payable upon redemption or repurchase will be payable to the Person to whom the Principal Amount is payable pursuant to such redemption or repurchase (unless the Redemption Date or the Fundamental Change Repurchase Date, as the case may be, is after a Regular Record Date and on or prior to the corresponding Interest Payment Date, in which case the quarterly payment of interest becoming due on such date shall be payable to the holders of such Notes registered as such on the applicable Regular Record Date). Notwithstanding the foregoing, any Note (or portion thereof) surrendered for conversion during the period from 5:00 p.m., New York City time, on the Regular Record Date to 9:00 a.m., New York City time, on the corresponding Interest Payment Date shall be accompanied by payment, in immediately available funds or other funds acceptable to the Company, of an amount equal to the Interest otherwise payable on such Interest Payment Date on the Principal Amount being converted; *provided* that no such payment need be made (1) if a holder converts its Notes in connection with a redemption and the Company has specified a Redemption Date that is after a Regular Record Date and on or prior to the corresponding Interest Payment Date, (2) if a holder converts its

Notes in connection with a Fundamental Change and the Company has specified a Fundamental Change Repurchase Date that is after a Regular Record Date and on or prior to the corresponding Interest Payment Date or (3) to the extent of any overdue Interest, if any, exists at the time of conversion with respect to such Note. Interest shall be payable at the office of the Company maintained by the Company for such purposes, which shall initially be an office or agency of the Paying Agent. The Company shall pay Interest (i) on any Notes in certificated form by check mailed to the address of the Person entitled thereto as it appears in the Note Register (or upon written notice, by wire transfer in immediately available funds, if such Person is entitled to Interest on Notes with an aggregate Principal Amount in excess of $2,000,000) (*provided* that at the Stated Maturity, Interest on any Note will be payable with the Principal Amount at the Company's office or agency in New York City) or (ii) on any Global Note by wire transfer of immediately available funds to the account of the Depositary or its nominee.

Any Interest on any Note which is payable, but is not punctually paid or duly provided for, on any applicable Interest Payment Date (herein called "**Defaulted Interest**") shall forthwith cease to be payable to the Noteholder on the relevant Regular Record Date by virtue of its having been such Noteholder. Amounts due as Defaulted Interest shall accrue interest at the rate of 5.75% per annum and shall be payable by the Company, at its election in each case, as provided in clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at 5:00 p.m., New York City time, on a "**Special Record Date**" for the payment of such Defaulted Interest, which shall be the date fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date of the proposed payment (which shall be not less than twenty-five days after the receipt by the Trustee of such notice, unless the Trustee shall consent to an earlier date), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest, which shall be not more than fifteen days and not less than ten days prior to the date of the proposed payment, and not less than ten days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each holder at his address as it appears in the Note Register, not less than ten days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at 5:00 p.m., New York City time, on such Special Record Date and shall no longer be payable pursuant to the following clause (2) of this Section 2.03.

(2) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, and upon such notice as

may be required by such exchange or automated quotation system, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Section 2.04. *Execution of Notes*. The Notes shall be signed in the name and on behalf of the Company by the manual or facsimile signature of its Chief Executive Officer, President, Chief Operating Officer or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title "Vice President"). Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the form of Note attached as Exhibit A hereto and as Exhibit B hereto, as applicable, manually executed by the Trustee (or an authenticating agent appointed by the Trustee as provided by Section 17.12), shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee (or such an authenticating agent) upon any Note executed by the Company shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the holder is entitled to the benefits of this Indenture.

In case any officer of the Company who shall have signed any of the Notes shall cease to be such officer before the Notes so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Notes nevertheless may be authenticated and delivered or disposed of as though the person who signed such Notes had not ceased to be such officer of the Company, and any Note may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Note, shall be the proper officers of the Company, although at the date of the execution of this Indenture any such person was not such an officer.

Section 2.05. *Exchange and Registration of Transfer of Notes; Restrictions on Transfer*.

(a) The Company shall cause to be kept at the office or agency of the Paying Agent a register (the register maintained in such office and in any other office or agency of the Company designated pursuant to Section 5.02 being herein sometimes collectively referred to as the "**Note Register**") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. The Note Register shall be in written form or in any form capable of being converted into written form within a reasonably prompt period of time. The Paying Agent is hereby appointed "**Note Registrar**" for the purpose of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-registrars in accordance with Section 5.02.

Upon surrender for registration of transfer of any Note to the Note Registrar or any co-registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.05, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of the same series of any authorized denominations and of a like aggregate Principal Amount and bearing such restrictive legends as may be required by this Indenture.

Notes may be exchanged for other Notes of the same series of any authorized denominations and of a like aggregate Principal Amount, upon surrender of the Notes of the same series to be exchanged at any such office or agency maintained by the Company pursuant

to Section 5.02. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes of the same series that the Noteholder making the exchange is entitled to receive bearing registration numbers not contemporaneously outstanding.

All Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Notes surrendered upon such registration of transfer or exchange.

All Notes presented or surrendered for registration of transfer or for exchange, redemption, repurchase or conversion shall (if so required by the Company or the Note Registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company, duly executed by the Noteholder thereof or his attorney duly authorized in writing.

No service charge shall be made to any holder for any registration of, transfer or exchange of Notes, but the Company may require payment by the holder of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in connection with any registration of, transfer or exchange of Notes.

Neither the Company nor the Trustee nor any Note Registrar shall be required to exchange or register a transfer of (a) any Notes for a period of fifteen days next preceding the mailing of a notice of redemption of Notes to be redeemed, (b) any Notes or portions thereof called for redemption pursuant to Section 3.01, (c) any Notes or portions thereof surrendered for conversion pursuant to Article 15, (d) any Notes or portions thereof tendered for repurchase (and not withdrawn) pursuant to Section 3.07 or (e) any Notes or portions thereof tendered for repurchase (and not withdrawn) pursuant to Section 3.08

(b) The following provisions shall apply only to Global Notes:

(i) Each Global Note authenticated under this Indenture shall be registered in the name of the Depositary or a nominee thereof and delivered to such Depositary or a nominee thereof or Custodian therefor, and each such Global Note shall constitute a single Note for all purposes of this Indenture.

(ii) Notwithstanding any other provision in this Indenture, no Global Note may be exchanged in whole or in part for Notes registered, and no transfer of a Global Note in whole or in part may be registered, in the name of any Person other than the Depositary or a nominee thereof unless (A) the Depositary (x) has notified the Company that it is unwilling or unable to continue as Depositary for such Global Note or (y) has ceased to be a clearing agency registered under the Exchange Act, and a successor depositary has not been appointed by the Company within ninety calendar days or (B) an Event of Default has occurred and is continuing or (C) the Company, in its sole discretion, notifies the Trustee in writing that it no longer wishes to have all the Notes represented by Global Notes or (D) any beneficial holder reasonably requests such exchange on terms acceptable to the Company, the Trustee and the Depositary, which in the case of the Trustee may include, in the Trustee's sole discretion, among other things,

the requirement that (i) the Trustee and any Note Registrar receive (a) from the Company or the Depositary, a written order, in either case requesting such exchange, and an Opinion of Counsel (which upon receipt thereof the Trustee and such Note Registrar shall be fully protected in relying) to the effect that (x) all securities laws in connection with such exchange have been complied with and (y) such exchange is otherwise authorized or permitted by this Indenture; and (b) from such beneficial holder (x) an affidavit as to its beneficial ownership interest in such Global Note and/or (y) an indemnity, reasonably satisfactory to the Trustee and such Note Registrar, against any loss, liability or expense to the Trustee and such Note Registrar to the extent that the Trustee or Note Registrar acts upon such order, affidavit and/or indemnity; and (ii) such exchange can be accomplished in a manner that is practicable and not inconsistent with the rules of any applicable Depositary or securities exchange upon which the Notes may be listed for trading. Any Global Note exchanged pursuant to clause (A) or (B) above shall be so exchanged in whole and not in part and any Global Note exchanged pursuant to clause (C) or (D) above may be exchanged in whole or from time to time in part as directed by the Company. Any Note issued in exchange for a Global Note or any portion thereof shall be a Global Note; *provided* that any such Note so issued that is registered in the name of a Person other than the Depositary or a nominee thereof shall not be a Global Note.

(iii) Notes issued in exchange for a Global Note or any portion thereof pursuant to clause (ii) above shall be issued in definitive, fully registered form, without interest coupons, shall have an aggregate Principal Amount equal to that of such Global Note or portion thereof to be so exchanged, shall be registered in such names and be in such authorized denominations as the Depositary shall designate and shall bear any legends required hereunder. Any Global Note to be exchanged in whole shall be surrendered by the Depositary to the Note Registrar. With regard to any Global Note to be exchanged in part, either such Global Note shall be so surrendered for exchange or, if a Custodian is acting for the Depositary or its nominee with respect to such Global Note, the Principal Amount thereof shall be reduced, by an amount equal to the portion thereof to be so exchanged, by means of an appropriate adjustment made on the records of the Trustee and an endorsement shall be made on such Global Note by the Trustee or the Custodian at the direction of the Trustee to reflect such reduction. Upon any such surrender or adjustment, the Trustee shall authenticate and make available for delivery the Note or Notes issuable on such exchange to or upon the written order of the Depositary or an authorized representative thereof.

(iv) In the event of the occurrence of any of the events specified in clause (ii) above, the Company will promptly make available to the Trustee a reasonable supply of certificated Notes in definitive, fully registered form, without interest coupons.

(v) Neither any members of, or participants in, the Depositary ("**Agent Members**") nor any other Persons on whose behalf Agent Members may act shall have any rights under this Indenture with respect to any Global Note registered in the name of the Depositary or any nominee thereof, and the Depositary or such nominee, as the case may be, may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and holder of such Global Note for all purposes

whatsoever. None of the Company, the Trustee, any Paying Agent, any Note Registrar, any Conversion Agent, any authenticating agent or any other agent of the Company or any agent of the Trustee shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Note in the form of a Global Note, or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests. The Company, the Trustee, any Paying Agent, any Note Registrar, any Conversion Agent and any other agent of the Company and any agent of the Trustee shall be entitled to deal with any depositary (including any Depositary), and any nominee thereof, that is the holder of any such Global Note for all purposes of this Indenture relating to such Global Note (including the payment of principal, premium, if any, and interest, if any, and the giving of instructions or directions by or to the owner or holder of a beneficial ownership interest in such Global Note) as the sole holder of such Global Note and shall have no obligations to the beneficial owners thereof. None of the Company, the Trustee, any Paying Agent, any Note Registrar or any other agent of the Company or any agent of the Trustee shall have any responsibility or liability for any acts or omissions of any such depositary with respect to such Global Note, for the records of any such depositary, including records in respect of beneficial ownership interests in respect of any such Global Note, for any transactions between such depositary and any Agent Member or other participant in such depositary or between or among any such depositary, any such Agent Member or other participant and/or any holder or owner of a beneficial interest in such Global Note or for any transfers of beneficial interests in any such Global Note. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or such nominee, as the case may be, or impair, as between the Depositary, its Agent Members and any other Person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a beneficial holder of any Note.

(vi) At such time as all interests in a Global Note have been redeemed, repurchased, converted, canceled or exchanged for Notes in certificated form, such Global Note shall, upon receipt thereof, be canceled by the Trustee in accordance with standing procedures and instructions existing between the Depositary and the Custodian. At any time prior to such cancellation, if any interest in a Global Note is redeemed, repurchased, converted, canceled or exchanged for Notes in certificated form, the Principal Amount of such Global Note shall, in accordance with the standing procedures and instructions existing between the Depositary and the Custodian, be appropriately reduced, and an endorsement shall be made on such Global Note, by the Trustee or the Custodian, at the direction of the Trustee, to reflect such reduction.

(c) Every Note that bears or is required under this Section 2.05(c) to bear the legend set forth in this Section 2.05(c) (together with any Common Stock issued upon conversion of the Notes and required to bear the legend set forth in Exhibit C, collectively, the "**Restricted Securities**") shall be subject to the restrictions on transfer set forth in this Section 2.05(c) (including those set forth in the legend below) unless such restrictions on transfer shall be waived by written consent of the Company, and the holder of each such Restricted Security, by such holder's acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in Section 2.05(c) and 2.05(d), the term "**transfer**" encompasses any sale, pledge, loan, transfer or other disposition whatsoever of any Restricted Security or any interest therein.

Any certificate evidencing such Note (and all securities issued in exchange therefor or substitution thereof, other than Common Stock, if any, issued upon conversion thereof, which shall bear the legend set forth in Exhibit C, if applicable) shall bear a legend in substantially the following form, unless such Note has been sold pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such transfer) or pursuant to Rule 144 under the Securities Act or any similar provision then in force, or unless otherwise agreed by the Company in writing, with written notice thereof to the Trustee:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF:

(1) AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY OR ANY COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH SECURITY EXCEPT (A) TO THE NASDAQ STOCK MARKET, INC. (THE "ISSUER") OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER, (C) PURSUANT TO THE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR (D) PURSUANT TO THE EXEMPTION FROM REGISTRATION REQUIREMENTS OF THE SECURITIES ACT PERMITTED BY ANY OTHER PROVISION OR RULE UNDER THE SECURITIES ACT (IF AVAILABLE); AND

(2) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 1(B) OR 1(C) ABOVE) A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

IN CONNECTION WITH ANY TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 1(B) ABOVE), THE HOLDER MUST CHECK THE APPROPRIATE BOX SET FORTH ON THE REVERSE HEREOF RELATING TO THE MANNER OF SUCH TRANSFER AND SUBMIT THIS CERTIFICATE TO THE TRUSTEE (OR ANY SUCCESSOR TRUSTEE, AS APPLICABLE). IF THE PROPOSED TRANSFER IS PURSUANT TO CLAUSE 1(C) OR 1(D) ABOVE, THE HOLDER MUST, PRIOR TO SUCH

TRANSFER, FURNISH TO THE TRUSTEE (OR ANY SUCCESSOR TRUSTEE, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE ISSUER OR THE TRUSTEE MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THIS SECURITY PURSUANT TO CLAUSE 1(B) OR 1(C) ABOVE.

Each stock certificate representing Common Stock issued upon conversion of a Note shall bear a comparable legend as set forth in Exhibit C.

Every Series A Note shall bear the following legend:

THIS NOTE OR ANY INTEREST THEREON MAY NOT BE CONVERTED, TRANSFERRED, PLEDGED, HYPOTHECATED OR ENCUMBERED IN ANY MANNER, EXCEPT AS OTHERWISE PERMITTED BY THE SECURITIES PURCHASE AGREEMENT, DATED AS OF APRIL 22, 2005, AND THE AMENDED AND RESTATED SECURITYHOLDERS AGREEMENT, DATED AS OF APRIL 22, 2005, COPIES OF WHICH MAY BE OBTAINED FROM THE COMPANY. THIS LEGEND WILL BE REMOVED UPON THE TERMINATION OF SUCH RESTRICTIONS ON TRANSFER.

Every Series B Note shall bear the following legend:

THIS NOTE OR ANY INTEREST THEREON MAY NOT BE TRANSFERRED, PLEDGED, HYPOTHECATED OR ENCUMBERED IN ANY MANNER, EXCEPT AS OTHERWISE PERMITTED BY THE AMENDED AND RESTATED SECURITYHOLDERS AGREEMENT, DATED AS OF APRIL 22, 2005, A COPY OF WHICH MAY BE OBTAINED FROM THE COMPANY. THIS LEGEND WILL BE REMOVED UPON THE TERMINATION OF SUCH RESTRICTIONS ON TRANSFER.

Any Note (or security issued in exchange or substitution therefor) as to which such restrictions on transfer shall have expired in accordance with their terms or as to conditions for removal of the foregoing legends set forth therein have been satisfied may, upon surrender of such Note for exchange to the Note Registrar in accordance with the provisions of this Section 2.05, be exchanged for a new Note or Notes, of the same series, like tenor and aggregate Principal Amount, which shall not bear the restrictive legend required by this Section 2.05(c). If the Restricted Security surrendered for exchange is represented by a Global Note bearing the legend set forth in this Section 2.05(c), the Principal Amount of the legended Global Note shall be reduced by the appropriate Principal Amount and the Principal Amount of a Global Note without the legend set forth in this Section 2.05(c) shall be increased by an equal Principal Amount. If a Global Note without the legend set forth in this Section 2.05(c) is not then outstanding, the Company shall execute and the Trustee shall authenticate and deliver an unlegended Global Note to the Depositary.

(d) Any Note or Common Stock issued upon the conversion of a Note that is purchased or owned by the Company or any Affiliate thereof may not be resold by the Company

or such Affiliate unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction which results in such Notes or Common Stock, as the case may be, no longer being "restricted securities" (as defined under Rule 144).

(e) Each Noteholder agrees to indemnify the Company and the Trustee against any liability that may result from the transfer, exchange or assignment of a Noteholder's Note in violation of any provision of this Indenture and/or applicable United States federal or state securities law. The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Agent Members or beneficial holders of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Neither the Trustee nor any agent of the Trustee shall have any responsibility for actions taken or not taken by the Depositary.

Section 2.06. *Mutilated, Destroyed, Lost or Stolen Notes*. In case any Note shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and upon its written request the Trustee or an authenticating agent appointed by the Trustee shall authenticate and make available for delivery, a new Note, bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case, the applicant for a substituted Note shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity satisfactory to them to save each of them harmless for any loss, claim, damage, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company, to the Trustee and, if applicable, to such authenticating agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

Following receipt by the Trustee or such authenticating agent, as the case may be, of satisfactory security or indemnity and evidence, as described in the preceding paragraph, the Trustee or such authenticating agent may authenticate any such substituted Note and make available for delivery such Note. Upon the issuance of any substituted Note, the Company may require the payment by the holder of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith. In case any Note which has matured or is about to mature or has been called for redemption or has been tendered for repurchase upon a Fundamental Change (and not withdrawn) or is to be converted into Common Stock, cash or combination of cash and Common Stock, as the case may be, shall become mutilated or be destroyed, lost or stolen, the Company may, instead of issuing a substitute Note, pay or authorize the payment of or convert or authorize the conversion of the same (without surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity

satisfactory to them to save each of them harmless from any loss, claim, damage, liability, cost or expense caused by or in connection with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company, the Trustee and, if applicable, any Paying Agent or Conversion Agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

Every substitute Note issued pursuant to the provisions of this Section 2.06 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment or conversion or redemption or repurchase of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment or conversion or redemption or repurchase of negotiable instruments or other securities without their surrender.

Section 2.07. *Temporary Notes*. Pending the preparation of Notes in certificated form, the Company may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon the written request of the Company, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Notes in certificated form, but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the Notes in certificated form. Without unreasonable delay, the Company will execute and deliver to the Trustee or such authenticating agent Notes in certificated form and thereupon any or all temporary Notes may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 5.02 and the Trustee or such authenticating agent shall authenticate and make available for delivery in exchange for such temporary Notes an equal aggregate Principal Amount of Notes in certificated form. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Notes in certificated form authenticated and delivered hereunder.

Section 2.08. *Cancellation of Notes*. All Notes surrendered for the purpose of payment, redemption, repurchase, conversion, exchange or registration of transfer shall, if surrendered to the Company or any Paying Agent or any Note Registrar or any Conversion Agent, be surrendered to the Trustee and promptly canceled by it, or, if surrendered to the Trustee, shall be promptly canceled by it, and no Notes shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. The Trustee shall dispose of such canceled Notes in accordance with its customary procedures. If the Company shall acquire any of the Notes, such acquisition shall not operate as a redemption, repurchase or satisfaction of the indebtedness represented by such Notes unless and until the same are delivered to the Trustee for cancellation.

Section 2.09. *CUSIP Numbers*. The Company in issuing the Series A Notes and the Series B Notes may use "CUSIP", "ISIN" and/or similar numbers (if then generally in use) with respect to each series of Notes, and, if so, the Trustee shall use "CUSIP", "ISIN" and/or similar numbers in notices of redemption as a convenience to Noteholders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee in writing of any change in the "CUSIP", "ISIN" and/or similar numbers.

ARTICLE 3
REDEMPTION AND REPURCHASE OF NOTES

Section 3.01. *Company's Right to Redeem*. At any time after April 22, 2011, the Company, at its option, may redeem all (and not a portion) of the Outstanding Notes in accordance with the provisions of this Indenture on the Redemption Date for a redemption price in cash equal to 100% of the Principal Amount of the Notes to be redeemed (the "**Redemption Price**"), plus any accrued and unpaid Interest on the Notes redeemed to, but not including, the Redemption Date. If the Redemption Date is after a Regular Record Date and on or prior to the corresponding Interest Payment Date, the Interest accrued as of the Redemption Date which would otherwise be payable on such Interest Payment Date will be paid on the Redemption Date to the holder on the Regular Record Date.

Section 3.02. *Notice of Optional Redemption*.

(a) In case the Company shall desire to exercise the right to redeem all of the Notes pursuant to Section 3.01, it shall fix a date for redemption (the "**Redemption Date**") and it or, at its written request received by the Paying Agent not fewer than five Business Days prior (or such shorter period of time as may be acceptable to the Trustee) to the date the notice (which notice shall be prepared by the Company) of such redemption (the "**Redemption Notice**") is to be mailed, the Trustee in the name of and at the expense of the Company, shall mail or cause to be mailed the Redemption Notice not fewer than twenty calendar nor more than sixty calendar days prior to the Redemption Date to each holder of Notes so to be redeemed as a whole or in part at its last address as the same appears on the Note Register; *provided* that if the Company shall give such notice, it shall also give written notice of the Redemption Date to the Trustee. Such mailing shall be by first class mail. The Redemption Notice, if mailed in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the holder receives such notice. In any case, failure to give such Redemption Notice by mail or any defect in the notice to the holder of any Note designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Note. Concurrently with the mailing of any such Redemption Notice, the Company shall issue a press release announcing such redemption, the form and content of which press release shall be determined by the Company in its sole discretion. The failure to issue any such press release or any defect therein shall not affect the validity of the Redemption Notice or any of the proceedings for the redemption of any Note called for redemption.

(b) Each such Redemption Notice shall specify:

(i) the aggregate Principal Amount of Notes to be redeemed;

(ii) the CUSIP, ISIN or similar number or numbers of the Notes being redeemed;

(iii) the Redemption Date;

(iv) the Redemption Price at which Notes are to be redeemed;

(v) the place or places of payment and that payment will be made upon presentation and surrender of such Notes;

(vi) that Interest accrued to the Redemption Date will be paid as specified in said notice, and that on and after said date Interest thereon or on the portion thereof to be redeemed will cease to accrue;

(vii) that the holder has the right to convert the Notes called for redemption;

(viii) the Conversion Rate on the date of such notice; and

(ix) the time and the date on which the right to convert such Notes or portions thereof into Common Stock will expire.

(c) On or prior to the Redemption Date specified in the Redemption Notice given as provided in this Section 3.02, the Company will deposit with the Paying Agent (or, if the Company is acting as Paying Agent, set aside, segregate and hold in trust as provided in Section 5.04) an amount of money in immediately available funds sufficient to redeem on the Redemption Date all the Notes so called for redemption (other than those theretofore surrendered for conversion into Common Stock) at the Redemption Price plus accrued and unpaid interest to, but excluding, the Redemption Date; *provided* that if such payment is made on the Redemption Date, it must be received by the Paying Agent by 10:00 a.m., New York City time, on such date. The Company shall be entitled to retain any interest, yield or gain on amounts deposited with the Paying Agent pursuant to this Section 3.02(c) in excess of amounts required hereunder to pay the Redemption Price and accrued interest to, but not including, the Redemption Date. Subject to the last sentence of Section 8.05, if any Note called for redemption is converted pursuant hereto prior to such Redemption Date, any money deposited with the Paying Agent or so segregated and held in trust for the redemption of such Note shall be paid to the Company upon its written request, or, if then held by the Company, shall be discharged from such trust.

Whenever any Notes are to be redeemed, the Company will give the Trustee written notice in the form of an Officers' Certificate not fewer than thirty days (or such shorter period of time as may be acceptable to the Trustee) prior to the Redemption Date.

Section 3.03. *Payment of Notes Called for Redemption by the Company*. If a Redemption Notice has been given as provided in Section 3.02, the Notes or portion of Notes with respect to which such notice has been given shall, unless converted into Common Stock pursuant to the terms hereof, become due and payable on the Redemption Date and at the place or places stated in such notice at the Redemption Price plus interest accrued to, but not including,

the Redemption Date. Interest on the Notes so called for redemption shall cease to accrue on and after the Redemption Date (unless the Company shall default in the payment of the Redemption Price plus interest accrued to, but not including, the Redemption Date) and after 5:00 p.m., New York City time, on the second Trading Day immediately preceding the Redemption Date, such Notes shall cease to be convertible into Common Stock and, except as provided in Section 8.05, to be entitled to any benefit or security under this Indenture, and the holders thereof shall have no right in respect of such Notes except the right to receive the Redemption Price plus interest accrued to, but not including, the Redemption Date. On presentation and surrender of such Notes at a place of payment in said notice specified, the said Notes or the specified portions thereof shall be paid and redeemed by the Company at the Redemption Price plus interest accrued to, but not including, the Redemption Date; *provided* that if the applicable Redemption Date is after the applicable Regular Record Date and on or before an Interest Payment Date, the Interest accrued as of the Redemption Date which would otherwise be payable on such Interest Payment Date shall be paid on such Interest Payment Date to the holders of record of such Notes on the Regular Record Date instead of the holders surrendering such Notes for redemption on such date.

Notwithstanding the foregoing, the Paying Agent shall not pay the Redemption Price and accrued interest, if any, with respect to any Notes presented and surrendered for redemption or redeem any Notes or mail any Redemption Notice during the continuance of a default in payment of Interest on the Notes of which a Responsible Officer of the Trustee has deemed or actual knowledge (and the Paying Agent shall be entitled to conclusively rely upon a certificate of the Trustee as to such knowledge). If any Note called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid or duly provided for, bear interest at the rate of 5.75% per annum, compounded quarterly, and such Note shall remain convertible into cash or a combination of cash and Common Stock, as the case may be, until the Principal Amount and Interest shall have been paid or duly provided for.

Section 3.04. *Mandatory Redemption of Series A Notes by the Company*. On the Series A Redemption Date, if any, the Company shall redeem all of the Series A Notes in accordance with the provisions of Section 3.05 and Section 3.06. The Company shall redeem such Series A Notes on the Series A Redemption Date at a redemption price in cash equal to the Adjusted Issue Price of the Series A Notes to be redeemed (the "**Series A Redemption Price**") plus any accrued and unpaid Interest to, but not including, the Series A Redemption Date. Simultaneous with the redemption of all of the Series A Notes, the Company shall redeem the Series A Warrants in accordance with their terms.

Section 3.05. *Notice of Mandatory Redemption of Series A Notes*.

(a) If the Series A Redemption Date has occurred, the Company shall instruct the Paying Agent, and the Paying Agent in the name of and at the expense of the Company shall deliver written notice (the "**Series A Redemption Notice**") by mail as soon as practicable (and if possible at least five Business Days prior to the Series A Redemption Date) to each holder of Series A Notes so to be redeemed at its last address as the same appears on the Note Register and to the Trustee. Concurrently with the delivery of any such Series A Redemption Notice, the Company shall issue a press release announcing such redemption, the form and content of which press release shall be determined by the Company in its sole discretion. The failure to give any

Series A Redemption Notice or issue any such press release or any defect therein shall not affect the validity of the Series A Redemption Notice or any of the proceedings for the redemption of any Series A Note or the obligation of the Company to redeem the Series A Notes on the Series A Redemption Date.

(b) Each such Series A Redemption Notice shall specify:

(i) the aggregate Principal Amount of Series A Notes to be redeemed;

(ii) the CUSIP, ISIN or similar number or numbers of the Series A Notes being redeemed;

(iii) the Series A Redemption Date;

(iv) the Series A Redemption Price at which Series A Notes are to be redeemed;

(v) the place or places of payment and that payment will be made upon presentation and surrender of such Series A Notes; and

(vi) that Interest accrued to the Redemption Date will be paid as specified in said notice, and that on and after said date Interest thereon or on the portion thereof to be redeemed will cease to accrue.

(c) On or prior to the Series A Redemption Date, the Company will deposit with the Paying Agent (or, if the Company is acting as Paying Agent, set aside, segregate and hold in trust as provided in Section 5.04) an amount of money in immediately available funds sufficient to redeem on the Series A Redemption Date all the Series A Notes at the Series A Redemption Price plus accrued and unpaid interest to, but excluding, the Series A Redemption Date; *provided* that if such payment is made on the Series A Redemption Date, it must be received by the Paying Agent by 10:00 a.m., New York City time, on such date. The Company shall be entitled to retain any interest, yield or gain on amounts deposited with the Paying Agent pursuant to this Section 3.05(c) in excess of amounts required hereunder to pay the Series A Redemption Price and accrued interest to, but not including, the Series A Redemption Date.

Section 3.06. *Payment of Series A Notes Upon Mandatory Redemption by the Company*. If the Series A Redemption Date has occurred, the Series A Notes shall, unless earlier converted into Common Stock pursuant to the terms hereof, become due and payable on the Series A Redemption Date and at the Agent Office of the Paying Agent at the Series A Redemption Price plus interest accrued to, but not including, the Series A Redemption Date. Interest on the Series A Notes so called for redemption shall cease to accrue on and after the Series A Redemption Date (unless the Company shall default in the payment of the Series A Redemption Price plus interest accrued to, but not including, the Series A Redemption Date). On presentation and surrender of such Series A Notes at the Agent Office of the Paying Agent, the said Series A Notes or the specified portions thereof shall be paid and redeemed by the Company at the Series A Redemption Price plus interest accrued to, but not including, the Series A Redemption Date; *provided* that if the applicable Series A Redemption Date is after the applicable Regular Record Date and on or before an Interest Payment Date, the Interest accrued as of the Series A

Redemption Date payable on such Interest Payment Date shall be paid on such Interest Payment Date to the holders of record of such Series A Notes on the applicable Regular Record Date instead of the holders surrendering such Series A Notes for redemption on such date.

Notwithstanding the foregoing, if the amounts applied pursuant to Section 9(c) of the Guarantee Agreement fully satisfy the obligations of the Company with respect to the Series A Notes and the Series A Warrants and the obligations of the borrower under the Term Loan Agreement have been paid in full, then the obligations of the Company with respect to payment of the Series A Redemption Price shall be deemed to be satisfied in full under this Section.

If any Series A Note called for redemption pursuant to Section 3.04 shall not be so paid upon surrender thereof for redemption, the principal shall, until paid or duly provided for, bear interest at the rate of 5.75% per annum, compounded quarterly, and such Series A Note shall remain convertible into cash or a combination of cash and Common Stock, as the case may be, until the Principal Amount and Interest shall have been paid or duly provided for. The Company will notify all of the holders if the Company redeems any of the Series A Notes.

Section 3.07. *Repurchase of Notes by the Company at Option of Holders upon a Fundamental Change*.

(a) If a Fundamental Change shall occur at any time prior to Stated Maturity, each holder shall have the right, at such holder's option, to require the Company to repurchase for cash all or a portion of such holder's Notes, or any portion of the Principal Amount thereof that is equal to $1.00 or an integral multiple of $1.00, on the date specified in the Fundamental Change Repurchase Notice, which date shall be no more than thirty calendar days after the date of the Fundamental Change Repurchase Notice (subject to extension to comply with applicable law) (the "**Fundamental Change Repurchase Date**"). The Company shall repurchase such Notes at a price equal to 101% of the Principal Amount thereof (the "**Fundamental Change Repurchase Price**") plus any accrued and unpaid Interest on the Notes to, but not including, the Fundamental Change Repurchase Date. If the applicable Fundamental Change Repurchase Date is after a Regular Record Date and on or prior to the corresponding Interest Payment Date, the Interest accrued as of the Fundamental Change Repurchase Date that would otherwise be payable on such Interest Payment Date shall be paid on such Interest Payment Date to the holders of record of such Notes on the applicable Regular Record Date instead of the holders surrendering such Notes for repurchase on such date.

(b) On or before the thirtieth calendar day after the occurrence of a Fundamental Change, the Company, or at its written request the Paying Agent in the name of and at the expense of the Company (which request must be received by the Paying Agent at least five Business Days prior to the date the Paying Agent is requested to give notice as described below, unless the Paying Agent shall agree to a shorter period), shall mail or cause to be mailed, by first class mail, to all holders of record on such date a notice (which notice shall be prepared by the Company) (the "**Fundamental Change Repurchase Notice**") of the occurrence of such Fundamental Change and of the repurchase right at the option of the holders arising as a result thereof to each holder of Notes at its last address as the same appears on the Note Register; *provided* that if the Company shall give such notice, it shall also give written notice of the Fundamental Change to the Trustee and Paying Agent, if other than the Trustee, at such time as

it is mailed to Noteholders. Such notice, if mailed in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the holder receives such notice. Each Fundamental Change Repurchase Notice shall state, among other things:

(i) the events causing the Fundamental Change;

(ii) the date of the Fundamental Change;

(iii) the last date on which a holder may exercise the repurchase right;

(iv) the Fundamental Change Repurchase Price and, to the extent known at the time of such notice, the amount of Interest that will be payable with respect to the Notes to, but not including, the Fundamental Change Repurchase Date;

(v) the Fundamental Change Repurchase Date;

(vi) the name and address of the Paying Agent and the Conversion Agent, if the Notes are then convertible in accordance with Section 15.01;

(vii) if the Notes are then convertible in accordance with Section 15.01, the applicable Conversion Rate at the time of such notice (and any applicable adjustments to the applicable Conversion Rate);

(viii) if the Notes are then convertible in accordance with Section 15.01, the Notes if a holder may be converted only if the Fundamental Change Repurchase Election has been withdrawn by such holder in accordance with the terms of this Indenture;

(ix) that the holder shall have the right to withdraw any Notes surrendered prior to 5:00 p.m., New York City time, on the Business Day immediately preceding the Fundamental Change Repurchase Date (or any such later time as may be required by applicable law);

(x) a description of the procedures which a Noteholder must follow to exercise such repurchase right or to withdraw any surrendered Notes;

(xi) the CUSIP, ISIN or similar number or numbers of the Notes (if then generally in use); and

(xii) briefly, the conversion rights of the holders of the Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Noteholders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 3.07.

(c) Notes shall be repurchased pursuant to this Section 3.07 at the option of the holder upon:

(i) delivery to the Paying Agent by a holder of a duly completed notice (a "**Fundamental Change Repurchase Election**") in the form set forth on the reverse of the Note at any time prior to 5:00 p.m., New York City time, on the Business Day immediately preceding the Fundamental Change Repurchase Date, which is subject to extension to comply with applicable law, stating:

(A) if certificated notes have been issued, the certificate numbers of the Notes which the holder shall deliver to be repurchased;

(B) the portion of the Principal Amount of the Notes that the holder shall deliver to be repurchased, which portion must be $1.00 or an integral multiple thereof; and

(C) that such Notes shall be repurchased by the Company as of the Fundamental Change Repurchase Date pursuant to the terms and conditions specified in the Notes and in the Indenture; and

(ii) delivery or book-entry transfer of the Notes to the Paying Agent simultaneously with or at any time after delivery of the Fundamental Change Repurchase Election (together with all necessary endorsements) at the Agent Office of the Paying Agent, such delivery or transfer being a condition to receipt by the holder of the Fundamental Change Repurchase Price therefor; *provided* that such Fundamental Change Repurchase Price shall be so paid pursuant to this Section 3.07 only if the Notes so delivered or transferred to the Paying Agent shall conform in all respects to the description thereof in the related Fundamental Change Repurchase Election. All questions as to the validity, eligibility (including time of receipt) and acceptance of any Note for repurchase shall be determined by the Company, whose determination shall be final and binding absent manifest error.

If the Notes are not in certificated form, holders must provide notice of their election in accordance with the appropriate procedures of the Depositary.

Section 3.08. *Conditions and Procedures for Repurchase at Option of Holders*.

(a) At the request of the holder, the Company shall repurchase from such holder, pursuant to Section 3.07, a portion of a Note, if the Principal Amount of such portion is $1.00 or a whole multiple of $1.00. Provisions of this Indenture that apply to the repurchase of all of a Note also apply to the repurchase of such portion of such Note. Upon presentation of any Note repurchased in part only, the Company shall execute and the Trustee shall authenticate and make available for delivery to the holder thereof, at the expense of the Company, a new Note or Notes, of any authorized denomination, in aggregate Principal Amount equal to the portion of the Notes presented not repurchased.

(b) On or prior to a Fundamental Change Repurchase Date, the Company will deposit with the Paying Agent an amount of money sufficient to repurchase on the Fundamental Change Repurchase Date all the Notes or portions thereof to be repurchased on such date at the Fundamental Change Repurchase Price plus accrued and unpaid Interest, if any, to, but not including, the Fundamental Change Repurchase Date, if applicable; *provided* that if such deposit is made on the Fundamental Change Repurchase Date it must be received by the Trustee or Paying Agent, as the case may be, by 10:00 a.m., New York City time, on such date.

If on the Fundamental Change Repurchase Date the Trustee or other Paying Agent appointed by the Company holds money sufficient to pay the aggregate Fundamental Change Repurchase Price of all the Notes or portions thereof that are to be repurchased plus accrued and unpaid Interest, if any, to, but not including, the Fundamental Change Repurchase Date, if applicable, then, on such Fundamental Change Repurchase Date (i) such Notes will cease to be outstanding, (ii) Interest on such Notes will cease to accrue, and (iii) all other rights of the holders of such Notes will terminate (other than the right to receive the Fundamental Change Repurchase Price plus accrued and unpaid Interest, if any, to, but not including, the Fundamental Change Repurchase Date, if applicable upon book-entry transfer or delivery of the Notes, as the case may be).

(c) Upon receipt by the Paying Agent of a Fundamental Change Repurchase Election, the holder of the Note in respect of which such Fundamental Change Repurchase Election was given shall (unless such Fundamental Change Repurchase Election is validly withdrawn) thereafter be entitled to receive solely the Fundamental Change Repurchase Price with respect to such Note plus accrued and unpaid Interest, if any, to, but not including, the Fundamental Change Repurchase Date, if applicable. Such Fundamental Change Repurchase Price plus accrued and unpaid Interest, if any, to, but not including, the Fundamental Change Repurchase Date, if applicable, shall be paid to such holder, subject to receipt of funds and/or Notes by the Paying Agent, promptly following the later of (x) the Fundamental Change Repurchase Date with respect to such Note (provided the holder has satisfied the conditions in Section 3.07(c)) and (y) the time of book-entry transfer or delivery of such Note to the Paying Agent by the holder thereof in the manner required by Section 3.07(c). Notes in respect of which a Fundamental Change Repurchase Election has been given by the holder thereof may not be converted pursuant to Article 15 hereof on or after the date of the delivery of such Fundamental Change Repurchase Election unless such Fundamental Change Repurchase Election has first been validly withdrawn.

(d) Notwithstanding anything herein to the contrary, any holder delivering to the Paying Agent a Fundamental Change Repurchase Election shall have the right to withdraw such Fundamental Change Repurchase Election, in whole or in part, at any time prior to 5:00 p.m., New York City time, on the Business Day preceding the Fundamental Change Repurchase Date (or any such later time as may be required by applicable law) by delivery of a written notice of withdrawal to the Paying Agent, specifying:

(i) if certificated Notes have been issued, the certificate numbers of the withdrawn Notes;

(ii) the Principal Amount of the Note with respect to which such notice of withdrawal is being submitted; and

(iii) the Principal Amount, if any, of such Note which remains subject to the original Fundamental Change Repurchase Election and which has been or will be delivered for repurchase by the Company.

If the Notes are not in certificated form, holders must provide notice of their withdrawal in accordance with the appropriate procedures of the Depositary.

The Paying Agent shall promptly notify the Company of the receipt by it of any Fundamental Change Repurchase Election or written notice of withdrawal thereof.

(e) The Company will comply with the provisions of Rule 13e-4 and any other tender offer rules under the Exchange Act to the extent then applicable in connection with the repurchase rights of the holders of Notes in the event of a Fundamental Change. If then required by applicable rules, the Company will file a Schedule TO or any other schedule required in connection with any offer by the Company to repurchase Notes.

(f) There shall be no repurchase of any Notes pursuant to Section 3.07 if there has occurred at any time prior to, and is continuing on, the Fundamental Change Repurchase Date an Event of Default (other than an Event of Default that is cured by the payment of the Fundamental Change Repurchase Price with respect to such Notes). The Paying Agent will promptly return to the respective holders thereof any Notes (x) with respect to which a Fundamental Change Repurchase Election has been withdrawn in compliance with this Indenture or (y) held by it during the continuance of an Event of Default (other than a default in the payment of the Fundamental Change Repurchase Price with respect to such Notes) of which Event of Default the Paying Agent has been notified by the Company in which case, upon such return, the Fundamental Change Repurchase Election with respect thereto shall be deemed to have been withdrawn.

(g) The Paying Agent shall return to the Company any cash that remains unclaimed as provided in Section 13.03, together with interest, if any, thereon, held by them for the payment of the Fundamental Change Repurchase Price; *provided* that to the extent that the aggregate amount of cash deposited by the Company pursuant to Section 3.08(b) exceeds the aggregate Fundamental Change Repurchase Price of the Notes or portions thereof which the Company is obligated to purchase as of the Fundamental Change Repurchase Date then, unless otherwise agreed in writing with the Company, promptly after the Business Day following the Fundamental Change Repurchase Date, the Paying Agent shall return any such excess to the Company together with interest, if any, thereon.

(h) In the case of a reclassification, change, consolidation, merger, binding share exchange, combination, sale or conveyance to which Section 15.06 applies, in which the Common Stock of the Company is changed or exchanged as a result into the right to receive cash, securities or other property, which includes shares of Common Stock of the Company or shares of common stock of another Person that are, or upon issuance will be, traded on a U.S. national securities exchange or approved for trading on an established automated over-the-counter trading market in the United States and such shares constitute at the time such change or exchange becomes effective in excess of 50% of the aggregate fair market value of such cash, securities or other property (as determined by the Company, which determination shall be conclusive and binding), then the Person formed by such consolidation or resulting from such merger or which acquires such assets, as the case may be, shall execute and deliver to the Trustee a supplemental indenture (accompanied by an Opinion of Counsel to the effect that such supplemental indenture complies with this Section 3.08(h)) modifying the provisions of this

Indenture relating to the right of holders of the Notes to cause the Company to repurchase the Notes following a Fundamental Change, including without limitation the applicable provisions of this Article 3 and the definition of Fundamental Change, as appropriate, as determined in good faith by the Company (which determination shall be conclusive and binding), to make such provisions apply to such other Person if different from the Company (in lieu of the Company).

ARTICLE 4
SUBORDINATION OF NOTES

Section 4.01. *Notes Subordinated To Senior Indebtedness*. The Company covenants and agrees, and the Trustee and each holder of the Notes by the acceptance thereof likewise covenant and agree, that all Notes shall be issued subject to the provisions of this Article 4; and each Person holding any Note, whether upon original issue or upon transfer, assignment or exchange thereof, accepts and agrees that all payments of the principal of, premium, if any, and interest on the Notes by the Company shall, to the extent and in the manner set forth in this Article 4, be subordinated and junior in right of payment to the prior payment in full in cash of all obligations arising under Senior Indebtedness. Only Senior Indebtedness shall rank senior to the Notes in accordance with the provisions set forth herein.

Section 4.02. *No Payment On Notes In Certain Circumstances*.

(a) No direct or indirect payment (other than in Junior Securities) by or on behalf of the Company of principal of, premium, if any, or interest on the Notes, whether pursuant to the terms of the Notes, upon acceleration, pursuant to any repurchase, redemption or otherwise (each a "**Note Payment**"), and no deposit pursuant to Article 13, will be made, if, at the time of such payment, there exists a default in the payment in cash of all or any portion of the principal of, premium, if any, or interest on the Designated Senior Indebtedness when due, or the Designated Senior Indebtedness has been accelerated, and such default shall not have been cured or waived in writing or the benefits of this sentence waived in writing by or on behalf of the holders of such Designated Senior Indebtedness. In addition, during the continuance of any non-payment event of default with respect to the Designated Senior Indebtedness pursuant to which the maturity thereof may be immediately accelerated by the holder or holders of the Designated Senior Indebtedness, and upon receipt by the Trustee of written notice, referring to this Indenture and entitled "Payment Blockage Notice" (a "**Payment Blockage Notice**"), from the holder or holders of the Designated Senior Indebtedness, then, unless and until such event of default has been cured or waived in writing or has ceased to exist or the Designated Senior Indebtedness has been discharged or repaid in full in cash (or such payment shall be duly provided for in a manner satisfactory to holders of the Designated Senior Indebtedness) or otherwise to the extent holders of the Designated Senior Indebtedness in their sole discretion accept satisfaction of amounts due by settlement in other than cash or the benefits of these provisions have been waived in writing by the holders of the Designated Senior Indebtedness, no Note Payment and no deposit pursuant to Article 13 will be made to such holders during a period (a "**Payment Blockage Period**") commencing on the date of receipt of the Payment Blockage Notice by the Trustee and ending 179 days thereafter. The Trustee shall deliver a copy of the Payment Blockage Notice to the Company promptly upon receipt thereof.

Notwithstanding anything in the subordination provisions of this Indenture or the Notes to the contrary, (1) in no event will a Payment Blockage Period extend beyond 179 days from the date the Payment Blockage Notice in respect thereof was received by the Trustee and (2) not more than one Payment Blockage Period may exist with respect to the Notes during any period of 360 consecutive calendar days. No default that existed or was continuing on the date of delivery of any Payment Blockage Notice (whether or not such event is with respect to the same issue of Designated Senior Indebtedness) may be, or be made, the basis for a subsequent Payment Blockage Notice, unless such default has been cured or waived for a period of not less than 90 consecutive calendar days.

(b) In the event that, notwithstanding the foregoing, any Note Payment shall be received by the Trustee at a time when such payment is prohibited by Section 4.02(a), such Note Payment shall be received and held in trust for the benefit of, and shall be paid over or delivered to, the holders of the Designated Senior Indebtedness, as their respective interests may appear.

Section 4.03. *Payment Over Of Proceeds Upon Dissolution, Etc*.

(a) Upon any payment or distribution of assets or securities of the Company of any kind or character, whether in cash, property or securities, to the creditors of the Company upon any dissolution or winding-up or total or partial liquidation or reorganization of the Company, whether voluntary or involuntary, or in bankruptcy, insolvency, receivership or other similar proceedings relating to the Company, any assignment for the benefit of creditors or any marshalling of the Company's assets and liabilities, the holders of Senior Indebtedness shall be entitled to receive payment in full in cash of all obligations due in respect of Senior Indebtedness (including Post-Petition Interest), or have provision made for such payment in a manner acceptable to holders of Senior Indebtedness, before the holders of the Notes or the Trustee on behalf of such holders shall be entitled to receive any payment by the Company of the principal of, premium, if any, or interest on the Notes, or any payment by the Company to acquire any of the Notes for cash, property or securities, or any distribution by the Company with respect to the Notes of any cash, property or securities (in each case, other than payments in Junior Securities). For the purposes of this Section 4.03, "Post-Petition Interest" means, with respect to the Senior Indebtedness, all interest accrued or accruing on the Senior Indebtedness after the commencement of any insolvency or liquidation proceeding against the Company in accordance with and at the contract rate (including, without limitation, any rate applicable upon default), specified in the Credit Facility, whether or not, pursuant to applicable law or otherwise, the claim for such interest is allowed as a claim in such insolvency or liquidation proceeding.

(b) In the event that, notwithstanding the foregoing provision prohibiting such payment or distribution, any payment or distribution of assets or securities of the Company of any kind or character, whether in cash, property or securities (in each case, other than Junior Securities) in respect of the principal, premium, if any, or interest on the Notes, shall be received by the Trustee or any Paying Agent or any holder of Notes at a time when such payment or distribution is prohibited by Section 4.03(a), such payment or distribution shall be received and held in trust for the benefit of, and shall be paid over or delivered to, the holders of Senior Indebtedness, as their respective interests may appear, for application to the payment of all obligations in respect of Senior Indebtedness remaining unpaid until all obligations in respect of Senior Indebtedness have been paid in full in cash (or such payment shall be duly provided for in

a manner satisfactory to the holders of Senior Indebtedness) or otherwise to the extent holders of Senior Indebtedness in their sole discretion accept satisfaction of amounts due by settlement in other than cash after giving effect to any prior or concurrent payment, distribution or provision therefor to or for the holders of Senior Indebtedness.

Section 4.04. *Subrogation*. Upon the payment in full in cash (or such payment shall be duly provided for in a manner satisfactory to the holders of Senior Indebtedness) or otherwise to the extent holders of Senior Indebtedness in their sole discretion accept satisfaction of amounts due by settlement in other than cash of all Senior Indebtedness, the holders of the Notes shall be subrogated to the rights of the holders of Senior Indebtedness to receive payments or distributions of cash, cash equivalents, property or securities of the Company made on Senior Indebtedness until the principal of, premium, if any, and interest on the Notes shall be paid in full in cash or the Notes are no longer outstanding; and, for the purposes of such subrogation, no payments or distributions to the holders of Senior Indebtedness of any cash, cash equivalents, property or securities to which the holders of the Notes or the Trustee on their behalf would be entitled except for the provisions of this Article 4, and no payment over pursuant to the provisions of this Article 4 to the holders of Senior Indebtedness by holders of the Notes or the Trustee on their behalf shall, as between the Company, its creditors other than holders of Senior Indebtedness, and the holders of the Notes, be deemed to be a payment by the Company to or on account of Senior Indebtedness. It is understood that the provisions of this Article 4 are and are intended solely for the purpose of defining the relative rights of the holders of the Notes, on the one hand, and the holders of Senior Indebtedness, on the other hand.

If any payment or distribution to which the holders of the Notes would otherwise have been entitled but for the provisions of this Article 4 shall have been applied, pursuant to the provisions of this Article 4, to the payment of all amounts payable under Senior Indebtedness, then and in such case, the holders of the Notes shall be entitled to receive from the holders of Senior Indebtedness any payments or distributions received by such holders of Senior Indebtedness in excess of the amount required to make payment in full in cash of Senior Indebtedness (or to duly provide for such payment in a manner satisfactory to the holders of Senior Indebtedness) or otherwise to the extent holders of Senior Indebtedness in their sole discretion accept satisfaction of amounts due by settlement in other than cash.

Section 4.05. *Obligations Of Company Unconditional*. Nothing contained in this Article 4 or elsewhere in this Indenture or in the Notes is intended to or shall impair, as among the Company and the holders of the Notes, the obligation of the Company, which is absolute and unconditional, to pay to the holders of the Notes the principal of, premium on and interest on the Notes as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the holders of the Notes and creditors of the Company other than the holders of Senior Indebtedness, nor shall anything herein or therein prevent the holder of any Note or the Trustee on their behalf from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article 4 of the holders of Senior Indebtedness in respect of cash, cash equivalents, property or securities of the Company received upon the exercise of any such remedy.

Without limiting the generality of the foregoing, nothing contained in this Article 4 shall restrict the right of the Trustee or the holders of Notes to take any action to declare the Notes to be due and payable prior to their Stated Maturity pursuant to Section 7.01 or to pursue any rights or remedies hereunder.

Section 4.06. *Notice To Trustee*. The Company shall give prompt written notice to the Trustee of any fact known to the Company which would prohibit the making of any payment to or by the Trustee in respect of the Notes pursuant to the provisions of this Article 4. Unless the Trustee has failed to give notice of its change of address pursuant to Section 17.03, the Trustee shall not be charged with knowledge of the existence of any default or event of default with respect to Senior Indebtedness or of any other facts which would prohibit the making of any payment to or by the Trustee unless and until a Responsible Officer of the Trustee shall have received notice in writing at its Corporate Trust Office to that effect signed by an Officer of the Company, or by a holder of Senior Indebtedness or agent therefor; and prior to the receipt of any such written notice, the Trustee subject to the provisions of Article 8 shall, be entitled to conclusively assume that no such facts exist; *provided, however*, that if the Trustee shall not have received the notice provided for in this Section 4.06 at least two Business Days prior to the date upon which by the terms of this Indenture any moneys shall become payable to any Noteholder for any purpose (including, without limitation, the payment of the principal of, premium, if any, or interest on any Note), then, regardless of anything herein to the contrary, the Trustee shall have full power and authority to receive any moneys from the Company and to apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it on or after such prior date. The Trustee shall be entitled to conclusively rely on the delivery to it of a written notice by a Person representing himself or itself to be a holder of Senior Indebtedness (or a trustee on behalf of, or agent or other representative of, such holder) to establish that such notice has been given by a holder of Senior Indebtedness or a trustee or agent or representative on behalf of any such holder. A holder of Senior Indebtedness and any agent on behalf of such holder shall be entitled to deliver all notices required by this Section 4.06 or otherwise pursuant to this Article 4 to the address of the Trustee set forth herein or to such additional or different address as the Trustee shall have designated pursuant to Section 17.03.

In the event that the Trustee determines in good faith that any evidence is required with respect to the right of any Person as a holder of Senior Indebtedness to participate in any payment or distribution pursuant to this Article 4, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article 4, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

Section 4.07. *Trustee's Relation To Senior Indebtedness*. The Trustee and any Paying Agent shall be entitled to all the rights set forth in this Article 4 with respect to Senior Indebtedness which may at any time be held by it in its individual or any other capacity to the same extent as any other holder of Senior Indebtedness, and nothing in this Indenture shall deprive the Trustee or any Paying Agent of any of its rights as such holder.

With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article 4, and no implied covenants or obligations with respect to the holders of Senior Indebtedness shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness (except as provided in Section 4.02(b) and 4.03(b)). The Trustee shall not be liable to any such holders of Senior Indebtedness if the Trustee shall in good faith mistakenly pay over or distribute to holders of Notes or to the Company or to any other Person cash, property or securities to which any holders of Senior Indebtedness shall be entitled by virtue of this Article 4 or otherwise.

Section 4.08. *Subordination Rights Not Impaired By Acts Or Omissions Of The Company Or Holders Of Senior Indebtedness*. No right of any present or future holders of Senior Indebtedness to enforce subordination as provided herein shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms of this Indenture, regardless of any knowledge thereof which any such holder may have or otherwise be charged with. The provisions of this Article 4 are intended to be for the benefit of, and shall be enforceable directly by, the holders of Senior Indebtedness.

Section 4.09. *Holders Authorize Trustee To Effectuate Subordination Of Notes*. Each holder of Notes by his acceptance of such Notes authorizes and expressly directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article 4, and appoints the Trustee his attorney-in-fact for such purposes, including, in the event of any dissolution, winding-up, total liquidation or reorganization of the Company (whether in bankruptcy, insolvency, receivership, reorganization or similar proceedings or upon an assignment for the benefit of creditors or otherwise) tending towards liquidation of the business and assets of the Company, the filing of a claim for the unpaid balance of its or his Notes in the form required in those proceedings.

Section 4.10. *This Article Not To Prevent Events Of Default*. The failure to make a payment on account of principal of, or premium, if any, or interest on the Notes by reason of any provision of this Article 4 shall not be construed as preventing the occurrence of an Event of Default specified in clauses (a), (b), (c) or (d) of Section 7.01.

Section 4.11. *Trustee's Compensation And Rights To Indemnification Not Prejudiced*. Nothing in this Article 4 shall apply to amounts due to the Trustee, or its rights to indemnification, pursuant to other sections in this Indenture.

Section 4.12. *No Waiver of Subordination Provisions*. Without in any way limiting the generality of Section 4.08, the holders of Senior Indebtedness may, at any time and from time to time, without the consent of or notice to the Trustee or the holders of the Notes, without incurring responsibility to the holders of the Notes and without impairing or releasing the subordination provided in this Article 4 or the obligations hereunder of the holders of the Notes to the holders of Senior Indebtedness, do any one or more of the following: (a) change the manner or place or time of payment of Senior Indebtedness or amend, supplement or otherwise modify any instrument evidencing the same or any agreement under which Senior Indebtedness is outstanding, guaranteed or secured; (b) sell, exchange, release or otherwise deal with any

property pledged, mortgaged or otherwise securing Senior Indebtedness; (c) release any Person liable in any manner for the collection of Senior Indebtedness; and (d) exercise or refrain from exercising any rights against the Company and any other Person.

Section 4.13. *Subordination Provisions Not Applicable To Money Held In Trust For Holders; Payments May Be Paid Prior To Dissolution*. All funds deposited in trust with the Paying Agent pursuant to and in accordance with Article 13 when permitted pursuant to Article 4 shall be for the sole benefit of the holders and shall not be subject to this Article 4.

Nothing contained in this Article 4 or elsewhere in this Indenture shall prevent (i) the Company, except under the conditions described in this Article 4, from making payments of principal of, premium, if any, and interest on the Notes or from depositing with the Paying Agent any moneys for such payments or from effecting a termination of the Company's obligations under the Notes and this Indenture as provided in Article 13, or (ii) the application by the Trustee of any moneys deposited with it or any Paying Agent for the purpose of making such payments of principal of, premium, if any, and interest on the Notes, to the holders entitled thereto unless at least two Business Days prior to the date upon which such payment becomes due and payable, the Trustee shall have received the written notice provided for in Section 4.02(b) or in Section 4.06. The Company shall give prompt written notice to the Trustee of any dissolution, winding-up, liquidation or reorganization of the Company.

Section 4.14. *Acceleration Of Notes*. If payment of the Notes is accelerated because of an Event of Default, the Company shall promptly notify holders of the Designated Senior Indebtedness through their agent of the acceleration. If Designated Senior Indebtedness is outstanding at the time of such acceleration, then the Company shall not pay principal of, premium, if any, or interest on the Notes until five Business Days after the holders of Designated Senior Indebtedness receive notice of such acceleration and, thereafter, shall be entitled to make such payments only if this Article 4 permits such payments at such time.

Section 4.15. *Certain Conversions and Repurchases Not Deemed Payment*. For the purposes of this Article 4 only, (1) (x) the issuance and delivery of Junior Securities upon conversion of Notes in accordance with, and (y) the payment, issuance or delivery of cash, property or securities upon conversion of a Note as a result of any transaction pursuant to, Section 15.01 or (2) the issuance and delivery of Junior Securities made in connection with repurchases of Notes in accordance with Section 3.07, shall not be deemed to constitute a Note Payment. For the purposes of this Article 4, the term "**Junior Securities**" means (a) Common Stock of the Company or Applicable Stock, as the case may be, or (b) securities of the Company that are subordinated in right of payment to Senior Indebtedness that may be outstanding at the time of issuance or delivery of such securities to at least the same extent as, or to a greater extent than, the Notes are so subordinated as provided in this Article 4. Nothing contained in this Article 4 or elsewhere in this Indenture or in the Notes is intended to or shall impair, as among the Company, its creditors (other than holders of Senior Indebtedness) and the Noteholders, the right, which is absolute and unconditional, of the holder of any Note to convert such Note in accordance with Section 15.01.

Section 4.16. *Reliance by Holders of Senior Indebtedness on Subordination Provisions*. Each Noteholder by accepting a Note acknowledges and agrees that the foregoing subordination

provisions are, and are intended to be, an inducement and a consideration to each holder of any Senior Indebtedness, whether such Senior Indebtedness was created or acquired before or after the issuance of the Notes, to acquire and continue to hold, or to continue to hold, such Senior Indebtedness and such holder of such Senior Indebtedness shall be deemed conclusively to have relied on such subordination provisions in acquiring and continuing to hold, or in continuing to hold, such Senior Indebtedness.

ARTICLE 5
PARTICULAR COVENANTS OF THE COMPANY

Section 5.01. *Payment of Principal and Interest*. The Company covenants and agrees that it will duly and punctually pay or cause to be paid the Principal Amount of (including any Redemption Price or Fundamental Change Repurchase Price pursuant to Article 3) and Interest on each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes.

Section 5.02. *Maintenance of Office or Agency*. The Company will maintain an office or agency in such cities as it shall determine, where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or for conversion, redemption or repurchase and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office.

The Company may also from time to time designate co-registrars and one or more offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations. The Company will give prompt written notice of any such designation or rescission and of any change in the location of any such other office or agency to the Trustee and the holders.

The Company hereby initially designates JPMorgan Chase Bank, N.A. as Paying Agent, Note Registrar, Custodian and Conversion Agent, and the office of agency of the Paying Agent shall be considered as one such office or agency of the Company for each of the aforesaid purposes, which office or agency shall be the Agent Office.

Section 5.03. *Appointments to Fill Vacancies in Trustee's Office*. The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 8.10, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 5.04. *Provisions as to Paying Agent*.

(a) If the Company shall appoint a Paying Agent other than the Trustee, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 5.04:

(i) that it will hold all sums held by it as such agent for the payment of the Principal Amount of or Interest on the Notes (whether such sums have been paid to it by the Company or by any other obligor on the Notes) in trust for the benefit of the holders of the Notes or of the Trustee, as the case may be;

(ii) that it will give the Trustee notice of any failure by the Company (or by any other obligor on the Notes) to make any payment of the Principal Amount of or Interest on the Notes when the same shall be due and payable; and

(iii) that at any time during the continuance of an Event of Default, upon the written request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust by it as such agent.

The Company shall, on or before each due date of the Principal Amount of or Interest on the Notes, deposit with the Paying Agent a sum (in funds which are immediately available on the due date for such payment) sufficient to pay such Principal Amount or Interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of any failure to take such action; *provided* that if such deposit is made on the due date, such deposit shall be received by the Paying Agent by 10:00 a.m., New York City time, on such date.

(b) If the Company shall act as Paying Agent, it will, on or before each due date of the Principal Amount of or Interest on the Notes, set aside, segregate and hold in trust for the benefit of the holders of the Notes a sum sufficient to pay such Principal Amount or Interest so becoming due and will promptly notify the Trustee of any failure to take such action and of any failure by the Company (or any other obligor under the Notes) to make any payment of the Principal Amount of or Interest on the Notes when the same shall become due and payable.

(c) Anything in this Section 5.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by the Company or any Paying Agent hereunder as required by this Section 5.04, such sums to be held by the Trustee upon the trusts herein contained and upon such payment by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability with respect to such sums.

(d) Anything in this Section 5.04 to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section 5.04 is subject to Sections 13.02 and 13.03.

The Trustee shall not be responsible for the actions of any other Paying Agents and shall have no control of any funds held by such other Paying Agents.

Section 5.05. *Existence*. Subject to Article 12, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory), privileges and franchises necessary or desirable in the ordinary conduct of its business; *provided* that the Company shall not be required to preserve any such right if the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not disadvantageous in any material respect to the Noteholders.

Section 5.06. *Rule 144A Information Requirement.* Within the period prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), the Company covenants and agrees that it shall, during any period in which it is not subject to Section 13 or 15(d) under the Exchange Act, make available to any holder or beneficial holder of Notes or any Common Stock issued upon conversion thereof which continue to be Restricted Securities in connection with any sale thereof and any prospective purchaser of Notes or such Common Stock designated by such holder or beneficial holder, the information required pursuant to Rule 144A(d)(4) under the Securities Act upon the request of any holder or beneficial holder of the Notes or such Common Stock and it will take such further action as any holder or beneficial holder of such Notes or such Common Stock may reasonably request, all to the extent required from time to time to enable such holder or beneficial holder to sell its Notes or Common Stock without registration under the Securities Act within the limitation of the exemption provided by Rule 144A, as such Rule may be amended from time to time. Upon the request of any holder or any beneficial holder of the Notes or such Common Stock, the Company will deliver to such holder a written statement as to whether it has complied with such requirements.

Section 5.07. *Stay, Extension and Usury Laws.* The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Company from paying all or any portion of the Principal Amount of or Interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 5.08. *Compliance Certificate.* The Company shall deliver to the Trustee, within ninety calendar days after the end of each fiscal year of the Company (which fiscal year of the Company is presently the twelve calendar months ending December 31), a certificate signed by either the principal executive officer, principal financial officer or principal accounting officer of the Company, stating whether or not to the best knowledge of the signer thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company shall be in default, specifying all such defaults and the nature and the status thereof of which the signer may have knowledge.

The Company will deliver to the Trustee, promptly upon becoming aware of (i) any default in the performance or observance of any covenant, agreement or condition contained in this Indenture, or (ii) any Event of Default, an Officers' Certificate specifying with particularity such default or Event of Default and further stating what action the Company has taken, is taking or proposes to take with respect thereto.

Any notice required to be given under this Section 5.08 shall be delivered to a Responsible Officer of the Trustee at its Corporate Trust Office.

Section 5.09. *[Reserved]*.

Section 5.10. *Transactions with Affiliates.*

(a) the Company will not make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate (each, an "**Affiliate Transaction**") involving aggregate consideration in excess of $1,000,000, unless:

(i) the Affiliate Transaction is on terms that are no less favorable to the Company than those that would have been obtained in a comparable transaction by the Company with an unrelated Person; and

(ii) the Company delivers to the Trustee, with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $10,000,000, a resolution of the Board of Directors approving such Affiliate Transaction set forth in an Officers' Certificate certifying that such Affiliate Transaction complies with this Section 5.10 and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors.

(b) The restrictions set forth in Section 5.10 do not apply to:

(i) any Affiliate Transaction with the NASD;

(ii) employment agreements with officers or employees of the Company or the payment of reasonable and customary compensation and fees paid to, and indemnities provided on behalf of, officers, directors, employees or consultants of the Company, any of its direct or indirect parent entities, or any of its Subsidiaries as determined in good faith by the Board of Directors of the Company or senior management thereof;

(iii) the payment by the Company or any of its Subsidiaries to the Holders and any of their Affiliates for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including, without limitation, in connection with acquisitions or divestitures, which payments are approved by a majority of the members of the Board of Directors of the Company or a majority of the disinterested members of the Board of Directors of the Company, in each case in good faith;

(iv) transactions in which the Company delivers to the Trustee a letter from an Independent Financial Adviser stating that such transaction is fair to the Company or any of its Subsidiaries from a financial point of view;

(v) payments or loans (or cancellations of loans) to employees or consultants of the Company or any of its direct or indirect parent entities or any of its Subsidiaries which are approved by a majority of the Board of Directors of the Company in good faith and which are otherwise permitted under this Indenture;

(vi) payments made or performance under any agreement as in effect on the Issue Date; and

(vii) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Indenture that are fair to the Company or the Subsidiaries, in the reasonable determination of the members of the Board of Directors of the Company or the senior management thereof, or are on terms at least as favorable as would reasonably have been entered into at such time with an unaffiliated party.

Section 5.11. *Future Guarantors.* In the event of a spin-off or other corporate transaction that results in the Company's stockholders owning a subsidiary or other business or other entity that was a subsidiary of the Company within the two years preceding any such distribution of capital stock, the Company will cause such subsidiary or other business to execute and deliver to the Trustee a supplemental indenture (accompanied by an Opinion of Counsel to the effect that such supplemental indenture is the legal, valid and binding obligation of such subsidiary or other business, and is enforceable in accordance with its terms, subject to then customary exceptions) which provides for such subsidiary's or business' full and unconditional guarantee of the Company's obligations under the Notes and this Indenture.

Section 5.12. *Calculation of Original Issue Discount.* The Company shall provide to the Paying Agent on a timely basis such information as the Paying Agent requires to enable the Paying Agent to prepare and file any form required to be submitted by the Company with the Internal Revenue Service and the holders of the Notes relating to original issue discount, including, without limitation, Form 1099-OID or any successor form.

Section 5.13. *Limitation on Layering.* The Company shall not incur any Indebtedness that is contractually senior in right of payment to the Notes and contractually subordinate in right of payment to any other Indebtedness of the Company.

ARTICLE 6
NOTEHOLDERS' LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 6.01. *Noteholders' Lists.* The Company covenants and agrees that it, if requested, will, furnish or cause to be furnished to the Trustee, four times a year, not more than fifteen calendar days after each January 7, April 7, July 7 and October 7 in each year beginning with July 7, 2005, and at such other times as the Trustee may request in writing, within thirty calendar days after receipt by the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the holders of Notes as of a date not more than fifteen calendar days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that no such list need be furnished by the Company to the Trustee so long as the Trustee is acting as the sole Note Registrar.

Section 6.02. *Preservation and Disclosure of Lists.*

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the holders of Notes contained in the most recent list furnished to it as provided in Section 6.01 or maintained by the Trustee in its capacity as Note Registrar or co-registrar in respect of the Notes, if so acting. The Trustee may destroy any list furnished to it as provided in Section 6.01 upon receipt of a new list so furnished.

(b) The rights of Noteholders to communicate with other holders of Notes with respect to their rights under this Indenture or under the Notes, and the corresponding rights and duties of the Trustee, shall be as provided by the Trust Indenture Act.

(c) Every Noteholder, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of any disclosure of information as to names and addresses of holders of Notes made pursuant to the Trust Indenture Act.

Section 6.03. *Reports by Trustee.*

(a) Within sixty calendar days after December 31 of each year commencing with the year 2005, the Trustee shall transmit to holders of Notes such reports dated as of December 31 of the year in which such reports are made concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. In the event that no events have occurred under the applicable sections of the Trust Indenture Act, the Trustee shall be under no duty or obligation to provide such reports.

(b) A copy of such report shall, at the time of such transmission to holders of Notes, be filed by the Trustee with each stock exchange and automated quotation system upon which the Notes are listed, if any, and with the Company and the Commission if and when at any time after this Indenture becomes qualified under the Trust Indenture Act. The Company will promptly notify the Trustee in writing when the Notes are listed on any stock exchange or automated quotation system or delisted therefrom.

Section 6.04. *Reports by Company.* The Company shall file with the Trustee (and the Commission if at any time after this Indenture becomes qualified under the Trust Indenture Act), and transmit to holders of Notes, such information, documents and other reports and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant to such Act, whether or not the Notes are governed by such Act; *provided* that any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act shall be filed with the Trustee within fifteen calendar days after the same is so required to be filed with the Commission. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

ARTICLE 7
REMEDIES OF THE TRUSTEE AND NOTEHOLDERS ON AN EVENT OF DEFAULT

Section 7.01. *Events of Default.* In case one or more of the following events (each, an "**Event of Default**") (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) shall have occurred and be continuing:

(a) default in the payment of the Principal Amount of any of the Notes as and when the same shall become due and payable either at Stated Maturity or in connection with any redemption, repurchase or Fundamental Change repurchase, in each case pursuant to Article 3, or otherwise; or

(b) default in the payment of any installment of Interest upon any of the Notes as and when the same shall become due and payable, and continuance of such default for a period of thirty calendar days; or

(c) failure to provide on a timely basis a Fundamental Change Repurchase Notice after the occurrence of a Fundamental Change as required by Section 3.07; or

(d) default in the Company's obligation to convert the Notes into cash or a combination of cash and Common Stock, as applicable, upon the exercise of a holder's conversion rights pursuant to Article 15 and continuation of such default for a period of ten calendar days; or

(e) failure on the part of the Company duly to observe or perform any other of the terms, covenants or agreements on the part of the Company in the Notes or this Indenture (other than a covenant or agreement a default in whose performance or whose breach is elsewhere in this Section 7.01 specifically dealt with) continued for a period of sixty calendar days after the date on which written notice of such failure, requiring the Company to remedy the same, shall have been given to the Company by the Trustee, or to the Company and a Responsible Officer of the Trustee by the holders of at least 25% in aggregate Principal Amount of the Notes at the time outstanding determined in accordance with Section 9.04; or

(f) default with respect to the Company's or any of its Subsidiaries' indebtedness having a principal amount then outstanding, individually or in the aggregate, of at least $50.0 million, whether such indebtedness now exists or is hereafter incurred, which default or defaults, if not cured, rescinded or annulled within thirty calendar days after written notice as provided in this Indenture:

(i) shall have resulted in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise have become due and payable; or

(ii) shall constitute the failure to pay such indebtedness at the final stated maturity thereof (after expiration of any applicable grace period); or

(g) rendering of any final judgment or judgments for the payment of money in excess of $50,000,000 against the Company (to the extent not covered by insurance as to which the insurer does not dispute coverage) that is not discharged for any period of sixty consecutive calendar days during which a stay of enforcement shall not be in effect; or

(h) the Company or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:

(i) commences a voluntary case,

(ii) consents to the entry of an order for relief against it in an involuntary case,

(iii) consents to the appointment of a custodian of it or for all or substantially all of its property,

(iv) makes a general assignment for the benefit of its creditors,

(v) takes any comparable action under any foreign laws relating to insolvency,

(vi) generally is not able to pay its debts as they become due, or

(vii) takes any corporate action to authorize or effect any of the foregoing; or

(i) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against the Company or any Significant Subsidiary in an involuntary case,

(ii) appoints a custodian of the Company or any Significant Subsidiary or for all or substantially all of the property of the Company or any Significant Subsidiary, or

(iii) orders the liquidation of the Company or any Significant Subsidiary,

and the order or decree remains unstayed and in effect for 60 days;

then, and in each and every such case (other than an Event of Default specified in Section 7.01(h) or Section 7.01(i)), unless the Principal Amount of all of the Notes shall have already become due and payable, either the Trustee or the holders of not less than 25% in aggregate Principal Amount of the Notes then outstanding hereunder determined in accordance with Section 9.04, by notice in writing to the Company (and to the Trustee if given by Noteholders), may declare the Principal Amount of all the Notes and the Interest accrued and unpaid thereon to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Notes contained to the contrary notwithstanding. If an Event of Default specified in Section 7.01(h) or Section 7.01(i) occurs, the Principal Amount of all the Notes and the Interest accrued and unpaid thereon shall be immediately and automatically due and payable without necessity of further action. If, however, at any time after the Principal Amount of the Notes shall have been so declared due

and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, (a) the Company shall pay or shall deposit with the Trustee a sum sufficient to pay (i) all matured installments of Interest upon all Notes, (ii) the Principal Amount of any and all Notes which shall have become due otherwise than by acceleration, (iii) interest on overdue and unpaid installments of Interest (to the extent that payment of such interest is enforceable under applicable law) and on such Principal Amount at the rate borne by the Notes, to the date of such payment or deposit and (iv) amounts due to the Trustee pursuant to Section 8.06, and (b) any and all defaults under this Indenture, other than the nonpayment of Principal Amount of and accrued and unpaid Interest on Notes which shall have become due by acceleration, shall have been cured or waived pursuant to Section 7.07, then and in every such case the holders of a majority in aggregate Principal Amount of the Notes then outstanding on behalf of the holders of all of the Notes then outstanding, by written notice to the Company and to the Trustee, may waive all defaults or Events of Default and rescind and annul such declaration and its consequences subject to Section 7.07; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default or Event of Default, or shall impair any right consequent thereon. The Company shall notify in writing a Responsible Officer of the Trustee, promptly upon becoming aware thereof, of any Event of Default, as provided in Section 5.08.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of such waiver or rescission and annulment or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the holders of Notes, and the Trustee shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the holders of Notes, and the Trustee shall continue as though no such proceeding had been taken.

Section 7.02. *Payments of Notes on Default; Suit Therefor.* The Company covenants that in the case of an Event of Default pursuant to Section 7.01(a) or 7.01(b), then, upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of the holders of the Notes, (i) the whole amount that then shall have become due and payable on all such Notes for Principal Amount or Interest, as the case may be, with interest upon the overdue Principal Amount and (to the extent that payment of such interest is enforceable under applicable law) upon the overdue installments of Interest at the rate of 5.75% per annum, from the required payment date, and (ii) in addition thereto, any amounts due the Trustee under Section 8.06. Until such demand by the Trustee, the Company may pay the Principal Amount of and Interest on the Notes to the registered holders, whether or not the Notes are overdue.

In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Company or any other obligor on the Notes and collect in the manner provided by law out of the property of the Company or any other obligor on the Notes wherever situated the monies adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under Title 11 of the United States Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the case of any other judicial proceedings relative to the Company or such other obligor upon the Notes, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the Principal Amount of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 7.02, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of the Principal Amount and Interest owing and unpaid in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and of the Noteholders allowed in such judicial proceedings relative to the Company or any other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due the Trustee under Section 8.06, and to take any other action with respect to such claims, including participating as a member of any official committee of creditors, as it reasonably deems necessary or advisable, and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Noteholders to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to the Noteholders, to pay to the Trustee any amount due it for reasonable compensation, expenses, advances and disbursements, including counsel fees and expenses incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property which the holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the holders of the Notes.

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Notes, and it shall not be necessary to make any holders of the Notes parties to any such proceedings.

Section 7.03. *Application of Monies Collected by Trustee.* Any monies or other property collected by the Trustee pursuant to this Article 7, or any monies or other property

otherwise distributable in respect of the Company's obligations under this Indenture, shall be applied in the order following, at the date or dates fixed by the Trustee for the distribution of such monies, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

FIRST: To the payment of all amounts due the Trustee (including any predecessor Trustee), and any Paying Agent, Note Registrar, Conversion Agent and Custodian under Section 8.06;

SECOND: In case the Principal Amount of the outstanding Notes shall not have become due and be unpaid, to the payment of Interest on the Notes in default in the order of the maturity of the installments of such Interest, with interest (to the extent that such interest has been collected by the Trustee) as provided in Section 7.02 upon the overdue installments of Interest at the rate borne by the Notes, such payments to be made ratably to the Persons entitled thereto;

THIRD: In case the Principal Amount of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid, to the payment of the whole amount then owing and unpaid upon the Notes for Principal Amount and Interest, with interest on the overdue Principal Amount and (to the extent that such interest has been collected by the Trustee) upon overdue installments of Interest, at the rate borne by the Notes, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such Principal Amount and Interest without preference or priority of the Principal Amount over Interest, or of Interest over the Principal Amount, or of any installment of Interest over any other installment of Interest, or of any Note over any other Note, ratably to the aggregate of such Principal Amount and accrued and unpaid Interest; and

FOURTH: To the payment of the remainder, if any, to the Company or any other Person lawfully entitled thereto.

Section 7.04. *Proceedings by Noteholder.* No holder of any Note shall have any right by virtue of or by reference to any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, unless (a) such holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as hereinbefore provided, (b) the holders of not less than 25% in aggregate Principal Amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such security or indemnity satisfactory to the Trustee as it may require against the costs, expenses and liabilities to be incurred therein or thereby, (c) the Trustee for sixty calendar days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding and (d) no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 7.07; it being understood and intended, and being expressly covenanted by the taker and holder of every Note with every other taker and holder and the Trustee, that no one or more holders of Notes shall have any right in any manner whatever by virtue of or by reference to any provision of this Indenture to affect, disturb or prejudice the rights of any other holder of Notes, or to obtain or seek to obtain priority over or preference to

any other such holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Notes (except as otherwise provided herein). For the protection and enforcement of this Section 7.04, each and every Noteholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture and any provision of any Note, the right of any holder of any Note to receive payment of the Principal Amount of (including any Redemption Price or Fundamental Change Repurchase Price pursuant to Article 3) and accrued Interest on such Note on or after the respective due dates expressed in such Note, or to institute suit for the enforcement of any such payment on or after such respective dates against the Company, shall not be impaired or affected without the consent of such holder.

Anything contained in this Indenture or the Notes to the contrary notwithstanding, the holder of any Note, without the consent of either the Trustee or the holder of any other Note, in its own behalf and for its own benefit, may enforce, and may institute and maintain any proceeding suitable to enforce, its rights of conversion as provided herein.

Section 7.05. *Proceedings by Trustee.* In case of an Event of Default, the Trustee may, in its discretion, proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 7.06. *Remedies Cumulative and Continuing.* Except as provided in Section 2.06, all powers and remedies given by this Article 7 to the Trustee or to the Noteholders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the holders of the Notes, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any holder of any of the Notes to exercise any right or power accruing upon any default or Event of Default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or any acquiescence therein, and, subject to the provisions of Section 7.04, every power and remedy given by this Article 7 or by law to the Trustee or to the Noteholders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Noteholders.

Section 7.07. *Direction of Proceedings and Waiver of Defaults by Majority of Noteholders.* The holders of a majority in aggregate Principal Amount of the Notes at the time outstanding determined in accordance with Section 9.04 shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee; *provided* that (a) such direction shall not be in conflict with any rule of law or with this Indenture, (b) the Trustee may take any other action which is not inconsistent with such direction, (c) the Trustee may decline to take any action that would benefit some Noteholders to the detriment of other Noteholders and (d) the

Trustee may decline to take any action that would involve the Trustee in personal liability. The holders of a majority in aggregate Principal Amount of the Notes at the time outstanding determined in accordance with Section 9.04 may, on behalf of the holders of all of the Notes, waive any past default or Event of Default hereunder and its consequences except (i) a default in the payment of Interest on, or the Principal Amount of, the Notes, (ii) a failure by the Company to convert any Notes into cash or a combination of cash and Common Stock, as the case may be, (iii) a default in the payment of the Redemption Price pursuant to Section 3.03, (iv) a default in the payment of the Fundamental Change Repurchase Price pursuant to Section 3.07 or (v) a default in respect of a covenant or provision hereof which under Article 11 cannot be modified or amended without the consent of the holders of each or all Notes then outstanding or affected thereby. Upon any such waiver, the Company, the Trustee and the holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 7.07, said Default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

Section 7.08. *Notice of Defaults.* The Trustee shall, within ninety calendar days after a Responsible Officer of the Trustee has actual knowledge of the occurrence of a Default, mail to all Noteholders, as the names and addresses of such holders appear upon the Note Register, notice of all defaults known to a Responsible Officer, unless such defaults shall have been cured or waived before the giving of such notice; *provided* that except in the case of Default in the payment of the Principal Amount of or Interest on any of the Notes, the Trustee shall be protected in withholding such notice if and so long as a trust committee of directors and/or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Noteholders.

Section 7.09. *Undertaking to Pay Costs.* All parties to this Indenture agree, and each holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided* that the provisions of this Section 7.09 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Noteholder, or group of Noteholders, holding in the aggregate more than ten percent in Principal Amount of the Notes at the time outstanding determined in accordance with Section 9.04, or to any suit instituted by any Noteholder for the enforcement of the payment of the Principal Amount of or Interest on any Note on or after the due date expressed in such Note or to any suit for the enforcement of the right to convert any Note in accordance with the provisions of Article 15.

ARTICLE 8
THE TRUSTEE

Section 8.01. *Duties and Responsibilities of Trustee.* The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture and the Trust Indenture Act against the Trustee. In case an Event of Default has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default which may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture and the Trust Indenture Act, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture and the Trust Indenture Act against the Trustee; and

(ii) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein);

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless the Trustee was negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the written direction of the holders of not less than a majority in Principal Amount of the Notes at the time outstanding determined as provided in Section 9.04 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(d) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent or any records maintained by any co-registrar with respect to the Notes;

(e) anything in this Indenture to the contrary notwithstanding, in no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(f) the Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; terrorism; wars and other military disturbances; sabotage; epidemics; riots; interruptions; loss or malfunctions of utilities, computer (hardware or software) or communication services; accidents; labor disputes; acts of civil or military authority and governmental action;

(g) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred; and

(h) this paragraph shall not be construed to limit the effect of the immediately succeeding two paragraphs of this Section.

The Trustee shall not be deemed to have knowledge or notice of any Default or Event of Default hereunder unless a Responsible Officer of the Trustee shall have received at the Corporate Trust Office written notice of such Default or Event of Default from the Company or the holders of at least 10% in aggregate Principal Amount of the Notes and such notice refers to such default or Event of Default, the Notes and the Indenture.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or adequate indemnity against such risk or liability is not assured to it.

Whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section 8.01.

Section8.02. *Reliance on Documents, Opinions, Etc.* Except as otherwise provided in Section 8.01:

(a) the Trustee may conclusively rely and shall be fully protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, note, coupon or other paper or document (whether in its original or facsimile form) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officers' Certificate (unless other evidence in respect thereof be

herein specifically prescribed); and any resolution of the Board of Directors may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;

(c) the Trustee may consult with counsel of its own selection and any advice of such counsel or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(d) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Noteholders pursuant to the provisions of this Indenture, unless such Noteholders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby;

(e) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note or other paper or document, but the Trustee may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;

(f) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed by it with due care hereunder;

(g) the Trustee shall not be liable for any action taken, suffered or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(h) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder;

(i) the Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded;

(j) before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel. The Trustee shall not be liable for any action which it takes or omits to take in good faith in reliance on the Officers' Certificate or Opinion of Counsel; and

(k) the permissive right of the Trustee under the Indenture to take or omit to take any action shall not be construed as a duty.

Section 8.03. *No Responsibility for Recitals, Etc.* The recitals contained herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture.

Section 8.04. *Trustee, Paying Agents, Conversion Agents or Registrar May Own Notes.* The Trustee, any Paying Agent, any Conversion Agent or Note Registrar, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not Trustee, Paying Agent, Conversion Agent or Note Registrar.

Section 8.05. *Monies to Be Held in Trust.* Subject to the provisions of Section 13.03, all monies received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as may be agreed in writing from time to time by the Company and the Trustee.

Section 8.06. *Compensation and Expenses of Trustee.* The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall receive, such compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to from time to time in writing between the Company and the Trustee, and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its gross negligence or willful misconduct. The Company also covenants to indemnify the Trustee and any predecessor Trustee (and any officer, director or employee of the Trustee and any predecessor trustee), in any capacity under this Indenture and its agents and any authenticating agent for, and to hold them harmless against, any and all loss, liability, damage, claim or expense including taxes (other than taxes based on the income of the Trustee) incurred without gross negligence or willful misconduct on the part of the Trustee or such officers, directors, employees and agent or authenticating agent, as the case may be, and arising out of or in connection with the acceptance or administration of this trust or in any other capacity hereunder, including the costs and expenses (including reasonable attorneys' fees and expenses) of defending themselves against any claim (whether asserted by the Company, any holder or any other Person) of liability in connection with the exercise or performance of any of its powers or duties hereunder. The Trustee shall have a claim prior to that of the Notes in respect of the obligations of the Company under this Section 8.06 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses (including reasonable attorneys' fees and expenses), disbursements and advances, and such obligations shall be secured by a lien

prior to that of the Notes, which, in the case of such claim and lien, shall be upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the holders of particular Notes. The obligations of the Company under this Section, and the claim and lien referred to herein, shall survive the resignation or removal of the Trustee and the satisfaction and discharge or termination of this Indenture.

Without prejudice to the rights available to the Trustee hereunder or under applicable law, when the Trustee and its agents and any authenticating agent incur expenses or render services after an Event of Default specified in Section 7.01(h) or Section 7.01(i) with respect to the Company occurs, the expenses (including reasonable attorneys' fees and expenses) and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws.

"Trustee" for purposes of this Section 8.06 shall include each predecessor Trustee, the Trustee in each of its other capacities under this Indenture and each agent, custodian and other Person employed to act hereunder and to each of the respective officers, directors, employees and agents of each of the foregoing; provided, however, that the negligence or bad faith of any Trustee (including any predecessor Trustee), any such agent, custodian or other Person hereunder or any such officer, director or employee shall not affect the rights of any other Trustee or any such other agent, custodian or other Person.

Section 8.07. *Officers' Certificate as Evidence.* Except as otherwise provided in Section 8.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee.

Section 8.08. *Conflicting Interests of Trustee.* If the Trustee has or shall acquire a conflicting interest within the meaning of Section 310(b) of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture. In determining whether the Trustee has a conflicting interest as defined in Section 310(b) of the Trust Indenture Act with respect to the Notes of any specific series, this Indenture shall be excluded with respect to the other series of Notes. Nothing contained herein shall prevent the Trustee from filing the application provided for in the penultimate sentence of Section 310(b) of the TIA.

Section 8.09. *Eligibility of Trustee.* There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least $50,000,000 (or if such Person is a member of a bank holding company system, its bank holding company shall have a combined capital and surplus of at least $50,000,000). If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 8.09, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 8.10. *Resignation or Removal of Trustee.*

(a) The Trustee may at any time resign by giving written notice of such resignation to the Company and to the holders of Notes. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment sixty calendar days after the mailing of such notice of resignation to the Noteholders, the resigning Trustee may, upon ten Business Days' notice to the Company and the Noteholders, petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor trustee, or, if any Noteholder who has been a bona fide holder of a Note or Notes for at least six months may, subject to the provisions of Section 7.09, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall fail to comply with Section 8.08 after written request therefor by the Company or by any Noteholder who has been a bona fide holder of a Note or Notes for at least six months; or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 8.09 and shall fail to resign after written request therefor by the Company or by any such Noteholder; or

(iii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, the Company may remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 7.09, any Noteholder who has been a bona fide holder of a Note or Notes for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee; *provided* that if no successor Trustee shall have been appointed and have accepted appointment sixty calendar days after either the Company or the Noteholders has removed the Trustee, or the Trustee resigns, the Trustee so removed may petition, at the expense of the Company, any court of competent jurisdiction for an appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The holders of a majority in aggregate Principal Amount of the Notes at the time outstanding may at any time remove the Trustee and nominate a successor trustee which shall be deemed appointed as successor trustee unless, within ten calendar days after notice to the Company of such nomination, the Company objects thereto, in which case the Trustee so removed or any Noteholder, or if such Trustee so removed or any Noteholder fails to act, the Company, upon the terms and conditions and otherwise as in Section 8.10(a) provided, may petition any court of competent jurisdiction for an appointment of a successor trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 8.10 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 8.11.

Section 8.11. *Acceptance by Successor Trustee.* Any successor trustee appointed as provided in Section 8.10 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amount then due it pursuant to the provisions of Section 8.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a senior claim and lien upon all property and funds held or collected by such trustee as such, except for funds held in trust for the benefit of holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 8.06.

No successor trustee shall accept appointment as provided in this Section 8.11 unless, at the time of such acceptance, such successor trustee shall be qualified under the provisions of Section 8.08 and be eligible under the provisions of Section 8.09.

Upon acceptance of appointment by a successor trustee as provided in this Section 8.11, the Company (or the former trustee, at the written direction and the expense of the Company) shall mail or cause to be mailed notice of the succession of such trustee hereunder to the holders of Notes at their addresses as they shall appear on the Note Register. If the Company fails to mail such notice within ten (10) calendar days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

Section 8.12. *Succession by Merger.* Any Person into which the Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of the Trustee (including any trust created by this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, *provided* that in the case of any Person succeeding to all or substantially all of the corporate trust business of the Trustee, such Person shall be qualified under the provisions of Section 8.08 and eligible under the provisions of Section 8.09.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or authenticating agent appointed by such predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or any authenticating agent appointed by such successor trustee may authenticate such Notes in the name of the successor trustee; and in all such cases such certificates shall have the full force that is provided in the Notes or in this Indenture; *provided* that the right to adopt the certificate of authentication of any predecessor Trustee or authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 8.13. *Preferential Collection of Claims*. If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Notes), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of the claims against the Company (or any such other obligor).

ARTICLE 9
THE NOTEHOLDERS

Section 9.01. *Action by Noteholders.* Whenever in this Indenture it is provided that the holders of a specified percentage in aggregate Principal Amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Noteholders in person or by agent or proxy appointed in writing, or (b) by the record of the holders of Notes voting in favor thereof at any meeting of Noteholders duly called and held in accordance with the provisions of Article 10, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Noteholders; *provided*, *however*, that if (i) the H&F Entities hold in the aggregate at least $105,000,000 in principal amount of the Notes, then the consent of the H&F Entities holding Notes shall be required to take any Noteholder action under this Indenture and (ii) the SLP Entities hold in the aggregate at least $50,000,000 in principal amount of the Notes, then the consent of the SLP Entities holding Notes shall be required to take any Noteholder action under this Indenture. Whenever the Company or the Trustee solicits the taking of any action by the holders of the Notes, the Company or the Trustee may fix in advance of such solicitation, a date as the record date for determining holders entitled to take such action. The record date shall be not more than fifteen calendar days prior to the date of commencement of solicitation of such action.

Section 9.02. *Proof of Execution by Noteholders.* Subject to the provisions of Sections 8.01, 8.02 and 10.05, proof of the execution of any instrument by a Noteholder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the registry of such Notes or by a certificate of the Note Registrar.

The record of any Noteholders' meeting shall be proved in the manner provided in Section 10.06.

Section 9.03. *Who Are Deemed Absolute Owners.* The Company, the Trustee, any Paying Agent, any Conversion Agent and any Note Registrar may deem the Person in whose name such Note shall be registered upon the Note Register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Note Registrar) for the purpose of receiving payment of or on account of the Principal Amount of and Interest on such Note, for conversion of such Note and for all other purposes; and none of the Company, the Trustee, any Paying Agent, any Conversion Agent or any Note Registrar shall be affected by any notice to the contrary. All such payments so made to any holder for the time being, or upon his order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for monies payable upon any such Note.

Section 9.04. *Company-owned Notes Disregarded.* In determining whether the holders of the requisite aggregate Principal Amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes which are owned by the Company or any other obligor on the Notes or any Affiliate of the Company or any other obligor on the Notes shall be disregarded and deemed not to be outstanding for the purpose of any such determination; *provided* that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action, only Notes which a Responsible Officer actually knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith may be regarded as outstanding for the purposes of this Section 9.04 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Notes and that the pledgee is not the Company, any other obligor on the Notes or any Affiliate of the Company or any such other obligor. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described Persons, and, subject to Section 8.01, the Trustee shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

Section 9.05. *Revocation of Consents, Future Holders Bound.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 9.01, of the taking of any action by the holders of the percentage in aggregate Principal Amount of the Notes specified in this Indenture in connection with such action, any holder of a Note which is shown by the evidence to be included in the Notes the holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 9.02, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the holder of any Note shall be conclusive and binding upon such holder and upon all future holders and owners of such Note and of any Notes issued in exchange or substitution therefor, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor.

ARTICLE 10
MEETINGS OF NOTEHOLDERS

Section 10.01. *Purpose of Meetings.* A meeting of Noteholders may be called at any time and from time to time pursuant to the provisions of this Article 10 for any of the following purposes:

(a) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under this Indenture, or to consent to the waiving of any default or Event of Default hereunder and its consequences, or to take any other action authorized to be taken by Noteholders pursuant to any of the provisions of Article 7;

(b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article 8;

(c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 11.02; or

(d) to take any other action authorized to be taken by or on behalf of the holders of any specified aggregate Principal Amount of the Notes under any other provision of this Indenture or under applicable law.

Section 10.02. *Call of Meetings by Trustee.* The Trustee may at any time call a meeting of Noteholders to take any action specified in Section 10.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Noteholders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to Section 9.01, shall be mailed to holders of Notes at their addresses as they shall appear on the Note Register. Such notice shall also be mailed to the Company. Such notices shall be mailed not less than twenty calendar nor more than ninety calendar days prior to the date fixed for the meeting.

Any meeting of Noteholders shall be valid without notice if the holders of all Notes then outstanding are present in person or by proxy or if notice is waived before or after the meeting by the holders of all Notes outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

Section 10.03. *Call of Meetings by Company or Noteholders.* In case at any time the Company, pursuant to a resolution of its Board of Directors, or the holders of at least 10% in aggregate Principal Amount of the Notes then outstanding, shall have requested the Trustee to call a meeting of Noteholders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within twenty calendar days after receipt of such request, then the Company or such Noteholders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 10.01, by mailing notice thereof as provided in Section 10.02.

Section 10.04. *Qualifications for Voting.* To be entitled to vote at any meeting of Noteholders a person shall (a) be a holder of one or more Notes on the record date pertaining to such meeting or (b) be a person appointed by an instrument in writing as proxy by a holder of one or more Notes on the record date pertaining to such meeting. The only persons who shall be entitled to be present or to speak at any meeting of Noteholders shall be the persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 10.05. *Regulations.* Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Noteholders, in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Noteholders as provided in Section 10.03, in which case the Company or the Noteholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the holders of a majority in Principal Amount of the Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 9.04, at any meeting each Noteholder or proxyholder shall be entitled to one vote for each $1.00 Principal Amount of Notes held or represented by him; *provided* that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by him or instruments in writing as aforesaid duly designating him as the proxy to vote on behalf of other Noteholders. Any meeting of Noteholders duly called pursuant to the provisions of Section 10.02 or 10.03 may be adjourned from time to time by the holders of a majority of the aggregate Principal Amount of Notes represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 10.06. *Voting.* The vote upon any resolution submitted to any meeting of Noteholders shall be by written ballot on which shall be subscribed the signatures of the holders of Notes or of their representatives by proxy and the outstanding Principal Amount of the Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Noteholders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 10.02. The record shall show the Principal Amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 10.07. *No Delay of Rights by Meeting.* Nothing contained in this Article 10 shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Noteholders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Noteholders under any of the provisions of this Indenture or of the Notes.

ARTICLE 11
SUPPLEMENTAL INDENTURES

Section 11.01. *Supplemental Indentures Without Consent of Noteholders.* The Company, when authorized by the resolutions of the Board of Directors, and the Trustee may, from time to time, and at any time enter into an indenture or indentures supplemental hereto for one or more of the following purposes:

(a) to convey, transfer, assign, mortgage or pledge to the Trustee as security for the Notes, any property or assets;

(b) to evidence the assumption by a successor Person of the obligations of the Company pursuant to Article 12;

(c) to add guarantees or guarantors with respect to the Notes;

(d) to add to the covenants of the Company such further covenants for the benefit of the holders of Notes, and to make the occurrence, or the occurrence and continuance, of a default in any such additional covenants a default or an Event of Default permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth; *provided* that in respect of any such additional covenant such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default;

(e) to cure any ambiguity or correct any inconsistency or otherwise defective provision contained in this Indenture (including, without limitation, as contemplated by Section 17.17), so long as such action will not adversely affect the interests of holders;

(f) to give effect to the provisions of Section 3.08(h), Section 15.06 or Section 17.17;

(g) to evidence the acceptance of appointment hereunder by a successor Trustee with respect to the Notes;

(h) to increase the Conversion Rate; *provided*, *however*, that such increase in the Conversion Rate shall not adversely affect the interests of the holders of the Notes (after taking into account tax and other consequences of such increase);

(i) to modify, eliminate or add to the provisions of this Indenture to such extent as shall be necessary to qualify or maintain the qualification of this Indenture under the Trust Indenture Act, or under any similar federal statute hereafter enacted; or

(j) to make any provision with respect to matters or questions arising under this Indenture that the Company may deem necessary or desirable and that shall not be inconsistent with provisions of this Indenture, *provided* that such change will not have a material adverse effect on the interests of the Noteholders.

Upon the written request of the Company, accompanied by a copy of the resolutions of the Board of Directors certified by its Secretary or Assistant Secretary authorizing the execution of any supplemental indenture, the Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations that may be therein contained and to accept the conveyance, transfer and assignment of any property thereunder, but the Trustee shall not be obligated to, but may in its discretion, enter into any supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section 11.01 may be executed by the Company and the Trustee without the consent of the holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 11.02.

Notwithstanding any other provision of the Indenture or the Notes, the Registration Rights Agreement may be amended, modified or waived in accordance with the provisions of the Registration Rights Agreement.

Section 11.02. *Supplemental Indenture with Consent of Noteholders.* With the consent (evidenced as provided in Article 9) of the holders of a majority in aggregate Principal Amount of the Notes at the time outstanding, the Company, when authorized by the resolutions of the Board of Directors, and the Trustee may, from time to time and at any time, enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or any supplemental indenture or of modifying in any manner the rights of the holders of the Notes; *provided* that no such supplemental indenture shall:

(a) extend the Stated Maturity of any Note;

(b) reduce the rate or extend the time for payment of Interest thereon;

(c) reduce the Principal Amount thereof;

(d) reduce any amount payable on redemption or repurchase thereof;

(e) affect the obligation of the Company to redeem any Note called for redemption on a Redemption Date in a manner adverse to the holders of Notes;

(f) affect the obligation of the Company to repurchase any Series A Note on the Series A Redemption Date in a manner adverse to the holders of Series A Notes;

(g) affect the automatic amendment to the Series B Notes in accordance with the terms of Section 17.17 in a manner adverse to the holders of the Series B Notes (except as contemplated by Section 17.17);

(h) affect the obligation of the Company to repurchase any Note upon the happening of a Fundamental Change in a manner adverse to the holders of Notes;

(i) impair the right of any Noteholder to institute suit for the payment thereof;

(j) make the Principal Amount thereof or Interest thereon payable in any coin or currency other than that provided in the Notes;

(k) impair the right to convert the Notes into cash or a combination of cash and Common Stock, as the case may be, subject to the terms set forth herein, including Section 15.06, or reduce the amount of cash and/or number of shares of Common Stock or the amount of other property receivable upon conversion;

(l) reduce the quorum or voting requirements set forth in Article 10;

(m) modify the subordination provisions set forth in Article 4 in a manner adverse to holders of Notes;

(n) modify any of the provisions of this Section 11.02 or Section 7.07, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the holder of each Note so affected by such change; or

(o) reduce the aforesaid percentage of aggregate Principal Amount of Notes, the holders of which are required to consent to any such supplemental indenture,

without the consent of each Noteholder affected thereby (in addition to the consent of the holders of a majority in aggregate Principal Amount of the Notes at the time outstanding).

Upon the written request of the Company, accompanied by a copy of the resolutions of the Board of Directors certified by its Secretary or Assistant Secretary authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of Noteholders as aforesaid, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee’s own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

It shall not be necessary for the consent of the Noteholders under this Section 11.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

Section 11.03. *Effect of Supplemental Indenture.* Any supplemental indenture executed pursuant to the provisions of this Article 11 shall comply with the Trust Indenture Act, as then in effect, *provided* that this Section 11.03 shall not require such supplemental indenture or the Trustee to be qualified under the Trust Indenture Act prior to the time such qualification is in fact required under the terms of the Trust Indenture Act or this Indenture has been qualified under the Trust Indenture Act, nor shall it constitute any admission or acknowledgment by any party to such supplemental indenture that any such qualification is required prior to the time such qualification is in fact required under the terms of the Trust Indenture Act or this Indenture has been qualified under the Trust Indenture Act. Upon the execution of any supplemental indenture pursuant to the provisions of this Article 11, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the holders of Notes shall thereafter be determined, exercised and enforced hereunder, subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 11.04. *Notation on Notes.* Notes authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 11 may bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may, at the Company's expense, be prepared and executed by the Company, authenticated by the Trustee (or an authenticating agent duly appointed by the Trustee pursuant to Section 17.12) and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 11.05. *Evidence of Compliance of Supplemental Indenture to Be Furnished to Trustee.* Prior to entering into any supplemental indenture, the Trustee shall be provided with an Officers' Certificate and an Opinion of Counsel to the effect that any supplemental indenture executed pursuant hereto complies with the requirements of this Article 11 and is otherwise authorized or permitted by this Indenture.

Section 11.06. *Notice of Supplemental Indenture.* Promptly after the execution by the Company and the appropriate Trustee of any supplemental indenture pursuant to this Article, the Company shall transmit (by mail to holders of Notes at their addresses as they shall appear on the Note Register) to all Holders of any series of the Securities affected thereby, a notice setting forth in general terms the substance of such supplemental indenture; *provided*, *however*, that failure to transmit any such notice or any defect therein shall not affect the validity of any such supplemental indenture.

ARTICLE 12
CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Section 12.01. *Company May Consolidate on Certain Terms.* Subject to the provisions of Section 12.02, the Company shall not consolidate with or merge with or into any other Person or Persons (whether or not affiliated with the Company), nor shall the Company or its successor or successors be a party or parties to successive consolidations or mergers, nor shall the Company sell, convey, transfer or lease the property and assets of the Company substantially as an entirety, to any other Person (whether or not affiliated with the Company), unless:

(a) (i) the Company is the surviving Person or (ii) the resulting, surviving or transferee Person, if other than the Company, is organized and existing under the laws of the United States of America, any state thereof or the District of Columbia and, upon any such consolidation, merger, sale, conveyance, transfer or lease, assumes all obligations of the Company under the Notes, this Indenture and the Registration Rights Agreement, by supplemental indenture in form reasonably satisfactory to the Trustee, and by supplemental agreement in form reasonably satisfactory to the Trustee;

(b) immediately after giving effect to the transaction described above, no Default or Event of Default shall have occurred and be continuing; and

(c) the Company shall have delivered to the Trustee the Officers' Certificate and Opinion of Counsel, if any, requested pursuant to Section 12.03.

Section 12.02. *Successor to Be Substituted.* In case of any such consolidation, merger, sale, conveyance, transfer or lease in which the Company is not the surviving Person and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the Principal Amount of and Interest on all of the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed or satisfied by the Company and by supplemental agreement, executed and delivered to the Trustee and reasonably satisfactory in form to the Trustee, of all of the obligations of the Company under the Registration Rights Agreement, such successor Person shall succeed to and be substituted for the Company, with the same effect as if it had been named herein as the party of this first part. Such successor Person thereupon may cause to be signed, and may issue either in its own name or in the name of The Nasdaq Stock Market, Inc. any or all of the Notes, issuable hereunder that theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor Person instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Notes that such successor Person thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, sale, conveyance or transfer (but not in the case of a lease), the Person named as the "**Company**" in the first paragraph of this Indenture

or any successor that shall thereafter have become such in the manner prescribed in this Article 12 may be dissolved, wound up and liquidated at any time thereafter and such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture.

In case of any such consolidation, merger, sale, conveyance, transfer or lease, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

Section 12.03. *Opinion of Counsel to Be Given Trustee.* The Trustee shall receive an Officers' Certificate and an Opinion of Counsel to the effect that any such consolidation, merger, sale, conveyance, transfer or lease and any such assumption complies with the provisions of this Article 12 and that the conditions precedent herein relating to such transaction have been complied with.

ARTICLE 13
SATISFACTION AND DISCHARGE OF INDENTURE

Section 13.01. *Discharge of Indenture.* When (a) the Company shall deliver to the Trustee for cancellation all Notes theretofore authenticated (other than any Notes that have been destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) and not theretofore canceled, or (b) all the Notes not theretofore canceled or delivered to the Trustee for cancellation shall have become due and payable and the Company shall deposit with the Paying Agent (or, if the Company is acting as Paying Agent, set aside, segregate and hold in trust as provided in Section 5.04), in trust, funds sufficient to pay all amounts due and owing on Notes (other than any Notes that shall have been mutilated, destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) not theretofore canceled or delivered to the Trustee for cancellation, and if in either case the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Indenture shall cease to be of further effect (except as to (i) remaining rights of registration of transfer, substitution and exchange and conversion of Notes, (ii) rights hereunder of Noteholders to receive payments of Principal Amount of and Interest on the Notes and the other rights, duties and obligations of Noteholders, as beneficiaries hereof with respect to the amounts, if any, so deposited with the Trustee and (iii) the rights, obligations and immunities of the Trustee hereunder, including those pursuant to Section 8.06), and the Trustee, on written demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel as required by Section 17.05 and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture; the Company, however, hereby agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Indenture or the Notes.

Section 13.02. *Paying Agent to Repay Monies Held.* Upon the satisfaction and discharge of this Indenture, all monies then held by any Paying Agent of the Notes (other than the Trustee) shall, upon written request of the Company, be repaid to it or paid to the Trustee, and thereupon such Paying Agent shall be released from all further liability with respect to such monies.

Section 13.03. *Return of Unclaimed Monies.* Subject to the requirements of applicable law, any monies deposited with or paid to the Trustee for payment of the Principal Amount of or Interest on Notes and not applied but remaining unclaimed by the holders of Notes for two years after the date upon which the Principal Amount of or Interest on such Notes, as the case may be, shall have become due and payable, shall be repaid to the Company by the Trustee on written demand and all liability of the Trustee shall thereupon cease with respect to such monies; and the holder of any of the Notes shall thereafter look only to the Company for any payment that such holder may be entitled to collect unless an applicable abandoned property law designates another Person.

ARTICLE 14
IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 14.01. *Indenture and Notes Solely Corporate Obligations.* No recourse for the payment of the Principal Amount of or Interest on any Note, or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or in any Note, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, officer, director or subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes.

ARTICLE 15
CONVERSION OF NOTES

Section 15.01. *Right to Convert.*

(a) Subject to and upon compliance with the provisions of this Indenture, at any time after April 22, 2006 (or, if earlier, in connection with a tender or exchange offer for Common Stock or a transaction or agreement which, if consummated, would result in a Fundamental Change described in clause (ii) of the definition of Fundamental Change; *provided* that such event described in this parenthetical does not result in the occurrence of the Series A Redemption Date and, *provided further* that this parenthetical shall not apply to (x) the Optional Repurchase Note Amount (as defined in the Purchase Agreement) until the later of October 24, 2005 and the date of the Stockholders Meeting (as defined in the Purchase Agreement) and (y) the Mandatory Repurchase Note Amount (as defined in the Purchase Agreement) until the sixth Business Day after the Stockholders Meeting) and prior to 5:00 p.m., New York City time, on the Trading Day immediately preceding the Stated Maturity, the holder of any Note shall have the right, at such holder's option, to convert each $1.00 Principal Amount of the Notes and integral multiples thereof, into fully paid and non-assessable shares of Common Stock (as such shares shall be constituted) or, at the option of the Company as provided below, a combination of cash and fully paid and non-assessable shares of Common Stock (as such shares shall then be constituted) at the Conversion Rate in effect at such time, subject to Section 15.01(c), by surrender of the Note so to be converted in whole or in part, together with any required funds, under the circumstances described in this Section 15.01(a) and in the manner provided in Section 15.02.

(b) The Company may at any time in its sole discretion deliver written notice to each Holder setting forth its election to pay the Settlement Amount in cash (a "**Cash Election Notice**"). A Cash Election Notice will be effective on the second Business Day after delivery of the Cash Election Notice until such time as the Company revokes such cash election by delivery of a written notice of revocation delivered to each Holder (a "**Revocation Notice**"). A Cash Election Notice may be revoked by the Company at any time, *provided* that any notice of conversion delivered by a Holder to the Company (each, a "**Conversion Notice**") will not be affected by the subsequent delivery of a Cash Election Notice or Notice of Revocation, as the case may be. Following delivery of a Revocation Notice the Company may deliver a new Cash Election Notice pursuant to this Section 15.01(b).

(c) A Note in respect of which a holder is electing to exercise its option to require repurchase upon a Fundamental Change pursuant to Section 3.07 may be converted only if such holder withdraws its election in accordance with Section 3.08(d). Except as may be provided in the Company's restated certificate of incorporation, a holder of Notes is not entitled to any rights of a holder of Common Stock until such holder has converted his Notes into Common Stock, and only to the extent such Notes are deemed to have been converted to Common Stock under this Article 15.

Section 15.02. *Exercise of Conversion Right; Issuance of Common Stock on Conversion; No Adjustment for Interest or Dividends.* In order to exercise the conversion right with respect to any Note in certificated form, the Company must receive at the office or agency of the Company maintained for that purpose, such Note with the original or facsimile of the form entitled "**Form of Conversion Notice**" on the reverse thereof, which is irrevocable, duly completed and manually signed, together with such Notes duly endorsed for transfer; *provided, however*, that a Holder may condition the delivery of a Conversion Notice upon the consummation of a tender offer. Such notice shall also state the name or names (with address or addresses) in which the certificate or certificates for shares of Common Stock which shall be issuable on such conversion shall be issued, and to whom any cash payable on such conversion shall be delivered, and shall be accompanied by transfer or similar taxes, if required pursuant to Section 15.07, and funds equal to the Interest payable on the next Interest Payment Date to which such holder of the Note is not entitled, if required pursuant to this Section 15.02.

In order to exercise the conversion right with respect to any interest in a Global Note, the beneficial holder must complete, or cause to be completed, the appropriate instruction form for conversion pursuant to the Depositary's book-entry conversion program, deliver, or cause to be delivered, by book-entry delivery an interest in such Global Note, furnish appropriate endorsements and transfer documents if required by the Company or the Trustee or Conversion Agent, and pay the funds, if any, required by this Section 15.02 and any transfer taxes if required pursuant to Section 15.07.

In the event a Cash Election Notice is in effect when a Conversion Notice is delivered, the Company will deliver the Settlement Amount as set forth in Section 15.03 to any converting holder on the Business Day immediately following the date on which such holder delivers a

Conversion Notice. In the event that no Cash Election Notice is in effect at the time a Conversion Notice is delivered, the Company will deliver to the holder as soon as practicable through a Conversion Agent or stock transfer agent the number of shares issuable on conversion in satisfaction of the Settlement Amount.

Subject to compliance with any restrictions on transfer if shares issuable on conversion are to be issued in a name other than that of the Noteholder (as if such transfer were a transfer of the Note or Notes (or portion thereof) so converted), the Company shall issue and shall deliver through the Conversion Agent or stock transfer agent to such Noteholder at the office or agency maintained by the Company for such purpose pursuant to Section 5.02, to the extent a Cash Election Notice is then in effect, a check or cash in respect of the lesser of the aggregate Principal Amount of Notes being converted and the Conversion Value in respect of such Notes, calculated by the Company as provided in Section 15.03 and a certificate or certificates for the number of full shares of Common Stock, if any, issuable upon the conversion of such Note or Notes (or portion thereof) so converted as determined by the Company as provided in Section 15.03, or if the Common Stock is eligible for transfer through The Depository Trust Company, the Company shall make a book-entry transfer of such number of shares of Common Stock through The Depository Trust Company, and a check or cash in respect of any fractional interest in respect of any share of Common Stock arising upon such conversion. In case any Note of a denomination greater than $1.00 shall be surrendered for partial conversion, and subject to Section 2.03, the Company shall execute and the Trustee shall authenticate and deliver to the holder of the Note so surrendered, without charge to him, a new Note or Notes in authorized denominations in an aggregate Principal Amount equal to the unconverted portion of the surrendered Note.

Each conversion shall be deemed to have been effected as to any such Note (or portion thereof) on the date on which the requirements set forth above in this Section 15.02 have been satisfied as to such Note (or portion thereof) (such date, the "**Conversion Date**"), and the Person in whose name any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become on said date the holder of record of the shares represented thereby; *provided* that any such surrender on any date when the stock transfer books of the Company shall be closed shall constitute the Person in whose name the certificates are to be issued as the record holder thereof for all purposes on the next succeeding day on which such stock transfer books are open, but such conversion shall be at the Conversion Rate in effect on the date upon which such Note shall be surrendered.

Any Note or portion thereof surrendered for conversion during the period from 5:00 p.m., New York City time, on any Regular Record Date to 9:00 a.m., New York City time, on the corresponding Interest Payment Date shall be accompanied by payment, in immediately available funds or other funds acceptable to the Company, of an amount equal to the Interest otherwise payable on such Interest Payment Date on the Principal Amount being converted; *provided* that no such payment need be made (1) if the Company has specified a Redemption Date that is after a Regular Record Date and on or prior to the corresponding Interest Payment Date, (2) if the Company has specified a Fundamental Change Repurchase Date that is after a Regular Record Date and on or prior to the corresponding Interest Payment Date or (3) to the extent of any overdue Interest, if any overdue Interest exists at the time of conversion with respect to such Note. Except as provided above in this Section 15.02, no payment or other adjustment shall be made for Interest accrued on any Note converted or for dividends on any shares issued upon the conversion of such Note as provided in this Article 15.

Upon the conversion of an interest in a Global Note, the Conversion Agent, or the Custodian at the direction of the Conversion Agent, shall make a notation on such Global Note as to the reduction in the Principal Amount represented thereby. The Company shall notify the Trustee in writing of any conversions of Notes effected through any Conversion Agent or stock transfer agent other than the Trustee.

Upon the conversion of a Note, that portion of the accrued but unpaid Interest with respect to the converted Note shall not be cancelled, extinguished or forfeited, but rather shall be deemed to be paid in full to the holder thereof through delivery of cash or a combination of cash and the Common Stock, as the case may be (together with the cash payment in lieu of fractional shares, if any) in exchange for the Note being converted pursuant to the provisions hereof; and cash or a combination of cash and shares of Common Stock, as the case may be (together with any such cash payment in lieu of fractional shares) shall be treated as issued, to the extent thereof, first in exchange for and in satisfaction of the Company's obligation to pay the Principal Amount of the converted Note and the accrued but unpaid Interest, and the balance, if any, of such fair market value of such Common Stock (and any such cash payment) shall be treated as issued in exchange for and in satisfaction of the right to convert the Note being converted pursuant to the provisions hereof.

Section 15.03. *Payment Upon Conversion; Cash Payments in Lieu of Fractional Shares.*

(a) Upon receipt of a Conversion Notice when a Cash Election Notice is in effect, the Company will deliver to holders in respect of each $1.00 Principal Amount of Notes being converted a settlement amount (the "**Settlement Amount**") consisting of (i) cash equal to the lesser of $1.00 and the Conversion Value and (ii) to the extent the Conversion Value exceeds $1.00, a number of shares equal to the difference between the Conversion Value and $1.00, divided by the Last Reported Sale Price of the Common Stock for the day on which such Conversion Notice was received.

(b) No fractional shares of Common Stock shall be issued upon conversion of Notes. If more than one Note shall be surrendered for conversion at one time by the same holder, the number of full shares that shall be issuable upon conversion, if any, shall be computed on the basis of the aggregate principal amount of Notes so surrendered. If any fractional share of Common Stock would be issuable upon the conversion of any Note or Notes, the Company shall make an adjustment and payment therefor in cash to the holder of Notes at a price equal to such fraction multiplied by the sale price of the last Trading Day prior to the date of conversion.

Section 15.04. *Conversion Rate*. Each $1.00 Principal Amount of the Notes shall be convertible into the number of shares of Common Stock specified in the forms of Note (herein called the "**Conversion Rate**") attached as Exhibit A and Exhibit B hereto (initially 0.0689655 shares), subject to adjustment as provided in this Article 15.

Section 15.05. *Adjustment of Conversion Rate.* The Conversion Rate shall be adjusted from time to time by the Company as follows:

(a) If the Company issues shares of Common Stock as a dividend or distribution on shares of the Common Stock, or effects a subdivision or share split or share combination or reverse splitting, the Conversion Rate will be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{OS'}{OS_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to such event

CR' = the Conversion Rate in effect immediately after such event

OS_0 = the number of shares of Common Stock outstanding immediately prior to such event

OS' = the number of shares of Common Stock outstanding immediately after such event.

Such adjustment shall become effective immediately after 9:00 a.m., New York City time, on the Business Day following the date fixed for such determination. The Company will not pay any dividend or make any distribution on shares of Common Stock held in treasury by the Company. If any dividend or distribution of the type described in this Section 15.05(a) is declared but not so paid or made, the Conversion Rate shall again be adjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) If the Company issues to all or substantially all holders of its Common Stock any rights or warrants entitling them for a period of not more than 45 calendar days to subscribe for or purchase shares of Common Stock, at a price per share less than the average Last Reported Sale Price of Common Stock over the ten consecutive Trading Day period ending on the Business Day immediately preceding the date of announcement of such issuance, the Conversion Rate will be adjusted based on the following formula (*provided* that the Conversion Rate will be readjusted to the extent that such rights or warrants are not exercised prior to their expiration):

$$CR' = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to such event

CR' = the Conversion Rate in effect immediately after such event

OS_0 = the number of shares of Common Stock outstanding immediately prior to such event

X = the total number of shares of Common Stock issuable pursuant to such rights

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights divided by the average of the Last Reported Sale Prices of Common Stock over the ten consecutive Trading Day period ending on the Business Day immediately preceding the Record Date for the issuance of such rights.

Such adjustment shall be successively made whenever any such rights or warrants are issued and shall become effective immediately after 9:00 a.m., New York City time, on the Business Day following the date fixed for such determination. The Company shall not issue any such rights, options or warrants in respect of shares of Common Stock held in treasury by the Company. To the extent that shares of Common Stock are not delivered after the expiration of such rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights or warrants are not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such date fixed for the determination of stockholders entitled to receive such rights or warrants had not been fixed.

In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such Last Reported Sale Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) If the Company distributes shares of its capital stock, evidences of its indebtedness or other assets or property of the Company to all or substantially all holders of the Common Stock, excluding:

(i) dividends or distributions and rights or warrants referred to in clause (a) or (b) above; and

(ii) dividends or distributions paid exclusively in cash;

then the Conversion Rate will be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to such distribution

CR’ = the Conversion Rate in effect immediately after such distribution

SP_0 = the average of the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on the Business Day immediately preceding the record date for such distribution

FMV = the fair market value (as determined by the Board of Directors, whose determination shall be conclusive) of the shares of capital stock, evidences of indebtedness, assets or property distributed with respect to each outstanding share of Common Stock on the Record Date for such distribution.

Such adjustment shall become effective immediately prior to 9:00 a.m., New York City time, on the Business Day following the date fixed for the determination of stockholders entitled to receive such distribution.

With respect to an adjustment pursuant to this clause (c) where there has been a payment of a dividend or other distribution on the Common Stock or shares of capital stock of any class or series, or similar equity interest, of or relating to a subsidiary or other business unit (a "**Spin-Off**") the Conversion Rate in effect immediately before 5:00 p.m., New York City time, on the Record Date fixed for determination of stockholders entitled to receive the distribution will be increased based on the following formula:

$$CR' = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to such distribution

CR' = the Conversion Rate in effect immediately after such distribution

FMV_0 = the average of the Last Reported Sale Prices of the capital stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock over the first ten consecutive Trading Day period after the effective date of the Spin-Off

MP_0 = the average of the Last Reported Sale Prices of Common Stock over the first ten consecutive Trading Day period after the effective date of the Spin-Off.

Such adjustment shall occur on the tenth Trading Day from, and including, the effective date of the Spin-Off.

(d) If the Company makes any cash dividend (excluding any cash distributions in connection with the Company's liquidation, dissolution or winding up) or distribution during any

quarterly fiscal period to all or substantially all holders of Common Stock, the Conversion Rate will be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the Record Date for such distribution

CR' = the Conversion Rate in effect immediately after the Record Date for such distribution

SP_0 = the average of the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period prior to the Business Day immediately preceding the Record Date of such distribution

C = the amount in cash per share the Company distributes to holders of Common Stock.

Such adjustment shall become effective immediately after 5:00 p.m., New York City time, on the date for such determination.

(e) If the Company or any of its Subsidiaries purchases shares of the Common Stock pursuant to a tender or exchange offer which involves an aggregate per share consideration that exceeds the Last Reported Sale Price of the Common Stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (such last date, the "**Expiration Time**"), the Conversion Rate will be increased based on the following formula:

$$CR' = CR_0 \times \frac{AC + (SP' \times OS')}{OS_0 \times SP'}$$

where,

CR_0 = the Conversion Rate in effect on the date such tender or exchange offer expires

CR' = the Conversion Rate in effect on the day next succeeding the date such tender or exchange offer expires

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for shares purchased in such tender or exchange offer

OS_0 = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires

OS' = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires

SP' = the average of the Last Reported Sale Prices of Common Stock over the ten consecutive Trading Day period commencing on the Trading Day next succeeding the date such tender or exchange offer expires.

If the Company is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made.

If, however, the application of the foregoing formula would result in a decrease in the Conversion Rate, no adjustment to the Conversion Rate will be made.

Except as stated herein, the Company will not adjust the Conversion Rate for the issuance of shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or the right to purchase shares of Common Stock or such convertible or exchangeable securities.

(f) [Reserved]

(g) Notwithstanding the foregoing provisions of this Section 15.05, no adjustment shall be made thereunder, nor shall an adjustment be made to the ability of a Holder of a Note to convert, for any distribution described therein if the Holder will otherwise participate in the distribution without conversion of such Holder's Notes.

(h) The Company may (but is not required to) make such increases in the Conversion Rate, in addition to those required by clauses (a) through (e) of this Section 15.05 as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock in connection with a dividend or distribution of shares (or rights to acquire shares) or any similar event treated as such for income tax purposes.

To the extent permitted by applicable law, the Company from time to time may increase the Conversion Rate by any amount for any period of at least twenty days if the Board of Directors shall have made a determination that such increase would be in the best interests of the Company, which determination shall be conclusive.

(i) No adjustment to the Conversion Rate need be made:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on securities of the Company and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) upon the issuance of any shares of Common Stock or options or rights to purchase shares of Common Stock pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of its Subsidiaries;

(iii) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right, or exercisable, exchangeable or convertible security not described in (ii) above and outstanding as of the date the Notes were first issued;

(iv) for a change in the par value of the Common Stock; or

(v) for accrued and unpaid Interest.

To the extent the Notes become convertible into cash, assets or property (other than capital stock of the Company or securities to which Section 15.06 applies), no adjustment shall be made thereafter as to the cash, assets or property. Interest shall not accrue on such cash, assets or property.

(j) All calculations under this Article 15 shall be made by the Company and shall be made to the nearest cent or to the nearest one-ten thousandth (1/10,000) of a share, as the case may be. The Company will not be required to make an adjustment in the Conversion Rate unless the adjustment would require a change of at least 1% in the Conversion Rate. However, the Company will carry forward any adjustments that are less than 1% of the Conversion Rate and make such carried forward adjustments, regardless of whether aggregate adjustment is less than 1% within one year of the first such adjustment carried forward, upon redemption, upon a Fundamental Change or upon the Stated Maturity. Except as described above in this Section 15.05, the Company will not adjust the Conversion Rate.

(k) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee and any Conversion Agent other than the Trustee an Officers' Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee or the Conversion Agent shall have received such Officers' Certificate, neither the Trustee nor the Conversion Agent shall be deemed to have knowledge of any adjustment of the Conversion Rate and may assume that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to the holder of each Note at his last address appearing on the Note Register provided for in Section 2.05 of this Indenture, within twenty days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(l) In any case in which this Section 15.05 provides that an adjustment shall become effective immediately after (1) a record date or Stock Record Date for an event, (2) the date fixed for the determination of stockholders entitled to receive a dividend or distribution pursuant to Section 15.05(a), (3) a date fixed for the determination of stockholders entitled to receive rights or warrants pursuant to Section 15.05(b) or (4) the Expiration Time for any tender or exchange

offer pursuant to Section 15.05(e), (each a "**Determination Date**"), the Company may elect to defer until the occurrence of the applicable Adjustment Event (as hereinafter defined) (x) issuing to the holder of any Note converted after such Determination Date and before the occurrence of such Adjustment Event, the additional shares of Common Stock or other securities issuable upon such conversion by reason of the adjustment required by such Adjustment Event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment and (y) paying to such holder any amount in cash in lieu of any fraction pursuant to Section 15.03. For purposes of this Section 15.05(l), the term "**Adjustment Event**" shall mean:

(i) in any case referred to in clause (1) hereof, the occurrence of such event,

(ii) in any case referred to in clause (2) hereof, the date any such dividend or distribution is paid or made,

(iii) in any case referred to in clause (3) hereof, the date of expiration of such rights or warrants, and

(iv) in any case referred to in clause (4) hereof, the date a sale or exchange of Common Stock pursuant to such tender or exchange offer is consummated and becomes irrevocable.

(m) For purposes of this Section 15.05, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

Section 15.06. *Effect of Reclassification, Consolidation, Merger or Sale*. If any of the following events occur, namely (i) any reclassification or change of the outstanding shares of Common Stock (other than a subdivision or combination to which Section 15.05(c) applies), (ii) any consolidation, merger, binding share exchange or combination of the Company with another Person as a result of which holders of Common Stock shall be entitled to receive cash, securities or other property with respect to or in exchange for such Common Stock, or (iii) any sale or conveyance of all or substantially all of the properties and assets of the Company to any other Person as a result of which holders of Common Stock shall be entitled to receive cash, securities or other property with respect to or in exchange for such Common Stock, then the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture providing that each Note shall be convertible into the kind and amount of cash, securities or other property (and in the same proportion) receivable upon such reclassification, change, consolidation, merger, binding share exchange, combination, sale or conveyance by a holder of a number of shares of Common Stock issuable upon conversion of such Notes (assuming, for such purposes, a sufficient number of authorized shares of Common Stock are available to convert all such Notes) immediately prior to such reclassification, change, consolidation, merger, binding share exchange, combination, sale or conveyance assuming such holder of Common Stock did not exercise his rights of election, if any, as to the kind or amount of cash, securities or other property receivable upon such reclassification, change, consolidation, merger, binding share exchange, combination, sale or conveyance (*provided* that, if the kind or

amount of cash, securities or other property receivable upon such reclassification, change, consolidation, merger, binding share exchange, combination, sale or conveyance is not the same for each share of Common Stock in respect of which such rights of election shall not have been exercised ("**non-electing share**"), then for the purposes of this Section 15.06 the kind and amount of cash, securities or other property receivable upon such reclassification, change, consolidation, merger, binding share exchange, combination, sale or conveyance for each non-electing share shall be deemed to be the kind and amount so receivable per share by a plurality of the non-electing shares). Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 15.

The Company shall cause notice of the execution of such supplemental indenture to be mailed to each holder of Notes, at its address appearing on the Note Register provided for in Section 2.05 of this Indenture, within twenty (20) calendar days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

The above provisions of this Section shall similarly apply to successive reclassifications, changes, consolidations, mergers, binding share exchanges, combinations, sales and conveyances.

If this Section 15.06 applies to any event or occurrence, Section 15.05 shall not apply.

Section 15.07. *Taxes on Shares Issued*. The issue of stock certificates on conversions of Notes shall be made without charge to the converting Noteholder for any documentary, stamp or similar issue or transfer tax in respect of the issue thereof. The Company shall not, however, be required to pay any such tax which may be payable in respect of any transfer involved in the issue and delivery of stock in any name other than that of the holder of any Note converted, and the Company shall not be required to issue or deliver any such stock certificate unless and until the Person or Persons requesting the issue thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

Section 15.08. *Reservation of Shares, Shares to Be Fully Paid; Compliance with Governmental Requirements; Listing of Common Stock*. The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for the conversion of the Notes from time to time as such Notes are presented for conversion.

Before taking any action which would cause an adjustment increasing the Conversion Rate to an amount that would cause the Conversion Price to be reduced below the then par value, if any, of the shares of Common Stock issuable upon conversion of the Notes, the Company will take all corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue shares of such Common Stock at such adjusted Conversion Rate.

The Company covenants that all shares of Common Stock which may be issued upon conversion of Notes will upon issue be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

The Company covenants that, if any shares of Common Stock to be provided for the purpose of conversion of Notes hereunder require registration with or approval of any governmental authority under any federal or state law before such shares may be validly issued upon conversion, the Company will in good faith and as expeditiously as possible, to the extent then permitted by the rules and interpretations of the Commission (or any successor thereto), endeavor to secure such registration or approval, as the case may be.

The Company further covenants that, if at any time the Common Stock shall be listed on The Nasdaq National Market, The New York Stock Exchange or any other national securities exchange or automated quotation system, the Company will, if permitted by the rules of such exchange or automated quotation system, list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, all Common Stock issuable upon conversion of the Notes; *provided* that if the rules of such exchange or automated quotation system permit the Company to defer the listing of such Common Stock until the first conversion of the Notes into Common Stock in accordance with the provisions of this Indenture, the Company covenants to list such Common Stock issuable upon conversion of the Notes in accordance with the requirements of such exchange or automated quotation system at such time.

Section 15.09. *Responsibility of Trustee*. The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to the Company or any holder of Notes to determine the Conversion Rate or whether any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities or property, which may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article 15. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 15.06 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Noteholders upon the conversion of their Notes after any event referred to in such Section 15.06 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 8.01, may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officers' Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto.

Section 15.10. *Notice to Holders Prior to Certain Actions*. In case:

(a) the Company shall declare a dividend (or any other distribution) on its Common Stock that would require an adjustment in the Conversion Rate pursuant to Section 15.05; or

(b) the Company shall authorize the granting to the holders of all or substantially all of its Common Stock of rights or warrants to subscribe for or purchase any share of any class or any other rights or warrants; or

(c) of any reclassification or reorganization of the Common Stock of the Company (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company; or

(d) of the voluntary or involuntary dissolution, liquidation or winding up of the Company;

the Company shall cause to be filed with the Trustee and to be mailed to each holder of Notes at his address appearing on the Note Register provided for in Section 2.05 of this Indenture, as promptly as possible but in any event at least ten (10) calendar days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up.

Section 15.11. *Stockholder Rights Plan*. To the extent that the Company has a rights plan in effect upon conversion of the Notes into Common Stock, the Noteholder will receive, in addition to the Common Stock, the rights under the rights plan, unless prior to any conversion, the rights have separated from the Common Stock, in which case the Conversion Rate will be adjusted at the time of separation as if the Company distributed to all holders of Common Stock, shares of the Company's capital stock, evidences of indebtedness or assets as described in Section 15.04(c) above, subject to readjustment in the event of the expiration, termination or redemption of such rights. In lieu of any such adjustment, the Company may amend such applicable stockholder rights agreement to provide that upon conversion of the Notes the holders will receive, in addition to the Common Stock issuable upon such conversion, the rights which would have attached to such Common Stock if the rights had not become separated from the Common Stock under such applicable stockholder rights agreement.

ARTICLE 16
[RESERVED]

ARTICLE 17
MISCELLANEOUS PROVISIONS

Section 17.01. *Provisions Binding on Company's Successors*. All the covenants, stipulations, promises and agreements by the Company contained in this Indenture shall bind its successors and assigns whether so expressed or not.

Section 17.02. *Official Acts by Successor Corporation*. Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any Person that shall at the time be the lawful sole successor of the Company.

Section 17.03. *Addresses for Notices, Etc*. Any request, notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the holders of Notes on the Company shall be deemed to have been sufficiently given or made, for all purposes, if delivered by messenger or overnight carrier, given or served by being deposited postage prepaid by registered or certified mail in a post office letter box or sent by telecopier transmission addressed as follows: to The Nasdaq Stock Market, Inc., 9513 Key West Avenue, Rockville, MD 20850, Telecopier No. (301) 978-5296, Attention: John Zecca. Any notice, direction, request or demand hereunder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if delivered by messenger or overnight carrier, given or served by being deposited, postage prepaid, by registered or certified mail in a post office letter box or sent by telecopier transmission addressed as follows: Law Debenture Trust Company of New York, 767 Third Avenue, 31st Floor, New York, New York 10017, Telecopier No.: (212) 750-1361, Attention: Corporate Trust Administration; *provided, however*, that the Trustee, subject to the provisions hereof, shall not be deemed to have received notice until such notice is actually received at such office. Any notice, direction, request or demand hereunder to or upon the Paying Agent, the Note Registrar, the Conversion Agent or the Custodian shall be deemed to have been sufficiently given or made, for all purposes, if delivered by messenger or overnight carrier, given or served by being deposited, postage prepaid, by registered or certified mail in a post office letter box or sent by telecopier transmission addressed as follows: JPMorgan Chase Bank, N.A., 4 New York Avenue, 15th Floor, New York, New York 10004, Telecopier No.: (212) 623-6167, Attention: Institutional Trust Services; *provided, however*, that the Paying Agent, the Note Registrar, the Conversion Agent or the Custodian, subject to the provisions hereof, shall not be deemed to have received notice until such notice is actually received at such office.

The Company or the Trustee, by notice to the other, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Noteholder shall be mailed to him by first class mail, postage prepaid, at his address as it appears on the Note Register and shall be sufficiently given to him if so mailed within the time prescribed.

Failure to mail a notice or communication to a Noteholder or any defect in it shall not affect its sufficiency with respect to other Noteholders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

Section 17.04. *Governing Law; Waiver of Jury Trial*. This Indenture and each Note shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of the State of New York (including Section 5-1401 of the New York General Obligations Law or any successor to such statute). EACH OF THE COMPANY AND THE TRUSTEE 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 EACH OF THIS INDENTURE, THE NOTES OR THE SUBSIDIARY GUARANTEE.

Section 17.05. *Evidence of Compliance with Conditions Precedent, Certificates to Trustee*. Upon any application, request or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with, and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture shall include: (1) a statement that the person making such certificate or opinion has read such covenant or condition; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statement or opinion contained in such certificate or opinion is based; (3) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

Section 17.06. *Legal Holidays*. In any case in which the date of maturity of Interest on or principal of the Notes or the Redemption Date of any Note or the Series A Redemption Date or any Fundamental Change Repurchase Date with respect to any Note will not be a Business Day, then payment of such Interest on or the Principal Amount of the Notes need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the Redemption Date or the Fundamental Change Repurchase Date, as the case may be, and no interest shall accrue for the period from and after such date.

Section 17.07. *Company Responsible for Making Calculations*. The Company will be responsible for making all calculations called for under this Indenture. These calculations include, but are not limited to, determination of the Last Reported Sale Price, the amount of accrued Interest payable on the Notes, the Principal Amount and the Conversion Rate of the Notes. The Company will make these calculations in good faith and, absent manifest error, these calculations will be final and binding on the Noteholders. Promptly after the calculation thereof, the Company will provide to each of the Trustee and the Conversion Agent an Officers' Certificate setting forth a schedule of its calculations, and each of the Trustee and the Conversion Agent is entitled to conclusively rely upon the accuracy of such calculations without independent verification. The Trustee will forward the Company's calculations to any holder upon the written request of such holder.

Section 17.08. *Trust Indenture Act*. This Indenture is hereby made subject to, and shall be governed by, the provisions of the Trust Indenture Act required or deemed to be part of and to govern indentures qualified under the Trust Indenture Act; *provided* that unless otherwise required by law, notwithstanding the foregoing, this Indenture and the Notes issued hereunder shall not be subject to the provisions of subsections (a)(1), (a)(2), and (a)(3) of Section 314 of the Trust Indenture Act as now in effect or as hereafter amended or modified; provided further that this Section 17.08 shall not require this Indenture or the Trustee to be qualified under the Trust Indenture Act prior to the time such qualification is in fact required under the terms of the Trust Indenture Act, nor shall it constitute any admission or acknowledgment by any party to the Indenture that any such qualification is required prior to the time such qualification is in fact required under the terms of the Trust Indenture Act. If any provision hereof limits, qualifies or conflicts with another provision hereof which is required or deemed to be included in an indenture qualified under the Trust Indenture Act, such required or deemed to be included provision shall control.

Section 17.09. *No Security Interest Created*. Except as provided in Section 8.06, nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction in which property of the Company or its subsidiaries is located.

Section 17.10. *Benefits of Indenture*. Nothing in this Indenture or in the Notes, express or implied, shall give to any Person, other than the parties hereto, any Paying Agent, any authenticating agent, any Note Registrar, any Conversion Agent and their successors hereunder and the holders of Notes, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 17.11. *Table of Contents, Headings, Etc*. The table of contents and the titles and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 17.12. *Authenticating Agent*. The Trustee may appoint an authenticating agent that shall be authorized to act on its behalf, and subject to its direction, in the authentication and delivery of either or both series of Notes in connection with the original issuance thereof and transfers and exchanges of such Notes hereunder, including under Sections 2.04, 2.05, 2.06, 2.07 and 3.02, as fully to all intents and purposes as though the authenticating agent had been expressly authorized by this Indenture and those Sections to authenticate and deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by the authenticating agent shall be deemed to be authentication and delivery of such Notes “by the Trustee” and a certificate of authentication executed on behalf of the Trustee by an authenticating agent shall be deemed to satisfy any requirement hereunder or in the Notes for the Trustee’s certificate of authentication. Such authenticating agent shall at all times be a Person eligible to serve as trustee hereunder pursuant to Section 8.09.

Any corporation into which any authenticating agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation or conversion to which any authenticating agent shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of any authenticating agent, shall be the successor of the authenticating agent hereunder, if such successor corporation is otherwise eligible under this Section 17.12, without the execution or filing of any paper or any further act on the part of the parties hereto or the authenticating agent or such successor corporation.

Any authenticating agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any authenticating agent by giving written notice of termination to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any authenticating agent shall cease to be eligible under this Section, the Trustee shall either promptly appoint a successor authenticating agent or itself assume the duties and obligations of the former authenticating agent under this Indenture and, upon such appointment of a successor authenticating agent, if made, shall give written notice of such appointment of a successor authenticating agent to the Company and shall mail notice of such appointment of a successor authenticating agent to all holders of Notes as the names and addresses of such holders appear on the Note Register.

The Company agrees to pay to the authenticating agent from time to time such reasonable compensation for its services as shall be agreed upon in writing between the Company and the authenticating agent.

The provisions of Sections 8.02, 8.03, 8.04 and 9.03 and this Section 17.12 shall be applicable to any authenticating agent.

If an appointment with respect to one or more series is made pursuant to this Section, the Securities of such series may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternate certificate of authentication in the following form:

"This is one of the Series [A][B] Notes described in the within-named Indenture.

_____

as Trustee

By: _____

as Authenticating Agent

By: _____

Authorized Officer"

Section 17.13. *Execution in Counterparts*. This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 17.14. *Severability*. In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 17.15. *Tax Treatment*. The Company agrees, and by acceptance of beneficial ownership interest in the Notes each beneficial holder of the Notes will be deemed to have agreed, for United States federal income tax purposes to treat the Notes as indebtedness that is not subject to the contingent payment debt instrument regulations under Treas. Reg. Sec. 1.1275-4.

Section 17.16. *Voting Rights*.

(a) The holders of Notes shall be entitled to such voting rights as may be provided in the certificate of incorporation of the Company, in this Section 17.16 and as otherwise may be provided by law.

(b) Without the consent (evidenced as provided in Article 9) of holders of a majority in aggregate Principal Amount of the Notes at the time outstanding, the Company will not amend, alter or repeal any provision of the certificate of incorporation (by merger or otherwise) of the Company so as to adversely affect the preferences, rights or powers of the holders of the Notes.

Section 17.17. *Amendment to the Series B Notes*. Upon the occurrence of the Amendment Date, this Indenture and the Series B Notes shall automatically, without further action, be deemed to be amended to include the terms set forth on Exhibit D hereto, and any provision contained in this Indenture or in the Series B Notes which is in conflict with the provisions set forth on such Exhibit D shall be deemed to be superseded by the terms set forth on such Exhibit D. The Company shall execute and deliver to the Trustee a supplemental indenture (accompanied by an Officers' Certificate and an Opinion of Counsel to the effect that any supplemental indenture executed pursuant hereto complies with the requirements of this Section 17.17 and is otherwise authorized or permitted by this Indenture) that amends and restates the terms of this Indenture with modifications to give effect to the provisions set forth on such Exhibit D. In furtherance of the intention of this Section, such supplemental indenture may provide for notes containing all of the provisions of Exhibit D hereto in the principal amount of the outstanding Series B Notes to be issued in exchange for such Series B Notes and the termination of this Indenture. Upon the written request of the Company, the Trustee is hereby authorized to join with the Company in the execution of such supplemental indenture and to make any further appropriate agreements and stipulations that may be therein contained, subject to the immediately succeeding sentence. Anything in this Section 17.17 or Exhibit D hereto to the contrary notwithstanding, no such amendment to this Indenture or the Series B Notes shall, without the consent of the Trustee, exercisable in the discretion of the Trustee, operate so as to affect the Trustee's own rights, duties or immunities under this Indenture, the Series B Notes or

otherwise; and the Trustee shall not be obligated to, but may in its discretion, enter into any such supplemental indenture and make any further appropriate agreements and stipulations that may be contained therein that affects the Trustee's own rights, duties or immunities under this Indenture, the Series B Notes or otherwise.

Law Debenture Trust Company of New York hereby accepts the trusts in this Indenture declared and provided, upon the terms and conditions herein above set forth.

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IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first written above.

THE NASDAQ STOCK MARKET, INC.

By: /s/ Adena T. Friedman

Name: Adena T. Friedman
Title: Executive Vice President

LAW DEBENTURE TRUST COMPANY OF NEW YORK, as trustee

By: /s/ Adam Berman

Name: Adam Berman
Title: Vice President

EXHIBIT A

[Include only for Global Notes:]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) (THE "**DEPOSITARY**", WHICH TERM INCLUDES ANY SUCCESSOR DEPOSITARY FOR THE CERTIFICATES) TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREIN IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

[Include only for Notes that are Restricted Securities:]

[THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF:

(1) AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY OR ANY COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH SECURITY EXCEPT (A) TO THE NASDAQ STOCK MARKET, INC. (THE "ISSUER") OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER, (C) PURSUANT TO THE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR (D) PURSUANT TO THE EXEMPTION FROM REGISTRATION REQUIREMENTS OF THE SECURITIES ACT PERMITTED BY ANY OTHER PROVISION OR RULE UNDER THE SECURITIES ACT (IF AVAILABLE); AND

(2) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 1(B) OR 1(C) ABOVE) A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

IN CONNECTION WITH ANY TRANSFER OF THIS SECURITY WITHIN TWO YEARS AFTER THE ORIGINAL ISSUANCE OF SUCH SECURITY (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 1(B) ABOVE), THE HOLDER MUST CHECK THE APPROPRIATE BOX SET FORTH ON THE REVERSE HEREOF RELATING TO THE MANNER OF SUCH TRANSFER AND SUBMIT THIS CERTIFICATE TO THE TRUSTEE (OR ANY SUCCESSOR TRUSTEE, AS APPLICABLE). IF THE PROPOSED TRANSFER IS PURSUANT TO CLAUSE 1(C) or 1(D) ABOVE, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE (OR ANY SUCCESSOR TRUSTEE, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE ISSUER OR THE TRUSTEE MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THIS SECURITY PURSUANT TO CLAUSE 1(B) OR 1(C) ABOVE OR THE EXPIRATION OF TWO YEARS FROM THE ORIGINAL ISSUANCE OF THE SECURITY EVIDENCED HEREBY.]

THIS NOTE OR ANY INTEREST THEREON MAY NOT BE CONVERTED, TRANSFERRED, PLEDGED, HYPOTHECATED OR ENCUMBERED IN ANY MANNER, EXCEPT AS PERMITTED BY THE SECURITIES PURCHASE AGREEMENT, DATED AS OF APRIL 22, 2005, AND THE AMENDED AND RESTATED SECURITYHOLDERS AGREEMENT, DATED AS OF APRIL 22, 2005, COPIES OF WHICH MAY BE OBTAINED FROM THE COMPANY. THIS LEGEND WILL BE REMOVED UPON THE TERMINATION OF SUCH RESTRICTIONS ON TRANSFER. THE HOLDER OF THIS SECURITY IS ENTITLED TO THE BENEFITS OF A REGISTRATION RIGHTS AGREEMENT DATED AS OF APRIL 22, 2005 AND, BY ITS ACCEPTANCE HEREOF, AGREES TO BE BOUND BY AND TO COMPLY WITH THE PROVISIONS OF SUCH REGISTRATION RIGHTS AGREEMENT.

THIS SECURITY IS ISSUED WITH ORIGINAL ISSUE DISCOUNT UNDER SECTION 1272 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. THE ISSUE PRICE OF THE SECURITY IS $978.15 PER $1,000 OF PRINCIPAL AMOUNT, THE ISSUE DATE IS APRIL 22, 2005, THE YIELD TO MATURITY IS 4.09%, COMPOUNDED QUARTERLY, AND THE AMOUNT OF THE ORIGINAL ISSUE DISCOUNT IS $21.85.

THE NASDAQ STOCK MARKET, INC.

3.75% SERIES A CONVERTIBLE NOTE DUE 2012

No. A-__ **CUSIP: _____**

The Nasdaq Stock Market, Inc., a corporation duly organized and validly existing under the laws of the State of Delaware (herein called the "**Company**", which term includes any successor Person under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to _____ or its registered assigns, [the Principal Amount of _____ Dollars[1]] [the Principal Amount of _____ Dollars or such amount as is indicated in the records of the Trustee and the Depositary[2]] on October 22, 2012, and to pay interest thereon from April 22, 2005 or from the most recent Interest Payment Date to which Interest has been paid or duly provided for, on the Acquisition Closing Date and January 22, April 22, July 22 and October 22 of each year (each, an "**Interest Payment Date**"), commencing on the earlier to occur of the Acquisition Closing Date and July 22, 2005, at the rate of 3.75% per annum, until the Principal Amount is paid or made available for payment at October 22, 2012, or earlier upon redemption, or upon acceleration, or until such date on which the Series A Notes are converted or repurchased as provided herein, and at the rate of 5.75% per annum on any overdue principal and on any overdue installment of Interest. Except as otherwise provided herein or in the Indenture, the Interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture (as hereinafter defined), be paid to the Person in whose name this Series A Note (or one or more predecessor Series A Notes) is registered at 5:00 p.m., New York City time, on the Regular Record Date for such interest, which will be the date which is 15 days prior to the Acquisition Closing Date and the January 7, April 7, July 7 and October 7 (whether or not a Business Day), as the case may be, next preceding the corresponding Interest Payment Date. The Company shall pay Interest (i) on any Series A Notes in certificated form by check mailed to the address of the Person entitled thereto as it appears in the Note Register (or, upon timely written notice, by wire transfer in immediately available funds, if such Person is entitled to interest on Series A Notes with an aggregate Principal Amount in excess of $1,000,000) (*provided* that at the Stated Maturity Interest payable on this Series A Note will be payable with the Principal Amount at the Company's office or agency in New York City) or (ii) on any Global Note representing Series A Notes by wire transfer of immediately available funds to the account of the Depositary or its nominee.

Reference is made to the further provisions of this Series A Note set forth on the reverse hereof, including, without limitation, provisions giving the holder of this Series A Note the right to convert this Series A Note into cash or a combination of cash and Common Stock, as the case may be, on the terms and subject to the limitations referred to on the reverse hereof and as more fully specified in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

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[1] This phrase should be included only if the Series A Note is a Certificated Note.

[2] This phrase should be included only if the Series A Note is a Global Note.

This Series A Note shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with and governed by the laws of the State of New York (including Section 5-1401 of the New York General Obligations Law or any successor to such statute).

This Series A Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been manually signed by the Trustee or a duly authorized authenticating agent under the Indenture.

IN WITNESS WHEREOF, the Company has caused this Series A Note to be duly executed.

THE NASDAQ STOCK MARKET, INC.

By: /s/ Adena T. Friedman

[Date of Authentication]

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Series A Notes described in the within-named Indenture.

LAW DEBENTURE TRUST COMPANY OF NEW YORK, as Trustee

By: _____

Authorized Signatory

FORM OF REVERSE OF NOTE

THE NASDAQ STOCK MARKET, INC.

3.75% SERIES A CONVERTIBLE NOTE DUE 2012

This Series A Note is one of a duly authorized issue of Series A Notes of the Company, designated as its 3.75% Series A Convertible Notes due 2012 (herein called the "**Series A Notes**"), limited in aggregate Principal Amount to $205,000,000, issued and to be issued under and pursuant to an Indenture dated as of April 22, 2005 (herein called the "**Indenture**"), between the Company and Law Debenture Trust Company of New York, as trustee (herein called the "**Trustee**"), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the holders of the Series A Notes and the 3.75% Series B Convertible Notes due 2012 (the "**Series B Notes**", together with the Series A Notes, the "**Notes**") issued thereunder.

In case an Event of Default shall have occurred and be continuing, the Principal Amount of and accrued Interest on all Notes may be declared by either the Trustee or, subject to Section 9.01, the holders of not less than 25% in aggregate Principal Amount of the Notes then outstanding, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions provided in the Indenture.

The Indenture contains provisions permitting the Company and the Trustee, with the consent of the holders of at least a majority in aggregate Principal Amount of the Notes at the time outstanding, to execute supplemental indentures adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or modifying in any manner the rights of the holders of the Notes, subject to Section 9.01 and the exceptions set forth in Section 11.02 of the Indenture. Subject to Section 9.01 and other provisions of the Indenture, the holders of a majority in aggregate Principal Amount of the Notes at the time outstanding may on behalf of the holders of all of the Notes waive any past default or Event of Default under the Indenture and its consequences, subject to the exceptions set forth in the Indenture. Any such consent or waiver by the holder of this Note (unless revoked as provided in the Indenture) shall be conclusive and binding upon such holder and upon all future holders and owners of this Note and any Notes which may be issued in exchange or substitution hereof, irrespective of whether or not any notation thereof is made upon this Note or such other Notes.

The indebtedness evidenced by the Notes is, to the extent and in the manner provided in the Indenture, contractually subordinated in right of payment or satisfaction to the prior payment or satisfaction in full in cash of all obligations arising under Senior Indebtedness of the Company, and this Note is issued subject to the provisions of the Indenture with respect to such subordination. Each holder of this Note, by accepting the same, agrees to and shall be bound by such provisions and authorizes the Trustee on its behalf to take such action as may be necessary or appropriate to effectuate the subordination so provided and appoints the Trustee his attorney-in-fact for such purpose.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the Principal Amount of and Interest on this Note at the place, at the respective times, at the rate and in the coin or currency herein prescribed.

Interest on the Notes shall be computed on the basis of a 360-day year of twelve 30-day months.

The Notes are issuable in fully registered form, without interest coupons, in denominations of $1.00 Principal Amount and any multiple of $1.00. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, without payment of any service charge but with payment of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in connection with any registration or exchange of Notes, Notes may be exchanged for a like aggregate Principal Amount of Notes of any other authorized denominations.

At any time after April 22, 2011, the Company, at its option, may redeem all (and not a portion) of the Outstanding Notes in accordance with the provisions of the Indenture on the Redemption Date for a redemption price in cash equal to 100% of the Principal Amount of the Notes to be redeemed (the "**Redemption Price**"), plus any accrued and unpaid Interest on the Notes redeemed to, but not including, the Redemption Date. If the Redemption Date is after the applicable Regular Record Date and on or prior to the corresponding Interest Payment Date, the Interest accrued as of the Redemption Date which would otherwise be payable on such Interest Payment Date will be paid on such Interest Payment Date to the holders of record of such Notes on the applicable Regular Record Date. The Company shall mail a written notice of such redemption not less than 20 calendar days but not more than 60 calendar days before the Redemption Date to the holders of the Notes at their last registered addresses, all as provided in the Indenture.

On the Series A Redemption Date, the Company shall redeem all of the Series A Notes in accordance with the provisions of the Indenture. The Company shall redeem such Series A Notes on the Series A Redemption Date at a redemption price in case equal to the Adjusted Issue Price of the Series A Notes to be redeemed plus any accrued and unpaid Interest to, but not including, the Series A Redemption Date. The Company shall mail to all holders of record of the Series A Notes a notice of the mandatory redemption. Simultaneous with the redemption of all of the Series A Notes, the Company shall redeem the Series A Warrants in accordance with their terms.

The Notes are not subject to redemption through the operation of any sinking fund.

If a Fundamental Change occurs at any time prior to maturity of their Notes, the holders will have the right to require the Company to repurchase all or any portion of the Notes on a Fundamental Change Repurchase Date specified by the Company, which shall be no later than 30 calendar days after notice thereof, in integral multiples of $1.00 Principal Amount at a Fundamental Change Repurchase Price equal to 101% of the Principal Amount thereof, together with accrued Interest to, but not including, the Fundamental Change Repurchase Date; *provided* that, if the applicable Fundamental Change Repurchase Date is after a Regular Record Date and

on or prior to the corresponding Interest Payment Date, the Interest accrued as of the Fundamental Change Repurchase Date which would otherwise be payable on such Interest Payment Date shall be paid on such Interest Payment Date to the holders of record of such Notes on the applicable Regular Record Date instead of the holders surrendering such Notes for repurchase on such date. The Company shall mail to all holders of record of the Notes a notice of the occurrence of a Fundamental Change and of the repurchase right arising as a result thereof on or before the 30th calendar day after the occurrence of such Fundamental Change. To exercise such right, a holder must deliver to the Paying Agent such Notes with the form entitled "**Form of Fundamental Change Repurchase Election**" on the reverse thereof duly completed, together with such Notes, duly endorsed for transfer (or if such Notes are Global Notes, book-entry transfer of such Notes) at any time prior to 5:00 p.m., New York City time, on the Business Day immediately preceding the Fundamental Change Repurchase Date.

The Fundamental Change Repurchase Price to be paid on any Fundamental Change Repurchase Date shall be paid in cash, subject to the terms and conditions of the Indenture.

Holders have the right to withdraw a Fundamental Change Repurchase Election by delivering to the Paying Agent a written notice of withdrawal up to 5:00 p.m., New York City time, on the Business Day immediately preceding the Fundamental Change Repurchase Date, all as provided in the Indenture.

If on the Fundamental Change Repurchase Date money sufficient to pay the Fundamental Change Repurchase Price with respect to the Notes to be repurchased as of any Fundamental Change Repurchase Date is deposited with the Paying Agent, then on and after such Fundamental Change Repurchase Date, Interest will cease to accrue on such Notes (or portions thereof), and the holder thereof shall have no other rights as such other than the right to receive the Fundamental Change Repurchase Price plus accrued interest upon surrender of such Note.

Subject to the occurrence of certain events and in compliance with the provisions of the Indenture, on or prior to the Trading Day immediately preceding the Stated Maturity, the holder hereof has the right, at its option, to convert each $1.00 principal amount of this Note into 0.0689655 shares of Common Stock (a Conversion Price of approximately $14.50 per share) as such shares shall be constituted at the date of conversion and subject to adjustment from time to time as provided in the Indenture, upon surrender of this Note (in certificated form) with the form entitled "**Form of Conversion Notice**" on the reverse hereof duly completed and manually signed, to the Company at the office or agency of the Company maintained for that purpose in accordance with the terms of the Indenture, together with any funds required pursuant to the terms of the Indenture, and, unless the shares issuable on conversion are to be issued in the same name as this Note, duly endorsed by, or accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the holder or by his duly authorized attorney. In order to exercise the conversion right with respect to any interest in a Global Note, the holder must complete the appropriate instruction form pursuant to the Depositary's book-entry conversion program, deliver by book-entry delivery an interest in such Global Note and furnish appropriate endorsements and transfer documents if required pursuant to the terms of the Indenture and any funds required pursuant to the Indenture. Upon conversion, the Company will deliver shares of Common Stock or, at the option of the Company, a combination of cash and shares of Common Stock, equal to the lesser of the aggregate principal amount of Notes being converted and the Conversion Value, and shares of Common Stock in respect of the remainder, if any, of the Conversion Value.

If the Company (i) is a party to a consolidation, merger, statutory share exchange or combination, (ii) reclassifies the Common Stock, or (iii) sells or conveys all or substantially all of its properties and assets, the right to convert a Note into shares of Common Stock may be changed into a right to convert it into the kind or amount of cash, securities or other property receivable upon such event, in each case in accordance with the Indenture.

No adjustment in respect of Interest on any Note converted or dividends on any shares issued upon conversion of such Note will be made upon any conversion except as set forth in the next sentence and Interest will be deemed paid in full upon receipt of shares of Common Stock upon conversion. If this Note (or portion hereof) is surrendered for conversion during the period from 5:00 p.m., New York City time, on any Regular Record Date to 9:00 a.m., New York City time, on the immediately following Interest Payment Date, this Note (or portion hereof being converted) must be accompanied by payment, in immediately available funds or other funds acceptable to the Company, of an amount equal to the Interest otherwise payable on such Interest Payment Date on the Principal Amount being converted; *provided* that no such payment shall be required (1) if the Company has specified a Redemption Date that is after a Regular Record Date and on or prior to the corresponding Interest Payment Date, (2) if the Company has specified a Fundamental Change Repurchase Date that is after a Regular Record Date and on or prior to the corresponding Interest Payment Date or (3) to the extent of any overdue Interest, if any overdue Interest exists at the time of conversion with respect to such Note.

No fractional shares will be issued upon any conversion, but an adjustment and payment in cash will be made, as provided in the Indenture, in respect of any fraction of a share which would otherwise be issuable upon the surrender of any Note or Notes for conversion.

A Note in respect of which a holder is exercising its right to require repurchase upon a Fundamental Change may be converted only if such holder withdraws its election to exercise such right in accordance with the terms of the Indenture.

Upon due presentment for registration of transfer of this Series A Note at the office or agency of the Company maintained for that purpose in accordance with the terms of the Indenture, a new Series A Note or Series A Notes of authorized denominations for an equal aggregate Principal Amount will be issued to the transferee in exchange thereof, subject to the limitations provided in the Indenture, without charge except for any tax, assessment or other governmental charge imposed in connection therewith.

The Company, the Trustee, any authenticating agent, any Paying Agent, any Conversion Agent and any Note Registrar may deem and treat the registered holder hereof as the absolute owner of this Note (whether or not this Series A Note shall be overdue and notwithstanding any notation of ownership or other writing hereon made by anyone other than the Company or any Note Registrar) for the purpose of receiving payment hereof, or on account hereof, for the conversion hereof and for all other purposes, and neither the Company nor the Trustee nor any other authenticating agent nor any Paying Agent nor other Conversion Agent nor any Note Registrar shall be affected by any notice to the contrary. All payments made to or upon the order of such registered holder shall, to the extent of the sum or sums paid, satisfy and discharge liability for monies payable on this Series A Note.

No recourse for the payment of the Principal Amount of or Interest on this Series A Note, or for any claim based hereon or otherwise in respect hereof, and no recourse under or upon any obligation, covenant or agreement of the Company in the Indenture or any supplemental indenture or in any Note, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, officer or director or subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability being, by acceptance hereof and as part of the consideration for the issue hereof, expressly waived and released.

Terms used in this Note and defined in the Indenture are used herein as therein defined.

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Series A Note, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM -	as tenants in common	UNIF GIFT MIN ACT -	Custodian
TEN ENT -	as tenant by the entireties	(Cust)	(Minor)
JT TEN -	as joint tenants with right of survivorship and not as tenants in common	under Uniform Gifts to Minors Act	
		_____	
		(State)	

Additional abbreviations may also be used though not in the above list.

FORM OF CONVERSION NOTICE

TO: THE NASDAQ STOCK MARKET, INC.
One Liberty Plaza
New York, NY 10006

The undersigned registered owner of this Series A Note hereby irrevocably exercises the option to convert this Series A Note, or the portion thereof (which is $1.00 Principal Amount or a multiple thereof) below designated, into Common Stock of The Nasdaq Stock Market, Inc. in accordance with the terms of the Indenture referred to in this Series A Note, and directs that the [shares of Common Stock] [funds in payment of the lesser of the aggregate principal amount of the Series A Notes being converted and the Conversion Value and any shares issuable and deliverable upon such conversion], together with any funds in payment of fractional shares, if any, payable upon such conversion and any Series A Notes representing any unconverted Principal Amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture. If funds, shares or any portion of this Series A Note not converted are to be issued in the name of a person other than the undersigned, the undersigned will provide the appropriate information below and pay all transfer taxes payable with respect thereto. Any amount required to be paid by the undersigned on account of Interest accompanies this Series A Note.

Dated: _____

_____

_____

Signature(s)

Signature(s) must be guaranteed by an "**eligible guarantor institution**" meeting the requirements of the Note Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("**STAMP**") or such other "**signature guarantee program**" as may be determined by the Note Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

_____

Signature Guarantee

Fill in the registration of shares of Common Stock if to be issued, and Series A Notes if to be delivered, other than to and in the name of the registered holder:

_____

(Name)

_____

(Street Address)

_____

(City, State and Zip Code)

_____

Please print name and address

Principal Amount to be converted
(if less than all):

$ _____

Social Security or Other Taxpayer
Identification Number:

_____

FORM OF

FUNDAMENTAL CHANGE REPURCHASE ELECTION

TO: THE NASDAQ STOCK MARKET, INC.
One Liberty Plaza
New York, NY 10006

The undersigned registered owner of this Series A Note hereby irrevocably acknowledges receipt of a notice from The Nasdaq Stock Market, Inc. (the "**Company**") as to the occurrence of a Fundamental Change with respect to the Company and requests and instructs the Company to repurchase the entire Principal Amount of this Series A Note, or the portion thereof (which is $1.00 Principal Amount or a multiple thereof) below designated, in accordance with the terms of the Indenture referred to in this Series A Note, at the price of 101% of such entire Principal Amount or portion thereof, together with accrued Interest to, but not including, the Fundamental Change Repurchase Date and to pay such amounts, to the undersigned registered holder hereof, except as otherwise provided in Section 3.07(a) of the Indenture. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

Dated: _____

_____

_____

Signature(s)

NOTICE: The above signatures of the holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Note Certificate Number (if applicable):

Principal Amount to be repurchased (if less than all):

Social Security or Other Taxpayer Identification Number:

ASSIGNMENT

For value received _____hereby sell(s) assign(s) and transfer(s) unto _____ (Please insert social security or other Taxpayer Identification Number of assignee:_____) the within Series A Note, and hereby irrevocably constitutes and appoints _____ attorney to transfer said Series A Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the Note prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), the undersigned confirms that such Note is being transferred:

☐ To the Nasdaq Stock Market, Inc. or a subsidiary thereof; or

☐ Pursuant to and in compliance with Rule 144 under the Securities Act of 1933, as amended; or

☐ Pursuant to and in compliance with any provision or rule (other than Rule 144) under the Securities Act of 1933, as amended; or

☐ Pursuant to a Registration Statement which has been declared effective under the Securities Act of 1933, as amended, and which continues to be effective at the time of transfer;

and unless the Note has been transferred to The Nasdaq Stock Market, Inc. or a subsidiary thereof, the undersigned confirms that such Note is not being transferred to an "**affiliate**" of the Company as defined in Rule 144 under the Securities Act of 1933, as amended.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Notes evidenced by this certificate in the name of any person other than the registered holder thereof.

Dated: _____

_____

_____

Signature(s)

Signature(s) must be guaranteed by an "**eligible guarantor institution**" meeting the requirements of the Note Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("**STAMP**") or such other "**signature guarantee program**" as may be determined by the Note Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

_____

Signature Guarantee

NOTICE: The signature on the Conversion Notice, the Fundamental Change Repurchase Election or the Assignment must correspond with the name as written upon the face of the Series A Note in every particular without alteration or enlargement or any change whatever.

EXHIBIT B

[Include only for Global Notes:]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) (THE "**DEPOSITARY**", WHICH TERM INCLUDES ANY SUCCESSOR DEPOSITARY FOR THE CERTIFICATES) TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREIN IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

[Include only for Notes that are Restricted Securities:]

[THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF:

(1) AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY OR ANY COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH SECURITY EXCEPT (A) TO THE NASDAQ STOCK MARKET, INC. (THE "ISSUER") OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER, (C) PURSUANT TO THE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR (D) PURSUANT TO THE EXEMPTION FROM REGISTRATION REQUIREMENTS OF THE SECURITIES ACT PERMITTED BY ANY OTHER PROVISION OR RULE UNDER THE SECURITIES ACT (IF AVAILABLE); AND

(2) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 1(B) OR 1(C) ABOVE) A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

IN CONNECTION WITH ANY TRANSFER OF THIS SECURITY WITHIN TWO YEARS AFTER THE ORIGINAL ISSUANCE OF SUCH SECURITY (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 1(B) ABOVE), THE HOLDER MUST CHECK THE APPROPRIATE BOX SET FORTH ON THE REVERSE HEREOF RELATING TO THE MANNER OF SUCH TRANSFER AND SUBMIT THIS CERTIFICATE TO THE TRUSTEE (OR ANY SUCCESSOR TRUSTEE, AS APPLICABLE). IF THE PROPOSED TRANSFER IS PURSUANT TO CLAUSE 1(C) OR 1(D) ABOVE, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE (OR ANY SUCCESSOR TRUSTEE, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE ISSUER OR THE TRUSTEE MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THIS SECURITY PURSUANT TO CLAUSE 1(B) OR 1(C) ABOVE OR THE EXPIRATION OF TWO YEARS FROM THE ORIGINAL ISSUANCE OF THE SECURITY EVIDENCED HEREBY.]

THIS NOTE OR ANY INTEREST THEREON MAY NOT BE TRANSFERRED, PLEDGED, HYPOTHECATED OR ENCUMBERED IN ANY MANNER, EXCEPT AS PERMITTED BY THE AMENDED AND RESTATED SECURITYHOLDERS AGREEMENT, DATED AS OF APRIL 22, 2005, A COPY OF WHICH MAY BE OBTAINED FROM THE COMPANY. THIS LEGEND WILL BE REMOVED UPON THE TERMINATION OF SUCH RESTRICTIONS ON TRANSFER. THE HOLDER OF THIS SECURITY IS ENTITLED TO THE BENEFITS OF A REGISTRATION RIGHTS AGREEMENT DATED AS OF APRIL 22, 2005 AND, BY ITS ACCEPTANCE HEREOF, AGREES TO BE BOUND BY AND TO COMPLY WITH THE PROVISIONS OF SUCH REGISTRATION RIGHTS AGREEMENT.

THE NASDAQ STOCK MARKET, INC.

3.75% SERIES B CONVERTIBLE NOTE DUE 2012

No. B-_____ **CUSIP: _____**

The Nasdaq Stock Market, Inc., a corporation duly organized and validly existing under the laws of the State of Delaware (herein called the "**Company**", which term includes any successor Person under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to _____ or its registered assigns, [the Principal Amount of _____ Dollars[1]] [the Principal Amount of _____ Dollars or such amount as is indicated in the records of the Trustee and the Depositary[2]] on October 22, 2012, and to pay interest thereon from April 22, 2005 or from the most recent Interest Payment Date to which Interest has been paid or duly provided for, on the Acquisition Closing Date and January 22, April 22, July 22 and October 22 of each year (each, an "**Interest Payment Date**"), commencing on the earlier to occur of the Acquisition Closing Date and July 22, 2005, at the rate of 3.75% per annum, until the Principal Amount is paid or made available for payment at October 22, 2012, or earlier upon redemption, or upon acceleration, or until such date on which the Series B Notes are converted or repurchased as provided herein, and at the rate of 5.75% per annum on any overdue principal and on any overdue installment of Interest. Except as otherwise provided herein or in the Indenture, the Interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture (as hereinafter defined), be paid to the Person in whose name this Series B Note (or one or more predecessor Series B Notes) is registered at 5:00 p.m., New York City time, on the Regular Record Date for such interest, which will be the date which is 15 days prior to the Acquisition Closing Date and the January 7, April 7, July 7 and October 7 (whether or not a Business Day), as the case may be, next preceding the corresponding Interest Payment Date. The Company shall pay Interest (i) on any Series B Notes in certificated form by check mailed to the address of the Person entitled thereto as it appears in the Note Register (or, upon timely written notice, by wire transfer in immediately available funds, if such Person is entitled to interest on Series B Notes with an aggregate Principal Amount in excess of $1,000,000) (*provided* that at the Stated Maturity Interest payable on this Series B Note will be payable with the Principal Amount at the Company's office or agency in New York City) or (ii) on any Global Note representing Series B Notes by wire transfer of immediately available funds to the account of the Depositary or its nominee.

Reference is made to the further provisions of this Series B Note set forth on the reverse hereof, including, without limitation, provisions giving the holder of this Series B Note the right to convert this Series B Note into cash or a combination of cash and Common Stock, as the case may be, on the terms and subject to the limitations referred to on the reverse hereof and as more fully specified in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

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[1] This phrase should be included only if the Series B Note is a Certificated Note.

[2] This phrase should be included only if the Series B Note is a Global Note.

This Series B Note shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with and governed by the laws of the State of New York (including Section 5-1401 of the New York General Obligations Law or any successor to such statute).

This Series B Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been manually signed by the Trustee or a duly authorized authenticating agent under the Indenture.

IN WITNESS WHEREOF, the Company has caused this Series B Note to be duly executed.

THE NASDAQ STOCK MARKET, INC.

By: /s/ Adena T. Friedman

[Date of Authentication]

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Series B Notes described in the within-named Indenture.

LAW DEBENTURE TRUST COMPANY OF NEW YORK, as Trustee

By: _____

Authorized Signatory

FORM OF REVERSE OF NOTE

THE NASDAQ STOCK MARKET, INC.

3.75% SERIES B CONVERTIBLE NOTE DUE 2012

This Series B Note is one of a duly authorized issue of Series B Notes of the Company, designated as its 3.75% Series B Convertible Notes due 2012 (herein called the "**Series B Notes**"), limited in aggregate Principal Amount to $240,000,000, issued and to be issued under and pursuant to an Indenture dated as of April 22, 2005 (herein called the "**Indenture**"), between the Company and Law Debenture Trust Company of New York, as trustee (herein called the "**Trustee**"), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the holders of the Series B Notes and the 3.75% Series A Convertible Notes due 2012 (the "**Series A Notes**", together with the Series B Notes, the "**Notes**") issued thereunder.

In case an Event of Default shall have occurred and be continuing, the Principal Amount of and accrued Interest on all Notes may be declared by either the Trustee or, subject to Section 9.01, the holders of not less than 25% in aggregate Principal Amount of the Notes then outstanding, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions provided in the Indenture.

The Indenture contains provisions permitting the Company and the Trustee, with the consent of the holders of at least a majority in aggregate Principal Amount of the Notes at the time outstanding, to execute supplemental indentures adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or modifying in any manner the rights of the holders of the Notes, subject to Section 9.01 and the exceptions set forth in Section 11.02 of the Indenture. Subject to Section 9.01 and other provisions of the Indenture, the holders of a majority in aggregate Principal Amount of the Notes at the time outstanding may on behalf of the holders of all of the Notes waive any past default or Event of Default under the Indenture and its consequences, subject to the exceptions set forth in the Indenture. Any such consent or waiver by the holder of this Note (unless revoked as provided in the Indenture) shall be conclusive and binding upon such holder and upon all future holders and owners of this Note and any Notes which may be issued in exchange or substitution hereof, irrespective of whether or not any notation thereof is made upon this Note or such other Notes.

The indebtedness evidenced by the Notes is, to the extent and in the manner provided in the Indenture, contractually subordinated in right of payment or satisfaction to the prior payment or satisfaction in full in cash of all obligations arising under Senior Indebtedness of the Company, and this Note is issued subject to the provisions of the Indenture with respect to such subordination. Each holder of this Note, by accepting the same, agrees to and shall be bound by such provisions and authorizes the Trustee on its behalf to take such action as may be necessary or appropriate to effectuate the subordination so provided and appoints the Trustee his attorney-in-fact for such purpose.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the Principal Amount of and Interest on this Note at the place, at the respective times, at the rate and in the coin or currency herein prescribed.

Interest on the Notes shall be computed on the basis of a 360-day year of twelve 30-day months.

The Notes are issuable in fully registered form, without interest coupons, in denominations of $1.00 Principal Amount and any multiple of $1.00. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, without payment of any service charge but with payment of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in connection with any registration or exchange of Notes, Notes may be exchanged for a like aggregate Principal Amount of Notes of any other authorized denominations.

At any time after April 22, 2011, the Company, at its option, may redeem all (and not a portion) of the Outstanding Notes in accordance with the provisions of the Indenture on the Redemption Date for a redemption price in cash equal to 100% of the Principal Amount of the Notes to be redeemed (the "**Redemption Price**"), plus any accrued and unpaid Interest on the Notes redeemed to, but not including, the Redemption Date. If the Redemption Date is after the applicable Regular Record Date and on or prior to the corresponding Interest Payment Date, the Interest accrued as of the Redemption Date which would otherwise be payable on such Interest Payment Date will be paid on such Interest Payment Date to the holders of record of such Notes on the applicable Regular Record Date. The Company shall mail a written notice of such redemption not less than 20 calendar days but not more than 60 calendar days before the Redemption Date to the holders of the Notes at their last registered addresses, all as provided in the Indenture.

The Notes are not subject to redemption through the operation of any sinking fund.

If a Fundamental Change occurs at any time prior to maturity of their Notes, the holders will have the right to require the Company to repurchase all or any portion of the Notes on a Fundamental Change Repurchase Date specified by the Company, which shall be no later than 30 calendar days after notice thereof, in integral multiples of $1.00 Principal Amount at a Fundamental Change Repurchase Price equal to 101% of the Principal Amount thereof, together with accrued Interest to, but not including, the Fundamental Change Repurchase Date; *provided* that, if the applicable Fundamental Change Repurchase Date is after a Regular Record Date and on or prior to the corresponding Interest Payment Date, the Interest accrued as of the Fundamental Change Repurchase Date which would otherwise be payable on such Interest Payment Date shall be paid on such Interest Payment Date to the holders of record of such Notes on the applicable Regular Record Date instead of the holders surrendering such Notes for repurchase on such date. The Company shall mail to all holders of record of the Notes a notice of the occurrence of a Fundamental Change and of the repurchase right arising as a result thereof on or before the 30th calendar day after the occurrence of such Fundamental Change. To exercise such right, a holder must deliver to the Paying Agent such Notes with the form entitled "**Form of Fundamental Change Repurchase Election**" on the reverse thereof duly completed, together

with such Notes, duly endorsed for transfer (or if such Notes are Global Notes, book-entry transfer of such Notes) at any time prior to 5:00 p.m., New York City time, on the Business Day immediately preceding the Fundamental Change Repurchase Date.

The Fundamental Change Repurchase Price to be paid on any Fundamental Change Repurchase Date shall be paid in cash, subject to the terms and conditions of the Indenture.

Holders have the right to withdraw a Fundamental Change Repurchase Election by delivering to the Paying Agent a written notice of withdrawal up to 5:00 p.m., New York City time, on the Business Day immediately preceding the Fundamental Change Repurchase Date, all as provided in the Indenture.

If on the Fundamental Change Repurchase Date money sufficient to pay the Fundamental Change Repurchase Price with respect to the Notes to be repurchased as of any Fundamental Change Repurchase Date is deposited with the Paying Agent, then on and after such Fundamental Change Repurchase Date, Interest will cease to accrue on such Notes (or portions thereof), and the holder thereof shall have no other rights as such other than the right to receive the Fundamental Change Repurchase Price plus accrued interest upon surrender of such Note.

Subject to the occurrence of certain events and in compliance with the provisions of the Indenture, on or prior to the Trading Day immediately preceding the Stated Maturity, the holder hereof has the right, at its option, to convert each $1.00 principal amount of this Note into 0.0689655 shares of Common Stock (a Conversion Price of approximately $14.50 per share) as such shares shall be constituted at the date of conversion and subject to adjustment from time to time as provided in the Indenture, upon surrender of this Note (in certificated form) with the form entitled "**Form of Conversion Notice**" on the reverse hereof duly completed and manually signed, to the Company at the office or agency of the Company maintained for that purpose in accordance with the terms of the Indenture, together with any funds required pursuant to the terms of the Indenture, and, unless the shares issuable on conversion are to be issued in the same name as this Note, duly endorsed by, or accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the holder or by his duly authorized attorney. In order to exercise the conversion right with respect to any interest in a Global Note, the holder must complete the appropriate instruction form pursuant to the Depositary's book-entry conversion program, deliver by book-entry delivery an interest in such Global Note, furnish appropriate endorsements and transfer documents if required pursuant to the terms of the Indenture and any funds required pursuant to the Indenture. Upon conversion, the Company will deliver shares of Common Stock or, at the option of the Company, a combination of cash and shares of Common Stock, equal to the lesser of the aggregate principal amount of Notes being converted and the Conversion Value, and shares of Common Stock in respect of the remainder, if any, of the Conversion Value.

If the Company (i) is a party to a consolidation, merger, statutory share exchange or combination, (ii) reclassifies the Common Stock, or (iii) sells or conveys all or substantially all of its properties and assets, the right to convert a Note into shares of Common Stock may be changed into a right to convert it into the kind or amount of cash, securities or other property receivable upon such event, in each case in accordance with the Indenture.

No adjustment in respect of Interest on any Note converted or dividends on any shares issued upon conversion of such Note will be made upon any conversion except as set forth in the next sentence, and Interest will be deemed paid in full upon receipt of shares of Common Stock upon conversion. If this Note (or portion hereof) is surrendered for conversion during the period from 5:00 p.m., New York City time, on any Regular Record Date to 9:00 a.m., New York City time, on the immediately following Interest Payment Date, this Note (or portion hereof being converted) must be accompanied by payment, in immediately available funds or other funds acceptable to the Company, of an amount equal to the Interest otherwise payable on such Interest Payment Date on the Principal Amount being converted; *provided* that no such payment shall be required (1) if the Company has specified a Redemption Date that is after a Regular Record Date and on or prior to the corresponding Interest Payment Date, (2) if the Company has specified a Fundamental Change Repurchase Date that is after a Regular Record Date and on or prior to the corresponding Interest Payment Date or (3) to the extent of any overdue Interest, if any overdue Interest exists at the time of conversion with respect to such Note.

No fractional shares will be issued upon any conversion, but an adjustment and payment in cash will be made, as provided in the Indenture, in respect of any fraction of a share which would otherwise be issuable upon the surrender of any Note or Notes for conversion.

A Note in respect of which a holder is exercising its right to require repurchase upon a Fundamental Change may be converted only if such holder withdraws its election to exercise such right in accordance with the terms of the Indenture.

Upon due presentment for registration of transfer of this Series B Note at the office or agency of the Company maintained for that purpose in accordance with the terms of the Indenture, a new Series B Note or Series B Notes of authorized denominations for an equal aggregate Principal Amount will be issued to the transferee in exchange thereof, subject to the limitations provided in the Indenture, without charge except for any tax, assessment or other governmental charge imposed in connection therewith.

The Company, the Trustee, any authenticating agent, any Paying Agent, any Conversion Agent and any Note Registrar may deem and treat the registered holder hereof as the absolute owner of this Note (whether or not this Series B Note shall be overdue and notwithstanding any notation of ownership or other writing hereon made by anyone other than the Company or any Note Registrar) for the purpose of receiving payment hereof, or on account hereof, for the conversion hereof and for all other purposes, and neither the Company nor the Trustee nor any other authenticating agent nor any Paying Agent nor other Conversion Agent nor any Note Registrar shall be affected by any notice to the contrary. All payments made to or upon the order of such registered holder shall, to the extent of the sum or sums paid, satisfy and discharge liability for monies payable on this Series B Note.

No recourse for the payment of the Principal Amount of or Interest on this Series B Note, or for any claim based hereon or otherwise in respect hereof, and no recourse under or upon any obligation, covenant or agreement of the Company in the Indenture or any supplemental indenture or in any Note, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, officer or director or subsidiary, as such, past, present or future, of the Company or of any successor corporation,

either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability being, by acceptance hereof and as part of the consideration for the issue hereof, expressly waived and released.

Subject to Section 17.17 of the Indenture, upon the occurrence of the Amendment Date, the Indenture and this Series B Note shall automatically, without further action, be deemed to be amended to include the terms set forth on Exhibit D to the Indenture, and any provision contained in the Indenture or in this Series B Note which is in conflict with the provisions set forth on such Exhibit A shall be deemed to be superseded by the terms set forth in such Exhibit D.

Terms used in this Note and defined in the Indenture are used herein as therein defined.

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Series B Note, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM -	as tenants in common	UNIF GIFT MIN ACT-__Custodian__
TEN ENT -	as tenant by the entireties	(Cust) (Minor)
JT TEN -	as joint tenants with right of survivorship and not as tenants in common	under Uniform Gifts to Minors Act
		_____
		(State)

Additional abbreviations may also be used though not in the above list.

FORM OF CONVERSION NOTICE

TO: THE NASDAQ STOCK MARKET, INC.
One Liberty Plaza
New York, NY 10006

The undersigned registered owner of this Series B Note hereby irrevocably exercises the option to convert this Series B Note, or the portion thereof (which is $1.00 Principal Amount or a multiple thereof) below designated, into Common Stock of The Nasdaq Stock Market, Inc. in accordance with the terms of the Indenture referred to in this Series B Note, and directs that the [shares of Common Stock] [funds in payment of the lesser of the aggregate principal amount of the Series B Notes being converted and the Conversion Value and any shares issuable and deliverable upon such conversion], together with any funds in payment of fractional shares, if any, payable upon such conversion and any Series B Notes representing any unconverted Principal Amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture. If funds, shares or any portion of this Series B Note not converted are to be issued in the name of a person other than the undersigned, the undersigned will provide the appropriate information below and pay all transfer taxes payable with respect thereto. Any amount required to be paid by the undersigned on account of Interest accompanies this Series B Note.

Dated: _____

_____

_____

Signature(s)

Signature(s) must be guaranteed by an "**eligible guarantor institution**" meeting the requirements of the Note Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("**STAMP**") or such other "**signature guarantee program**" as may be determined by the Note Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

Signature Guarantee

Fill in the registration of shares of Common Stock if to be issued, and Series B Notes if to be delivered, other than to and in the name of the registered holder:

(Name)

(Street Address)

(City, State and Zip Code)

Please print name and address

Principal Amount to be converted
(if less than all):

$

Social Security or Other Taxpayer
Identification Number:

FORM OF

FUNDAMENTAL CHANGE REPURCHASE ELECTION

TO: THE NASDAQ STOCK MARKET, INC.
One Liberty Plaza
New York, NY 10006

The undersigned registered owner of this Series B Note hereby irrevocably acknowledges receipt of a notice from The Nasdaq Stock Market, Inc. (the "**Company**") as to the occurrence of a Fundamental Change with respect to the Company and requests and instructs the Company to repurchase the entire Principal Amount of this Series B Note, or the portion thereof (which is $1.00 Principal Amount or a multiple thereof) below designated, in accordance with the terms of the Indenture referred to in this Series B Note, at the price of 101% of such entire Principal Amount or portion thereof, together with accrued Interest to, but not including, the Fundamental Change Repurchase Date and to pay such amounts, to the undersigned registered holder hereof, except as otherwise provided in Section 3.07(a) of the Indenture. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

Dated: _____

_____

_____

Signature(s)

NOTICE: The above signatures of the holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.
Note Certificate Number (if applicable):

Principal Amount to be repurchased (if less than all):

Social Security or Other Taxpayer Identification Number:

ASSIGNMENT

For value received _____hereby sell(s) assign(s) and transfer(s) unto _____ (Please insert social security or other Taxpayer Identification Number of assignee:_____) the within Series B Note, and hereby irrevocably constitutes and appoints _____ attorney to transfer said Series B Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the Note prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), the undersigned confirms that such Note is being transferred:

☐ To the Nasdaq Stock Market, Inc. or a subsidiary thereof; or

☐ Pursuant to and in compliance with Rule 144 under the Securities Act of 1933, as amended; or

☐ Pursuant to and in compliance with any provision or rule (other than Rule 144) under the Securities Act of 1933, as amended; or

☐ Pursuant to a Registration Statement which has been declared effective under the Securities Act of 1933, as amended, and which continues to be effective at the time of transfer;

and unless the Note has been transferred to The Nasdaq Stock Market, Inc. or a subsidiary thereof, the undersigned confirms that such Note is not being transferred to an "**affiliate**" of the Company as defined in Rule 144 under the Securities Act of 1933, as amended.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Notes evidenced by this certificate in the name of any person other than the registered holder thereof.

Dated: _____

_____

_____

Signature(s)

Signature(s) must be guaranteed by an "**eligible guarantor institution**" meeting the requirements of the Note Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("**STAMP**") or such other "**signature guarantee program**" as may be determined by the Note Registrar in addition to,

or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

Signature Guarantee

NOTICE: The signature on the Conversion Notice, the Fundamental Change Repurchase Election or the Assignment must correspond with the name as written upon the face of the Series B Note in every particular without alteration or enlargement or any change whatever.

EXHIBIT C

FORM OF RESTRICTIVE LEGEND FOR
COMMON STOCK ISSUED UPON CONVERSION[1]

THE COMMON STOCK EVIDENCED BY THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS AND MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ACQUISITION HEREOF, THE HOLDER AGREES IT WILL NOT, WITHIN TWO YEARS AFTER THE ORIGINAL ISSUANCE OF THE SECURITY UPON THE CONVERSION OF WHICH THE COMMON STOCK EVIDENCED HEREBY WAS ISSUED, RESELL OR OTHERWISE TRANSFER THE COMMON STOCK EVIDENCED HEREBY EXCEPT (A) TO THE NASDAQ STOCK MARKET, INC. (THE "ISSUER") OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER OR (C) PURSUANT TO THE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE).

THIS SECURITY IS ALSO SUBJECT TO RESTRICTIONS ON TRANSFER AS SET FORTH IN THE AMENDED & RESTATED SECURITYHOLDERS AGREEMENT, DATED AS OF APRIL 22, 2005, A COPY OF WHICH MAY BE OBTAINED FROM THE NASDAQ STOCK MARKET, INC. THE HOLDER OF THIS SECURITY IS ENTITLED TO THE BENEFITS OF A REGISTRATION RIGHTS AGREEMENT DATED APRIL 22, 2005 AND, BY ITS ACCEPTANCE HEREOF, AGREES TO BE BOUND BY AND TO COMPLY WITH THE PROVISIONS OF SUCH REGISTRATION RIGHTS AGREEMENT.

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[1] This legend should be included if the Security is a Restricted Security.

EXHIBIT D

AMENDED TERMS OF SERIES B NOTE

This Note shall bear interest, commencing on the Amendment Date, at a rate per annum (the "**Interest Rate**") equal to 4.0%. Further, the Company shall pay interest on any overdue Principal Amount at a rate per annum equal to 6.0% (the "**Overdue Rate**"), and interest on overdue installments of interest, to the extent lawful, at the Overdue Rate. Interest on this Note will be calculated on the basis of a 360-day year of twelve 30-day months.

Notwithstanding anything herein to the contrary, the interest or any amount deemed to be interest payable by the Company with respect to this Note shall not exceed the maximum amount permitted by applicable law and, to the extent that any payments in excess of such permitted amount are received by the Holder, such excess shall be considered payments in respect of the principal amount of this Note. All sums paid or agreed to be paid to the Holder for the use, forbearance or retention of the indebtedness of the Company to the Holder shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full of the principal so that the interest on account of such indebtedness shall not exceed the maximum amount permitted by applicable law.

Section 1.1. *Certain Terms Defined*. The following terms (except as otherwise expressly provided or unless the context otherwise clearly requires) for all purposes of this Note shall have the respective meanings specified below. All accounting terms used herein and not expressly defined shall have the meanings given to them in accordance with U.S. generally accepted accounting principles, and the term "**generally accepted accounting principles**" shall mean such accounting principles which are generally accepted as of the date hereof. The terms defined in this Section 1.1 include the plural as well as the singular.

"**Acceleration Notice**" shall have the meaning set forth in Section 4.1.

"**Affiliate**" of any Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For the purposes of this definition, "control" when used with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Business Day**" means any day except a Saturday, Sunday or other day on which commercial banks in the City of New York are authorized by law to close.

"**Capital Stock**" means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of such Person's capital stock whether now outstanding or issued after the date of this Note, including without limitation, with respect to the Company, the Common Stock and the Preferred Stock.

"**Common Stock**" means any and all shares of common stock, par value $0.01 per share, of the Company.

"**Debt**" of any Person means at any date, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments, (iii) all obligations of such Person in respect of letters of credit or other similar instruments (or reimbursement obligations with respect thereto), except letters of credit or other similar instruments issued to secure payment of Trade Payables, (iv) all obligations of such Person to pay the deferred purchase price of property or services, except Trade Payables, (v) all obligations of such Person as lessee under capital leases, (vi) all Debt of others secured by a Lien on any asset of such Person, whether or not such Debt is assumed by such Person and (vii) all Debt of others Guaranteed by such Person.

"**Default**" means any condition or event which constitutes an Event of Default or which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

"**Default Notice**" shall have the meaning set forth in Section 7.2.

"**Event of Default**" means any event or condition specified as such in Section 4.1 which shall have continued for the period of time, if any, therein designated.

"**Guarantee**" by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation 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 Debt or other obligation of such other Person (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) or (ii) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligation for the payment thereof or to protect such obligee 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.

"**Holders**" means the Person or Persons in whose name the Series B Notes are registered in the Note Register maintained by or on behalf of the Company.

"**Lien**" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset. For the purposes of this Note, the Company shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capitalized lease or other title retention agreement relating to such asset.

"**NASD**" means the National Association of Securities Dealers, Inc., and its successors.

"**Notice of Default**" shall have the meaning set forth in Section 4.1(d).

"**Person**" means any individual or a corporation, partnership, association, trust, or any other entity or organization including a government or political subdivision or an agency or instrumentality thereof.

"**Preferred Stock**" means any and all shares of preferred stock, par value $.01 per share, of the Company.

"**Securityholders Agreement**" means the Securityholders Agreement dated as of May 3, 2001 among the Company, Hellman & Friedman Capital Partners IV, L.P. and the other parties listed on the signature pages thereto, as amended from time to time.

"**Senior Debt**" means (i) the Senior Notes and (ii) any Debt of the Company which, by its terms or the terms of any instrument or agreement pursuant to which such Debt is issued, is expressly made senior in right of payment to the Notes.

"**Senior Notes**" means the Company's 7.41% Senior Notes due March 2007 issued in May 1997.

"**Trade Payables**" means accounts payable or any other indebtedness or monetary obligations to trade creditors created or assumed by the Company in the ordinary course of business in connection with the obtaining of materials or services.

Section 2. *Payment of Principal and Interest.*

Section 2.1. Scheduled Payment of Principal. The Company shall pay the Principal Amount, together with all accrued and unpaid interest thereon, if any, in cash to the Holder of this Note on May 3, 2006, *provided, however*, if the Amendment Date occurs on or after November 3, 2005, the Holder may at its sole option extend such payment date by the number of days in the period from the Issue Date of the Series B Notes under the Indenture up to and including the issue date of this Note.

Section 2.2. *Payment of Interest*. The Company shall pay interest on this Note quarterly in arrears, on March 15, June 15, September 15, and December 15 (unless such day is not a Business Day, in which event on the next succeeding Business Day) (each an "**Interest Payment Date**") of each year in which this Note remains outstanding, commencing with such Interest Payment Date immediately following the Amendment Date on the unpaid Principal Amount outstanding in lawful money of the United States at the Interest Rate, or Overdue Rate, as the case may be, as set forth above, by wire transfer of immediately available funds, from the most recent Interest Payment Date to which interest has been paid in full on this Note, or if no interest has been paid on this Note, from Issue Date, until payment in full of the Principal Amount has been made.

Section 2.3. *Payment Obligations Absolute and Unconditional*. No provision of this Note shall alter or impair the obligations of the Company, which are absolute and unconditional, to pay the Principal Amount of and interest on this Note at the place, times, and rate, and in the currency, herein prescribed.

Section 2.4. *Pro Rata Payment*. The Company agrees that any payments to the Holders of the Notes (whether for principal, interest or otherwise) shall be made pro rata among all such Holders based upon the aggregate unpaid Principal Amount of the Notes held by each such Holder. If any Holder of a Note obtains any payment (whether voluntary, involuntary, by application of offset or otherwise) of principal or interest on such Note in excess of such

Holder's pro rata share of payments obtained by all Holders of the Notes, such Holder shall make such payments to the other Holders of the Notes as is necessary to cause such Holders to share the excess payment ratably among each of them as provided in this Section.

Section 3. *Covenants*. The Company agrees that, so long as any amount payable under this Note remains unpaid:

Section 3.1. *Information*. The Company will deliver to the Holder, subject to appropriate confidentiality arrangements in the cases of (a) and (b) below:

(a) as soon as available and in any event within 90 days after the end of each fiscal year of the Company, a balance sheet of the Company as of the end of such fiscal year and the related statements of profit and loss for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, and accompanied by a report thereon of Ernst and Young LLP or other independent public accountants of nationally recognized standing;

(b) as soon as available and in any event within 45 days after the end of each of the first three quarters of each fiscal year of the Company, a balance sheet of the Company as of the end of such quarter and the related statements of profit and loss for such quarter and for the portion of the Company's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding quarter and the corresponding portion of the Company's previous fiscal year, all certified (subject to normal year-end adjustments) as to fairness of presentation, consistency and, except for the absence of footnotes, generally accepted accounting principles by the chief financial officer or the chief accounting officer of the Company;

(c) simultaneously with the delivery of each set of financial statements referred to in clauses (a) and (b) above, a certificate of the chief financial officer or the chief accounting officer of the Company stating whether any Default exists on the date of such certificate and, if any Default then exists, setting forth the details thereof and the action which the Company is taking or proposes to take with respect thereto; and

(d) within ten days after any executive officer of the Company obtains knowledge of any Default, if such Default is then continuing, a certificate of the chief financial officer or the chief accounting officer of the Company setting forth the details thereof and the action which the Company is taking or proposes to take with respect thereto.

Section 3.2 *Conduct of Business and Maintenance of Existence*. The Company will preserve, renew and keep in full force and effect its corporate existence and its rights, privileges and franchises necessary or desirable in the normal conduct of its business; provided that the foregoing shall not prevent the Company from, directly or indirectly, (a) consolidating or merging with or into another Person (whether or not the Company is the surviving entity in such transaction) or (b) selling, assigning, leasing, transferring, conveying or otherwise disposing of all or substantially all of its properties or assets, in one or more related transactions, to another Person, if either (A) the Company is the surviving entity in any such consolidation or merger, or (B) the Person formed by or surviving any such consolidation or merger or to which such sale, assignment, lease, transfer, conveyance or other disposition shall have been made is a corporation, limited liability company or other entity organized or existing under the laws of the United States, any state thereof or the District of Columbia and such Person assumes all of the obligations of the Company under this Note pursuant to agreements reasonably satisfactory to the Holder.

Section 4. *Events of Default and Remedies.*

Section 4.1. *Event of Default Defined; Acceleration of Maturity; Waiver of Default*. In case one or more of the following events ("**Events of Default**") (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) shall have occurred and be continuing:

(a) default in the payment of any interest upon any of the Notes as and when the same shall become due and payable, and continuance of such default for a period of 30 days; or

(b) default in the payment of all or any part of the principal of any of the Notes as and when the same shall become due and payable; or

(c) failure on the part of the Company duly to observe or perform any other of the covenants or agreements on the part of the Company contained in the Notes (other than those covered by clauses (a) through (b) above) for a period of 60 days after the date on which written notice specifying such failure, stating that such notice is a "**Notice of Default**" hereunder and demanding that the Company remedy the same, shall have been given by registered or certified mail, return receipt requested, to the Company; or

(d) any acceleration of the maturity of any Debt of the Company or any of its subsidiaries having a principal amount greater than $50,000,000; or

(e) a final and non-appealable judgment or order (not covered by insurance) for the payment of money shall be rendered against the Company or any of its subsidiaries in excess of $50,000,000 in the aggregate for all such judgments or orders (treating any deductibles, self insurance or retention as not so covered), and such judgment or order shall continue unsatisfied for a period of 60 days; or

(f) a court having jurisdiction shall enter a decree or order for relief in respect of the Company in an involuntary case under applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or for any substantial part of the property of the Company or ordering the winding up or liquidation of the affairs of the Company, and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days; or

(g) the Company shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consent to the entry of an order for relief in an involuntary case under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or for any substantial part of the property of the Company, or the Company shall make any general assignment for the benefit of creditors,

then, and in each and every such case (other than an Event of Default specified in Sections 4.1(f) or 4.1(g) hereof), the Holders of at least a majority in aggregate principal amount of the Notes then outstanding, by notice in writing to the Company (the "**Acceleration Notice**"), may declare the entire principal amount of the Notes and the interest accrued thereon to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable; *provided* that if an Event of Default specified in Section 4.1(f) or 4.1(g) occurs, the principal amount of and accrued interest on the Notes shall become and be immediately due and payable without any declaration or other act on the part of any Holder.

Section 4.2. *Powers and Remedies Cumulative; Delay or Omission Not Waiver of Default*. No right or remedy herein conferred upon or reserved to any Holder is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

No delay or omission of any Holder to exercise any right or power accruing upon any Event of Default occurring and continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein; and every power and remedy given by the Notes or by law may be exercised from time to time, and as often as shall be deemed expedient, by any Holder.

Section 4.3. *Waiver of Past Defaults*. The Holders of the Notes may waive, in accordance with Section 8.1, any past Default or Event of Default hereunder and its consequences. In the case of any such waiver, the Company and the Holders of the Notes shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Upon any such waiver, such Default shall cease to exist and be deemed to have been cured and not to have occurred, and any Event of Default arising therefrom shall be deemed to have been cured, and not to have occurred for every purpose of the Notes; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

Section 5.1 *Conversion Rights*. Subject to the provisions of this Section 5, the Holders of the Notes shall have the right, at any time and from time to time, at such Holder's option, to convert the Principal Amount of this Note, in whole or part (the "**Conversion Amount**"), into fully paid and non-assessable shares of Common Stock at the then effective Conversion Ratio (as such term is defined below). The number of shares of Common Stock deliverable upon conversion of each $1,000 Conversion Amount of the Notes, adjusted as hereinafter provided, is referred to herein as the "**Conversion Ratio**". The Conversion Ratio, as of the date of issue of the Notes is 50.0000, subject to adjustment from time to time pursuant to Section 5.1(f) hereof.

(a)(i) In order to exercise the conversion privilege, the Holder of the Note to be converted shall surrender the Note, with a written notice to the Company that such Holder elects to exercise its conversion privilege, and stating the Conversion Amount of Notes which the Holder seeks to convert. The date of receipt of the Note or Notes by the Company shall be the conversion date (the "**Conversion Date**").

(ii) As promptly as practicable (but no later than two days) after the Conversion Date, the Company shall issue and shall deliver to such Holder, or on the Holder's written order to the Holder's permitted transferee in accordance with the terms of the Securityholders Agreement, a certificate or certificates for the whole number of shares of Common Stock issuable upon the conversion of such Note or Notes in accordance with the provisions of this Section 5.1.

(iii) In the case where only part of a Note is converted, the Company shall execute and deliver (at its own expense) a new Note of any authorized denomination as requested by a Holder in an aggregate principal amount equal to and in exchange for the unconverted portion of the Principal Amount of the Note so surrendered.

(iv) The Company shall made a cash payment equal to all accrued and unpaid interest on the Principal Amount so surrendered for conversion (other than interest payments payable to a holder of record on a prior Interest Payment Date) to the Conversion Date.

(v) Each conversion shall be deemed to have been effected immediately prior to the close of business on the date on which the Notes to be converted shall have been surrendered, and the person in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder of record of the shares of Common Stock represented thereby on such date and such conversion shall be into a number of shares of Common Stock resulting from applying the Conversion Ratio in effect at such time on such date. All shares of Common Stock delivered upon conversion of the Notes will upon delivery be duly and validly issued and fully paid and non-assessable, free of all Liens and charges and not subject to any preemptive rights. Upon the surrender of any Notes for conversion, such Notes or part thereof so converted shall no longer be deemed to be outstanding and all rights of a Holder with respect to such Notes or part thereof so converted including the rights, if any, to receive interest, notices and consent rights shall immediately terminate on the Conversion Date except the right to receive the Common Stock and other amounts payable pursuant to this Section 5.1. Any Notes or part thereof so converted shall be retired and cancelled.

(c) (i) The Company covenants that it will at all times during which the Notes shall be outstanding reserve and keep available, free from preemptive rights, such number of its authorized but unissued shares of Common Stock as shall from time to time be required for the purpose of effecting conversions of outstanding Notes. Before taking any action which would cause an adjustment increasing the Conversion Ratio such that the amount resulting from dividing $1,000 by the Conversion Ratio in effect at such time on such date would be below the then par value of the shares of Common Stock issuable upon conversion of the Notes, the Company will take any corporate action which may, in the opinion of counsel, be necessary in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Ratio.

(ii) Prior to the delivery of any securities which the Company shall be obligated to deliver upon conversion of the Notes, the Company shall comply with all applicable federal and state laws and regulations which require action to be taken by the Company.

(d) The Company will pay any and all documentary stamp or similar issue or transfer taxes payable in respect of the issue or delivery of shares of Common Stock on conversion of the Notes pursuant hereto; *provided* that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issue or delivery of shares of Common Stock in a name other than that of the holder of the Notes to be converted and no such issue or delivery shall be made unless and until the person requesting such issue or delivery has paid to the Company the amount of any such tax or has established, to the satisfaction of the Company, that such tax has been paid.

(e) If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any Holder tendering Notes for conversion, be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the Holders entitled to receive the Common Stock issuable upon such conversion of the Notes shall not be deemed to have converted such Notes until immediately prior to the closing of the sale of securities in such offering.

(f) (i) In case the Company shall at any time after the date of issue of the Notes (A) declare a dividend or make a distribution on Common Stock payable in Common Stock, (B) subdivide or split the outstanding Common Stock, (C) combine or reclassify the outstanding Common Stock into a smaller number of shares, (D) issue any shares of its Capital Stock in a reclassification of Common Stock (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing corporation), or (E) consolidate with, or merge with or into, any other Person, the Conversion Ratio in effect at the time of the record date for any such dividend or distribution or of the effective date of any such subdivision, split, combination, consolidation, merger or reclassification shall be proportionately adjusted so that the conversion of the Note after such time shall entitle the Holder to receive the aggregate number of shares of Common Stock or other securities of the Company (or shares of any security into which such shares of Common Stock have been combined, consolidated, merged, converted or reclassified pursuant to clause (C), (D) or (E) above) which, if this Note had been converted immediately prior to such time, such Holder would have owned upon such conversion and been entitled to receive by virtue of such dividend, distribution, subdivision, split, combination, consolidation, merger or reclassification, assuming for purposes of this subsection (f) that such Holder (x) is not a Person with which the Company consolidated or into which the Company merged or which merged into the Company or to which such recapitalization, sale or transfer was made, as the case may be ("**constituent person**") and (y) failed to exercise any rights of election as to the kind or amount of securities, cash and other property receivable upon such reclassification, change, consolidation, merger, recapitalization, sale or transfer (*provided* that if the kind or amount of securities, cash and other property receivable upon such reclassification, change, consolidation, merger, recapitalization, sale or transfer is not the same for each share of Common Stock of the Company held immediately prior to such reclassification, change, consolidation, merger, recapitalization, sale or transfer by other than a constituent person and in

respect of which such rights of election shall not have been exercised ("**non-electing share**"), then for the purpose of this Section 5.1(f) the kind and amount of securities, cash and other property receivable upon such reclassification, change, consolidation, merger, recapitalization, sale or transfer by each non-electing share shall be deemed to be the kind and amount so receivable per share by a plurality of the non-electing shares). Such adjustment shall be made successively whenever any event listed above shall occur.

(ii) For purposes of any computation under this Section 5.1(f), the number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company. All calculations under this Section 5.1(f) shall be made to the nearest four decimal points.

(iii) In the event that, at any time as a result of the provisions of this Section 5.1(f), the holder of this Note upon subsequent conversion shall become entitled to receive any shares of Capital Stock of the Company other than Common Stock, the number of such other shares so receivable upon conversion of this Note shall thereafter be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions contained herein.

(g) No fractional shares of Common Stock shall be issued upon conversion of the Notes. In lieu of fractional shares, the Company shall pay cash equal to such fraction multiplied by the Closing Price for shares of Common Stock on the trading day immediately preceding the related Conversion Date. "**Closing Price**" means (1) if the shares of such class of Common Stock then are listed and traded on the National Market of The Nasdaq Stock Market, Inc. ("**Nasdaq**"), the last reported sale price on such day; (2) if the shares of such class of Common Stock then are not traded on the Nasdaq National Market, the average of the highest reported bid and lowest reported asked price on such day as reported by Nasdaq; (3) if the shares of such class of Common Stock then are not listed and traded on the Nasdaq, the closing price on such day as reported by the principal national securities exchange on which the shares are listed and traded; or (4) if the shares of such class of Common Stock are not then listed or traded on Nasdaq or a national securities exchange, the fair market value as determined in good faith by the Company's Board of Directors.

(h) Upon the occurrence of each adjustment or readjustment of the Conversion Ratio pursuant to this Section 5.1, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each Holder of Notes outstanding a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based and shall file a copy of such certificate with its corporate records. The Company shall, upon the reasonable written request of any Holder of Notes, furnish or cause to be furnished to such Holders a similar certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Ratio then in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which then would be received upon the conversion of the Notes. Despite such adjustment or readjustment, the form of each or all Notes, if the same shall reflect the initial or any subsequent Conversion Ratio, need not be changed in order for the adjustments or readjustments to be valid in accordance with the provisions of this Note, which shall control.

(i) The Company will not, by amendment of its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue of sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Section 5.1 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the Holders of the Notes against impairment to the extent required hereunder. Nothing in this Section 5.1 shall affect the continued accrual of interest on the outstanding Notes in accordance with the terms of this Note.

(j) Notwithstanding any other provision of this Section 5.1, prior to the Exchange Registration Date (as defined below), the Holders of the Notes shall not have the right to convert the Principal Amount of this Note plus accrued and unpaid interest thereon into shares of Common Stock to the extent, but only to the extent, such conversion would result in The National Association of Securities Dealers holding less than 50% of the combined voting power in the Company. "**Exchange Registration Date**" means the date upon which the Company becomes registered to operate as a national securities exchange by the Securities and Exchange Commission.

Section 6.1. *Voting Rights*. (a) The Holders of this Note shall be entitled to such voting rights as may be provided in the certificate of incorporation of the Company, in this Section 6.1, and as otherwise may be provided by law.

(b) Without the written consent of the Holders of a majority in Principal Amount of the Notes or the vote of Holders of a majority in Principal Amount of the Notes at a meeting of the Holders of the Notes called for such purpose, the Company will not amend, alter or repeal any provision of the Certificate of Incorporation (by merger or otherwise) so as to adversely affect the preferences, rights or powers of the Holders of the Notes.

Section 7. *Subordination*.

Section 7.1. *Notes Subordinated to Senior Debt*. The Company covenants and agrees and each Holder, by his acceptance hereof likewise covenants and agrees, that all Notes shall be issued subject to the provisions of Section 7 of this Note; and each Person holding any Note, whether upon original issue or upon transfer, assignment or exchange thereof accepts and agrees that the payment of the principal amount of and interest on the Notes by the Company shall, to the extent and in the manner herein set forth, be subordinated and junior in right of payment, to the prior payment in full of Senior Debt.

Section 7.2. *No Payment on Notes in Certain Circumstances*. (a) If any default in the payment of any principal of or interest on any Senior Debt when due and payable, whether at maturity, upon any redemption, by declaration or otherwise, occurs and is continuing, no payment shall be made by the Company with respect to the principal of or interest on the Notes or to acquire any of the Notes for cash or property other than conversion of the Notes into Common Stock in accordance with Section 5.1 hereof.

(b) If any event of default (other than a default in payment of the principal of or interest on any Senior Debt) occurs and is continuing (or if such an event of default would occur upon any payment with respect to the Notes) with respect to any Senior Debt, as such event of default is defined in such Senior Debt, permitting the holders thereof to accelerate the maturity thereof and if the holder or holders or a representative of such holder or holders gives written notice of the event of default to the Company (a "**Default Notice**"), then, unless and until such event of default has been cured or waived or has ceased to exist, the Company shall not be obligated to, and shall not, (x) make any payment of or with respect to the principal of or interest on the Notes or (y) acquire any of the Notes for cash or property or otherwise other than conversion of the Notes into Common Stock in accordance with Section 5.1 hereof. After the event of default in such Default Notice has been cured or waived or ceases to exist, the Company shall, subject to Section 7.2(a), promptly pay to the Holders of the Notes all sums which the Company would have been obligated to pay from the date of the Default Notice but for this Section 7.2(b).

(c) Notwithstanding the foregoing, in the event that any payment in cash shall be received by any Holder when such payment is prohibited by Section 7.2(a) or 7.2(b), such payment shall be held in trust for the benefit of, and shall be paid over or delivered to, the holders of Senior Debt or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any of such Senior Debt may have been issued, as their respective interests may appear, but only to the extent of the amounts then due and owing on the Senior Debt, if any.

Section 7.3 *Payment Over of Proceeds Upon Dissolution, Etc*. (a) Upon any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to creditors upon any dissolution or winding-up or total or partial liquidation or reorganization of the Company, whether voluntary or involuntary or in bankruptcy, insolvency, receivership or other proceedings, all amounts due or to become due upon all Senior Debt shall first be paid in full, or such payment duly provided for, before any payment is made on account of the principal of or interest on the Notes, or any acquisition of the Notes for cash or property is made, other than conversion of the Notes into Common Stock in accordance with Section 5.1 hereof. Upon any such dissolution, winding-up, liquidation or reorganization, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the Holders of the Notes would be entitled, except for the provisions hereof, other than conversion of the Notes into Common Stock in accordance with Section 5.1 hereof, shall be paid by the Company or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution, or by the Holders of the Notes if received by them, directly to the holders of Senior Debt (pro rata to such holders on the basis of the respective amounts of Senior Debt held by such holders) or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any of such Senior Debt may have been issued, as their respective interests may appear, for application to the payment of Senior Debt remaining unpaid until all such Senior Debt has been paid in full after giving effect to any concurrent payment, distribution or provision therefor to or for the holders of Senior Debt.

(b) Notwithstanding the foregoing, in the event that any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, other than conversion of the Notes into Common Stock in accordance with Section 5.1 hereof, shall be

received by any Holder when such payment or distribution is prohibited by Section 7.3(a), such payment or distribution shall be held in trust for the benefit of, and shall be paid over or delivered to, the holders of Senior Debt (pro rata to such holders on the basis of the respective amount of Senior Debt held by such holders) or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any of such Senior Debt may have been issued, as their respective interests may appear, for application to the payment of Senior Debt remaining unpaid until all such Senior Debt has been paid in full, after giving effect to any concurrent payment, distribution or provision therefor to or for the holders of such Senior Debt.

(c) For purposes of Section 7 of this Note, the words "**cash, property or securities**" shall not be deemed to include (x) shares of stock of the Company as reorganized or readjusted, (y) any payment or distribution of securities of the Company or any other Company authorized by an order or decree giving effect, and stating in such order or decree that effect is given, to the subordination of the Notes to the Senior Debt, and made by a court of competent jurisdiction in a reorganization proceeding under any applicable bankruptcy, insolvency or other similar law, or (z) securities of the Company or any other Company provided for by a plan of reorganization or readjustment which are subordinated, to at least the same extent as the Notes, to the payment of all Senior Debt then outstanding; *provided* that (i) if a new Company results from such reorganization or readjustment, such Company assumes the Senior Debt and (ii) the rights of the holders of the Senior Debt are not, without the consent of such holders, altered by such reorganization or readjustment. Notwithstanding anything to the contrary in this Section 7, (i) a court referred to in clause (x) above may give effect, and state that it is giving effect to the subordination of the Notes in an order or decree which authorizes the payment in full of Senior Debt in assets other than cash or cash equivalents and (ii) any assets which the holders of the Notes are permitted to receive in accordance with the provisions of this Section 7 shall not be subject to any claim by or on behalf of the holders of Senior Debt.

7.4. *Subrogation*. Subject to the payment in full of all Senior Debt, the Holders of the Notes shall be subrogated to the rights of the holders of Senior Debt to receive payments or distributions of cash, property or securities of the Company applicable to the Senior Debt until the principal amount of and interest on the Notes shall be paid in full; and, for the purposes of such subrogation, (a) no payments or distributions to the holders of the Senior Debt of any cash, property or securities to which the Holders of the Notes would be entitled except for the provisions of Section 7 of this Note, and no payment over pursuant to the provisions of Section 7 of this Note to the holders of Senior Debt by the Holders of the Notes shall, as between the Company, its creditors other than holders of Senior Debt, and the Holders of the Notes, be deemed to be a payment by the Company to or on account of the Senior Debt, and (b) no payment or distributions of cash, property or securities to or for the benefit of the holders of the Notes pursuant to the subrogation provision of Section 7, which would otherwise have been paid to the holders of Senior Debt shall, as between the Company, its creditors other than holders of Senior Debt, and the Holders of the Notes, be deemed to be a payment by the Company to or for the account of the Notes. It is understood that the provisions of this Section are and are intended solely for the purpose of defining the relative rights of the Holders of the Notes, on the one hand, and the holders of the Senior Debt, on the other hand.

If any payment or distribution to which the Holders of the Notes would otherwise have been entitled but for the provisions of this Section 7, shall have been applied, pursuant to the

provisions of this Section 7, to the payment of all amounts payable under Senior Debt, then and in such case, the Holders of the Notes shall be entitled to receive from the holders of such Senior Debt any payments or distributions received by such holders of Senior Debt in excess of the amount required to make payment in full of such Senior Debt.

Section 7.5. *Obligations of Company Unconditional*. Nothing contained in Section 6.1 or elsewhere in the Notes is intended to or shall impair, as between the Company and the Holders of the Notes, the obligation of the Company, which is absolute and unconditional, to pay to the Holders of the Notes the principal amount of and interest on the Notes as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the Holders of the Notes and creditors of the Company other than the holders of the Senior Debt, nor shall anything herein or therein prevent any Holder from exercising all remedies otherwise permitted by applicable law upon default under this Note, subject to the rights, if any, under Section 7 of the holders of the Senior Debt in respect of cash, property or securities of the Company received upon the exercise of any such remedy.

Without limiting the generality of the foregoing, nothing contained in Section 7 will restrict the right of the Holders of the Notes to take any action to declare the Notes to be due and payable prior to their stated maturity pursuant to Section 4.1 or to pursue any rights or remedies hereunder.

Section 7.6. *Reliance on Judicial Order or Certificate of Liquidating Agent*. Upon any payment or distribution of assets of the Company referred to in Section 7, the Holders of the Notes shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which bankruptcy, dissolution, winding-up, liquidation or reorganization proceedings are pending, or a certificate of the receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution, delivered to the Holders of the Notes, for the purpose of ascertaining the Persons entitled to participate in such distribution, the holders of the Senior Debt and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to Section 7 of this Note.

Section 7.7. *Subordination Rights Not Impaired by Acts or Omissions of the Company or Holders of Senior Debt*. No right of any present or future holders of any Senior Debt to enforce subordination as provided herein will at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliances by the Company with the terms of this Note, regardless of any knowledge thereof which any such holder may have or otherwise be charged with. The holders of Senior Debt may extend, renew, modify or amend the terms of the Senior Debt or any security therefor and release, sell or exchange such security and otherwise deal freely with the Company, all without affecting the liabilities and obligations of the Holders of the Notes.

Section 7.8. *Section 7 Not to Prevent Events of Default*. The failure to make a payment on account of principal of or interest on the Notes by reason of any provision of Section 7 will not be construed as preventing the occurrence of an Event of Default.

Section 8.1. *Modification of Notes*. Any provision of this Note may be amended or, subject to Section 4, waived with the written consent of the Company and the Holders of at least a majority in aggregate principal amount of the Notes then outstanding; provided that no such amendment or waiver shall (a) extend the final maturity of any Note, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon, or reduce any amount payable on the conversion thereof, or impair or affect the rights of any Holder to institute suit for the payment thereof or adversely affect the ranking of the Notes with respect to the outstanding Debt of the Company, in each such case, without the consent of each Holder of each Note so affected, (b) reduce the aforesaid percentage of Notes, the consent of the Holders of the Notes of which is required for any such amendment or waiver, without the consent of the Holders of all Notes then outstanding, or (c) modify the terms of the Notes so as to affect adversely the rights of any holder of Senior Debt at the time outstanding to the benefits of subordination hereunder without the consent of such holder. The Company shall promptly notify all of the Holders of the Notes after the making of any amendment or waiver pursuant to this Section 8.1.

Exhibit 4.4

REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT, dated as of April 21, 2005 (this "Agreement"), among (i) The Nasdaq Stock Market, Inc., a Delaware corporation (together with any successor entity, the "Company"), (ii) Hellman & Friedman Capital Partners IV, L.P. ("H&F-1"), H&F Executive Fund IV, L.P. ("H&F-2"), H&F International Partners IV-A, L.P. ("H&F-3"), H&F International Partners IV-B, L.P. ("H&F-4" and collectively with H&F-1, H&F-2 and H&F-3, and any affiliates to whom they transfer Registrable Securities, the "H&F Entities"), (iii) Silver Lake Partners II TSA, L.P. ("SLP-1"), Silver Lake Technology Investors II, L.L.C. ("SLP-2"), Silver Lake Partners TSA, L.P. ("SLP-3") and Silver Lake Investors, L.P. ("SLP-4" and collectively with SLP-1, SLP-2 and SLP-3, and any affiliates to whom they transfer Registrable Securities, the "SLP Entities"); (iv) Integral Capital Partners VI, L.P. ("Integral") and (v) VAB Investors, LLC ("VAB Investors" and together with the H&F Entities, the SLP Entities, and Integral, the "Initial Holders").

RECITALS

Pursuant to the Securities Purchase Agreement, dated April 21, 2005 (the "Securities Purchase Agreement"), between the Company and Norway Acquisition SPV, LLC ("Norway SPV"), Norway SPV has agreed to purchase from the Company up to $205,000,000 aggregate principal amount of 3.75% Series A Convertible Notes due 2012 (the "Series A Notes") under the Indenture (as defined below). In addition, pursuant to the Note Amendment Agreement, dated as of April 21, 2005 (the "Amendment Agreement"), among the Company and the H&F Entities, the H&F Entities have agreed to amend and restate the $240,000,000 aggregate principal amount of 4.0% Convertible Subordinated Notes due 2006 (the "Existing Notes") issued by the Company and held by the H&F Entities by issuing to the H&F Entities $240,000,000 aggregate principal amount of 3.75% Series B Convertible Notes due 2012 (the "Series B Notes" and together with the Series A Notes, the "Notes") under the Indenture. The Notes will be convertible into shares of fully paid, non-assessable Common Stock (as defined below) on the terms, and subject to the conditions, set forth in the Notes and the Indenture.

In addition, pursuant to the Securities Purchase Agreement, the Company has agreed to issue Warrants (as defined below) to Norway SPV which give Norway SPV the right to acquire an aggregate of 2,753,448 shares of Common Stock, and pursuant to the Amendment Agreement, the Company has agreed to issue Warrants to the H&F Entities which give them the right to acquire an aggregate of 2,209,052 shares of Common Stock.

It is contemplated that, on or promptly following the Acquisition Closing Date (as defined below) Norway SPV will transfer to the H&F Entities and the SLP Entities the Series A Notes and the Warrants acquired by Norway SPV under the Securities Purchase Agreement.

For good and valuable consideration, the receipt of which is hereby acknowledged, the Company desires to provide to each Holder (as defined below) the rights to register the Registrable Securities (as defined below) held by them under the Securities Act (as defined below) on the terms and subject to the conditions set forth herein.

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following capitalized terms shall have the following respective meanings:

"Action": Any action, suit, arbitration, inquiry, proceeding or investigation by or before any governmental entity.

"Acquisition Closing Date": The "Closing Date" as defined in the Agreement and Plan of Merger, dated as of April 21, 2005 by and among the Company, Norway Acquisition Corp. and Instinet Group Incorporated.

"Common Stock": The Company's common stock, $0.01 par value per share, and any securities issued in or upon exchange, conversion or replacement of such Common Stock.

"Exchange Act": The Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"H&F Holders": Each of the H&F Entities and any other Holder to whom an H&F Holder has in accordance with Section 7.2 assigned the right to request the filing of a registration statement pursuant to Section 2.1.

"Holder": Any holder of Registrable Securities (including any direct or indirect transferee of the Initial Holders) who agrees in writing to be bound by the provisions of this Agreement and, in the case of Holders other than the Initial Holders, specifies in such writing the address and facsimile number at which notices may be given pursuant to this Agreement and delivers a copy of such writing to the Company.

"Indenture": The Indenture, dated as of April 21, 2005, between the Company and Law Debenture Trust Company of New York, as trustee (the "Trustee"), pursuant to which the Notes are to be issued, as such Indenture is amended, modified or supplemented from time to time in accordance with the terms thereof.

"Person": Any individual, partnership, joint venture, corporation, limited liability company, trust, unincorporated organization, enterprise or government or any department or agency thereof.

"Registrable Securities": Each of (a) the Notes, (b) the shares of Common Stock issued upon conversion of the Notes, (c) the shares of Common Stock issued upon exercise of the Warrants and (d) any securities issued as dividend or other distribution with respect to, or in or upon exchange, conversion or replacement of, any Registrable Securities. Any particular Registrable Securities that are issued shall cease to be Registrable Securities when (i) a registration statement with respect to the sale by the Holder of such securities shall have become effective under the Securities Act and such securities shall have been disposed of in accordance with such registration statement, (ii) such securities shall have been distributed to the public pursuant to Rule 144 (or any successor provision) under the Securities Act, (iii) such securities

are held by a Holder that together with its affiliates beneficially owns less than 2% of such class or series of securities and such securities may be sold or transferred by such Holder without restriction pursuant to 144(k) (or successor provision) under the Securities Act or (iv) such securities shall have ceased to be outstanding.

"Registration Date": The date which is the earlier of (i) the date which is nine months following the Acquisition Closing Date and (ii) October 21, 2006.

"Registration Expenses": Any and all expenses incident to performance of or compliance with this Agreement, including, without limitation, (i) all SEC and stock exchange or National Association of Securities Dealers, Inc. (the "NASD") registration and filing fees (including, if applicable, the fees and expenses of any "qualified independent underwriter," as such term is defined in Rule 2720 of the NASD Manual, and of its counsel), (ii) all fees and expenses of complying with securities or blue sky laws (including fees and disbursements of counsel for the underwriters in connection with blue sky qualifications of the Registrable Securities), (iii) all printing, messenger and delivery expenses, (iv) all fees and expenses incurred in connection with the listing of the Registrable Securities on any securities market or exchange and all rating agency fees, (v) the fees and disbursements of counsel for the Company and of its independent public accountants, including the expenses of any special audits and/or comfort letters required by or incident to such performance and compliance, (vi) the reasonable fees and disbursements of one counsel selected pursuant to Section 6.1 hereof by the Holders of the Registrable Securities being registered to represent such Holders in connection with each such registration, (vii) any fees and disbursements of underwriters customarily paid by the issuers or sellers of securities, but excluding underwriting discounts and commissions and transfer taxes, if any, and (viii) fees and expenses incurred by the Company or the Holders participating in such registration in connection with any "road show" including travel and accommodations.

"Securities Act": The Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"SEC": The Securities and Exchange Commission or any other federal agency at the time administering the Securities Act or the Exchange Act and other federal securities laws.

"SLP Holders": Each of the SLP Entities and any other Holder to whom an SLP Holder has in accordance with Section 7.2 assigned the right to request the filing of a registration statement pursuant to Section 2.1.

"TIA": Trust Indenture Act of 1939, as amended, and the rules and regulations of the Commission thereunder, in each case, as in effect on the date the Indenture is qualified under the TIA.

"Warrants": Each of the warrants issued by the Company to (i) Norway SPV pursuant to the Securities Purchase Agreement which give them the right to acquire shares of Common Stock, and (ii) the H&F Entities pursuant to the Amendment Agreement which give them the right to acquire shares of Common Stock, in each case, on terms, and subject to the conditions, set forth in such warrants.

ARTICLE II

REGISTRATION RIGHTS

Section 2.1 Demand Registration Rights.

(a) Right to Demand Registration of Registrable Securities. Subject to the conditions of this Section 2.1, if the Company shall receive a written request from one or more H&F Holders and/or SLP Holders (the "Initiating Holders"), that the Company file a registration statement under the Securities Act covering the registration of Registrable Securities having a value (based on the average closing sale price per share of Common Stock for 10 trading days preceding the registration request) of not less than $50,000,000 (or, if less, all of the Registrable Securities then held by such requesting Holders), then the Company shall, within five (5) days of the receipt thereof, give written notice of such request to all Holders, who must respond in writing within fifteen (15) days requesting inclusion in such registration of such Holders' Registrable Securities of the same type or types that are being registered by the Initiating Holders (it being understood that all Notes will be deemed to be the same type of Registrable Securities). Each request must specify the amount and intended manner of disposition of such Registrable Securities. The Company, subject to the limitations of this Section 2.1, must use its reasonable best efforts to effect, as soon as reasonably practicable, the registration under the Securities Act of all Registrable Securities that the Holders request to be registered in accordance with this Section 2.1 together with any other securities of the Company entitled to inclusion in such registration; provided, however, that the Company shall not be required to file a registration statement in connection with a written request pursuant to this paragraph (a) prior to the date which is sixty (60) days before the expected Registration Date (as determined by the Company in good faith).

(b) Shelf Registration Statement. If a written request made by the Initiating Holders under Section 2.1(a) hereof specifies that the intended manner of disposition of Registrable Securities is to be made by means of a shelf registration providing for resales of such Registrable Securities, the Company shall use its reasonable best efforts to effect, as soon as reasonably practicable, the registration under the Securities Act of all Registrable Securities that the Holders request to be so registered in accordance with Section 2.1(a) pursuant to a registration statement for an offering to be made on a continuous basis pursuant to Rule 415 (or successor provision) under the Securities Act (together with any amendments thereto, and including any documents incorporated by reference therein, the "Shelf Registration Statement"), which Shelf Registration Statement shall provide for resales of such Registrable Securities.

(c) Underwritten Offerings. If the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to Section 2.1(a) hereof and the Company shall include such information in the written notice referred to in such Section 2.1(a). In such event, the right of any Holder to include its Registrable Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting

by a majority in interest of the Initiating Holders (which underwriter or underwriters shall be reasonably acceptable to the Company) and complete and execute all questionnaires, powers of attorney and other documents reasonably required under the terms of such underwriting agreement and these registration rights. Notwithstanding any other provision of this Section 2.1, if the managing underwriter advises the Company in writing that, in its opinion, marketing factors require a limitation of the amount of securities to be underwritten (including Registrable Securities) because the amount of securities to be underwritten is likely to have an adverse effect on the price, timing or the distribution of the securities to be offered, then the Company shall so advise all Holders of Registrable Securities which would otherwise be underwritten pursuant hereto, and the amount of Registrable Securities that may be included in the underwriting shall be allocated among participating Holders, (i) first among the Initiating Holders as nearly as possible on a pro rata basis based on the total amount of Registrable Securities (on an as converted basis) held by such Initiating Holders requested to be included in such underwriting and (ii) second to the extent all Registrable Securities requested to be included in such underwriting by the Initiating Holders have been included, among the Holders (other than the Initiating Holders) requesting inclusion of Registrable Securities in such underwritten offering, as nearly as possible on a pro rata basis based on the total amount of Registrable Securities (on an as converted basis) held by such Holders requested to be included in such underwriting. Any Registrable Securities excluded or withdrawn from such underwriting shall be withdrawn from the registration.

(d) Underwritten Shelf Take-Downs. Notwithstanding the provisions of Section 2.1(c) hereof, if a Shelf Registration Statement has become effective in accordance with Section 2.1(b) hereof and any H&F Holder or SLP Holder (the "Initiating Shelf Holders") of Registrable Securities covered by such Shelf Registration Statement advises the Company in writing that it intends to sell its Registrable Securities pursuant to an underwritten "take-down" under such Shelf Registration Statement which could involve a customary "road show" (a "Marketed Take-down"), then the Company shall, within five (5) days of the receipt thereof, give written notice of such intention to all Holders of Registrable Securities under such Shelf Registration Statement, who must respond in writing within fifteen (15) days requesting inclusion of such Holders' Registrable Securities in such Marketed Take-down. In such event, the right of any Holder to include its Registrable Securities in such Marketed Take-down shall be conditioned upon such Holder's participation in such Marketed Take-down and inclusion of such Holder's Registrable Securities in the Marketed Take-down to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by a majority in interest of the Initiating Holders (which underwriter or underwriters shall be reasonably acceptable to the Company). Notwithstanding any other provision of this Section 2.1, if the managing underwriter advises the Company in writing that, in its opinion, marketing factors require a limitation of the amount of securities to be underwritten (including Registrable Securities) because the amount of securities to be underwritten is likely to have an adverse effect on the price, timing or the distribution of the securities to be offered, then the Company shall so advise all Holders of Registrable Securities which would otherwise be underwritten pursuant hereto, and the amount of Registrable Securities that may be included in the underwriting shall be allocated among participating Holders, (i) first among the Initiating Shelf Holders as nearly as possible on a pro rata basis based on the total amount of Registrable Securities (on an as converted basis) held by such Holders requested to be included in such

underwriting and (ii) second to the extent all Registrable Securities requested to be included in such underwriting by the Initiating Shelf Holders have been included, among the Holders (other than the Initiating Holders) requesting inclusion of Registrable Securities in such underwritten offering, as nearly as possible on a pro rata basis based on the total amount of Registrable Securities (on an as converted basis) held by such Holders requested to be included in such underwriting. For avoidance of doubt, if any Holder desires to sell its Registrable Securities pursuant to an underwritten "take-down" under the Shelf Registration Statement which does not involve a customary "road show", then the other Holders will not have the right to participate in such underwritten "take-down".

(e) Registration Limits. Notwithstanding the foregoing, the Company shall not be required to effect a registration pursuant to this Section 2.1:

(i) that will become effective prior to the Registration Date;

(ii) in the case of (A) a registration requested by the H&F Holders pursuant to Section 2.1(a) hereof, after the Company has effected six (6) registrations requested by the H&F Holders pursuant to such Section and (B) a registration requested by the SLP Holders pursuant to Section 2.1(a), after the Company has effected three (3) registrations requested by the SLP Holders pursuant to such Section; provided however, that a registration request involving an underwritten offering will not count as a requested registration under this clause (ii) unless the Holder making such request is able, after giving effect to any underwriting cutbacks contemplated by Section 2.1(c) or (d) hereof, to register at least 75% of the amount of Registrable Securities originally requested by such Holder to be included in such registration; provided, further, however, if the H&F Holders and the SLP Holders jointly request a registration pursuant to Section 2.1(a) hereof, then, for purposes of this clause (ii), whichever of either the H&F Holders (as a group) or the SLP Holders (as a group) is able to register and sell more Registrable Securities pursuant to such request shall be deemed solely to have made such request; and provided, still, further, however, that the second Marketed Take-down requested by a H&F Holder or SLP Holder under any Shelf Registration Statement which has been effected pursuant to the request of such Holder shall be deemed to be a requested registration by such Holder for purposes of this clause (ii);

(iii) within 90 days of the effective date of any other registration statement filed by the Company pursuant to the Securities Act in connection with the Company making a primary offering of its securities, excluding registration statements filed on From S-4 or S-8 (or any substitute form that may be adopted by the SEC);

(iv) if the Company shall furnish to Holders requesting a registration statement pursuant to this Section 2.1, a certificate signed by the Chairman, President or a Vice President of the Company stating that in the good faith judgment of the Company's Board of Directors the filing or effectiveness of such registration statement would materially interfere with any proposed acquisition, disposition, financing or other material transaction involving the Company or its subsidiaries, in which event the Company shall have the right to defer such filing for a period of not more than sixty (60) days in any 90-day period after receipt of the request of the Initiating Holders; provided that the Company shall not defer filings pursuant to this clause (iv) more than an aggregate of one hundred and twenty (120) days in any twelve (12) month period; or

(v) (x) requested by the H&F Holders if in the prior six (6) months the Company has effected a registration pursuant to this Section 2.1 at the request of the H&F Holders or (y) requested by the SLP Holders if in the prior six (6) months the Company has effected a registration pursuant to this Section 2.1 at the request of the SLP Holders.

Section 2.2 Piggyback Rights. (a) Right to Include Registrable Securities. If the Company at any time after the Registration Date hereof proposes to register its Common Stock (or any security which is convertible into or exchangeable or exercisable for Common Stock) under the Securities Act (other than a registration on Form S-4 or S-8, or any successor or other forms promulgated for similar purposes), whether or not for sale for its own account, it will, at each such time, give prompt written notice to all Holders of Registrable Securities of its intention to do so and of such Holders' rights under this Article II. Upon the written request of any such Holder made within twenty (20) days after the receipt of any such notice (which request shall specify the Registrable Securities intended to be disposed of by such Holder), the Company will, as expeditiously as reasonably practicable, use its reasonable best efforts to effect the registration under the Securities Act of all Registrable Securities (in the form of Common Stock) which the Company has been so requested to register by the Holders thereof, to the extent requisite to permit the disposition of the Registrable Securities so to be registered; provided that (i) if, at any time after giving written notice of its intention to register any securities and prior to the effective date of the registration statement filed in connection with such registration, the Company shall determine for any reason not to proceed with the proposed registration of the securities to be sold by it, the Company may, at its election, give written notice of such determination to each Holder of Registrable Securities and, thereupon, shall be relieved of its obligation to register any Registrable Securities in connection with such registration (but not from its obligation to pay the Registration Expenses in connection therewith), and (ii) if such registration involves an underwritten offering, all Holders of Registrable Securities requesting to be included in the Company's registration must sell their Registrable Securities to the underwriters selected by the Company on the same terms and conditions as apply to the Company, with such differences, including any with respect to indemnification, as may be customary or appropriate in combined primary and secondary offerings. If a registration requested pursuant to this Section 2.2(a) involves an underwritten public offering, any Holder of Registrable Securities requesting to be included in such registration may elect, in writing prior to the effective date of the registration statement filed in connection with such registration, not to register such securities in connection with such registration.

Section 2.3 Priority in Piggyback Registrations. If a registration pursuant to Section 2.2 hereof involves an underwritten offering and the managing underwriter advises the Company in writing that, in its opinion, marketing factors require a limitation of the amount of securities to be underwritten (including Registrable Securities) because the amount of securities to be underwritten is likely to have an adverse effect on the price, timing or distribution of the securities to be offered, in such offering as contemplated by the Company (other than the Registrable Securities), then, (i) in the case such registration is being made pursuant to NASD's registration demand rights under Section 1.1 of the Investor Rights Agreement, dated as of

February 20, 2002, between the Company and NASD as in effect on the date of this Agreement (but without giving effect to any amendment, supplement or other modification of such agreement after the date hereof), the Company will include in such registration (A) first, 100% of the securities NASD proposes to sell and (B) second, to the extent that the amount of securities requested to be involved in such registration pursuant to Section 2.2 hereof can, in the opinion of such managing underwriter, be sold without having the materially adverse effect referred to above, the amount of Registrable Securities (on an as converted basis) which the Holders have requested to be included in such registration and the securities to be offered by the Company, if any, such amount to be allocated pro rata among all requesting Holders and the Company on the basis of the amount of securities requested by such Holders and the Company in such registration, and (ii) otherwise (A) first, 100% of the securities the Company proposes to sell, (B) second, to the extent that the amount of Registrable Securities requested to be included in such registration pursuant to Section 2.2 hereof can, in the opinion of such managing underwriter, be sold without having the materially adverse effect referred to above, the amount of Registrable Securities (on an as converted basis) which the Holders have requested to be included in such registration, such amount to be allocated pro rata among all requesting Holders on the basis of the amount of Registrable Securities (on an as converted basis) then held by each such Holder (provided that any amount thereby allocated to any such Holder that exceed such Holder's request will be reallocated among the remaining requesting Holders in like manner) and (C) third, to the extent that the amount of securities requested to be included in such registration can, in the opinion of such managing underwriter, be sold without having the materially adverse effect referred to above, the amount of securities held by any other Person which have the right to be included in such registration.

Section 2.4 Expenses. The Company will pay all Registration Expenses in connection with each registration of Registrable Securities requested pursuant to this Article II.

Section 2.5 Registration Form. The Company shall select the registration statement form for any registration pursuant to Section 2.1, but shall cooperate with the requests of the Initiating Holders or managing underwriters selected by them as to the inclusion therein of information not specifically required by such form.

Section 2.6 Additional Rights. If the Company at any time after the date hereof grants to any other holders of Common Stock or securities of the Company convertible into Common Stock any rights to request the Company to effect the registration under the Securities Act of any such shares of Common Stock on terms more favorable to such holders than the terms set forth in this Article II, the terms of this Article II shall be deemed amended or supplemented to the extent necessary to provide the Holders such more favorable rights and benefits.

ARTICLE III

REGISTRATION PROCEDURES

Section 3.1 Registration Procedures. If and whenever the Company is required to use its reasonable best efforts to effect or cause the registration of any Registrable Securities under the Securities Act as provided in this Agreement, the Company will, as expeditiously as reasonably practicable:

(i) prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its reasonable best efforts to cause such registration statement to become effective, provided, however, that the Company may discontinue any registration of its securities which is being effected pursuant to Section 2.2 at any time prior to the effective date of the registration statement relating thereto;

(ii) prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for a period (A) in the case such registration statement is a Shelf Registration Statement, ending on the date that the securities registered under such Shelf Registration Statement cease being Registrable Securities, and (B) in the case of all other registration statements, not in excess of 180 days, and, in each case, to comply with the provisions of the Securities Act, the Exchange Act and the rules and regulations of the SEC thereunder with respect to the disposition of all securities covered by such registration statement during such period in accordance with the intended methods of disposition by the seller or sellers thereof set forth in such registration statement; provided that before filing a registration statement or prospectus, or any amendments or supplements thereto, the Company will furnish to each counsel selected pursuant to Section 6.1 hereof by the Holders of the Registrable Securities covered by such registration statement to represent such Holders and use all reasonable efforts to take into account and, if appropriate, reflect in such registration statement or amendment thereto such comments as the Holders and their counsel may reasonably request; and provided, further, that notwithstanding the foregoing, the Company may suspend the effectiveness of a Shelf Registration Statement by written notice to the Holders of Registrable Securities subject to such Shelf Registration Statement for a period not to exceed an aggregate of sixty (60) days in any 90-day period (each such period, a "Suspension Period") and not to exceed an aggregate of one hundred and twenty (120) days in any twelve (12) month period if:

(I) an event occurs and is continuing as a result of which the Shelf Registration Statement would, in the Company's reasonable judgment, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and

(II) the Company reasonably determines that the disclosure of such event at such time would materially interfere with any proposed acquisition, disposition, financing or other material transaction involving the Company or its subsidiaries;

(iii) furnish to each seller of such Registrable Securities such number of copies of such registration statement and of each amendment and supplement thereto, such number of copies of the prospectus included in such registration statement (including each preliminary and final prospectus and supplement thereto), in conformity with the requirements of the Securities Act, and such other documents as such seller may reasonably request in order to facilitate the disposition of the Registrable Securities by such seller;

(iv) use its reasonable best efforts to (A) register or qualify such Registrable Securities covered by such registration in such jurisdictions as each seller shall reasonably request and to keep such registration or qualification in effect for so long as such registration statement remains in effect, and do any and all other acts and things which may be reasonably necessary or advisable to enable such seller to consummate the disposition in such jurisdictions of the Registrable Securities owned by such seller, and (B) use its reasonable best efforts to cause such Registrable Securities covered by such registration statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the seller or sellers thereof to consummate the disposition of such Registrable Securities; provided, however, that the Company shall not for any such purpose be required to (I) qualify generally to do business as a foreign corporation in any jurisdiction where, but for the requirements of this clause (iv), it would not be obligated to be so qualified, (II) subject itself to taxation in any such jurisdiction other than with respect to the registration of securities or (III) consent to general service of process in any such jurisdiction;

(v) notify each seller of any such Registrable Securities covered by such registration statement, at any time when a prospectus relating thereto is required to be delivered under the Securities Act within the appropriate period mentioned in clause (ii) of this Section 3.1, of the Company's becoming aware that the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing, and at the request of any such seller, prepare as promptly as reasonably practical a post-effective amendment to such registration statement and furnish to such seller a reasonable number of copies of an amended or supplemental prospectus as may be necessary so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing;

(vi) use its reasonable best efforts to comply with all applicable rules and regulations of the SEC, and make available to its security holders, as soon as reasonably practicable after the effective date of the registration statement, an earnings statement which shall satisfy the provisions of Section 11(a) of the Securities Act and the rules and regulations promulgated thereunder;

(vii) (A) use its reasonable best efforts to list the Common Stock issuable upon conversion of the Notes or exercise of the Warrants on any securities market or exchange on which the Common Stock is then listed if such Registrable Securities are not already so listed and if such listing is then permitted under the rules of such exchange; and (B) use its reasonable best efforts to provide a transfer agent and registrar for such Registrable Securities covered by such registration statement not later than the effective date of such registration statement;

(viii) enter into and perform such customary agreements (including an underwriting agreement in customary form), which may include indemnification

provisions in favor of underwriters and other persons in addition to, or in substitution for the provisions of Article IV hereof, and take such other actions as sellers of a majority of shares of such Registrable Securities or the underwriters, if any, reasonably request in order to expedite or facilitate the disposition of such Registrable Securities;

(ix) obtain a “cold comfort” letter or letters from the Company’s independent public accounts in customary form and covering matters of the type customarily covered by “cold comfort” letters as the seller or sellers of a majority of shares of such Registrable Securities (on an as converted basis) or managing underwriter or agent shall reasonably request;

(x) make available for inspection by any seller of such Registrable Securities covered by such registration statement, by any underwriter participating in any disposition to be effected pursuant to such registration statement and by any attorney, accountant or other agent retained by any such seller or any such underwriter, all pertinent financial and other records, pertinent corporate documents and properties of the Company, and cause all of the Company’s officers, directors and employees to supply all information reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such registration statement;

(xi) notify counsel (selected pursuant to Section 6.1 hereof) for the Holders of Registrable Securities included in such registration statement and the managing underwriter or agent, as promptly as possible, and confirm the notice in writing (A) when the registration statement, or any post-effective amendment to the registration statement, shall have become effective, or any supplement to the prospectus or any amendment prospectus shall have been filed, (B) of the receipt of any comments from the SEC, (C) of any request of the SEC to amend the registration statement or amend or supplement the prospectus or for additional information and (D) of the issuance by the SEC of any stop order suspending the effectiveness of the registration statement or of any order preventing or suspending the use of any preliminary prospectus, or of the suspension of the qualification of the registration statement for offering or sale in any jurisdiction, or of the institution or threatening of any proceedings for any of such purposes;

(xii) make every reasonable effort to prevent the issuance of any stop order suspending the effectiveness of the registration statement or of any order preventing or suspending the use of any preliminary prospectus and, if any such order is issued, to obtain the withdrawal of any such order at the earliest possible moment;

(xiii) if requested by the managing underwriter or agent or any Holder of Registrable Securities covered by the registration statement, promptly incorporate in a prospectus supplement or post-effective amendment such information as the managing underwriter or agent or such Holder reasonably requests to be included therein and to which the Company does not reasonably object, including, without limitation, with respect to the number of Registrable Securities being sold by such Holder to such underwriter or agent, the purchase price being paid therefor by such underwriter or agent and with respect to any other terms of the underwritten offering of the Registrable

Securities to be sold in such offering; and make all required filings of such prospectus supplement or post-effective amendment as soon as practicable after being notified of the matters incorporated in such prospectus supplement or post-effective amendment;

(xiv) cooperate with the Holders of Registrable Securities covered by the registration statement and the managing underwriter or agent, if any, to facilitate the timely preparation and delivery of certificates (not bearing any restrictive legends) representing securities to be sold under the registration statement, and enable such securities to be in such denominations and registered in such names as the managing underwriter or agent, if any, or such Holders may request;

(xv) obtain for delivery to the Holders of Registrable Securities being registered and to the underwriters or agents an opinion or opinions from counsel for the Company in customary form and in form, substance and scope reasonably satisfactory to such Holders, underwriters or agents and their counsel;

(xvi) cooperate with each seller of Registrable Securities and each underwriter or agent participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with the NASD;

(xvii) cause the Indenture to be qualified under the TIA not later than the effective date of the applicable registration statement required by this Agreement, and, in connection therewith, cooperate with the Trustee and the holders of Notes to effect such changes to the Indenture as may be required for such Indenture to be so qualified in accordance with the terms of the TIA; execute and use its reasonable best efforts to cause the Trustee thereunder to execute all documents that may be required to effect such changes and all other forms and documents required to be filed with the SEC to enable such Indenture to be so qualified in a timely manner; and in the event that any such amendment or modification referred to in this clause (xvii) involves the appointment of a new trustee under the Indenture, the Company shall appoint a new trustee thereunder pursuant to the applicable provisions of the Indenture; and

(xviii) if requested by the underwriters, prepare and present to potential investors customary “road show” or marketing materials in a manner consistent with other new issuances of other securities similar to the Registrable Securities.

Each Holder of Registrable Securities agrees as a condition to the registration of such Holder’s Registrable Securities as provided herein to furnish the Company with such information regarding such seller and pertinent to the disclosure requirements relating to the registration and the distribution of such securities as the Company may from time to time reasonably request in writing.

Each Holder of Registrable Securities agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in clause (vi) of this Section 3.1, such Holder will forthwith discontinue disposition of Registrable Securities pursuant to the registration statement covering such Registrable Securities until such Holder’s receipt of the

copies of the supplemented or amended prospectus contemplated by clause (vi) of this Section 3.1, and, if so directed by the Company, such Holder will deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in such Holder's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice. In the event the Company shall give any such notice, the period mentioned in clause (ii) of this Section 3.1 shall be extended by the number of days during the period from and including the date of the giving of such notice pursuant to clause (vi) of this Section 3.1 and including the date when each seller of Registrable Securities covered by such registration statement shall have received the copies of the supplemented or amended prospectus contemplated by clause (vi) of this Section 3.1.

Section 3.2 Restrictions on Public Sale by the Company. The Company agrees (i) not to effect any public sale or distribution of any securities similar to those being registered in accordance with Section 2.1(c) or Section 2.1(d), or any securities convertible into or exchangeable or exercisable for such securities, during such period as the lead Underwriter may reasonably request, no greater than ninety (90) days, beginning on, the effective date of any registration statement relating to an offering under Section 2.1(c) or the pricing of an offering under Section 2.1(d) (except as part of such registration statement and except pursuant to registrations on Form S-4 or S-8 or any successor or similar form thereto), and (ii) that any agreement entered into after the date of this Agreement pursuant to which the Company issues or agrees to issue any privately placed securities shall contain a provision under which holders of such securities agree not to effect any sale or distribution of such securities and not to effect any sale or distribution of such securities during the periods described in (i) above, in each case including a sale pursuant to Rule 144 (except as part of any such registration, if permitted).

ARTICLE IV

INDEMNIFICATION

Section 4.1 Indemnification by the Company. In the event of any registration of any securities of the Company under the Securities Act pursuant to Article II hereof, the Company will, and it hereby does, indemnify and hold harmless, to the extent permitted by law, the seller of any Registrable Securities covered by such registration statement, each affiliate of such seller and their respective trustees, directors and officers or general and limited partners (including any director, officer, affiliate, employee, representative, agent and controlling Person of any of the foregoing), each other Person who participates as an underwriter in the offering or sale of such securities and each other Person, if any, who controls such seller or any such underwriter within the meaning of the Securities Act (collectively, the "Indemnified Parties"), against any and all Actions (whether or not an Indemnified Party is a party thereto), losses, claims, damages or liabilities, joint or several, and expenses (including, without limitation, reasonable attorney's fees and reasonable expenses of investigation) to which such Indemnified Party may become subject under the Securities Act, common law or otherwise, insofar as such losses, claims, damages, liabilities or expenses (or actions or proceedings in respect thereof, whether or not such Indemnified Party is a party thereto) arise out of, relate to or are based upon (a) any untrue statement or alleged untrue statement of any material fact contained in any registration statement under which such securities were registered under the Securities Act, any preliminary, final or supplemental prospectus contained therein, or any amendment or

supplement thereto, or (b) any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus, in light of the circumstances under which they were made) not misleading, and the Company will reimburse such Indemnified Party for any legal or any other expenses reasonably incurred by it in connection with investigating or defending against any such loss, claim, liability, action or proceeding; provided that the Company shall not be liable to any Indemnified Party in any such case to the extent that any such loss, claim, damage, liability (or action or proceeding in respect thereof) or expense arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission made in such registration statement or amendment or supplement thereto or in any such preliminary, final or supplemental prospectus in reliance upon and in conformity with written information furnished to the Company through an instrument duly executed by such seller specifically stating that it is for use in the preparation thereof. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such seller or any Indemnified Party and shall survive the transfer of such securities by such seller.

Section 4.2 Indemnification by the Seller. The Company may require, as a condition to including any Registrable Securities in any registration statement filed in accordance with Article II hereof, that the Company shall have received an undertaking reasonably satisfactory to it from the prospective seller of such Registrable Securities or any underwriter to indemnify and hold harmless (in the same manner and to the same extent as set forth in Section 4.1) the Company, its officers, directors and agents and all other prospective sellers with respect to any untrue statement or alleged untrue statement in or omission or alleged omission from such registration statement, any preliminary, final or supplemental prospectus contained therein, or any amendment or supplement, if such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company through an instrument duly executed by such seller or underwriter specifically stating that it is for use in the preparation of such registration statement, preliminary, final or supplemental prospectus or amendment or supplement, or a document incorporated by reference into any of the foregoing. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Company or any of the prospective sellers, or any of their respective affiliates, directors, officers or controlling Persons and shall survive the transfer of such securities by such seller. In no event shall the liability of any selling Holder of Registrable Securities hereunder be greater in amount than the dollar amount of the gross proceeds after underwriting discounts and commissions, but before expenses, received by such Holder upon the sale of the Registrable Securities giving rise to such indemnification obligation.

Section 4.3 Notices of Claims, Etc. Promptly after receipt by an Indemnified Party hereunder of written notice of the commencement of any Action with respect to which a claim for indemnification may be made pursuant to this Article IV, such Indemnified Party will, if a claim in respect thereof is to be made against an indemnifying party, give written notice to the latter of the commencement of such Action; provided that the failure of the Indemnified Party to give notice as provided herein (i) shall not relieve the indemnifying party of its obligations under this Article IV, except to the extent that the indemnifying party is materially prejudiced by such failure to give notice, and (ii) shall not, in any event, relieve the indemnifying party from any obligations which it may have to any Indemnified Party other than the

indemnification obligation provided in Sections 4.1 and 4.2. In case any such Action is brought against an Indemnified Party, unless in such Indemnified Party's reasonable judgment a conflict of interest between such Indemnified Party and indemnifying parties may exist in respect of such Action, the indemnifying party will be entitled to participate in and to assume the defense thereof (at its expense), jointly with any other indemnifying party similarly notified to the extent that it may wish, with counsel reasonably satisfactory to such Indemnified Party, and after notice from the indemnifying party to such Indemnified Party of its election so to assume the defense thereof, the indemnifying party will not be liable to such Indemnified Party for any legal or other expenses subsequently incurred by the latter in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party will consent to entry of any judgment or settle any Action which (i) does not include, as an unconditional term thereof, the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect of such Action and (ii) does not involve the imposition of equitable remedies or of any obligations on such Indemnified Party and does not otherwise adversely affect such Indemnified Party, other than as a result of the imposition of financial obligations for such Indemnified Party will be indemnified hereunder.

Section 4.4 Contribution. (a) If the indemnification provided for in this Article IV from the indemnifying party is unavailable to or insufficient to fully hold harmless an Indemnified Party hereunder in respect of any Action, losses, damages, liabilities or expenses referred to herein, then the indemnifying party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Action, losses, damages, liabilities or expenses in such proportion as is appropriate to reflect the relative fault of the indemnifying party and such Indemnified Party in connection with the actions which resulted in such Action losses, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative fault of such indemnifying party and such Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, has been made by, or relates to information supplied by, such indemnifying party or Indemnified Parties, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action. The amount paid or payable by a party under this Section 4.4 as a result of the Action, losses, damages, liabilities and expenses referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such party in connection with any investigation or proceeding.

(b) The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 4.4 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in Section 4.4(a) hereof. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

Section 4.5 Other Indemnification. Indemnification similar to that specified in the preceding provisions of this Article IV (with appropriate modifications) shall be given by the Company and each seller of Registrable Securities with respect to any required registration or other qualification of securities under any federal or state law or regulation or governmental authority other than the Securities Act.

Section 4.6 Non-Exclusivity. The obligations of the parties under this Article IV shall be in addition to any liability which any party may otherwise have to any other party.

ARTICLE V

RULE 144

Section 5.1 Rule 144. The Company covenants that it will file the reports required to be filed by it under the Securities Act and the Exchange Act (or, if the Company is not required to file such reports, it will, upon the request of any Holder, make publicly available such information), and it will take such further action as any Holder may reasonably request, all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (i) Rule 144 under the Securities Act, as such Rule may be amended from time to time, or (ii) any similar rule or regulation hereafter adopted by the SEC. Upon the request of any Holder of Registrable Securities, the Company will deliver to such Holder a written statement as to whether it has complied with such requirements.

ARTICLE VI

SELECTION OF COUNSEL

Section 6.1 Selection of Counsel. In connection with any registration of Registrable Securities pursuant to Article II hereof, the Holders of a majority of the Registrable Securities (on as an converted basis) covered by any such registration may select one counsel to represent all Holders of Registrable Securities covered by such registration; provided, however, that in the event that the counsel selected as provided above is also acting as counsel to the Company in connection with such registration, the remaining Holders shall be entitled to select one additional counsel to represent all such remaining Holders.

ARTICLE VII

MISCELLANEOUS

Section 7.1 Amendments and Waivers. This Agreement may not be amended except by an instrument in writing signed on behalf of the Company and each of the H&F Entities and each of the SLP Entities. Each holder of any Registrable Securities at the time or thereafter outstanding shall be bound by any amendment authorized by this Section, whether or not such Registrable Securities shall have been marked to indicate such amendment.

Section 7.2 Successors, Assigns and Transferees. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. All or any portion of the rights of each Holder under this Agreement are transferable to each transferee of such Holder to whom the transferor transfers Registrable Securities or Warrants and each transferee of such Holder agrees to be bound by and to perform all of the terms and provisions required by this Agreement.

Section 7.3 Confidentiality of Records. Each Holder agrees to use, and to use all reasonable efforts to insure that its authorized representatives use, the same degree of care as such Holder uses to protect its own confidential information to keep confidential any information furnished to it pursuant to this Agreement which the Company identifies as being confidential (so long as such information is not in the public domain); provided, however, that any Holder may disclose such confidential information without the prior written consent of the other parties hereto (i) to any "Related Party" (as defined below) so long as such Related Party is advised of the confidentiality provisions of this Section 5.3 and agrees in writing to comply with such provisions, (ii) if such information is publicly available or (iii) if disclosure is requested or compelled by legal proceedings, subpoena, civil investigative demands or similar proceedings. Any Holder who provides confidential information to a Related Party shall be liable for any breach by such Related Party of the confidentiality provisions of this Section 7.3. For purposes of this Section 7.3, "Related Party" shall mean, with respect to any Holder, (A) any partner, member, director, officer, employee or representative of such Holder or (B) any affiliate of such Holder.

Section 7.4 Notices. All notices and other communications provided for hereunder shall be in writing and shall be sent by first class mail, fax or hand delivery:

(i) if to the Company, to:

The Nasdaq Stock Market, Inc.
9513 Key West Avenue
Rockville, MD 20850
Attention: John Zecca
Fax: (310) 978-5296

(ii) if to the H&F Entities, to:

Hellman & Friedman LLC
One Maritime Plaza, 12th Floor
San Francisco, CA 94111
Attention: Arrie Park
Fax: (415) 788-0176

(iii) if to the SLP Entities, to:

Silver Lake Partners
2725 Sand Hill Road, Suite 150
Menlo Park, CA 94025
Attention: Alan Austin
Fax: (650) 234-2593

(iv) if to Integral, to:

Silver Lake Partners
2725 Sand Hill Road, Suite 150
Menlo Park, CA 94025
Attention: Alan Austin
Fax: (650) 234-2593

(v) if to VAB Investors, to:

Silver Lake Partners
2725 Sand Hill Road, Suite 150
Menlo Park, CA 94025
Attention: Alan Austin
Fax: (650) 234-2593

All such notices and communications shall be deemed to have been given or made (A) when delivered by hand, (B) five (5) business days after being deposited in the mail, postage prepaid or (C) when faxed, receipt acknowledged.

Section 7.5 Descriptive Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning of terms contained herein.

Section 7.6 Severability. In the event that any one or more of the provisions, paragraphs, words, clauses, phrases or sentences contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision, paragraph, word, clause, phrase or sentence in every other respect and of the remaining provisions, paragraphs, words, clauses, phrases or sentences hereof shall not be in any way impaired, it being intended that all rights, powers and privileges of the parties hereto shall be enforceable to the fullest extent permitted by law.

Section 7.7 Counterparts. This Agreement may be executed in counterparts, and by different parties on separate counterparts, each of which shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.

Section 7.8 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York.

Section 7.9 Specific Performance. The parties hereto acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, it is agreed that they shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which they may be entitled at law or in equity.

Section 7.10 Termination. This Agreement shall terminate and be of no further force and effect on the Series A Redemption Date (as defined in the Indenture) if the Company has redeemed the Series A Notes and the Warrants in accordance with their terms on such date.

[Signatures on following pages.]

IN WITNESS WHEREOF, each of the undersigned has executed this Agreement or caused this Agreement to be duly executed on its behalf as of the date first written above.

THE NASDAQ STOCK MARKET, INC.

By: /s/ Adena T. Friedman

Name: Adena T. Friedman
Title: Executive Vice President

[Signature pages continue on next page]

HELLMAN & FRIEDMAN CAPITAL PARTNERS IV, L.P.

By: H&F INVESTORS IV, LLC, its General Partner

By: H&F ADMINISTRATION IV, LLC,
its Administrative Manager

By: H&F INVESTORS III, INC.,
its Manager

By: /s/ Mitchell R. Cohen

Name: Mitchell R. Cohen
Title: Vice President

H&F EXECUTIVE FUND IV, L.P.

By: H&F INVESTORS IV, LLC, its General Partner

By: H&F ADMINISTRATION IV, LLC,
its Administrative Manager

By: H&F INVESTORS III, INC.,
its Manager

By: /s/ Mitchell R. Cohen

Name: Mitchell R. Cohen
Title: Vice President

H&F INTERNATIONAL PARTNERS IV-A, L.P.

By: H&F INVESTORS IV, LLC, its General Partner

By: H&F ADMINISTRATION IV, LLC,
its Administrative Manager

By: H&F INVESTORS III, INC.,
its Manager

By: /s/ Mitchell R. Cohen

Name: Mitchell R. Cohen
Title: Vice President

[Signature pages continue on next page]

H&F INTERNATIONAL PARTNERS IV-B, L.P.

By: H&F INVESTORS IV, LLC, its General Partner

By: H&F ADMINISTRATION IV, LLC,
its Administrative Manager

By: H&F INVESTORS III, INC.,
its Manager

By: /s/ Mitchell R. Cohen

Name: Mitchell R. Cohen
Title: Vice President

[Signature pages continue on next page]

SILVER LAKE PARTNERS II TSA, L.P.

By: SILVER LAKE TECHNOLOGY ASSOCIATES II, L.L.C., its General Partner

By: /s/ Alan K. Austin

Name: Alan K. Austin
Title: Managing Director and Chief Operating Officer

SILVER LAKE TECHNOLOGY INVESTORS II, L.L.C.

By: SILVER LAKE MANAGEMENT COMPANY, L.L.C., its Manager

By: SILVER LAKE TECHNOLOGY MANAGEMENT, L.L.C., its Managing Member

By: /s/ Alan K. Austin

Name: Alan K. Austin
Title: Managing Director and Chief Operating Officer

SILVER LAKE PARTNERS TSA, L.P.

By: SILVER LAKE TECHNOLOGY ASSOCIATES, L.L.C., its General Partner

By: /s/ Alan K. Austin

Name: Alan K. Austin
Title: Managing Director and Chief Operating Officer

[Signature pages continue on next page]

SILVER LAKE INVESTORS, L.P.

By: SILVER LAKE TECHNOLOGY ASSOCIATES, L.L.C.,
its General Partner

By: /s/ Alan K. Austin

Name: Alan K. Austin
Title: Managing Director
and Chief Operating Officer

[Signature pages continue on next page]

INTEGRAL CAPITAL PARTNERS VI, L.P.

By: INTEGRAL CAPITAL MANAGEMENT VI, L.L.C.,
its General Partner

By: /s/ Pamela K. Hagenah

Name: Pamela K. Hagenah
Title: Manager

[Signature pages continue on next page]

VAB INVESTORS, LLC

By: /s/ Edward J. Nicoll

Name: Edward J. Nicoll
Title: Manager

Exhibit 4.5

AMENDED AND RESTATED SECURITYHOLDERS AGREEMENT

dated as of

April 22, 2005

among

THE NASDAQ STOCK MARKET, INC.,

NORWAY ACQUISITION SPV, LLC,

HELLMAN & FRIEDMAN CAPITAL PARTNERS IV, L.P.,

SILVER LAKE PARTNERS II TSA, L.P.,

and

THE OTHER SECURITYHOLDERS LISTED
ON THE SIGNATURE PAGES HEREOF

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AMENDED AND RESTATED SECURITYHOLDERS AGREEMENT

AMENDED AND RESTATED SECURITYHOLDERS AGREEMENT, dated as of April 22, 2005 (this "Agreement"), among (i) The Nasdaq Stock Market, Inc., a Delaware corporation (together with any successor entity, the "Company"), (ii) Norway Acquisition SPV, LLC, a Delaware limited liability company ("Norway Acquisition"), (iii) Hellman & Friedman Capital Partners IV, L.P. ("H&F-1"), H&F Executive Fund IV, L.P. ("H&F-2"), H&F International Partners IV-A, L.P. ("H&F-3") and H&F International Partners IV-B, L.P. ("H&F-4" and collectively with H&F-1, H&F-2 and H&F-3, and their respective Affiliates, the "H&F Entities") and (iv) Silver Lake Partners II TSA, L.P. ("SLP-1"), Silver Lake Technology Investors II, L.L.C. ("SLP-2"), Silver Lake Partners TSA, L.P. ("SLP-3"), Silver Lake Investors, L.P. ("SLP-4"), Integral Capital Partners VI, L.P. ("Integral") and VAB Investors, LLC ("VAB Investors" and collectively with SLP-1, SLP-2, SLP-3, SLP-4 and Integral, and their respective Affiliates, the "SLP Entities" and together with Norway Acquisition and the H&F Entities, the "Holders").

WHEREAS, the Company and the H&F Entities previously entered into the Securityholders Agreement, dated as of May 3, 2001 (the "Existing Securityholders Agreement"), in connection with the H&F Entities' purchase of $240,000,000 in aggregate principal amount of 4% Convertible Subordinated Notes due 2006 of the Company (the "Existing H&F Notes"); and

WHEREAS, immediately following the execution of this Agreement, the Company is entering into an Agreement and Plan of Merger (as amended, supplemented or otherwise modified from time to time, the "Merger Agreement"), among the Company, Norway Acquisition Corp., a Delaware corporation ("Merger Sub"), and Instinet Group, Incorporated, a Delaware corporation ("Instinet"), providing for the merger (the "Merger") of Merger Sub into Instinet; and

WHEREAS, in connection with the entry by the Company into the Merger Agreement, the Company has authorized the sale and issuance of $205,000,000 of its 3.75% Series A Convertible Notes due 2012 (as amended, supplemented or otherwise modified from time to time, the "Series A Notes") pursuant to an indenture in the form previously provided to the Holders (as amended, supplemented or otherwise modified from time to time, the "Indenture") and the Company has authorized the issuance of warrants to acquire 2,209,052 shares of common stock (the "Common Stock"), par value $0.01 per share, of the Company, in the form previously provided to the Holders (as amended, supplemented or otherwise modified from time to time, the "Series A Warrants") (the Series A Notes and the Series A Warrants collectively referred to herein as the "Series A Securities"); and

WHEREAS, in connection with the purchase of the Series A Securities, the H&F Entities and the SLP Entities have established Norway Holdings SPV, LLC, a Delaware limited liability company, and Norway Acquisition, for the limited purpose of entering into and carrying out the transactions contemplated by the Securities Purchase Agreement and to hold the Series A Securities for the beneficial ownership of the H&F Entities and the SLP Entities until the earlier of the Merger Closing (as defined below) or the Merger Termination (as defined below) at which point the Series A Securities will be distributed to the H&F Entities and the SLP Entities or redeemed by the Company, respectively; and

WHEREAS, in connection with the entry by the Company into the Merger Agreement, on the date hereof the Company is entering into a Note Amendment Agreement among the Company and the H&F Entities in the form previously provided to the Holders (as amended, supplemented or otherwise modified from time to time to the extent permitted by this Agreement, the "Note Amendment Agreement"), to amend the terms and conditions of the Company's outstanding 4.0% Convertible Subordinated Notes due 2006 held by the H&F Entities to reflect the terms of the 3.75% Series B Convertible Notes due 2012 of the Company (the "Series B Notes") pursuant to the Indenture and to issue warrants to acquire 2,753,448 shares of Common Stock in the form previously provided to the Holders (as amended, supplemented or otherwise modified from time to time, the "Series B Warrants") (the Series B Notes and the Series B Warrants collectively referred to herein as the "Series B Securities") (the Series A Securities and the Series B Securities together with the Common Stock are collectively referred to here as the "Securities"); and

WHEREAS, it is a condition precedent to the closing of the transactions contemplated by the Securities Purchase Agreement that the parties hereto amend and restate the Existing Securityholders Agreement in its entirety, to provide for, among other things, certain rights and obligations of Norway Acquisition, the SLP Entities and the H&F Entities, as follows.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants set forth herein, the parties hereto agree as follows:

ARTICLE 1
Definitions

Section 1.01. Definitions.

(a) The following terms, as used herein, have the following meanings:

"Affiliate" of any Person means any other Person directly or indirectly controlling, controlled by or under common control with such Person. For the purposes of this definition, "control" when used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing. Notwithstanding the foregoing, (i) the Affiliates of the H&F Entities or the SLP Entities will not include any of the portfolio companies in which such Persons have investments and (ii) the Company will not be deemed to be an Affiliate of any of the H&F Entities or the SLP Entities.

"Board" and "Board of Directors" means the Board of Directors of the Company.

"Cause" means the H&F Board Designee's or the SLP Board Designee's: (i) conviction of, or guilty plea, to a felony charge (other than felonies related solely to automobile infractions, unless such designee is incarcerated as a result thereof) or (ii) fraudulent conduct or an intentional act or acts of dishonesty in the performance of his or her service as a director that is materially injurious to the financial condition, results of operations or business regulation of the Company.

"Charter Amendment" means the Charter Amendment attached to the Securities Purchase Agreement as Exhibit A thereto.

"Collateral Agreement" means the Collateral Agreement, dated as of the date hereof, among Norway Holdings SPV, LLC, Norway Acquisition and JPM, in the form previously provided to the Holders, as amended, supplemented or otherwise modified from time to time.

"Commission" means the Securities and Exchange Commission.

"Competitor" means any Person that, during the 12 calendar months preceding the date of transfer derived more than 20% of its gross revenues from (i) the provision by such Person of listing, order execution or matching services for securities, (ii) the conduct by such Person of an international or national securities market, (iii) acting as a Self-Regulatory Organizations, (iv) operating an "electronic communications network," as defined under the Exchange Act or (v) operating an "alternative trading system" as defined in Regulation ATS under the Exchange Act.

"Exchange Act" means Securities Exchange Act of 1934, as amended.

"JPM" means JPMorgan Chase Bank, N.A., as administrative agent under the Loan Agreement.

"Loan Agreement" means the Secured Term Loan Agreement, dated as of the date hereof, among Norway Acquisition, Norway Holdings SPV, LLC, the lenders parties thereto and JPM, in the form previously provided to the Holders, as amended, supplemented or otherwise modified from time to time, pursuant to which Norway Acquisition is obtaining a senior bridge loan in connection with the Securities Purchase Agreement.

"Merger Closing" means the Closing (as defined in the Merger Agreement).

"Merger Termination" means the termination of the Merger Agreement pursuant to Article XIII thereof.

"NASD" means the National Association of Securities Dealers, Inc. and its successors.

"Notes" means the Series A Notes and the Series B Notes.

"Person" means an individual or a corporation, partnership, association, trust, or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Plan Assets Regulations" means the Department of Labor regulations codified at 29 C.F.R. Section 2510.3-101.

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of the date hereof, among the Company, the H&F Entities, the SLP Entities (as defined in the Registration Rights Agreement), Integral and VAB Investors as amended, supplemented or otherwise modified from time to time.

"Securities Act" means the Securities Act of 1933, as amended.

"Self-Regulatory Organization" means the NASD, any domestic or foreign securities exchange, commodities exchange, registered securities association, the Municipal Securities Rulemaking Board, National Futures Association, and any other board or body, whether United States or foreign, that regulates brokers, dealers, commodity pool operators, commodity trading advisors or future commission merchants.

"Subsidiary" means, with respect to any Person, any corporation or other entity of which a majority of the capital stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

"Warrants" means the Series A Warrants and the Series B Warrants.

(b) Each of the following terms is defined in the Section set forth opposite such term:

Term	Section
Agreement	Recitals
Company	Recitals
Common Stock	Recitals
Existing H&F Notes	Recitals
Existing Securityholders Agreement	Recitals
H&F-1	Recitals
H&F-2	Recitals
H&F-3	Recitals
H&F-4	Recitals
H&F Board Designee	3.01(a)
H&F Entities	Recitals
Holders	Recitals
Indemnified Parties	5.01(a)
Indemnified Liabilities	5.01(a)
Indenture	Recitals
Instinet	Recitals
Integral	Recitals
Merger	Recitals
Merger Agreement	Recitals
Merger Sub	Recitals
Norway Acquisition	Recitals
Note Amendment Agreement	Recitals
Securities	Recitals

Series A Notes	Recitals
Series A Securities	Recitals
Series A Warrants	Recitals
Series B Notes	Recitals
Series B Securities	Recitals
Series B Warrants	Recitals
SLP-1	Recitals
SLP-2	Recitals
SLP-3	Recitals
SLP-4	Recitals
SLP Board Designee	3.01(b)
SLP Entities	Recitals
Transfer	2.01(a)
VAB Investors	Recitals
VCOC Investor	4.03(a)

ARTICLE 2
Transfer Restrictions

Section 2.01. Transfer by Holders.

(a) Prior to the earlier of (x) nine months following the Merger Closing, (y) 18 months after the date hereof and (z) October 24, 2005 if the Merger Agreement has been terminated prior to such date and the Series A Redemption Date (as defined in the Indenture) does not occur on such date, no Holder shall transfer, sell, assign, or otherwise dispose of ("Transfer") any of the Securities, except (A) in compliance with all applicable federal securities laws and (B):

(i) to one or more Affiliates;

(ii) to the Company or any of its Subsidiaries;

(iii) pursuant to a merger, consolidation, share exchange, tender offer or other similar transaction involving the Company;

(iv) with the prior written consent of the Company; or

(v) to JPM pursuant to the Loan Agreement and the Collateral Agreement.

For the avoidance of doubt, the conversion of the Notes and the exercise of the Warrants will not be deemed to be a Transfer.

(b) Notwithstanding anything in the foregoing to the contrary, no Holder shall Transfer any of the Securities to any Competitor except (i) pursuant to a merger, consolidation, share exchange, tender offer or other similar transaction involving the Company, (ii) in any such Transfer pursuant to a public offering or a sale pursuant to Rule 144 under the Securities Act, *provided* that the Holder does not have actual knowledge that a purchaser pursuant thereto is a Competitor, and (iii) to any investment bank or its Affiliate (x) in the capacity of an underwriter,

placement agent, broker, dealer or similar function or (y) in a transaction (or series of related transactions) involving the transfer of Securities representing (on an as-converted basis) less than 5.0% of the outstanding Common Stock.

Section 2.02. Hedging Transactions.

(a) The H&F Entities will not enter into any hedging transactions with respect to the Securities it beneficially owns as of the date hereof.

(b) The SLP Entities will not enter into any hedging transactions with respect to the Securities it beneficially owns as of the date hereof.

ARTICLE 3
Board of Directors

Section 3.01. Board Appointment Obligation.

(a) For so long as the H&F Entities beneficially own Securities representing at least 5,793,000 shares of Common Stock (on an as-converted basis, as adjusted for any stock dividend, stock split, recapitalization or similar event in respect of such shares), H&F-1 shall have the right to nominate one person reasonably acceptable to the Company (the "H&F Board Designee") as director to the Board of Directors. The Company hereby agrees to (i) include the H&F Board Designee as one of the nominees to the Board of Directors on each slate of nominees for election to the Board of Directors proposed by management of the Company, (ii) recommend the election of the H&F Board Designee to the shareholders of the Company, and (iii) without limiting the foregoing, to otherwise use its reasonable best efforts to cause the H&F Board Designee to be elected to the Board of Directors. The Company hereby agrees to use its reasonable best efforts to cause the appointment of the H&F Board Designee to the Finance Committee and the Policy Committee of the Board of Directors.

(b) For so long as the SLP Entities own Securities representing at least 3,500,000 shares of the Common Stock (on an as-converted basis, as adjusted for any stock dividend, stock split, recapitalization or similar event in respect of such shares), SLP-1 shall have the right to nominate one person reasonably acceptable to the Company (the "SLP Board Designee") as director to the Board of Directors. The Company hereby agrees to (i) include the SLP Board Designee as one of the nominees to the Board of Directors on each slate of nominees for election to the Board of Directors proposed by management of the Company, (ii) recommend the election of the SLP Board Designee to the shareholders of the Company with the same level of support as is provided for the other Company nominees and (iii) without limiting the foregoing, to otherwise use its reasonable best efforts to cause the SLP Board Designee to be elected to the Board of Directors. The Company hereby agrees to use its reasonable best efforts to cause the appointment of the SLP Board Designee to the Finance Committee and the Compensation Committee of the Board of Directors; *provided*, that so long as the SLP Board Designee does not qualify as a "non-employee director" under Rule 16b-3 promulgated pursuant to the Exchange Act, the Company may form a sub-committee of the Compensation Committee which does not include the SLP Board Designee for purposes of approving any equity incentive grants such as restricted stock or stock options.

(c) In the event that the H&F Board Designee for any reason (other than for Cause) ceases to serve as a director during his term of office, to the extent H&F-1 is entitled to designate an H&F Board Designee, the resulting vacancy on the Board of Directors shall be filled by a director designated by H&F-1 reasonably acceptable to the Company. In addition, in the event that the SLP Board Designee for any reason (other than for Cause) ceases to serve as a director during his term of office, to the extent SLP-1 is entitled to designate an SLP Board Designee, the resulting vacancy on the Board of Directors shall be filled by a director designated by SLP-1 reasonably acceptable to the Company.

Section 3.02. No Interference with Board Rights.

The Company will use its reasonable best efforts not to, directly or indirectly, propose or take any action to encourage any modification to the composition of the Board of Directors that, in the Company's reasonable judgment, would likely result in the elimination or significant diminishment of the rights of H&F-1 and SLP-1 specified in Section 3.01; *provided* that the foregoing shall in no way limit the Company's right to increase the number of directors on the Board of Directors.

Section 3.03. Anti-Takeover Defenses.

The Board of Directors will not adopt, approve, recommend or submit for a vote of the Company's stockholders a "poison pill", stockholder rights plan or any other anti-takeover provision that would adversely affect the ability of the Holders to convert the Notes, exercise the Warrants or hold the shares of Common Stock received upon such conversion or exercise.

ARTICLE 4
Observer Rights; Information Rights; Additional Rights of VCOC Investors

Section 4.01. Observer Rights.

Subject to the execution of customary confidentiality arrangements, (i) for so long as SLP-1 is entitled to nominate a SLP Board Designee, SLP-3 shall have the right to designate a person reasonably acceptable to the Company, (ii) in the event H&F-1 is not represented on the Board of Directors by an H&F Board Designee and is entitled to such representation pursuant to Section 3.01, H&F-1 shall have the right to designate a person reasonably acceptable to the Company and (iii) in the event SLP-1 is not represented on the Board of Directors by an SLP Board Designee and is entitled to such representation pursuant to Section 3.01, SLP-1 shall have the right to designate a person reasonably acceptable to the Company who shall (i) receive notices of all meetings of the Board of Directors; (ii) be entitled to be present at all meetings of the Board of Directors in a nonvoting observer capacity (*provided* that, if the Company determines in good faith that such board observer's presence at any meeting or any portion of any meeting (A) violates or is substantially likely to violate applicable law or regulation or applicable regulatory policy or (B) would be reasonably likely to impair the Company's attorney-client privilege in connection with any pending or threatened legal proceedings, such board observer may be excluded from such meeting or such portion of such meeting) and (iii)

receive copies of all written materials and other information, including, without limitation, all minutes and consents, as provided by the Company to the members of the Board of Directors in their capacity as directors at the same time and in the same manner as provided to such directors.

Section 4.02. Information Rights.

Subject to appropriate confidentiality arrangements, to the extent not otherwise filed with the Commission, the Company will provide each of the Holders:

(a) as soon as available and in any event within 90 days after the end of each fiscal year of the Company, a balance sheet of the Company as of the end of such fiscal year and the related statements of profit and loss and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, and accompanied by a report thereon of Ernst & Young LLP or other independent registered public accounting firm; and

(b) as soon as available and in any event within 45 days after the end of each of the first three quarters of each fiscal year of the Company, a balance sheet of the Company as of the end of such quarter and the related statements of profit and loss and cash flows for such quarter and for the portion of the Company's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding quarter and the corresponding portion of the Company's previous fiscal year, all certified (subject to normal year-end adjustments) as to fairness of presentation, consistency and, except for the absence of footnotes, generally accepted accounting principles by the chief financial officer or the chief accounting officer of the Company.

Section 4.03. Additional Rights of VCOC Investors.

(a) (x) For so long as (i) the H&F Entities, directly or through one or more Affiliates, continue to beneficially own Securities representing at least 1,650,000 shares of Common Stock (on an as-converted basis, as adjusted for any stock dividend, stock split, recapitalization or similar event in respect of such shares) or (ii) H&F-1 determines in good faith that the possession of the following rights is necessary to facilitate its qualifying as a "venture capital operating company", H&F-1 or (y) for so long as (i) the SLP Entities, directly or through one or more Affiliates, continue to hold Securities representing at least 1,000,000 shares of Common Stock (on an as-converted basis, as adjusted for any stock dividend, stock split, recapitalization or similar event in respect of such shares) or (ii) SLP-1 or SLP-3 determines in good faith that the possession of the following rights is necessary to facilitate its qualifying as a "venture capital operating company", SLP-1 and SLP-3, without limitation or prejudice of any of the rights provided under this Agreement to each of SLP-1, SLP-3 and H&F-1 (each, a "VCOC Investor"), the Company shall:

(i) provide such VCOC Investor or its designated representative, upon written request, with:

(A) the right to visit and inspect any of the offices and properties of the Company and its Subsidiaries and inspect and copy the books and records of the Company and its Subsidiaries, at such times as such VCOC Investor shall reasonably request;

(B) to the extent the Company is required by law or pursuant to the terms of any outstanding indebtedness of the Company to prepare such reports, any annual reports, quarterly reports and other periodic reports pursuant to Section 13 or 15(d) of the Exchange Act actually prepared by the Company as soon as available; and

(C) copies of all materials provided to the Board of Directors;

(ii) make appropriate officers and/or directors of the Company available periodically and at such times as reasonably requested in writing by such VCOC Investor for consultation with such VCOC Investor or its designated representative with respect to matters relating to the business and affairs of the Company and its Subsidiaries, including without limitation, significant changes in management personnel and compensation of employees, introduction of new products or new lines of business, important acquisitions or dispositions of plants and equipment, significant research and development programs, the purchasing or selling of important trademarks, licenses or concessions or the proposed commencement or compromise of significant litigation;

(iii) to the extent consistent with applicable law (and with respect to events which require public disclosure, only following the Company's public disclosure thereof though applicable securities law filings or otherwise), inform such VCOC Investor or its designated representative in advance with respect to any significant corporate actions, including, without limitation, extraordinary dividends, mergers, acquisitions or dispositions of assets, issuances of significant amounts of debt or equity and material amendments to the certificate of incorporation or by laws of the Company, and to provide such VCOC Investor or its designated representative with the right to consult with the Company with respect to such actions, *provided* that the ultimate discretion with respect to all such matters shall be retained by the Company; and

(iv) provide such VCOC Investor or its designated representative with such other rights of consultation which such VCOC Investor's counsel may reasonably determine in writing to be reasonably necessary under applicable legal authorities promulgated after the date hereof to qualify its investment in the Company as a "venture capital investment" for purposes of the Plan Assets Regulations.

(b) The Company agrees to consider, in good faith, the recommendations of such VCOC Investor or its designated representative in connection with the matters on which it is consulted as described above, *provided* that the ultimate discretion with respect to all such matters shall be retained by the Company.

(c) In the event a VCOC Investor transfers all or any portion of its investment in the Company to an affiliated entity (or to a direct or indirect wholly-owned conduit Subsidiary of any such affiliated entity) that is intended to qualify as a venture capital operating company under the Plan Assets Regulations, such affiliated entity shall be afforded the same rights with respect to the Company afforded to such VCOC Investor hereunder and shall be treated, for such purposes, as a third party beneficiary hereunder, *provided* that the affiliated entity shall only be afforded such rights if it, together with the transferee and its Affiliates, hold the applicable amount of Securities referenced in Section 4.03(a).

Section 4.04. Voting Rights.

If the Board of Directors approves an exemption for any Person from the 5% limitation on voting rights set forth in Article Fourth of the Charter Amendment, the Board of Directors shall simultaneously grant a similar exemption to each of the H&F Entities and the SLP Entities and shall use its best efforts to obtain the concurrence of the Commission with respect thereto.

ARTICLE 5
Indemnification

Section 5.01. Indemnification.

(a) The Company will indemnify, exonerate and hold the Holders and each of their respective partners, stockholders, members, directors, officers, fiduciaries, managers, controlling Persons, employees and agents of each of the partners, stockholders, members, directors, officers, fiduciaries, managers, controlling Persons, employees and agents of each of the foregoing (collectively, the "Indemnified Parties") free and harmless from and against any and all actions, causes of action, suits, claims, liabilities, losses, damages and costs and out-of-pocket expenses in connection therewith (including reasonable attorneys' fees and expenses) incurred by the Indemnified Parties or any of them before or after the date of this Agreement (collectively, the "Indemnified Liabilities"), arising out of any actual or threatened action, cause of action, suit, or claim arising directly or indirectly out of such Holder's actual, alleged or deemed control or ability to influence the Company or any of its Subsidiaries (other than any such Indemnified Liabilities that arise out of any breach of this Agreement by such Indemnified Party or other related Persons); *provided* that if and to the extent that the foregoing undertaking may be unavailable or unenforceable for any reason, the Company hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. The rights of any Indemnified Party to indemnification hereunder will be in addition to any other rights any such Person may have under any other agreement or instrument to which such Indemnified Party is or becomes a party or is or otherwise becomes a beneficiary or under law or regulation or under the certificate of incorporation or bylaws of the Company or any of its Subsidiaries and shall extend to such Indemnified Party's successors and assigns.

ARTICLE 6
Miscellaneous

Section 6.01. Notices.

(a) Any notice, request, instruction or other document to be given hereunder by any party hereto to another party hereto shall be in writing (including fax or similar writing) and shall be given to such party at its address or fax number set forth below, or to such other address as the party to whom notice is to be given may provide in a written notice to the party giving such notice, a copy of which written notice shall be on file with the Secretary of the

Company. Each such notice, request or other communication shall be effective (i) if given by fax, when such fax is transmitted to the fax number specified below and confirmation of receipt is received or (ii) if given by mail, 72 hours after such communication is deposited in the mails with first class postage prepaid addressed as aforesaid or (iii) if given by any other means, when delivered at the address specified below.

(b) If to the Company,

The Nasdaq Stock Market, Inc.
9513 Key West Avenue
Rockville, MD 20850
Attention: John Zecca
Telephone: (310) 978-8498
Fax: (310) 978-5296

(c) If to Norway Acquisition,

Norway Acquisition
c/o Hellman & Friedman LLC
One Maritime Plaza, 12th Floor
San Francisco, CA 94111
Attention: Patrick J. Healy & Erik D. Ragatz
Telephone: (415) 788-5111
Fax: (415) 391-4648

and

c/o Silver Lake Partners
2725 Sand Hill Road, Suite 150
Menlo Park, CA 94025
Attention: Alan K. Austin
Telephone: (650) 233-8120
Fax: (650) 233-8125

(d) If to the H&F Entities,

Hellman & Friedman LLC
One Maritime Plaza, 12th Floor
San Francisco, CA 94111
Attention: Arrie Park
Telephone: (415) 788-5111
Fax: (415) 788-0176

(e) If to the SLP Entities other than Integral or VAB Investors,

Silver Lake Partners
2725 Sand Hill Road, Suite 150
Menlo Park, CA 94025
Attention: Alan K. Austin
Telephone: (650) 233-8120
Fax: (650) 233-8125

(f) If to Integral,

Integral Capital Partners
3000 Sand Hill Road
Building 3, Suite 240
Menlo Park, CA 94025
Attention: Pamela K. Hagenah
Telephone: (650) 233-3506
Fax: (650) 233-0366

(g) If to VAB Investors,

Instinet Group
Harborside Financial Center
900 Plaza 10
Jersey City, NJ 07311
Attention: Edward Nicoll
Telephone: (212) 231-5501
Fax: (201) 239-6860

Section 6.02. Amendments; Waivers.

(a) No failure or delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(b) Neither this Agreement nor any term or provision hereof may be amended or waived in any manner other than by instrument in writing signed, in the case of an amendment, by each of the Holders and the Company, or in the case of a waiver, by the party against whom the enforcement of such waiver is sought.

Section 6.03. Termination.

(a) Subject to Article V, this Agreement shall terminate and be of no further force or effect with respect to each Holder upon such date that such Holder no longer holds any Securities.

(b) Upon the earlier of the Merger Closing or Merger Termination, this Agreement will automatically and without further action of the parties be amended and restated to read in its entirety as set forth in the Existing Securityholders Agreement as of May 3, 2001.

Section 6.04. Successors, Assigns, Transferees.

(a) The parties hereto may not assign any of its rights and obligations hereunder without the prior written consent of the other; *provided*, *however*, each of the H&F Entities and the SLP Entities may assign its rights and obligations hereunder, without the consent of the Company, to any of their respective Affiliates; *provided*, that any such Affiliate of the H&F Entities or the SLP Entities, as the case may be, agrees in writing (in a form reasonably satisfactory to the Company) to be bound by the terms of this Agreement. The provisions of this Agreement shall be binding upon and accrue to the benefit of the parties hereto and their respective heirs, successors and assigns. Neither this Agreement nor any provision hereof shall be construed so as to confer any right or benefit upon any Person other than the parties to this Agreement and their respective successors and permitted assigns; *provided* that each of the Indemnified Parties is an intended third party beneficiary of Article V and shall be entitled to enforce its rights thereunder.

Section 6.05. Headings.

(a) The headings in this Agreement are for convenience of reference only and shall not control or affect the meaning or construction of any provisions hereof.

Section 6.06. No Inconsistent Agreements.

(a) The Company will not hereafter enter into any agreement with respect to its securities which is inconsistent with the rights granted to the Holders in this Agreement. The Company represents and warrants to each Holder that it has not previously entered into any agreement with respect to any of its debt or equity securities granting any registration rights to any Person, except for an agreement with the NASD.

Section 6.07. Severability.

(a) The invalidity or unenforceability of any provisions of this Agreement in any jurisdiction shall not affect the validity, legality or enforceability of the remainder of this Agreement in such jurisdiction or the validity, legality or enforceability of this Agreement, including any such provision, in any other jurisdiction, it being intended that all rights and obligations of the parties hereunder shall be enforceable to the fullest extent permitted by law.

Section 6.08. Recapitalization, Etc.

(a) In case of any consolidation, merger, reorganization, reclassification, merger, sale, conveyance, consolidation, spin-off, partial or complete liquidation, stock dividend, transfer or lease in which either (a) the Company is not the surviving person or (b) under the terms of the Indenture, the Notes are convertible into a security other than the Common Stock of the Company, then (i) all rights and obligations of the Company under this Agreement shall be assumed by and transferred to any such successor person into whose securities the Notes are

convertible, with the same effect as if it had been named herein as the party of this first part, and (ii) all references in this Section 6.08 to "Common Stock" shall be deemed to refer to any such new security and to the "Company" shall be deemed to refer to such person; *provided*, however, in any case, the Company will not effect any such transaction unless the successor delivers to each of the Holders an agreement in writing in a form reasonably satisfactory to the Holders agreeing to be bound by the terms of this Agreement. The intent of the parties is to fairly and equitably preserve the original rights and obligations of the parties hereto under this Agreement.

Section 6.09. Specific Performance.

(a) The parties hereto agree that if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, irreparable damage would occur, no adequate remedy at law would exist and damages would be difficult to determine, and that the parties shall be entitled to specific performance of the terms hereof and immediate injunctive relief, without the necessity of proving the inadequacy of money damages as a remedy, in addition to any other remedy at law or equity.

Section 6.10. Other Agreements.

(a) Nothing contained in this Agreement shall be deemed to be a waiver of, or release from, any obligations any party hereto may have under, or any restrictions on the transfer of shares of Common Stock or other securities of the Company or any direct or indirect subsidiary of the Company imposed by, any other agreement.

Section 6.11. New York Law.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to the conflicts of laws principles thereof.

Section 6.12. Counterparts.

(a) This Agreement may be executed in any number of counterparts, each of which shall be an original with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 6.13. Entire Agreement.

(a) This Agreement, together with the Securities Purchase Agreement, the Notes, the Warrants, the Registration Rights Agreement and the Charter Amendment, constitutes the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein, and there are no restrictions, promises, representations, warranties, covenants, or undertakings with respect to the subject matter hereof, other than those expressly set forth or referred to herein or therein. This Agreement, the Securities Purchase Agreement, the Notes, the Warrants, the Registration Rights Agreement and the amendment to the Company's restated certificate of incorporation supersede all prior agreements and understandings between the parties hereto with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

THE NASDAQ STOCK MARKET, INC.

By: /s/ Adena T. Friedman

Name: Adena T. Friedman
Title: Executive Vice President

[Signature pages continue on next page]

NORWAY ACQUISITION SPV, LLC

By: NORWAY HOLDINGS SPV, LLC, as Managing Member

By: SILVER LAKE PARTNERS II TSA, L.P.,
its Managing Member

By: SILVER LAKE TECHNOLOGY ASSOCIATES II, L.L.C.,
its General Partner

By: /s/ Alan K. Austin

Name: Alan K. Austin
Title: Managing Director
and Chief Operating Officer

AND

By: HELLMAN & FRIEDMAN CAPITAL PARTNERS IV, L.P., as Managing Member

By: H&F INVESTORS IV, LLC,
its General Partner

By: H&F ADMINISTRATION IV, LLC, its Administrative Manager

By: H&F INVESTORS III, INC.,
its Manager

By: /s/ Mtichell R. Cohen

Name: Mitchell R. Cohen
Title: Vice President

[Signature pages continue on next page]

HELLMAN & FRIEDMAN CAPITAL PARTNERS IV, L.P.

By: H&F INVESTORS IV, LLC, its General Partner

By: H&F ADMINISTRATION IV, LLC,
its Administrative Manager

By: H&F INVESTORS III, INC.,
its Manager

By: /s/ Mtichell R. Cohen

Name: Mitchell R. Cohen
Title: Vice President

H&F EXECUTIVE FUND IV, L.P.

By: H&F INVESTORS IV, LLC, its General Partner

By: H&F ADMINISTRATION IV, LLC,
its Administrative Manager

By: H&F INVESTORS III, INC.,
its Manager

By: /s/ Mtichell R. Cohen

Name: Mitchell R. Cohen
Title: Vice President

H&F INTERNATIONAL PARTNERS IV-A, L.P.

By: H&F INVESTORS IV, LLC, its General Partner

By: H&F ADMINISTRATION IV, LLC,
its Administrative Manager

By: H&F INVESTORS III, INC.,
its Manager

By: /s/ Mitchell R. Cohen

Name: Mitchell R. Cohen
Title: Vice President

[Signature pages continue on next page]

H&F INTERNATIONAL PARTNERS IV-B, L.P.

By: H&F INVESTORS IV, LLC, its General Partner

By: H&F ADMINISTRATION IV, LLC,
its Administrative Manager

By: H&F INVESTORS III, INC.,
its Manager

By: /s/ Mitchell R. Cohen

Name: Mitchell R. Cohen
Title: Vice President

[Signature pages continue on next page]

SILVER LAKE PARTNERS II TSA, L.P.

By: SILVER LAKE TECHNOLOGY ASSOCIATES II, L.L.C., its General Partner

By: /s/ Alan K. Austin

Name: Alan K. Austin
Title: Managing Director
and Chief Operating Officer

SILVER LAKE TECHNOLOGY INVESTORS II, L.L.C.

By: SILVER LAKE MANAGEMENT COMPANY, L.L.C.,
its Manager

By: SILVER LAKE TECHNOLOGY MANAGEMENT, L.L.C., its Managing Member

By: /s/ Alan K. Austin

Name: Alan K. Austin
Title: Managing Director
and Chief Operating Officer

SILVER LAKE PARTNERS TSA, L.P.

By: SILVER LAKE TECHNOLOGY ASSOCIATES, L.L.C.,
its General Partner

By: /s/ Alan K. Austin

Name: Alan K. Austin
Title: Managing Director
and Chief Operating Officer

[Signature pages continue on next page]

SILVER LAKE INVESTORS, L.P.

By: SILVER LAKE TECHNOLOGY ASSOCIATES, L.L.C.,
its General Partner

By: /s/ Alan K. Austin

Name: Alan K. Austin
Title: Managing Director
and Chief Operating Officer

[Signature pages continue on next page]

INTEGRAL CAPITAL PARTNERS VI, L.P.

By: INTEGRAL CAPITAL MANAGEMENT VI, LLC,
its General Partner

By: /s/ Pamela K. Hagenah

Name: Pamela K. Hagenah
Title: Manager

[Signature pages continue on next page]

VAB INVESTORS, LLC

By: /s/ Edward J. Nicoll

Name: Edward J. Nicoll
Title: Manager

Exhibit 99.1

SUPPORT AGREEMENT

April 22, 2005

The Nasdaq Stock Market, Inc.
One Liberty Plaza
New York, NY 10006
Attention: General Counsel

Ladies and Gentlemen:

Each of the undersigned understands that The Nasdaq Stock Market, Inc., a Delaware corporation ("Buyer"), Norway Acquisition Corp., a Delaware corporation ("Merger Sub") and Instinet Group Incorporated, a Delaware corporation (the "Company"), propose to enter into an Agreement and Plan of Merger, dated as of the date hereof (as it may be from time to time amended, the "Merger Agreement"), providing for, among other things, a merger of Merger Sub with and into the Company (the "Merger"), in which all of the issued and outstanding shares of common stock, par value $0.01 per share, of the Company (the "Company Common Stock") (together with the associated Company Rights and other than shares of Company Common Stock (a) held in treasury, (b) owned by Buyer, the Company or any of their respective wholly owned subsidiaries, or (c) as to which dissenters' rights shall have been perfected) will be cancelled and converted into the right to receive an amount in cash as determined in accordance with the terms of the Merger Agreement, without interest. Terms used without definition in this letter agreement shall have the meanings ascribed thereto in the Merger Agreement.

The undersigned are the owners of that number of shares of Company Common Stock set forth on Schedule I to this letter agreement and, in their capacity as such, are entering into this letter agreement in consideration of, and as a condition to, Buyer's and Merger Sub's willingness to enter into the Merger Agreement and to consummate the transactions contemplated thereby.

Each of the undersigned confirms its agreement with Buyer, as follows:

1. Each of the undersigned represents and warrants that Schedule I to this letter agreement sets forth the number of shares of Company Common Stock (together with any shares of Company Common Stock acquired by it after the date of this letter agreement, the "Shares"), of which it is the record or beneficial owner as of the date hereof and that it does not own any warrants or options exercisable for shares of Company Common Stock. Each of the undersigned represents and warrants that, as of the

date of this letter agreement, it owns the Shares as set forth on Schedule I to this letter agreement, free and clear of all Liens and all voting agreements and commitments of every kind, except as provided in the Disclosed Agreements (as defined below). The undersigned further represents and warrants that the undersigned has the power to vote all Shares owned by it as set forth on Schedule I to this letter agreement without restriction, except as provided in the Stockholders Agreement (as defined below), and that no proxies heretofore given in respect of any or all of such Shares are irrevocable and that any such proxies have heretofore been revoked. The term "Disclosed Agreements" refers to (i) the Stockholders Agreement, dated as of June 9, 2002 (the "Stockholders Agreement"), among the Company, certain Affiliates of the undersigned, entities affiliated with Bain Capital, entities affiliated with TA Associates, Inc. and entities associated with Silver Lake Partners, L.P., and with respect to certain sections thereof, Edward Nicoll, (ii) Registration Rights Agreement, dated as of September 20, 2002, among the parties to the Stockholders Agreement and the other parties named therein, and (iii) the Amended and Restated Corporate Agreement, dated as of June 9, 2002, between Reuters Limited and the Company.

2. Each of the undersigned agrees that it will not, directly or indirectly, sell, transfer, assign, pledge, encumber or otherwise dispose of any of the Shares owned by it, or any interest therein, or any other securities convertible into or exchangeable for Company Common Stock, or any voting rights with respect thereto or enter into any contract, option or other arrangement or understanding with respect thereto (including any voting trust or agreement and the granting of any proxy), other than: (a) pursuant to the Merger, (b) with the prior written consent of Buyer, or (c) a transfer to Reuters Group plc, a company organized under the laws of England ("Reuters"), or any direct or indirect subsidiary of Reuters for so long as such subsidiary is directly or indirectly wholly-owned by Reuters (provided that, in the case of this clause (c), the transferee shall agree in writing to be bound by the terms of this letter agreement to the same extent as the transferor and, further, provided that nothing herein shall relieve the transferor of any of its obligations hereunder). Each of the undersigned hereby agrees to authorize the Company to notify its transfer agent that the transfer agent should enter a stop transfer order with respect to all of the Shares owned by it (other than transfers and other actions permitted in the preceding sentence), that this letter agreement places limits on the voting of such Shares, and that such stop transfer order shall terminate automatically upon the termination of this letter agreement.

3. At every meeting of the stockholders of the Company called, and at every postponement or adjournment thereof, each of the undersigned agrees to vote its Shares or to cause its Shares to be voted: (a) in favor of adoption of the Merger Agreement and (b) against (i) any proposal made in opposition to adoption of the Merger Agreement or in competition with the Merger or any other transaction contemplated by the Merger Agreement, (ii) any Acquisition Proposal, and (iii) subject to the Stockholders Agreement, any change in the management or board of directors of the Company (other than in connection with the transactions contemplated by the Merger Agreement). The

obligations of each of the undersigned specified in this paragraph 3 shall be suspended and not apply if and during such time as the Company Board (or any committee thereof) shall have publicly announced and not publicly withdrawn or rescinded any Change in the Company Board Recommendation.

4. Each of the undersigned agrees that it will not, directly or indirectly, initiate, solicit, encourage or facilitate any inquiries or the making of any proposal or offer with respect to any Acquisition Proposal or engage in discussions with any third party that could reasonably be expected to lead to an Acquisition Proposal, except that such undersigned, its Affiliates and their respective representatives may take any such actions to the same extent that the Company and its representatives are permitted to take such actions under the Merger Agreement.

5. [Intentionally blank.]

6. Each of the undersigned and Reuters represents and warrants that (a) it has all necessary power and authority to enter into this letter agreement; and (b) this letter agreement is a legal, valid and binding agreement of such undersigned and is enforceable against it in accordance with its terms.

7. This letter agreement and all obligations of the parties hereunder shall automatically terminate upon the earliest of (a) the termination of the Merger Agreement in accordance with its terms, (b) the Effective Time, and (c) the effectiveness of any amendment, modification or supplement to, or waiver under, the Merger Agreement which amendment, modification, supplement or waiver is materially adverse, directly or indirectly, to the undersigned or Reuters, including but not limited to reducing the amount or modifying the form of the Merger Consideration payable in the Merger, unless consented to in writing by the undersigned; provided, however, that the provisions of this paragraph 7, and the first sentence of paragraph 6 and paragraphs 8 through 16 (inclusive) below shall survive any termination of this letter agreement in accordance with their terms; provided, further, that the provisions of paragraph 5 shall survive the termination of this letter agreement pursuant to paragraph 7(b) in accordance with their terms.

8. Buyer shall cooperate with the undersigned and use all commercially reasonable efforts to ensure that (upon surrender by the undersigned of certificates representing the Shares and duly completed transmittal materials in respect thereof) the undersigned shall receive, as soon as practicable following the effectiveness of the Merger, but in no event later than one Business Day thereafter (assuming that the undersigned has surrendered the certificates representing the Shares), the Merger Consideration in respect of the Shares so surrendered.

9. Notwithstanding anything herein to the contrary, none of the undersigned makes any representation or warranty about the Company or any subsidiary of the Company or any covenant or commitment to cause the Company or any subsidiary of the Company to take or refrain from taking any action, it being understood and agreed that the Merger Agreement fully governs the arrangements between Buyer and the Company and not this letter agreement.

10. Notwithstanding anything herein to the contrary, this letter agreement is entered into by each of the undersigned solely in its capacity as a stockholder of the Company, and nothing in this letter agreement shall restrict in any way the exercise by any of the undersigned's Affiliates of their fiduciary and legal obligations in their capacity as directors of the Company.

11. This agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to principles of conflict of laws.

12. Each party to this letter agreement recognizes and acknowledges that a breach by it of any covenants or agreements contained in this letter agreement will cause the other party to sustain damages for which it would not have an adequate remedy at law for money damages, and therefore each party agrees that in the event of any such breach, the aggrieved party shall be entitled to specific performance of such covenants and agreements and injunctive and other equitable relief in addition to any other remedy to which it may be entitled, at law or in equity.

13. The effectiveness of this letter agreement shall be conditioned upon the execution and delivery of the Merger Agreement by the parties thereto.

14. Each of the undersigned agrees that this letter agreement and the obligations hereunder shall attach to the Shares and shall be binding upon any person or entity to which legal or beneficial ownership of the Shares shall pass, whether by operation of law or otherwise, including the undersigned's successors.

15. Reuters hereby agrees to ensure that each of the undersigned complies with all of its obligations under this letter agreement in accordance with the terms hereof.

16. The Company is an express and intended third party donee beneficiary of the representations, warranties, covenants and agreements made in this letter agreement by each of the undersigned and their Affiliate, Reuters, with the right to directly enforce any such provisions against each of the undersigned and their Affiliate, Reuters, and their respective successors and assigns.

17. Each of the undersigned and Reuters hereby consent to the consummation of the Merger (as defined in the Merger Agreement) for purposes of each of the Disclosed Agreements, in each case to the extent and only to the extent that any provision of any such agreement expressly prohibits, by its terms, such consummation; provided that, the foregoing consent shall constitute a consent solely with respect to such consummation and not transactions in connection therewith, such as assignments or similar actions.

Please confirm that the foregoing correctly states the understanding between the undersigned and you by signing and returning to us a counterpart hereof.

Very truly yours,

REUTERS C LLC

By: /s/ Eric Lint

Name: Eric Lint
Title: Authorized Signatory

REUTERS GROUP OVERSEAS HOLDINGS (UK) LIMITED

By: /s/ Eric Lint

Name: Eric Lint
Title: Authorized Signatory

FOR PURPOSES OF PARAGRAPHS 6, 15, 16 and 17 ONLY,
REUTERS GROUP PLC

By: /s/ Eric Lint

Name: Eric Lint
Title: Authorized Signatory

Confirmed as of the date
first above written:

THE NASDAQ STOCK MARKET, INC.

By: /s/ Adena Friedman

Name: Adena Friedman
Title: Executive Vice President

SCHEDULE I

Name of Stockholder	Number of Shares
Reuters C LLC	170,181,887
Reuters Group Overseas Holdings (UK) Limited	40,469,640

EXHIBIT 99.2

EXECUTION COPY

GUARANTEE AGREEMENT dated as of April 22, 2005 (this "Agreement"), among THE NASDAQ STOCK MARKET, INC., a Delaware corporation (the "Guarantor"), NORWAY ACQUISITION SPV, LLC, a Delaware limited liability company (the "Borrower"), and JPMORGAN CHASE BANK, N.A., a national banking association, ("JPMCB"), as administrative agent (in such capacity, the "Administrative Agent") for the Lenders (as defined in the Term Loan Agreement referred to below).

Reference is made to the Secured Term Loan Agreement dated as of April 22, 2005 (as amended, supplemented or otherwise modified from time to time, the "Term Loan Agreement"), among Norway Holdings SPV, LLC ("Holdings"), the Borrower, the lenders from time to time party thereto (the "Lenders") and JPMCB, as Administrative Agent. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Term Loan Agreement.

Pursuant to (i) an Agreement and Plan of Merger (the "Merger Agreement") dated as of the date hereof among the Guarantor, Norway Acquisition Corp., a Delaware corporation and a direct wholly owned subsidiary of the Guarantor ("Merger Sub"), and Instinet Group Incorporated, a Delaware corporation (the "Seller"), Merger Sub will merge with and into the Seller, with the Seller surviving such merger as a wholly owned subsidiary of the Guarantor (the "Acquisition") and (ii) a Transaction Agreement (the "VAB Transaction Agreement") to be entered into among the Guarantor, Merger Sub and Iceland Acquisition Corp., a Delaware corporation ("VAB Acquisition Sub") all the capital stock of which is owned by affiliates of Silver Lake Partners, the Guarantor will, immediately upon completion of the Acquisition, sell the assets, liabilities and capital stock of the subsidiaries of the Seller that comprise its VAB business to VAB Acquisition Sub.

In order to obtain a portion of the financing for the Acquisition, on the Effective Date, the Guarantor will issue $205,000,000 aggregate principal amount of newly issued Convertible Notes, together with the Warrants, to the Borrower for an aggregate purchase price of $205,000,000 in cash. The Borrower has requested the Lenders to extend credit, subject to the terms and conditions specified in the Term Loan Agreement, in the form of the Loans on the Effective Date, the proceeds of which will be deposited by the Administrative Agent directly in the Blocked Account in satisfaction of the Borrower's obligations to pay the purchase price of the Convertible Notes and the Warrants. The Loans shall be (a) secured by the Convertible Notes and the Warrants and (b) guaranteed by (i) the Guarantor, which guarantee shall be secured by the cash deposited in the Blocked Account, which shall include the proceeds from the sale of the Convertible

Notes and the Warrants and the Additional Amounts (as defined below), and (ii) Holdings, which guarantee shall be secured by the Borrower Equity.

In connection with the foregoing, Holdings has obtained the Sponsor Commitment Letter pursuant to which the Sponsors commit to provide to Holdings, and Holdings commits to provide to the Borrower, a cash contribution in an amount of not less than $205,000,000 upon the consummation of the Acquisition. In the event the Acquisition shall not have been consummated on or prior to the Maturity Date, the Convertible Notes shall be redeemed by the Guarantor at the adjusted issue price thereof plus accrued interest.

The Guarantor acknowledges that (a) it will derive substantial benefit from the making of the Loans by the Lenders and (b) the Lenders have agreed to make the Loans on the condition that, among other things, the Guarantor executes and delivers a Guarantee Agreement in the form hereof. As consideration therefor and in order to induce the Lenders to agree to make the Loans, the Guarantor is willing to execute this Agreement.

Accordingly, the parties hereto agree as follows:

SECTION 1. Guarantee. The Guarantor unconditionally guarantees as a primary obligor and not merely as a surety, the due and punctual payment by the Borrower of (a) the principal of and premium, if any, and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans made to the Borrower, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (b) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of the Borrower to the Lenders under the Term Loan Agreement and the other Loan Documents (the obligations described in clauses (a) and (b) collectively, the "Obligations"). The Guarantor further agrees that the Obligations may be extended or renewed, in whole or in part, without notice to or further assent from it, and that it will remain bound upon its guarantee notwithstanding any extension or renewal of any Obligation.

SECTION 2. Obligations Not Waived. To the fullest extent permitted by applicable law, the Guarantor waives presentment to, demand of payment from and protest to the Borrower of any of the Obligations, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment. To the fullest extent permitted by applicable law, the obligations of the Guarantor hereunder shall not be affected by (a) the failure of the Administrative Agent or any other Lender to assert any claim or demand or to enforce or exercise any right or remedy against the Borrower under the provisions of the Term Loan Agreement, any other Loan Document or otherwise, (b) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, this Agreement, any other Loan Document, any guarantee or any other agreement or

(c) the failure to perfect any security interest in, or the release of, any of the security held by or on behalf of the Administrative Agent or any other Lender.

SECTION 3. Guarantee of Payment. The Guarantor further agrees that its guarantee constitutes a guarantee of payment when due and not of collection, and waives any right to require that any resort be had by the Administrative Agent or any other Lender to any of the security held for payment of the Obligations or to any balance of any deposit account or credit on the books of the Administrative Agent or any other Lender in favor of the Borrower or any other person.

SECTION 4. No Discharge or Diminishment of Guarantee. The obligations of the Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the Obligations), including any claim of waiver, release, surrender, alteration or compromise of any of the Obligations, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be discharged or impaired or otherwise affected by the failure of the Administrative Agent or any other Lender to assert any claim or demand or to enforce any remedy under the Term Loan Agreement, any other Loan Document or any other agreement, by any waiver or modification of any provision of any thereof, by any default, failure or delay, wilful or otherwise, in the performance of the Obligations, or the failure to perfect any security interest in, or the release of, any of the security held by or on behalf of the Administrative Agent or any other Lender, or by any other act or omission that may or might in any manner or to any extent vary the risk of the Guarantor or that would otherwise operate as a discharge of the Guarantor as a matter of law or equity (other than the indefeasible payment in full in cash of all the Obligations).

SECTION 5. Securities Demand. In the event that on the Maturity Date, (a) all conditions to the consummation of the Acquisition (as set forth in the Merger Agreement) shall have been satisfied or waived, (b) all conditions to any senior secured credit facilities to be obtained by the Guarantor in connection with the Acquisition shall have been satisfied or waived, (c) any Sponsor shall have failed to satisfy their commitments under the Sponsor Commitment Letter despite all conditions thereto having been satisfied or waived and (d) all the Loans have not as of such date been indefeasibly paid in full in cash (in any such case, a "Trigger Date"), (i) the Guarantor will engage one or more investment banks (collectively, the "Investment Banks") reasonably satisfactory to the Lenders to purchase, and subsequently sell in a public sale or private placement, cash-pay, pay-in-kind, discount or other debt securities of the Guarantor (the "Securities") that will provide gross proceeds in an aggregate amount specified by the Guarantor but not to exceed the aggregate principal amount of the Loans that have not been repaid in cash, which gross proceeds shall be used to pay a portion of the consideration payable in the Acquisition and (ii) the amounts deposited in the Blocked Account shall be used to indefeasibly pay in full in cash all the Obligations (which repayment shall, as set forth in Section 9(c) hereof, satisfy the Guarantor's obligations under the Convertible Notes Documents to pay the redemption price in respect of the Convertible Notes and the

Warrants (unless the Warrants expired or were otherwise terminated prior to such time) to the extent that such repayment is in an amount equal to the aggregate redemption price of the Convertible Notes and the Warrants, if any, required to be paid pursuant to Section 3.06 of the Indenture and the terms of the Warrants and otherwise pays in full all of the Obligations). The Guarantor further agrees, subject to the remainder of this paragraph, to take actions commercially reasonably necessary so that the Investment Banks can place the Securities. Upon notice by the lead Investment Bank (a "Securities Demand") delivered at the direction of the Guarantor, on or after the Trigger Date, the Guarantor will cause the issuance and sale of the Securities upon such terms and conditions as specified by the Investment Banks in the Securities Demand, provided that (a) the interest, dividend or discount rate (whether floating or fixed) and issue price shall be determined by the Investment Banks in light of the then-prevailing market conditions, but in no event shall (i) the weighted average effective yield of the Securities exceed the then-prevailing Adjusted LIBO Rate plus 6.25% prior to the date that is 60 days after the Trigger Date (or the then-prevailing Adjusted LIBO Rate plus 7.00% thereafter) or (ii) the weighted average cash-pay yield of the Securities exceed the then-prevailing Adjusted LIBO Rate plus 5.25% prior to the date that is 60 days after the Trigger Date (or the then-prevailing Adjusted LIBO Rate plus 6.00% thereafter), (b) the maturity of any Securities shall not be earlier than the date that is one year after the maturity of the Term Loan Facility of the Senior Facilities, (c) the Securities shall be issued pursuant to indentures or other governing documents in the form negotiated by the Guarantor and the Investment Banks that shall contain such terms, conditions and covenants as are typical and customary for similar financings and as are reasonably satisfactory in all respects to the Investment Banks and their counsel and (d) all other arrangements with respect to the Securities shall be reasonably satisfactory in all respects to the Investment Banks in light of the then-prevailing market conditions.

SECTION 6. Defenses of Borrower Waived. To the fullest extent permitted by applicable law, the Guarantor waives any defense based on or arising out of any defense of the Borrower or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of the Borrower, other than the final and indefeasible payment in full in cash of the Obligations. The Administrative Agent and the other Lenders may, at their election, foreclose on any security held by one or more of them by one or more judicial or nonjudicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with the Borrower or exercise any other right or remedy available to them against the Borrower, without affecting or impairing in any way the liability of the Guarantor hereunder except to the extent the Obligations have been indefeasibly paid in full in cash. Pursuant to applicable law, the Guarantor waives any defense arising out of any such election even though such election operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of the Guarantor against the Borrower, or any security.

SECTION 7. Agreement to Pay; Subordination. In furtherance of the foregoing and not in limitation of any other right that the Administrative Agent or any other Lender has at law or in equity against the Guarantor by virtue hereof, upon the failure of the Borrower to pay any Obligation when and as the same shall become due, whether at

maturity or by acceleration, the Guarantor hereby promises to and will forthwith pay, or cause to be paid, to the Administrative Agent or such other Lender as designated thereby in cash the amount of such unpaid Obligations. Upon payment by the Guarantor of any sums to the Administrative Agent or any other Lender as provided above or application of the Blocked Account Collateral (as defined in the Blocked Account Agreement), all rights of the Guarantor against the Borrower arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full in cash of all the Obligations. In addition, any indebtedness or other obligations of the Borrower now or hereafter held by or inuring to the benefit of the Guarantor is hereby subordinated in right of payment to the prior indefeasible payment in full in cash of the Obligations. If any amount shall erroneously be paid to the Guarantor on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of the Borrower, such amount shall be held in trust for the benefit of the Lenders and shall forthwith be paid to the Administrative Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of the Loan Documents. The Guarantor hereby irrevocably waives any and all rights against the Borrower and Holdings arising as a result of any payment by the Guarantor of any sums to the Administrative Agent or any other Lender as provided above by way of right of subrogation, contribution, reimbursement, indemnity or otherwise, provided that such waiver shall not apply if the Borrower is otherwise required to reimburse the Guarantor pursuant to Section 6.04(a) of the Securities Purchase Agreement.

SECTION 8. Information. The Guarantor assumes all responsibility for being and keeping itself informed of the Borrower's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Obligations and the nature, scope and extent of the risks that the Guarantor assumes and incurs hereunder, and agrees that none of the Administrative Agent or the other Lenders will have any duty to advise the Guarantor of information known to it or any of them regarding such circumstances or risks.

SECTION 9. Representations, Warranties and Covenants. (a) The Guarantor represents and warrants to the Lenders that:

(i) The Guarantor has the corporate power and authority to execute, deliver and perform its obligations under this Agreement, the Blocked Account Agreement and each other agreement or instrument contemplated hereby to which it is or will be a party.

(ii) The execution, delivery and performance by the Guarantor of this Agreement, the Blocked Account Agreement and each other agreement or instrument contemplated hereby to which it is or will be a party and the Guarantee (collectively, the "Transactions") (a) have been duly authorized by all requisite corporate and, if required, stockholder action and (b) will not (i) violate (A) any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other

constitutive documents or by-laws of the Guarantor, (B) any order of any Governmental Authority or (C) any provision of any material indenture, agreement or other instrument to which the Guarantor is a party or by which the Guarantor is or may be bound, or (ii) be in conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default under, or give rise to any right to accelerate or to require the prepayment, repurchase or redemption of any obligation under any such indenture, agreement or other instrument.

(iii) This Agreement and the Blocked Account Agreement have been duly executed and delivered by the Guarantor and constitute, and each other agreement or instrument contemplated hereby when executed and delivered by the Guarantor will constitute, a legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms.

(iv) No material action, consent or approval of, material registration or filing with or any other material action by any Governmental Authority is or will be required in connection with the Transactions, except for those that have been made or obtained and are in full force and effect. The Guarantor (a) is in compliance in all material respects with all laws, statutes, rules, regulations and orders applicable to it and (b) has filed or caused to be filed all tax returns required to be filed by it and paid or caused to be paid all taxes required to be paid by it.

(v) (a) The Guarantor is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock and (b) no part of the proceeds of any Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board, including Regulation T, U or X.

(vi) By virtue of the execution and delivery by the Guarantor of this Agreement and the Blocked Account Agreement, when the proceeds of the Loans are deposited into the Blocked Account in accordance with this Agreement and the Blocked Account Agreement, the Administrative Agent will obtain a legal, valid and perfected first priority Lien upon and security interest in such assets as security for the payment and performance of the Obligations.

(b) The Guarantor hereby (i) directs the Borrower to instruct the Administrative Agent to deposit the proceeds of the Loans directly into the Blocked Account, (ii) agrees that such deposit shall satisfy the Borrower's obligation to pay to the Guarantor the purchase price in respect of the Convertible Notes and the Warrants pursuant to the Securities Purchase Agreement, to the extent of such deposit and (iii) agrees to deposit on the Effective Date an

additional amount in the Blocked Account equal to $2,400,000 (the "Additional Amounts"), which Additional Amounts shall be available to repay Loans, to pay accrued interest in respect of Loans and to pay fees, expenses and other amounts required to be paid to the Administrative Agent and the Lenders under the Term Loan Agreement.

(c) The Borrower and the Guarantor hereby agree that, in the event the Convertible Notes or the Warrants are required to be redeemed on the Maturity Date pursuant to the terms of the Convertible Notes Documents, the Administrative Agent shall be entitled to deliver instructions to the Financial Institution directing the Financial Institution to transfer funds from the Blocked Account in an amount equal to the Obligations to an account designated by the Administrative Agent, for the benefit of the Lenders, which funds shall be applied to pay the Obligations. The Borrower agrees that such transfer of funds and payment shall satisfy the Guarantor's obligation to pay the redemption price of the Convertible Notes and the Warrants (unless the Warrants expired or were otherwise terminated prior to such time) to the extent such transfer and payment is in an amount equal to the aggregate redemption price of the Convertible Notes and the Warrants, if any, required to be paid pursuant to Section 3.06 of the Indenture and the terms of the Warrants and otherwise pays in full all of the Obligations.

SECTION 10. Termination. The guarantee made hereunder (a) shall terminate when all the Obligations (other than any right to indemnification of any Lender with respect to any matter in respect of which no claim has been asserted and is outstanding) have been indefeasibly paid in full in cash and the Lenders have no further obligations under the Term Loan Agreement and (b) shall continue to be effective or be reinstated (including, without limitation, Section 5 hereof), as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored by any Lender or the Guarantor upon the bankruptcy or reorganization of the Borrower, the Guarantor or otherwise.

SECTION 11. Binding Effect; Several Agreement; Assignments. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Guarantor that are contained in this Agreement shall bind and inure to the benefit of each party hereto and their respective successors and assigns. This Agreement shall become effective as to the Guarantor when a counterpart hereof executed on behalf of the Guarantor shall have been delivered to the Administrative Agent, and a counterpart hereof shall have been executed on behalf of the Administrative Agent, and thereafter shall be binding upon the Guarantor and the Administrative Agent and their respective successors and assigns, and shall inure to the benefit of the Guarantor, the Administrative Agent and the other Lenders, and their respective successors and assigns, except that the Guarantor shall not have the right to assign its rights or obligations hereunder or any interest herein (and any such attempted assignment shall be void).

SECTION 12. Waivers; Amendment. (a) No failure or delay of the Administrative Agent in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent hereunder and of the other Lenders under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Guarantor therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Guarantor in any case shall entitle the Guarantor to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to a written agreement entered into between the Administrative Agent and the Guarantor, with the prior written consent of the Required Lenders.

SECTION 13. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 14. Notices. All communications and notices hereunder shall be in writing and given as provided in Section 8.01 of the Term Loan Agreement. All communications and notices hereunder to the Guarantor shall be given to it at the address set forth below:

The Nasdaq Stock Market, Inc.
One Liberty Plaza
New York, NY 10006
Attn: Office of General Counsel
Fax: (301) 978-8472

SECTION 15. Survival of Agreement; Severability. (a) All covenants, agreements, representations and warranties made by the Guarantor herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Administrative Agent and the other Lenders and shall survive the making by the Lenders of the Loans regardless of any investigation made by the Lenders or on their behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any other fee or amount payable under this Agreement or any other Loan Document is outstanding and unpaid.

(b) In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the

remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 16. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 11. Delivery of an executed signature page to this Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 17. Rules of Interpretation. The rules of interpretation specified in Section 1.02 of the Term Loan Agreement shall be applicable to this Agreement.

SECTION 18. Jurisdiction; Consent to Service of Process. (a) The Guarantor hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent or any other Lender may otherwise have to bring any action or proceeding relating to this Agreement or the other Loan Documents against the Guarantor or its properties in the courts of any jurisdiction.

(b) The Guarantor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or Federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 14. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 19. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 19.

SECTION 20. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Lender to or for the credit or the account of the Guarantor against any or all the obligations of the Guarantor now or hereafter existing under this Agreement and the other Loan Documents held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations may be unmatured. After any exercise of such right of setoff, such Lender shall give notice of such exercise to the Administrative Agent; provided, however, that failure to give such notice shall not in any way affect the rights of any Lender. The rights of each Lender under this Section 20 are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 21. Blocked Account Instructions. In connection with Section 13 of the Blocked Account Agreement, the Administrative Agent may only give instructions (as defined in the Section 13 of the Blocked Account Agreement) upon the occurrence of an Event of Default or on the Maturity Date.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

THE NASDAQ STOCK MARKET, INC.,
as Guarantor,

By: /s/ Adena Friedman

Name: Adena Friedman
Title: Executive Vice President

NORWAY ACQUISITION SPV, LLC,

By: NORWAY HOLDINGS SPV, LLC, as Managing Member

By: SILVER LAKE PARTNERS II TSA, L.P., as Managing Member

By: SILVER LAKE TECHNOLOGY ASSOCIATES II, L.L.C., its General Partner

By: /s/ Alan K. Austin

Name: Alan K. Austin
Title: Managing Director and Chief Operating Officer

AND

By: HELLMAN & FRIEDMAN CAPITAL PARTNERS IV, L.P., as Managing Member

By: H&F INVESTORS IV, LLC, its General Partner

By: H&F ADMINISTRATION IV, LLC, its Administrative Manager

By: H&F INVESTORS III, Inc., its Manager

By: /s/ Mitchell R. Cohen

Name: Mitchell R. Cohen
Title: Vice President

JPMORGAN CHASE BANK, N.A., as
Administrative Agent and on behalf of the
Lenders,

By: /s/ Thomas H. Mulligan

Name: Thomas H. Mulligan
Title: Managing Director

EXHIBIT 99.3

EXECUTION COPY

BLOCKED ACCOUNT CONTROL AND SECURITY AGREEMENT

BLOCKED ACCOUNT CONTROL AND SECURITY AGREEMENT dated as of April 22, 2005 (this "Agreement"), by and between The Nasdaq Stock Market, Inc., a Delaware corporation (the "Guarantor"), and JPMorgan Chase Bank, N.A. ("JPMCB"), in its capacity as administrative agent under the Term Loan Agreement referred to below (the "Administrative Agent"), and JPMCB, in its capacity as the "Securities intermediary" (as defined in Section 8-102 of the UCC) and/or the "Bank" (as defined in Section 9-102 of the UCC) (in such capacities, the "Financial Institution").

Reference is made to (i) the Secured Term Loan Agreement dated as of April 22, 2005 (as amended, supplemented or otherwise modified from time to time, the "Term Loan Agreement"), among Norway Holdings SPV, LLC ("Holdings"), Norway Acquisition SPV, LLC (the "Borrower"), the lenders from time to time party thereto (the "Lenders") and JPMCB, as Administrative Agent and (ii) the Guarantee Agreement dated as of April 22, 2005 (as amended, supplemented or otherwise modified from time to time, the "Guarantee Agreement"), among the Guarantor, the Borrower and JPMCB, as Administrative Agent. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Term Loan Agreement. All references herein to the "UCC" shall mean the Uniform Commercial Code as in effect in the State of New York.

Pursuant to (a) an Agreement and Plan of Merger (the "Merger Agreement") dated as of the date hereof among the Guarantor, Norway Acquisition Corp., a Delaware corporation and a direct wholly owned subsidiary of the Guarantor ("Merger Sub"), and Instinet Group Incorporated, a Delaware corporation (the "Seller"), Merger Sub will merge with and into the Seller, with the Seller surviving such merger as a wholly owned subsidiary of the Guarantor (the "Acquisition") and (b) a Transaction Agreement (the "VAB Transaction Agreement") to be entered into among the Guarantor, Merger Sub and Iceland Acquisition Corp., a Delaware corporation ("VAB Acquisition Sub") all the capital stock of which is owned by affiliates of Silver Lake Partners, the Guarantor will, immediately upon completion of the Acquisition, sell the assets, liabilities and capital stock of the subsidiaries of the Seller that comprise its VAB business to VAB Acquisition Sub.

In order to obtain a portion of the financing for the Acquisition, the Guarantor will issue on the Effective Date $205,000,000 aggregate principal amount of newly issued Convertible Notes, together with the Warrants, to the Borrower for an aggregate purchase price of $205,000,000 in cash. The Borrower has requested the Lenders to extend credit, subject to the terms and conditions specified in the Term Loan Agreement, in the form of the Loans on the Effective Date, the proceeds of which will be deposited by the Administrative Agent directly in the Blocked Account (as defined herein) in satisfaction of the Borrower's obligations to pay the purchase price of the Convertible Notes and the Warrants. The Loans shall be (a) secured by the Convertible Notes and the Warrants and (b) guaranteed by (i) the Guarantor, which guarantee shall be secured by the cash deposited in the Blocked Account, which shall include the proceeds from the sale of the Convertible Notes and the Warrants and the Additional Amounts, and (ii) Holdings, which guarantee shall be secured by the Borrower Equity.

In connection with the foregoing, Holdings has obtained the Sponsor Commitment Letter pursuant to which the Sponsors commit to provide to Holdings, and Holdings commits to provide to the Borrower, a cash contribution in an amount of not less than $205,000,000 upon the consummation of the Acquisition. In the event the Acquisition shall not have been consummated on or prior to the Maturity Date, the Convertible Notes shall be redeemed by the Guarantor at the adjusted issue price thereof plus accrued interest.

The Guarantor acknowledges that (a) it will derive substantial benefit from the making of the Loans by the Lenders and (b) the Lenders have agreed to make Loans on the condition that, among other things, the Guarantor executes and delivers a Blocked Account Control and Security Agreement in the form hereof. As consideration therefor and in order to induce the Lenders to agree to make the Loans, the Guarantor is willing to execute this Agreement.

The parties hereto refer to Account No. 10221794 in the name of "The Nasdaq Stock Market, Inc." established hereby and maintained at the Financial Institution (the "Blocked Account") and hereby agree as follows:

1. On the Effective Date, (i) the Administrative Agent will deposit the proceeds of the Loans directly in the Blocked Account and (ii) the Guarantor will deposit the Additional Amounts (which will equal $2,400,000) directly in the Blocked Account.

2. As security for the payment or performance, as the case may be, in full of the Obligations, the Guarantor hereby assigns and pledges to the Administrative Agent, its successors and assigns, for the benefit of the Lenders, and hereby grants to the Administrative Agent, its successors and assigns, for the benefit of the Lenders, a security interest (the "Security Interest") in, all right, title or interest in or to the Blocked Account (and any successor account) and all cash and cash equivalents and proceeds thereof now or hereafter held in or constituting part of or relating to the Blocked Account (and any successor account) (the "Blocked Account Collateral").

3. The Financial Institution shall not change the name or account number of the Blocked Account without the prior written consent of the Administrative Agent. The Financial Institution acknowledges and agrees that the Blocked Account is intended to be a deposit account. Notwithstanding such intention, as used herein (i) "Deposit Account" shall mean the Blocked Account if it is determined to be a "deposit account" (within the meaning of Section 9-102(a)(29) of the UCC) and (ii) "Securities Account" shall mean the Blocked Account if it is determined to be a "securities account" (within the meaning of Section 8-501 of the UCC).

4. All securities or other property underlying any financial assets credited to the Blocked Account shall be registered in the name of the Financial Institution, indorsed to the Financial Institution or in blank or credited to another securities account maintained in the name of the Financial Institution and in no case will any financial asset credited to the Blocked Account be registered in the name of the Guarantor, payable to the order of the Guarantor or specially indorsed to the Guarantor.

5. The Financial Institution hereby agrees that each item of property (whether investment property, financial asset, security, instrument or cash) credited to the Blocked Account if it is determined to be a Securities Account shall be treated as a "financial asset" within the meaning of Section 8-102(a) (9) of the UCC.

6. During the term of this Agreement, the Blocked Account Collateral shall be invested and reinvested by the Financial Institution in a JPMorgan Trust Account returning one month LIBOR less 25 basis points, computed daily. And all amounts received in respect of such investment and reinvestment shall be deposited in the Blocked Account and shall constitute Blocked Account Collateral.

7. The Security Interest is granted as security only and shall not subject the Administrative Agent or any of the Lenders to, or in any way alter or modify, any obligation or liability of the Guarantor with respect to or arising out of the Blocked Account.

8. The Security Interest constitutes a legal and valid security interest in the Blocked Account securing the payment and performance of the Obligations. The Blocked Account is owned by the Guarantor free and clear of any Lien (other than the Security Interest). The Guarantor shall, at its own cost and expense, take any and all actions necessary to defend title to the Blocked Account against all persons and to defend the Security Interest of the Administrative Agent in the Blocked Account and the priority thereof against any other Lien.

9. Upon the occurrence and during the continuance of an Event of Default, the Guarantor agrees that the Administrative Agent shall have the right to, or at the request of the Required Lenders, the Administrative Agent will, subject to the mandatory requirements of applicable law, foreclose on the Blocked Account and apply the proceeds thereof to pay in full in cash all the Obligations.

10. The Guarantor shall remain liable to, at its own cost and expense, duly and punctually, observe and perform all the conditions and obligations to be observed and performed by it under each contract, agreement or instrument relating to the Blocked Account, all in accordance with the terms and conditions thereof, and the Guarantor agrees to indemnify and hold harmless the Administrative Agent and the Lenders from and against any and all liability for such performance; provided, however, that the Guarantor shall not be liable for, or indemnify the Administrative Agent with respect to, any liability resulting from the Administrative Agent's gross negligence or wilful misconduct as found in a final judgment of a court.

11. All rights of the Administrative Agent hereunder, the Security Interest and all obligations of the Guarantor hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of any Loan Document, any agreement with respect to any of the Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations or any other amendment or waiver of or any consent to any departure from any Loan Document or any other agreement or instrument, (c) any exchange, release or non-perfection of any Lien on the Blocked Account, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Obligations or (d) any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Guarantor in respect of the Obligations or in respect of this Agreement (other than the indefeasible payment in full in cash of all the Obligations).

12. The Guarantor acknowledges that the Administrative Agent has exclusive "control" of the Blocked Account under Sections 9-104 and 9-106 of the Uniform Commercial Code. The Financial Institution confirms that it has not and will not agree with any third party to direct transfer or redemption of any financial asset relating to the Blocked Account, or to comply with any instructions or other directions concerning the Blocked Account or the disposition of any Blocked Account Collateral originated by such third party without further consent by the Guarantors, without the prior written consent of the Administrative Agent and the Guarantor.

13. The Financial Institution shall honor only entitlement orders, withdrawal, payment, transfer or other fund disposition or other instructions (collectively, "instructions") received from the Administrative Agent concerning the Blocked Account without further consent by the Guarantor. The Guarantor shall have no right to issue instructions or any other right or ability to access or withdraw or transfer funds from the Blocked Account. In the event the Administrative Agent notifies the Financial Institution that an Event

of Default has occurred and is continuing, the Financial Institution shall immediately transfer all the funds in the Blocked Account to an account specified by the Administrative Agent. The Administrative Agent agrees that (a) in the event that on the Maturity Date, all conditions to the consummation of the Acquisition (as set forth in the Merger Agreement) shall have been satisfied or waived and all conditions to any senior secured credit facilities to be obtained by the Guarantor in connection with the Acquisition shall have been satisfied or waived, then the Administrative Agent shall deliver a written instruction to the Financial Institution directing it to cause (i) funds in an amount equal to all Obligations then outstanding to be released from the Blocked Account to the Administrative Agent, which amount will be applied to indefeasibly pay in full in cash all remaining Obligations and (ii) all remaining funds in the Blocked Account, if any, to be released to the Guarantor, which amounts will be applied to pay a portion of the merger consideration payable in the Acquisition and (b) in the event the Convertible Notes are required to be redeemed on the Maturity Date pursuant to the terms of the Convertible Notes Documents, then the Administrative Agent shall deliver a written instruction to the Financial Institution directing it to transfer funds in an amount equal to the then outstanding Obligations to an account designated by the Administrative Agent, for the benefit of the Lenders, which funds shall be applied to repay the then outstanding Obligations (which repayment shall satisfy the Guarantor's obligations under the Convertible Notes Documents to pay the redemption price in respect of the Convertible Notes and the Warrants (unless the Warrants expired or were otherwise terminated prior to such time) to the extent that such repayment is in an amount equal to the aggregate redemption price of the Convertible Notes and the Warrants, if any, required to be paid pursuant to Section 3.06 of the Indenture and the terms of the Warrants and otherwise pays in full all of the Obligations).

14. The Financial Institution may exercise any of its powers and perform any of its duties hereunder directly or through agents or attorneys (and shall be liable only for the careful selection of any such agent or attorney). The Financial Institution shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons.

15. Notwithstanding anything to the contrary in this Agreement and, for purposes of the following clauses (b) and (c), except to the extent a court determines in a final judgment that the Financial Institution's gross negligence or wilful misconduct was the primary cause of any loss to the Guarantor: (a) the Financial Institution shall have only the duties and responsibilities with respect to the matters set forth herein as is expressly set forth in writing herein and shall not be deemed to be an agent, bailee or fiduciary for any party hereto; (b) the Financial Institution shall be fully protected in acting or refraining from acting in good faith without investigation on any notice, instruction or request purportedly furnished to it by the Administrative Agent in accordance with the terms hereof, in which case the parties hereto agree that the Financial Institution has no duty to make any further inquiry whatsoever; (c) the Financial Institution shall not be liable to any party hereto or any other person for any action or failure to act under or in connection with this Agreement (and to the maximum extent permitted by law, shall under no circumstances be liable for any incidental, indirect, special, consequential or punitive damages of any kind whatsoever (including, but not limited to, lost profits), even if the Financial Institution has been advised of the likelihood of such loss or damage and regardless of the form of action); and (d) the Financial Institution shall not be liable for losses or delays caused by force majeure, interruption or malfunction of computer, transmission or communications facilities, labor difficulties, court order or decree, the commencement of bankruptcy or other similar proceedings or other matters beyond the Financial Institution's reasonable control.

16. The Guarantor hereby agrees to indemnify, defend and save harmless the Financial Institution and its directors, officers, agents and employees (the "indemnitees") from and against any and all loss,

liability or expense (including the reasonable and documented fees and expenses of in house or outside counsel and the reasonable and documented expense of document location, duplication and shipment) (collectively, "Covered Items") arising out of or in connection with the Financial Institution's execution and performance of this Agreement, except in the case of any indemnitee to the extent that such loss, liability or expense is due to such indemnitee's gross negligence or wilful misconduct as found in a final judgment of a court. The Administrative Agent hereby agrees to indemnify, defend and save harmless the Financial Institution against any Covered Items incurred (a) in connection with this Agreement or the Blocked Account or any interpleader proceeding related thereto, (b) at the Administrative Agent's direction or instruction or (c) due to any claim by the Administrative Agent of an interest in the Blocked Account or the funds on deposit therein. The parties hereto acknowledge that the foregoing indemnities shall survive the resignation or removal of the Financial Institution or the termination of this Agreement. The parties hereby grant the Financial Institution a lien on, right of set-off against and security interest in the Blocked Account Collateral for the payment of any claim for indemnification, compensation, expenses and amounts due hereunder.

17. The Guarantor shall furnish the Financial Institution with form W-8 or W-9, certifying its correct Taxpayer Identification Number ("TIN") assigned by the Internal Revenue Service ("IRS") or any other taxing authority. Notwithstanding such written directions, the Financial Institution shall report and, as required, withhold any taxes as it determines may be required by any law or regulation in effect at the time of the distribution. All proceeds of the Blocked Account Collateral shall be retained in the Blocked Account and reinvested from time to time by the Financial Institution as provided in paragraph 3. In the event that any earnings remain undistributed at the end of any calendar year, the Financial Institution shall report to the Internal Revenue Service or such other authority such earnings as it deems appropriate or as required by any applicable law or regulation or, to the extent consistent therewith, as directed in writing by the Administrative Agent. In addition, the Financial Institution shall withhold any taxes it deems appropriate and shall remit such taxes to the appropriate authorities. Any tax returns or reports required to be prepared and filed on behalf of or by the Blocked Account Collateral will be prepared and filed by the Guarantor, and the Financial Institution shall have no responsibility for the preparation and/or filing of any tax return with respect to any income earned by the Blocked Account Collateral. In addition, any tax or other payments required to be made pursuant to such tax return or filing will be paid by the Guarantor. The Financial Institution shall have no responsibility for such payment unless directed to make such payment by the appropriate authorized party.

18. The Financial Institution may terminate this Agreement (a) in its discretion upon the sending of at least thirty (30) days' advance written notice to the other parties hereto or (b) because of a material breach by the Guarantor or the Administrative Agent of any of the terms of this Agreement or the Account Documentation, upon the sending of at least five (5) days advance written notice to the other parties hereto. Any other termination or any amendment or waiver of this Agreement shall be effected solely by an instrument in writing executed by all the parties hereto; provided that this Agreement shall terminate when there are no funds in the Blocked Account, including as a result of transfers permitted by paragraph 10 hereof. The provisions of paragraphs 15 and 16 above shall survive any such termination.

19. The Guarantor agrees to pay the Financial Institution upon execution of this Agreement and from time to time thereafter reasonable compensation for the services to be rendered hereunder. The fees associated with the Blocked Account are $2,500 per year without pro-ration for partial years.

20. This Agreement (a) may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, (b) shall become effective when counterparts hereof have been signed by the parties hereto and (c) **shall be**

governed by and construed in accordance with the laws of the State of New York. All parties hereby waive all rights to a trial by jury in any action or proceeding relating to the Blocked Account or this Agreement. Regardless of any provision in any other agreement, the State of New York shall be the jurisdiction of the Financial Institution for purpose of Sections 9-304 and 8-110 of the Uniform Commercial Code as in effect in the State of New York from time to time. All notices under this Agreement shall be in writing and sent (including via facsimile transmission) to the parties hereto at their respective addresses or fax numbers set forth below (or to such other address or fax number as any such party shall designate in writing to the other parties from time to time).

21. (a) In the event of any conflict between this Agreement (or any portion thereof) and any other agreement now existing or hereafter entered into, the terms of this Agreement shall prevail, (b) no amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto and (c) the Financial Institution hereby confirms and agrees that (i) there are no other agreements entered into between the Financial Institution and the Guarantor with respect to the Blocked Account, (ii) it has not entered into, and until the termination of this Agreement will not enter into, any agreement with any other person relating to the Blocked Account and/or any financial assets credited thereto pursuant to which it has agreed to comply with entitlement orders (as defined in Section 8-102(a)(8) of the UCC) or instructions (within the meaning of Section 9-104 of the UCC) of such other person and (iii) it has not entered into, and until the termination of this Agreement will not enter into, any agreement with the Guarantor or the Administrative Agent purporting to limit or condition the obligation of the Financial Institution to comply with entitlement orders or instructions.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

THE NASDAQ STOCK MARKET, INC.,

By: /s/ David P. Warren

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

Address
For Notices: One Liberty Plaza
New York, NY 10006
Attention: Office of General Counsel
Fax No.: (301) 978-8472

JPMORGAN CHASE BANK, N.A.,
as Financial Institution,

By: /s/ John Mazzuca

Name: John Mazzuca
Title: Vice President

Address
For Notices 4 New York Plaza, 21st Floor
New York, NY 10004
Attention: Saverio Lunetta
Fax No.: (212) 623-6168

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent,

By: /s/ Thomas H. Mulligan

Name: Thomas H. Mulligan
Title: Managing Director

277 Park Avenue, 23rd Floor
New York, NY 10172
Attention: Thomas Mulligan
Fax No.: (646) 534-1720