

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93620; File No. S7–24–89]

Joint Industry Plan; Notice of Filing of the Fifty-First Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis

November 19, 2021.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 608 thereunder,² notice is hereby given that on November 5, 2021,³ the Participants⁴ in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (“UTP Plan” or “Plan”) filed with the Securities and Exchange Commission (“Commission”) a proposal to amend the UTP Plan. The amendment represents the Fifty-First Amendment to the Plan (“Amendment”). Under the Amendment, the Participants propose to amend the UTP Plan to implement the non-fee-related aspects of the Commission’s Market Data Infrastructure Rules (“MDI Rules”).⁵ The Participants have submitted a separate amendment to the UTP Plan to adopt fees for the receipt of the expanded content of consolidated market data pursuant to the MDI Rules.

The proposed Amendment has been filed by the Participants pursuant to Rule 608(b)(2) under Regulation NMS.⁶ The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendment. Set forth in Sections I and II, which were prepared and submitted to the Commission by the Participants,

is the statement of the purpose and summary of the Amendment, along with information pursuant to Rules 608(a) and 601(a) under the Act. A copy of the Plan marked to show the proposed Amendment is Attachment A to this notice.

I. Rule 608(a)

A. Purpose of the Amendments

On December 9, 2020, the Commission adopted amendments to Regulation NMS. The effective date of the final MDI Rules was June 8, 2021. New Rule 614(e) of Regulation NMS, as set forth in the MDI rules, provides that, “[t]he participants to the effective national market system plan(s) for NMS stocks shall file with the Commission . . . an amendment that includes [the provisions specified in Rule 614(e)(1)–(5)] within 150 calendar days from June 8, 2021[,]” which is November 5, 2021. The Participants are filing the above-captioned amendment to comply with Rule 614(e) requirements. As further specified in the MDI Rules Release, the Participants must also submit updated fees regarding the receipt and use of the expanded content of consolidated market data.⁷ The Participants are submitting a separate amendment to the UTP Plan to propose such fees.

Below, the Participants summarize the proposed amendment to the UTP Plan to comply with Rule 614(e) of the MDI Rules.⁸

Section III

The Participants propose adding a statement that terms used in the UTP Plan will have the same meaning as such terms are defined in Rule 600(b) under the Securities Exchange Act of 1934 (the “Exchange Act”). The Participants also propose adding a definition of “Primary Listing Exchange” to comply with the

requirements of the MDI Rules. The definition of “Primary Listing Exchange” replaces the definition “Listing Market” previously in the UTP Plan.

The Participants also propose amending the definition of “Quotation Information” and “Transaction Reports” to track more closely the requirements of the MDI Rules.

Finally, the Participants proposing amending the definition of “News Service” and “Vendor” to reference Competing Consolidators as a potential source of Quotation Information or Transaction Reports.

Section IV

The Participants propose to amend Section IV.B to include references to Competing Consolidators and Self-Aggregators. Additionally, the Participants propose to add the requirements that the Operating Committee will publish on the UTP Plan’s website: (1) The Primary Listing Exchange for each Eligible Security; and (2) on a monthly basis, the consolidated market data gross revenues for Eligible Securities. This addition is designed to comply with the requirements of Rule 614(e)(4) and (5)(ii).

Section VII

The Participants propose to amend Section VII by referring to the Administrator rather than the Processor since the Administrative Functions being described in that Section are more appropriately ascribed to the Administrator.

Section VIII

The Participants propose adding new Section VIII—and renumbering the remaining sections—to describe the process for evaluating Competing Consolidators. The proposed additions state that, on an annual basis, the Operating Committee will assess the performance of Competing Consolidators, prepare an annual report containing such assessment, and furnish the report to the Commission prior to the second quarterly meeting of the Operating Committee. These additions are designed to comply with the requirements of Rule 614(e)(3).

In addition, Rule 614(d)(5) requires Competing Consolidators to publish prominently on their websites monthly performance metrics, which are to be defined by the UTP Plan. Accordingly, the Participants propose to amend Section VIII to define such “monthly performance metrics,” in accordance

¹ 15 U.S.C. 78k–1.

² 17 CFR 242.608.

³ See Letter from Robert Books, Chair, UTP Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021).

⁴ The Participants are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., The Investors’ Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAx PEARL, LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the “Participants”).

⁵ Securities Exchange Act Release No. 90610, 86 FR 18596 (April 9, 2021) (File No. S7–03–20) (“MDI Rules Release”).

⁶ 17 CFR 242.608(b)(2).

⁷ MDI Rules Release at 18699.

⁸ As the Commission is aware, some of the SROs (the “Petitioners”) have challenged the MDI Rules Release in the D.C. Circuit. The Petitioners have joined in this submission, including the statement that the Plan amendments comply with the MDI Rules Release, solely to satisfy the requirements of the MDI Rules Release and Rule 608. Nothing in this submission should be construed as abandoning any arguments asserted in the D.C. Circuit, as an agreement by Petitioners with any analysis or conclusions set forth in the MDI Rules Release, or as a concession by Petitioners regarding the legality of the MDI Rules Release. Petitioners reserve all rights in connection with their pending challenge of the MDI Rules Release, including *inter alia*, the right to withdraw the proposed amendment or assert that any action relating to the proposed amendment has been rendered null and void, depending on the outcome of the pending challenge. Petitioners further reserve all rights with respect to this submission, including *inter alia*, the right to assert legal challenges regarding the Commission’s disposition of this submission.

with the requirements of Rule 614(d)(5) and sub-paragraphs (i)–(v) thereof.⁹

Section IX (Previously Section VIII)

The Participants propose to amend Section IX to reference Competing Consolidators and Self-Aggregators.

The Participants propose to amend Sections IX.A and IX.B to add the requirement that each Participant agrees to collect and transmit to Competing Consolidators and Self-Aggregators all quotation information and transaction reports required to be made available pursuant to Rule 603(b) of Regulation NMS in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in Eligible Securities to any person. The Participants also propose amending Sections IX.A and IX.B to require that quotation information and transaction reports include the time that the Participant made such information available to Competing Consolidators and Self-Aggregators. These additions are designed to comply with the requirements of Rule 614(e)(1) and (2).

Section XI (Previously Section X)

The Participants propose revising Section XI to include references to notifying Competing Consolidators and Self-Aggregators in addition to the Processor in connection with Regulatory and Operational Halts. The Participants believe these additions are consistent with the requirements of Rule 614(e)(1) and are necessary to ensure that such entities are notified of information related to Regulatory and Operational Halts and, with respect to Competing Consolidators, can further disseminate such information to their customers.

The Participants also propose replacing the term “Listing Market” with “Primary Listing Exchange” to align with the terminology used in the MDI Rules.

Section XII (Previously Section XI)

The Participants propose amending Section XII to include references to Competing Consolidators and Self-Aggregators.

Section XIV (Previously Section XIII)

The Participants propose amending Section XIV.C by referring to the Administrator rather than the Processor since the responsibilities being described in that Section are more appropriately ascribed to the Administrator.

Section XV (Previously Section XIV)

The Participants propose amending Section XV to include references to Competing Consolidators and Self-Aggregators.

Section XVIII (Previously Section XVII)

The Participants propose amending Section XVIII to include references to Competing Consolidators and Self-Aggregators.

Section XIX (Previously Section XVIII)

The Participants propose amending Section XIX to include references to Competing Consolidators and Self-Aggregators.

Section XXI

The Participants propose deleting former Section XXI (Depth of Book Display). The Participants believe that this provision is obsolete given the MDI Rules.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendments

All of the Participants have manifested their approval of the proposed amendments by means of their execution of the UTP Plan Amendment. The UTP Plan Amendment would become operational upon approval by the Commission.

D. Development and Implementation Phases

The amendments proposed herein would be implemented to coincide with the phased implementation of the MDI Rules as required by the Commission.

E. Analysis of Impact on Competition

The Participants believe that the proposed amendments comply with the requirements of the MDI Rules, which have been approved by the Commission.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plans

Not applicable.

G. Approval by Sponsors in Accordance With Plan

Section IV.C.1.a of the UTP Plan requires the Participants to unanimously approve the amendments proposed herein. They have so approved it.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

Not applicable.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 601(a)

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

The Participants propose to amend Section IX.B to add the requirement that each Participant agrees to collect and transmit to Competing Consolidators and Self-Aggregators all transaction reports required to be made available pursuant to Rule 603(b) of Regulation NMS in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to transactions in Eligible Securities to any person. The Participants also propose amending Section IX.B to require that transaction reports include the time that the Participant made such information available to Competing Consolidators and Self-Aggregators. These additions are designed to comply with the requirements of the MDI Rules.

C. Manner of Consolidation

Not applicable.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Reports

Not applicable.

G. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

The Commission seeks comments on the Amendment. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Amendment is consistent with

⁹MDI Rules Release at 18673.

the Act and the rules and regulations thereunder applicable to national market system plans. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number S7-24-89 on the subject line.

Paper Comments

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

All submissions should refer to File Number S7-24-89. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all written statements with respect to the proposed Amendment that are filed with the Commission, and all written communications relating to the proposed Amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for website viewing and printing at the principal office of the Plan. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number S7-24-89 and should be submitted on or before December 17, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

J. Matthew DeLesDernier,
Assistant Secretary.

Attachment A—Proposed Changes to the UTP Plan

Attachment A

Proposed Amendments to the NASDAQ/UTP Plan

Marked To Show Changes From the Existing Plan

(Additions are *italicized*; Deletions are in [brackets])

I. Participants

The Participants include the following:

A. Participants

1. Cboe BYX Exchange, Inc., 400 South LaSalle Street, Chicago, Illinois 60605
2. Cboe BZX Exchange, Inc., 400 South LaSalle Street, Chicago, Illinois 60605
3. Cboe EDGA Exchange, Inc., 400 South LaSalle Street, Chicago, Illinois 60605
4. Cboe EDGX Exchange, Inc., 400 South LaSalle Street, Chicago, Illinois 60605
5. Cboe Exchange, Inc., 400 South LaSalle Street, Chicago, Illinois 60605
6. Financial Industry Regulatory Authority, Inc., 1735 K Street NW, Washington, DC 20006
7. Investors' Exchange LLC, 3 World Trade Center, 58th Floor, New York, New York 10007
8. Long-Term Stock Exchange, Inc., 300 Montgomery St., Ste. 790, San Francisco, CA 94104
9. MEMX LLC, 111 Town Square Place, Suite 520, Jersey City, New Jersey 07310
10. MIAX PEARL, LLC, 7 Roszel Road, Suite 1A, Princeton, New Jersey 08540
11. Nasdaq BX, Inc., One Liberty Plaza, 165 Broadway, New York, New York 10006
12. Nasdaq ISE, LLC, One Liberty Plaza, 165 Broadway, New York, New York 10006
13. Nasdaq PHLX LLC, FMC Tower, Level 8, 2929 Walnut Street, Philadelphia, Pennsylvania 19104
14. The Nasdaq Stock Market LLC, One Liberty Plaza, 165 Broadway, New York, NY 10006
15. New York Stock Exchange LLC, 11 Wall Street, New York, New York 10005

16. NYSE American LLC, 11 Wall Street, New York, New York 10005
17. NYSE Arca, Inc., 11 Wall Street, New York, New York 10005
18. NYSE Chicago, Inc., 11 Wall Street, New York, New York 10005
19. NYSE National, Inc., 101 Hudson, Suite 1200, Jersey City, NJ 07302

B. Additional Participants

Any other national securities association or national securities exchange, in whose market Eligible Securities become traded, may become a Participant, provided that said organization executes a copy of this Plan and pays its share of development costs as specified in Section XIII.

II. Purpose of Plan

The purpose of this Plan is to provide for the collection, consolidation and dissemination of Quotation Information and Transaction Reports in Eligible Securities from the Participants in a manner consistent with the Exchange Act.

It is expressly understood that each Participant shall be responsible for the collection of Quotation Information and Transaction Reports within its market and that nothing in this Plan shall be deemed to govern or apply to the manner in which each Participant does so.

III. Definitions

Terms used in this plan have the same meaning as the terms defined in Rule 600(b) under the Act.

A. "Current" means, with respect to Transaction Reports or Quotation Information, such Transaction Reports or Quotation Information during the fifteen (15) minute period immediately following the initial transmission thereof by the Processor.

B. "Eligible Security" means any Nasdaq Global Market or Nasdaq Capital Market security, as defined in NASDAQ Rule 4200. Eligible Securities under this Nasdaq UTP Plan shall not include any security that is defined as an "Eligible Security" within Section VII of the Consolidated Tape Association Plan.

A security shall cease to be an Eligible Security for purposes of this Plan if: (i) The security does not substantially meet the requirements from time to time in effect for continued listing on Nasdaq, and thus is suspended from trading; or (ii) the security has been suspended from trading because the issuer thereof is in liquidation, bankruptcy or other similar type proceedings. The determination as to whether a security substantially meets the criteria of the definition of Eligible Security shall be made by the exchange on which such

¹⁰ 17 CFR 200.30-3(a)(85).

security is listed provided, however, that if such security is listed on more than one exchange then such determination shall be made by the exchange on which, the greatest number of the transactions in such security were effected during the previous twelve-month period.

C. "Commission" and "SEC" shall mean the U.S. Securities and Exchange Commission.

D. "Exchange Act" means the Securities Exchange Act of 1934, as amended.

E. "Market" shall mean (i) when used with respect to Quotation Information, FINRA in the case of a FINRA Participant, or the Participant on whose floor or through whose facilities the quotation was disseminated; and (ii) when used with respect to Transaction Reports, the Participant through whose facilities the transaction took place or is reported, or the Participant to whose facilities the order was sent for execution.

F. "FINRA" means the Financial Industry Regulatory Authority, Inc.

G. "FINRA Participant" means a FINRA member that is registered as a market maker or an electronic communications network or otherwise utilizes the facilities of FINRA pursuant to applicable FINRA rules.

H. "Transaction Reporting System" means the System provided for in the Transaction Reporting Plan filed with and approved by the Commission pursuant to SEC Rule 11Aa3-1, subsequently re-designated as Rule 601 of Regulation NMS, governing the reporting of transactions in Nasdaq securities.

I. "UTP Quote Data Feed" means the service that provides Subscribers with the National Best Bid and Offer quotations, size and market center identifier, as well as the Best Bid and Offer quotations, size and market center identifier from each individual Participant in Eligible Securities and, in the case of FINRA, the FINRA Participant(s) that constitutes FINRA's Best Bid and Offer quotations.

J. "Nasdaq System" means the automated quotation system operated by Nasdaq.

K. "UTP Trade Data Feed" means the service that provides Vendors and Subscribers with Transaction Reports.

L. "Nasdaq Security" or "Nasdaq-listed Security" means any security listed on the Nasdaq Global Market or Nasdaq Capital Market.

M. "News Service" means a person who receives Transaction Reports or Quotation Information provided by the Systems or provided by a *Competing Consolidators* or Vendor, on a Current

basis, in connection with such person's business of furnishing such information to newspapers, radio and television stations and other news media, for publication at least fifteen (15) minutes following the time when the information first has been published by the Processor or *Competing Consolidator*.

N. "OTC Montage Data Feed" means the data stream of information that provides Vendors and Subscribers with quotations and sizes from each FINRA Participant.

O. "Participant" means a registered national securities exchange or national securities association that is a signatory to this Plan.

P. "Plan" means this Nasdaq UTP Plan, as from time to time amended according to its provisions, governing the collection, consolidation and dissemination of Quotation Information and Transaction Reports in Eligible Securities.

Q. "Primary Listing Exchange" means the national securities exchange on which an Eligible Security is listed. If an Eligible Security is listed on more than one national securities exchange, Primary Listing Exchange means the exchange on which the security has been listed the longest.

[Q]R. "Processor" means the entity selected by the Participants to perform the processing functions set forth in the Plan.

[R]S. "Quotation Information" means all [bids, offers, displayed quotation sizes, the market center identifiers and, in the case of FINRA, the FINRA Participant that entered the quotation, withdrawals and other information pertaining to quotations] *information with respect to quotations for* [in] Eligible Securities required to be collected and made available to the Processor, *Competing Consolidators, and Self-Aggregators* pursuant to this Plan, *including all data necessary to generate consolidated market data*.

[S]T. "Regulatory Halt" means a trade suspension or halt called for the purpose of dissemination of material news, as described at Section X hereof or that is called for where there are regulatory problems relating to an Eligible Security that should be clarified before trading therein is permitted to continue, including a trading halt for extraordinary market activity due to system misuse or malfunction under Section X.E.1. of the Plan ("Extraordinary Market Regulatory Halt").

[T]U. "Subscriber" means a person who receives Current Quotation Information or Transaction Reports provided by the Processor or *Competing*

Consolidator or provided by a Vendor, for its own use or for distribution on a non-Current basis, other than in connection with its activities as a Vendor.

[U]V. "Transaction Reports" means *all information with respect to transactions in Eligible Securities required to be collected and made available to the Processor, Competing Consolidators, and Self-Aggregators pursuant to this Plan, including all data necessary to generate consolidated market data* [reports required to be collected and made available pursuant to this Plan containing the stock symbol, price, and size of the transaction executed, the Market in which the transaction was executed, and related information, including a buy/sell/cross indicator and trade modifiers, reflecting completed transactions in Eligible Securities].

[V]W. "Upon Effectiveness of the Plan" means July 12, 1993, the date on which the Participants commenced publication of Quotation Information and Transaction Reports on Eligible Securities as contemplated by this Plan.

[W]X. "Vendor" means a person who receives Current Quotation Information or Transaction Reports provided by the Processor, *Competing Consolidator*, or [provided by] a Vendor, in connection with such person's business of distributing, publishing, or otherwise furnishing such information on a Current basis to Subscribers, News Services or other Vendors.

IV. Administration of Plan

A. Operating Committee: Composition

The Plan shall be administered by the Participants through an operating committee ("Operating Committee"), which shall be composed of one representative designated by each Participant. Each Participant may designate an alternate representative or representatives who shall be authorized to act on behalf of the Participant in the absence of the designated representative. Within the areas of its responsibilities and authority, decisions made or actions taken by the Operating Committee, directly or by duly delegated individuals, committees as may be established from time to time, or others, shall be binding upon each Participant, without prejudice to the rights of any Participant to seek redress from the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act or in any other appropriate forum.

An Electronic Communications Network, Alternative Trading System, Broker-Dealer or other securities organization ("Organization") which is

not a Participant, but has an actively pending Form 1 Application on file with the Commission to become a national securities exchange, will be permitted to appoint one representative and one alternate representative to attend regularly scheduled Operating Committee meetings in the capacity of an observer/advisor. If the Organization's Form 1 petition is withdrawn, returned, or is otherwise not actively pending with the Commission for any reason, then the Organization will no longer be eligible to be represented in the Operating Committee meetings. The Operating Committee shall have the discretion, in limited instances, to deviate from this policy if, as indicated by majority vote, the Operating Committee agrees that circumstances so warrant.

Nothing in this section or elsewhere within the Plan shall authorize any person or organization other than Participants, their representatives, and members of the Advisory Committee to participate on the Operating Committee in any manner other than as an advisor or observer. Only the Participants and their representatives as well as Commission staff may participate in Executive Sessions of the Operating Committee.

B. Operating Committee: Authority

The Operating Committee shall be responsible for:

1. Overseeing the consolidation of Quotation Information and Transaction Reports in Eligible Securities from the Participants for dissemination to *Competing Consolidators, Self-Aggregators*, Vendors, Subscribers, News Services and others in accordance with the provisions of the Plan;
2. Periodically evaluating the Processor and *Competing Consolidators*;
3. Setting the level of fees to be paid by *Competing Consolidators, Self-Aggregators*, Vendors, Subscribers, News Services or others for services relating to Quotation Information or Transaction Reports in Eligible Securities, and taking action in respect thereto in accordance with the provisions of the Plan;
4. Determining matters involving the interpretation of the provisions of the Plan;
5. Determining matters relating to the Plan's provisions for cost allocation and revenue-sharing; [and]
6. *Publishing on the Plan's website the Primary Listing Exchange for each Eligible Security;*
7. *Calculating and publishing on a monthly basis consolidated market data gross revenues for Eligible Securities; and*

8. Carrying out such other specific responsibilities as provided under the Plan.

C. Operating Committee: Voting

Each Participant shall have one vote on all matters considered by the Operating Committee.

1. The affirmative and unanimous vote of all Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to:

- a. Amendments to the Plan;
- b. amendments to contracts between the Processor and Vendors, Subscribers, News Services and others receiving Quotation Information and Transaction Reports in Eligible Securities; and
- c. termination of the Processor, except for termination for cause, which shall be governed by Section V(B) hereof.

2. The affirmative vote of two-thirds of the Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to the establishment of new fees, the deletion of existing fees, or increases or reductions in existing fees relating to Quotation Information and Transaction Reports in Eligible Securities.

3. The affirmative vote of a majority of the Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to:

- a. Requests for system changes;
- b. interpretive matters and decisions of the Operating Committee arising under, or specifically required to be taken by, the provisions of the Plan as written;
- c. interpretive matters arising under Rules 601 and 602 of Regulation NMS;
- d. denials of access (other than for breach of contract, which shall be handled by the Processor); and
- e. all other matters not specifically addressed by the Plan.

4. It is expressly agreed and understood that neither this Plan nor the Operating Committee shall have authority in any respect over any Participant's proprietary systems. Nor shall the Plan or the Operating Committee have any authority over the collection and dissemination of quotation or transaction information in Eligible Securities in any Participant's marketplace, or, in the case of FINRA, from FINRA Participants.

D. Operating Committee: Meetings

Regular meetings of the Operating Committee may be attended by each Participant's designated representative and/or its alternate representative(s), and may be attended by one or more other representatives of the parties.

Meetings shall be held at such times and locations as shall from time to time be determined by the Operating Committee.

Quorum: Any action requiring a vote only can be taken at a meeting in which a quorum of all Participants is present. For actions requiring a simple majority vote of all Participants, a quorum of greater than 50% of all Participants entitled to vote must be present at the meeting before such a vote may be taken. For actions requiring a 2/3rd majority vote of all Participants, a quorum of at least 2/3rd of all Participants entitled to vote must be present at the meeting before such a vote may be taken. For actions requiring a unanimous vote of all Participants, a quorum of all Participants entitled to vote must be present at the meeting before such a vote may be taken.

A Participant is considered present at a meeting only if a Participant's designated representative or alternate representative(s) is either in physical attendance at the meeting or is participating by conference telephone, or other acceptable electronic means.

Any action sought to be resolved at a meeting must be sent to each Participant entitled to vote on such matter at least one week prior to the meeting via electronic mail, regular U.S. or private mail, or facsimile transmission, provided however that this requirement may be waived by the vote of the percentage of the Committee required to vote on any particular matter, under Section C above.

Any action may be taken without a meeting if a consent in writing, setting forth the action so taken, is sent to and signed by all Participant representatives entitled to vote with respect to the subject matter thereof. All the approvals evidencing the consent shall be delivered to the Chairman of the Operating Committee to be filed in the Operating Committee records. The action taken shall be effective when the minimum number of Participants entitled to vote have approved the action, unless the consent specifies a different effective date.

The Chairman of the Operating Committee shall be elected annually by and from among the Participants by a majority vote of all Participants entitled to vote. The Chairman shall designate a person to act as Secretary to record the minutes of each meeting. The location of meetings shall be rotated among the locations of the principal offices of the Participants, or such other locations as may from time to time be determined by the Operating Committee.

Meetings may be held by conference telephone and action may be taken

without a meeting if the representatives of all Participants entitled to vote consent thereto in writing or other means the Operating Committee deems acceptable.

E. Advisory Committee

(a) Formation. Notwithstanding any other provision of this Plan, an Advisory Committee to the Plan shall be formed and shall function in accordance with the provisions set forth in this section.

(b) Composition. Members of the Advisory Committee shall be selected for two year terms as follows:

(1) Operating Committee Selections. By affirmative vote of a majority of the Participants entitled to vote, the Operating Committee shall select at least one representative from each of the following categories to be members of the Advisory Committee:

(i) A broker-dealer with a substantial retail investor customer base, (ii) a broker-dealer with a substantial institutional investor customer base, (iii) an alternative trade system, (iv) a data vendor, and (v) an investor.

(2) Participant Selections. Each Participant shall have the right to select one member of the Advisory Committee. A Participant shall not select any person employed by or affiliated with any participant or its affiliates or facilities.

(c) Function. Members of the Advisory Committee shall have the right to submit their views to the Operating Committee on Plan matters, prior to a decision by the Operating Committee on such matters. Such matters shall include, but not be limited to, any new or modified product, fee, contract, or pilot program that is offered or used pursuant to the Plan.

(d) Meetings and Information. Members of the Advisory Committee shall have the right to attend all meetings of the Operating Committee and to receive any information concerning Plan matters that is distributed to the Operating Committee; provided, however, that the Operating Committee may meet in executive session if, by affirmative vote of a majority of the Participants entitled to vote, the Operating Committee determines that an item of Plan business requires confidential treatment.

F. Potential Conflicts of Interests

1. Disclosure Requirements. The Participants, the Processor, the Plan Administrator, members of the Advisory Committee, and each service provider or subcontractor engaged in Plan business (including the audit of subscribers' data usage) that has access to Restricted or Highly Confidential Plan information

(for purposes of this section, "Disclosing Parties") shall complete the applicable questionnaire to provide the required disclosures set forth below to disclose all material facts necessary to identify potential conflicts of interest. The Operating Committee, a Participant, Processor, or Administrator may not use a service provider or subcontractor on Plan business unless that service provider or subcontractor has agreed in writing to provide the disclosures required by this section and has submitted completed disclosures to the Administrator prior to starting work. If state laws, rules, or regulations, or applicable professional ethics rules or standards of conduct, would act to restrict or prohibit a Disclosing Party from making any particular required disclosure, a Disclosing Party shall refer to such law, rule, regulation, or professional ethics rule or standard and include in response to that disclosure the basis for its inability to provide a complete response. This does not relieve the Disclosing Party from disclosing any information it is not restricted from providing.

a. A potential conflict of interest may exist when personal, business, financial, or employment relationships could be perceived by a reasonable objective observer to affect the ability of a person to be impartial.

b. Updates to Disclosures. Following a material change in the information disclosed pursuant to subparagraph F.1, a Disclosing Party shall promptly update its disclosures. Additionally, a Disclosing Party shall update annually any inaccurate information prior to the Operating Committee's first quarterly meeting of a calendar year.

c. Public Dissemination of Disclosures. The Disclosing Parties shall provide the Administrator with its disclosures and any required updates. The Administrator shall ensure that the disclosures are promptly posted to the Plan's website.

2. Recusal.

a. A Disclosing Party may not appoint as its representative a person that is responsible for or involved with the development, modeling, pricing, licensing, or sale of proprietary data products offered to customers of a securities information processor if the person has a financial interest (including compensation) that is tied directly to the exchange's proprietary data business and if that compensation would cause a reasonable objective observer to expect the compensation to affect the impartiality of the representative.

b. A Disclosing Party (including its representative(s), employees, and

agents) will be recused from participating in Plan activities if it has not submitted a required disclosure form or the Operating Committee votes that its disclosure form is materially deficient. The recusal will be in effect until the Disclosing Party submits a sufficiently complete disclosure form to the Administrator.

c. A Disclosing Party, including its representative(s), and its affiliates and their representative(s), are recused from voting on matters in which it or its affiliate (i) are seeking a position or contract with the Plan or (ii) have a position or contract with the Plan and whose performance is being evaluated by the Plan.

d. All recusals, including a person's determination of whether to voluntarily recuse himself or herself, shall be reflected in the meeting minutes.

* * * * *

Required Disclosures for the UTP Plan
As part of the disclosure regime, the Participants, the Processors, the Administrators, members of the Advisory Committee, and service providers and subcontractors must respond to questions that are tailored to elicit responses that disclose the potential conflicts of interest.

The Participants must respond to the following questions and instructions:

- Is the Participant's firm for profit or not-for-profit? If the Participant's firm is for profit, is it publicly or privately owned? If privately owned, list any owner with an interest of 5% or more of the Participant, where to the Participant's knowledge, such owner, or any affiliate controlling, controlled by, or under common control with the owner, subscribes, directly or through a third-party vendor, to SIP and/or exchange Proprietary Market Data products.

- Does the Participant firm offer real-time proprietary equity market data that is filed with the SEC ("Proprietary Market Data")? If yes, list each product, describe its content, and provide a link to where fees for each product are disclosed.

- Provide the names of the representative and any alternative representatives designated by the Participant who are authorized under the Plans to vote on behalf of the Participant. Also provide a narrative description of the representatives' roles within the Participant organization, including the title of each individual as well as any direct responsibilities related to the development, dissemination, sales, or marketing of the Participant's Proprietary Market Data, and the nature of those responsibilities

sufficient for the public to identify the nature of any potential conflict of interest that could be perceived by a reasonable objective observer as having an effect on the Plan. If the representative works in or with the Participant's Proprietary Market Data business, describe the representative's roles and describe how that business and the representative's Plan responsibilities impacts his or her compensation. In addition, describe how a representative's responsibilities with the Proprietary Market Data business may present a conflict of interest with his or her responsibilities to the Plan.

- Does the Participant, its representative, or its alternative representative, or any affiliate have additional relationships or material economic interests that could be perceived by a reasonable objective observer to present a potential conflict of interest with their responsibilities to the Plan? If so, provide a detailed narrative discussion of all material facts necessary to identify the potential conflicts of interest and the effects they may have on the Plan.

The Processors must respond to the following questions and instructions:

- Is the Processor an affiliate of or affiliated with any Participant? If yes, disclose the Participant(s) and describe the nature of the affiliation. Include an entity-level organizational chart depicting the Processor and its affiliates.

- Provide a narrative description of the functions directly performed by senior staff, the manager employed by the Processor to provide Processor services to the Plans, and the staff that reports to that manager (collectively, the "Plan Processor").

- Does the Plan Processor provide any services for any Participant's Proprietary Market Data products or other Plans? If Yes, disclose the services the Plan Processor performs and identify which Plans. Does the Plan Processor have any profit or loss responsibility for a Participant's Proprietary Market Data products or any other professional involvement with persons the Processor knows are engaged in the Participant's Proprietary Market Data business? If so, describe.

- List the policies and procedures established to safeguard confidential Plan information that is applicable to the Plan Processor.

- Does the Processor, or its representatives, have additional relationships or material economic interests that could be perceived by a reasonable objective observer to present a potential conflict of interest with the representatives' responsibilities to the

Plan? If so, provide a detailed narrative discussion of all material facts necessary to identify the potential conflicts of interest and the effects they may have on the Plan.

The Administrators must respond to the following questions and instructions:

- Is the Administrator an affiliate of or affiliated with any Participant? If yes, disclose the Participant(s) and describe the nature of the affiliation. Include an entity-level organizational chart depicting the Administrator and its affiliates.

- Provide a narrative description of the functions directly performed by senior staff, the administrative services manager, and the staff that reports to that manager (collectively, the "Plan Administrator").

- Does the Plan Administrator provide any services for any Participant's Proprietary Market Data products? If yes, what services? Does the Plan Administrator have any profit or loss responsibility, or licensing responsibility, for a Participant's Proprietary Market Data products or any other professional involvement with persons the Administrator knows are engaged in the Participant's Proprietary Market Data business? If so, describe.

- List the policies and procedures established to safeguard confidential Plan information that is applicable to the Plan Administrator.

- Does the Administrator, or its representatives, have additional relationships or material economic interests that could be perceived by a reasonable objective observer to present a potential conflict of interest with the representatives' responsibilities to the Plan? If so, provide a detailed narrative discussion of all material facts necessary to identify the potential conflicts of interest and the effects they may have on the Plan.

The Members of the Advisory Committee must respond to the following questions and instructions:

- Provide the Advisor's title and a brief description of the Advisor's role within the firm.

- Does the Advisor have responsibilities related to the firm's use or procurement of market data?

- Does the Advisor have responsibilities related to the firm's trading or brokerage services?

- Does the Advisor's firm use the SIP? Does the Advisor's firm use exchange Proprietary Market Data products?

- Does the Advisor's firm have an ownership interest of 5% or more in one or more Participants? If yes, list the Participant(s).

- Does the Advisor actively participate in any litigation against the Plans?

- Does the Advisor or the Advisor's firm have additional relationships or material economic interests that could be perceived by a reasonable objective observer to present a potential conflict of interest with their responsibilities to the Plan? If so, provide a detailed narrative discussion of all material facts necessary to identify the potential conflicts of interest and the effects they may have on the Plan.

- Pursuant to Section IV.F.1. of the Plan, each service provider or subcontractor that has agreed in writing to provide required disclosures and be treated as a Disclosing Party pursuant to Section IV.F of the Plan shall respond to the following questions and instructions:

- Is the service provider or subcontractor affiliated with a Participant, Processor, Administrator, or member of the Advisory Committee? If yes, disclose with whom the person is affiliated and describe the nature of the affiliation.

- If the service provider's or subcontractor's compensation is on a commission basis or is tied to specific metrics, provide a detailed narrative summary of how compensation is determined for performing work on behalf of the Plan.

- Is the service provider or subcontractor subject to policies and procedures (including information barriers) concerning the protection of confidential information that includes affiliates? If so, describe. If not, explain their absence.

- Does the service provider or subcontractor, or its representative, have additional relationships or material economic interests that could be perceived by a reasonable objective observer to present a potential conflict of interest with its responsibilities to the Plan? If so, provide a detailed narrative discussion of all material facts necessary to identify the potential conflicts of interest and the effects they may have on the Plan.

The responses to these questions will be posted on the Plan's website. If a Disclosing Party has any material changes in its responses, the Disclosing Party must promptly update its disclosures. Additionally, the Disclosing Parties must update the disclosures on an annual basis to reflect any changes. This annual update must be made before the first quarterly session meeting of each calendar year, which is generally held in mid-February.

G. Confidentiality Policy

The Participants have adopted the confidentiality policy set forth in Exhibit 4 to the Plan.

V. Selection and Evaluation of the Processor

A. Generally

The Processor's performance of its functions under the Plan shall be subject to review by the Operating Committee at least every two years, or from time to time upon the request of any two Participants but not more frequently than once each year. Based on this review, the Operating Committee may choose to make a recommendation to the Participants with respect to the continuing operation of the Processor. The Operating Committee shall notify the SEC of any recommendations the Operating Committee shall make pursuant to the Operating Committee's review of the Processor and shall supply the Commission with a copy of any reports that may be prepared in connection therewith.

B. Termination of the Processor for Cause

If the Operating Committee determines that the Processor has failed to perform its functions in a reasonably acceptable manner in accordance with the provisions of the Plan or that its reimbursable expenses have become excessive and are not justified on a cost basis, the Processor may be terminated at such time as may be determined by a majority vote of the Operating Committee.

C. Factors To Be Considered in Termination for Cause

Among the factors to be considered in evaluating whether the Processor has performed its functions in a reasonably acceptable manner in accordance with the provisions of the Plan shall be the reasonableness of its response to requests from Participants for technological changes or enhancements pursuant to Section IV(C)(3) hereof. The reasonableness of the Processor's response to such requests shall be evaluated by the Operating Committee in terms of the cost to the Processor of purchasing the same service from a third party and integrating such service into the Processor's existing systems and operations as well as the extent to which the requested change would adversely impact the then current technical (as opposed to business or competitive) operations of the Processor.

D. Processor's Right To Appeal Termination for Cause

The Processor shall have the right to appeal to the SEC a determination of the Operating Committee terminating the Processor for cause and no action shall become final until the SEC has ruled on the matter and all legal appeals of right therefrom have been exhausted.

E. Process for Selecting New Processor

At any time following effectiveness of the Plan, but no later than upon the termination of the Processor, whether for cause pursuant to Section IV(C)(1)(c) or V(B) of the Plan or upon the Processor's resignation, the Operating Committee shall establish procedures for selecting a new Processor (the "Selection Procedures"). The Operating Committee, as part of the process of establishing Selection Procedures, may solicit and consider the timely comment of any entity affected by the operation of this Plan. The Selection Procedures shall be established by a majority vote of the Plan Participants, and shall set forth, at a minimum:

1. The entity that will:

(a) Draft the Operating Committee's request for proposal for bids on a new processor;

(b) assist the Operating Committee in evaluating bids for the new processor; and

(c) otherwise provide assistance and guidance to the Operating Committee in the selection process.

2. the minimum technical and operational requirements to be fulfilled by the Processor;

3. the criteria to be considered in selecting the Processor; and

4. the entities (other than Plan Participants) that are eligible to comment on the selection of the Processor.

The affirmative vote of two-thirds of the Participants entitled to vote shall be required to select a new processor or to approve any agreement between the Participants and a processor or any amendment to any such agreement. Nothing in this provision shall be interpreted as limiting Participants' rights under Section IV or Section V of the Plan or other Commission order.

VI. Functions of the Processor

A. Generally

The Processor shall collect from the Participants, and consolidate and disseminate to Vendors, Subscribers and News Services, Quotation Information and Transaction Reports in Eligible Securities in a manner designed to assure the prompt, accurate and reliable collection, processing and

dissemination of information with respect to all Eligible Securities in a fair and non-discriminatory manner. The Processor shall commence operations upon the Processor's notification to the Participants that it is ready and able to commence such operations.

B. Collection and Consolidation of Information

For as long as Nasdaq is the Processor, the Processor shall be capable of receiving Quotation Information and Transaction Reports in Eligible Securities from Participants by the Plan-approved, Processor sponsored interface, and shall consolidate and disseminate such information via the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed to Vendors, Subscribers and News Services.

C. Dissemination of Information

The Processor shall disseminate consolidated Quotation Information and Transaction Reports in Eligible Securities via the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed to authorized Vendors, Subscribers and News Services in a fair and non-discriminatory manner. The Processor shall specifically be permitted to enter into agreements with Vendors, Subscribers and News Services for the dissemination of quotation or transaction information on Eligible Securities to foreign (non-U.S.) marketplaces or in foreign countries.

The Processor shall, in such instance, disseminate consolidated quotation or transaction information on Eligible Securities from all Participants.

Nothing herein shall be construed so as to prohibit or restrict in any way the right of any Participant to distribute quotation, transaction or other information with respect to Eligible Securities quoted on or traded in its marketplace to a marketplace outside the United States solely for the purpose of supporting an intermarket linkage, or to distribute information within its own marketplace concerning Eligible Securities in accordance with its own format. If a Participant requests, the Processor shall make information about Eligible Securities in the Participant's marketplace available to a foreign marketplace on behalf of the requesting Participant, in which event the cost shall be borne by that Participant.

1. Best Bid and Offer

The Processor shall disseminate on the UTP Quote Data Feed the best bid and offer information supplied by each Participant, including the FINRA Participant(s) that constitutes FINRA's

single Best Bid and Offer quotations, and shall also calculate and disseminate on the UTP Quote Data Feed a national best bid and asked quotation with size based upon Quotation Information for Eligible Securities received from Participants. The Processor shall not calculate the best bid and offer for any individual Participant, including FINRA.

The Participant responsible for each side of the best bid and asked quotation making up the national best bid and offer shall be identified by an appropriate symbol. If the quotations of more than one Participant shall be the same best price, the largest displayed size among those shall be deemed to be the best. If the quotations of more than one Participant are the same best price and best displayed size, the earliest among those measured by the time reported shall be deemed to be the best. A reduction of only bid size and/or ask size will not change the time priority of a Participant's quote for the purposes of determining time reported, whereas an increase of the bid size and/or ask size will result in a new time reported. The consolidated size shall be the size of the Participant that is at the best.

If the best bid/best offer results in a locked or crossed quotation, the Processor shall forward that locked or crossed quote on the appropriate output lines (*i.e.*, a crossed quote of bid 12, ask 11.87 shall be disseminated). The Processor shall normally cease the calculation of the best bid/best offer after 6:30 p.m., Eastern Time.

2. Quotation Data Streams

The Processor shall disseminate on the UTP Quote Data Feed a data stream of all Quotation Information regarding Eligible Securities received from Participants. Each quotation shall be designated with a symbol identifying the Participant from which the quotation emanates and, in the case of FINRA, the FINRA Participant(s) that constitutes FINRA's Best Bid and Offer quotations. In addition, the Processor shall separately distribute on the OTC Montage Data Feed the Quotation Information regarding Eligible Securities from all FINRA Participants from which quotations emanate.

3. Transaction Reports

The Processor shall disseminate on the UTP Trade Data Feed a data stream of all Transaction Reports in Eligible Securities received from Participants. Each transaction report shall be designated with a symbol identifying the Participant in whose Market the transaction took place.

D. Closing Reports

At the conclusion of each trading day, the Processor shall disseminate a "closing price" for each Eligible Security. Such "closing price" shall be the price of the last Transaction Report in such security received prior to dissemination. The Processor shall also tabulate and disseminate at the conclusion of each trading day the aggregate volume reflected by all Transaction Reports in Eligible Securities reported by the Participants.

E. Statistics

The Processor shall maintain quarterly, semi-annual and annual transaction and volume statistical counts. The Processor shall, at cost to the user Participant(s), make such statistics available in a form agreed upon by the Operating Committee, such as a secure website.

VII. Administrative Functions [of the Processor]

Subject to the general direction of the Operating Committee, the [Processor] Administrator shall be responsible for carrying out all administrative functions necessary to the operation and maintenance of the consolidated information collection and dissemination system provided for in this Plan, including, but not limited to, record keeping, billing, contract administration, and the preparation of financial reports.

VIII. Evaluation of Competing Consolidators

On an annual basis, the Operating Committee shall assess the performance of Competing Consolidators, including an analysis with respect to speed, reliability, and cost of data provision. The Operating Committee shall prepare an annual report containing such assessment and furnish such report to the SEC prior to the second quarterly meeting of the Operating Committee. In conducting its analysis, the Operating Committee shall review the monthly performance metrics published by Competing Consolidators pursuant to Rule 614(d)(5). "Monthly performance metrics" shall include:

A. Capacity statistics, including system tested capacity, system output capacity, total transaction capacity, and total transaction peak capacity;

B. Message rate and total statistics, including peak output rates on the following bases: 1-millisecond, 10-millisecond, 100-millisecond, 500-millisecond, 1-second, and 5-second;

C. System availability statistics, including system up-time percentage and cumulative amount of outage time;

D. Network delay statistics, including quote and trade zero window size events, quote and trade retransmit events, and quote and trade message total; and

E. Latency statistics, including distribution statistics up to the 99.99th percentile, for the following:

1. When a Participant sends an inbound message to a Competing Consolidator and when the Competing Consolidator receives the inbound message;

2. When the Competing Consolidator receives the inbound message and when the Competing Consolidator sends the corresponding consolidated message to a customer of the Competing Consolidator; and

3. When a Participant sends an inbound message to a Competing Consolidator and when the Competing Consolidator sends the corresponding consolidated message to a customer of the Competing Consolidator.

[VIII.]IX. Transmission of Information to Processor, Competing Consolidators, and Self-Aggregators by Participants

A. Quotation Information

Each Participant shall, during the time it is open for trading be responsible promptly to collect and transmit to the Processor accurate Quotation Information in Eligible Securities through any means prescribed herein. Each Participant further agrees to collect and transmit to Competing Consolidators and Self Aggregators all quotation information required to be made available by such Participant by Rule 603(b) of Regulation NMS, including all data necessary to generated consolidated market data. Each Participant agrees to make available quotation information, and changes in any such information, to the Competing Consolidator and Self-Aggregators in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in NMS stocks to any person.

Quotation Information shall include:

1. Identification of the Eligible Security, using the Nasdaq Symbol;
2. the price bid and offered, together with size;
3. the FINRA Participant along with the FINRA Participant's market participant identification or Participant from which the quotation emanates;
4. identification of quotations that are not firm; and

5. through appropriate codes and messages, withdrawals and similar matters.

In addition, Quotation Information shall include:

(A) In the case of a national securities exchange, the reporting Participant's matching engine publication timestamp (reported in microseconds); or

(B) In the case of FINRA, the quotation publication timestamp that FINRA's bidding or offering member reports to FINRA's quotation facility in accordance with FINRA rules.

Each bid and offer with respect to an Eligible Security furnished to Competing Consolidators and Self-Aggregators by any Participant pursuant to this Plan shall also be accompanied by the time the Participant made such bid and offer available to Competing Consolidators and Self-Aggregators (reported in microseconds).

In addition, if FINRA's quotation facility provides a proprietary feed of its quotation information, then the quotation facility shall also furnish the Processor, *Competing Consolidators, and Self-Aggregators* with the time of the quotation as published on the quotation facility's proprietary feed.

FINRA shall convert any quotation times reported to it in seconds or milliseconds to microseconds and shall furnish such times to the Processor, *Competing Consolidators, and Self-Aggregators* in microseconds.

B. Transaction Reports

Each Participant shall (i) transmit all Transaction Reports in Eligible Securities as soon as practicable, but not later than 10 seconds, after the time of execution, (ii) establish and maintain collection and reporting procedures and facilities reasonably designed to comply with this requirement, and (iii) designate as "late" any last sale price not collected and reported in accordance with the above-referenced procedures or as to which the Participant has knowledge that the time interval after the time of execution is significantly greater than the time period referred to above. *Each Participant agrees to make available Transaction Reports to the Competing Consolidators, and Self-Aggregators in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in NMS stocks to any person.* [The Participants shall seek to reduce the time period for reporting last sale prices to the Processor as conditions warrant.]

With respect to orders sent by one Participant Market to another Participant Market for execution, each Participant shall adopt procedures governing the reporting of transactions in Eligible Securities specifying that the transaction will be reported by the Participant whose member sold the security. This provision shall apply only to transactions between Plan Participants.

Transaction Reports shall include:

1. Identification of the Eligible Security, using the Nasdaq Symbol;
2. the number of shares in the transaction;
3. the price at which the shares were purchased or sold;
4. the buy/sell/cross indicator;
5. the Market of execution; and,
6. through appropriate codes and messages, late or out-of-sequence trades, corrections and similar matters.

In addition, Transaction Reports shall include the time of the transaction (reported in microseconds) as identified in the Participant's matching engine publication timestamp and, with respect to reports to *Competing Consolidators and Self-Aggregators, the time that the Participant made such information available to Competing Consolidators and Self-Aggregators (reported in microseconds)*. However, in the case of FINRA, the time of the transaction shall be the time of execution that a FINRA member reports to a FINRA trade reporting facility in accordance with FINRA rules. In addition, if the FINRA trade reporting facility provides a proprietary feed of trades reported by the trade reporting facility to the Processor, *Competing Consolidators, and Self-Aggregators*, then the FINRA trade reporting facility shall also furnish the Processor with the time of the transmission as published on the facility's proprietary feed.

FINRA shall convert times that its members report to it in seconds or milliseconds to microseconds and shall furnish such times to the Processor, *Competing Consolidators, and Self-Aggregators* in microseconds.

The following types of transactions are not required to be reported to the Processor, *Competing Consolidators, or Self-Aggregators* pursuant to the Plan:

1. Transactions that are part of a primary distribution by an issuer or of a registered secondary distribution or of an unregistered secondary distribution;
2. Transactions made in reliance on Section 4(2) of the Securities Act of 1933;
3. transactions in which the buyer and the seller have agreed to trade at a price unrelated to the Current Market for the

security, *e.g.*, to enable the seller to make a gift;

4. the acquisition of securities by a broker-dealer as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange;

5. purchases of securities pursuant to a tender offer; and

6. purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the Current Market.

C. Symbols for Market Identification for Quotation Information and Transaction Reports

The following symbols shall be used to denote the marketplaces:

Code Participant

A	NYSE American LLC
Z	Cboe BZX Exchange, Inc.
Y	Cboe BYX Exchange, Inc.
B	Nasdaq BX, Inc.
W	Cboe Exchange, Inc.
M	NYSE Chicago, Inc.
J	Cboe EDGA Exchange, Inc.
K	Cboe EDGX Exchange, Inc.
I	Nasdaq ISE, LLC
V	Investors' Exchange LLC
D	Financial Industry Regulatory Authority, Inc.
Q	The Nasdaq Stock Market LLC
C	NYSE National, Inc.
N	New York Stock Exchange LLC
P	NYSE Arca, Inc.
X	Nasdaq PHLX LLC
L	Long-Term Stock Exchange Inc.
U	MEMX LLC
H	MIAX PEARL, LLC

D. Whenever a Participant determines that a level of trading activity or other unusual market conditions prevent it from collecting and transmitting Quotation Information or Transaction Reports to the Processor, *Competing Consolidators, and Self-Aggregators*, or where a trading halt or suspension in an Eligible Security is in effect in its Market, the Participant shall promptly notify the Processor, *Competing Consolidators, and Self-Aggregators* of such condition or event and shall resume collecting and transmitting Quotation Information and Transaction Reports to it as soon as the condition or event is terminated. In the event of a system malfunction resulting in the inability of a Participant or its members to transmit Quotation Information or Transaction Reports to the Processor, *Competing Consolidators, and Self-Aggregators*, the Participant shall promptly notify the Processor, *Competing Consolidators, and Self-Aggregators* of such event or condition.

Upon receiving such notification, the Processor shall take appropriate action, including either closing the quotation or purging the system of the affected quotations.

[IX]X. Market Access

Pursuant to the requirements of Rule 610 of Regulation NMS, a Participant that operates an SRO trading facility shall provide for fair and efficient order execution access to quotations in each Eligible Security displayed through its trading facility. In the case of a Participant that operates an SRO display-only quotation facility, trading centers posting quotations through such SRO display-only quotation facility must provide for fair and efficient order execution access to quotations in each Eligible Security displayed through the SRO display-only quotation facility. A Participant that operates an SRO trading facility may elect to allow such access to its quotations through the utilization of private electronic linkages between the Participant and other trading centers. In the case of a Participant that operates an SRO display-only quotation facility, trading centers posting quotations through such SRO display-only quotation facility may elect to allow such access to their quotations through the utilization of private electronic linkages between the trading center and SRO trading facilities of Participants and/or other trading centers.

In accordance with Regulation NMS, a Participant shall not impose, or permit to be imposed, any fee or fees for the execution of an order against a protected quotation of the Participant or of a trading center posting quotes through a Participant's SRO display-only quotation facility in an Eligible Security or against any other quotation displayed by the Participant in an Eligible Security that is the Participant's displayed best bid or offer for that Eligible Security, where such fee or fees exceed the limits provided for in Rule 610(c) of Regulation NMS. As required under Regulation NMS, the terms of access to a Participant's quotations or of a trading center posting quotes through a Participant's SRO display-only quotation facility in an Eligible Security may not be unfairly discriminatory so as to prevent or inhibit any person from obtaining efficient access to such displayed quotations through a member of the Participant or a subscriber of a trading center.

If quotations in an Eligible Security are displayed by a Participant that operates an SRO trading facility (or are displayed by a trading center that posts quotations through an SRO display-only

quotation facility) that complies with the fair and efficient access requirements of Regulation NMS (an "NMS Compliant Facility"), including prior to the compliance date of such access requirements, that Participant (or trading center posting quotes through an SRO display-only quotation facility) shall no longer be required to permit each FINRA market participant to have direct telephone access to the specialist, trading post, market maker and supervisory center in such Eligible Security that trades on that NMS Compliant Facility. For quotations in Eligible Securities that are displayed by a Participant that operates an SRO trading facility that is not an NMS Compliant Facility, such telephone access requirement will continue to be applicable to the Participant.

[Section X]XI. Regulatory and Operational Halts

A. Definitions for Purposes of Section XI.

1. "Extraordinary Market Activity" means a disruption or malfunction of any electronic quotation, communication, reporting, or execution system operated by, or linked to, the Processor or a Trading Center or a member of such Trading Center that has a severe and continuing negative impact, on a market-wide basis, on quoting, order, or trading activity or on the availability of market information necessary to maintain a fair and orderly market. For purposes of this definition, a severe and continuing negative impact on quoting, order, or trading activity includes (i) a series of quotes, orders, or transactions at prices substantially unrelated to the current market for the security or securities; (ii) duplicative or erroneous quoting, order, trade reporting, or other related message traffic between one or more Trading Centers or their members; or (iii) the unavailability of quoting, order, transaction information, or regulatory messages for a sustained period.

2. "Limit Up Limit Down" means the Plan to Address Extraordinary Market Volatility pursuant to Rule 608 of Regulation NMS under the Exchange Act.

3. "Market" means (i) in respect of FINRA, the facilities through which FINRA members display quotations and report transactions in Eligible Securities to FINRA and (ii) in respect of each Participant other than FINRA, the marketplace for Eligible Securities that the Participant operates.

4. "Market-Wide Circuit Breaker" means a halt in trading in all stocks in all Markets under the rules of a [Primary

Listing Market] Primary Listing Exchange.

5. "Material SIP Latency" means a delay of quotation or last sale price information in one or more securities between the time data is received by the Processor and the time the Processor disseminates the data over the Processor's vendor lines, which delay the [Primary Listing Market] *Primary Listing Exchange* determines, in consultation with, and in accordance with, publicly disclosed guidelines established by Operating Committee, to be (a) material and (b) unlikely to be resolved in the near future.

6. "Member Firm" means a member as that term is defined in Section 3(a)(3) of the Exchange Act.

7. "Operational Halt" means a halt in trading in one or more securities only on a Market declared by such Participant and is not a Regulatory Halt.

8. "Primary Listing Market" means the national securities exchange on which an Eligible Security is listed. If an Eligible Security is listed on more than one national securities exchange, Primary Listing Market means the exchange on which the security has been listed the longest.]

[9]8. "Regular Trading Hours" has the meaning provided in Rule 600(b)(68) of Regulation NMS. Regular Trading Hours can end earlier than 4:00 p.m. ET in the case of an early scheduled close.

[10.]9. "Regulatory Halt" means a halt declared by the Primary Listing Market in trading in one or more securities on all Trading Centers for regulatory purposes, including for the dissemination of material news, news pending, suspensions, or where otherwise necessary to maintain a fair and orderly market. A Regulatory Halt includes a trading pause triggered by Limit Up Limit Down, a halt based on Extraordinary Market Activity, a trading halt triggered by a Market-Wide Circuit Breaker, and a SIP Halt.

[11.]10. "SIP Halt" means a Regulatory Halt to trading in one or more securities that a [Primary Listing Market] *Primary Listing Exchange* declares in the event of a SIP Outage or Material SIP Latency.

[12.]11. "SIP Halt Resume Time" means the time that the [Primary Listing Market] *Primary Listing Exchange* determines as the end of a SIP Halt.

[13.]12. "SIP Outage" means a situation in which the Processor has ceased, or anticipates being unable, to provide updated and/or accurate quotation or last sale price information in one or more securities for a material period that exceeds the time thresholds for an orderly failover to backup facilities established by mutual

agreement among the Processor, the [Primary Listing Market] *Primary Listing Exchange* for the affected securities, and the Operating Committee unless the [Primary Listing Market] *Primary Listing Exchange*, in consultation with the Processor and the Operating Committee, determines that resumption of accurate data is expected in the near future.

[14. "Trading Center" has the same meaning as that term is defined in Rule 600(b)(82) of Regulation NMS.]

B. Operational Halts. A Participant shall notify the Processor, *Competing Consolidators, and Self-Aggregators* if it has concerns about its ability to collect and transmit Quotation Information or Transaction Reports, or where it has declared an Operational Halt or suspension of trading in one or more Eligible Securities, pursuant to the procedures adopted by the Operating Committee.

C. Regulatory Halts.

1. The [Primary Listing Market] *Primary Listing Exchange* may declare a Regulatory Halt in trading for any security for which it is the [Primary Listing Market] *Primary Listing Exchange*:

(a) As provided for in the rules of the [Primary Listing Market] *Primary Listing Exchange*;

(b) if it determines there is a SIP Outage, Material SIP Latency, or Extraordinary Market Activity; or

(c) in the event of national, regional, or localized disruption that necessitates a Regulatory Halt to maintain a fair and orderly market.

2. In making a determination to declare a Regulatory Halt under subparagraph C.1, the [Primary Listing Market] *Primary Listing Exchange* will consider the totality of information available concerning the severity of the issue, its likely duration, and potential impact on Member Firms and other market participants and will make a good-faith determination that the criteria of subparagraph C.1 have been satisfied and that a Regulatory Halt is appropriate. The [Primary Listing Market] *Primary Listing Exchange* will consult, if feasible, with the affected Trading Center(s), other Participants, or the Processor, as applicable, regarding the scope of the issue and what steps are being taken to address the issue. Once a Regulatory Halt based under subparagraph C.1 has been declared, the [Primary Listing Market] *Primary Listing Exchange* will continue to evaluate the circumstances to determine when trading may resume in accordance with the rules of the [Primary Listing Market] *Primary Listing Exchange*.

D. Initiating a Regulatory Halt.

1. The start time of a Regulatory Halt is when the Primary Listing Market declares the halt, regardless of whether an issue with communications impacts the dissemination of the notice.

2. If the Processor is unable to disseminate notice of a Regulatory Halt or the [Primary Listing Market] *Primary Listing Exchange* is not open for trading, the [Primary Listing Market] *Primary Listing Exchange* will take reasonable steps to provide notice of a Regulatory Halt, which shall include both the type and start time of the Regulatory Halt, by dissemination through:

(a) Proprietary data feeds containing quotation and last sale price information that the [Primary Listing Market] *Primary Listing Exchange* also sends to the Processor;

(b) posting on a publicly-available Participant website; or

(c) system status messages.

3. Except in exigent circumstances, the [Primary Listing Market] *Primary Listing Exchange* will not declare a Regulatory Halt retroactive to a time earlier than the notice of such halt.

E. Resumption of Trading After Regulatory Halts Other Than SIP Halts.

1. The [Primary Listing Market] *Primary Listing Exchange* will declare a resumption of trading when it makes a good-faith determination that trading may resume in a fair and orderly manner and in accordance with its rules.

2. For a Regulatory Halt that is initiated by another Participant that is a [Primary Listing Market] *Primary Listing Exchange*, a Participant may resume trading after the Participant receives notification from the [Primary Listing Market] *Primary Listing Exchange* that the Regulatory Halt has been terminated.

F. Resumption of Trading After SIP Halt.

1. The [Primary Listing Market] *Primary Listing Exchange* will determine the SIP Halt Resume Time. In making such determination, the [Primary Listing Market] *Primary Listing Exchange* will make a good-faith determination and consider the totality of information to determine whether resuming trading would promote a fair and orderly market, including input from the Processor, the Operating Committee, or the operator of the system in question (as well as any Trading Center(s) to which such system is linked), regarding operational readiness to resume trading. The [Primary Listing Market] *Primary Listing Exchange* retains discretion to delay the SIP Halt Resume Time if it believes trading will not resume in a fair and orderly manner.

2. The [Primary Listing Market] *Primary Listing Exchange* will terminate a SIP Halt with a notification that specifies a SIP Halt Resume Time. The [Primary Listing Market] *Primary Listing Exchange* shall provide a minimum notice of a SIP Halt Resume Time, as specified by the rules of the [Primary Listing Market] *Primary Listing Exchange*, during which period market participants may enter quotes and orders in the affected securities. During Regular Trading Hours, the last SIP Halt Resume Time before the end of Regular Trading Hours shall be an amount of time as specified by the rules of the [Primary Listing Market] *Primary Listing Exchange*. The [Primary Listing Market] *Primary Listing Exchange* may stagger the SIP Halt Resume Times for multiple symbols in order to reopen in a fair and orderly manner.

3. During Regular Trading Hours, if the [Primary Listing Market] *Primary Listing Exchange* does not open a security within the amount of time as specified by the rules of the [Primary Listing Market] *Primary Listing Exchange* after the SIP Halt Resume Time, a Participant may resume trading in that security. Outside Regular Trading Hours, a Participant may resume trading immediately after the SIP Halt Resume Time.

G. Participant to Halt Trading During Regulatory Halt. A Participant will halt trading for any security traded on its Market if the [Primary Listing Market] *Primary Listing Exchange* declares a Regulatory Halt for the security.

H. Communications. Whenever, in the exercise of its regulatory functions, the [Primary Listing Market] *Primary Listing Exchange* for an Eligible Security determines it is appropriate to initiate a Regulatory Halt, the [Primary Listing Market] *Primary Listing Exchange* will notify all other Participants and the Processor, *Competing Consolidators, and Self-Aggregators* of such Regulatory Halt as well as provide notice that a Regulatory Halt has been lifted using such protocols and other emergency procedures as may be mutually agreed to between the Operating Committee and the [Primary Listing Market] *Primary Listing Exchange*. The Processor shall disseminate to Participants notice of the Regulatory Halt (as well as notice of the lifting of a Regulatory Halt) through (i) the Quote Data Feed and the Trade Data Feed, and (ii) any other means the Processor, in its sole discretion, considers appropriate. Each Participant shall be required to continuously monitor these communication protocols established by the Operating Committee and the Processor during market hours, and the

failure of a Participant to do so shall not prevent the [Primary Listing Market] *Primary Listing Exchange* from initiating a Regulatory Halt in accordance with the procedures specified herein.

[XI.]XII. Hours of Operation

A. Quotation Information may be entered by Participants as to all Eligible Securities in which they make a market between 9:30 a.m. and 4:00 p.m. Eastern Time ("ET") on all days the Processor is in operation. Transaction Reports shall be entered between 9:30 a.m. and 4:01:30 p.m. ET by Participants as to all Eligible Securities in which they execute transactions between 9:30 a.m. and 4:00 p.m. ET on all days the Processor is in operation.

B. Participants that execute transactions in Eligible Securities outside the hours of 9:30 a.m. ET and 4:00 p.m., ET, shall be report such transactions as follows:

(i) Transactions in Eligible Securities executed between 4:00 a.m. and 9:29:59 a.m. ET and between 4:00:01 and 8:00 p.m. ET, shall be designated as ".T" trades to denote their execution outside normal market hours;

(ii) transactions in Eligible Securities executed after 8:00 p.m. and before 12:00 a.m. (midnight) shall be reported to the Processor, *Competing Consolidators, and Self-Aggregators* between the hours of 4:00 a.m. and 8:00 p.m. ET on the next business day (T+1), and shall be designated "as/of" trades to denote their execution on a prior day, and be accompanied by the time of execution;

(iii) transactions in Eligible Securities executed between 12:00 a.m. (midnight) and 4:00 a.m. ET shall be transmitted to the Processor, *Competing Consolidators, and Self-Aggregators* between 4:00 a.m. and 9:30 a.m. ET, on trade date, shall be designated as ".T" trades to denote their execution outside normal market hours, and shall be accompanied by the time of execution;

(iv) transactions reported pursuant to this provision of the Plan shall be included in the calculation of total trade volume for purposes of determining net distributable operating revenue, but shall not be included in the calculation of the daily high, low, or last sale.

C. Late trades shall be reported in accordance with the rules of the Participant in whose Market the transaction occurred and can be reported between the hours of 4:00 a.m. and 8:00 p.m.

D. The Processor shall collect, process and disseminate Quotation Information in Eligible Securities at other times between 4:00 a.m. and 9:30 a.m. ET, and after 4:00 p.m. ET, when any Participant

or FINRA Participant is open for trading, until 8:00 p.m. ET (the "Additional Period"); provided, however, that the national best bid and offer quotation will not be disseminated before 4:00 a.m. or after 8:00 p.m. ET. Participants that enter Quotation Information or submit Transaction Reports to the Processor, *Competing Consolidators, and Self-Aggregators* during the Additional Period shall do so for all Eligible Securities in which they enter quotations.

[XII.]XIII. Undertaking by All Participants

The filing with and approval by the Commission of this Plan shall obligate each Participant to enforce compliance by its members with the provisions thereof. In all other respects not inconsistent herewith, the rules of each Participant shall apply to the actions of its members in effecting, reporting, honoring and settling transactions executed through its facilities, and the entry, maintenance and firmness of quotations to ensure that such occurs in a manner consistent with just and equitable principles of trade.

[XIII.]XIV. Financial Matters

A. Development Costs

Any Participant becoming a signatory to this Plan after June 26, 1990, shall, as a condition to becoming a Participant, pay to the other Plan Participants a proportionate share of the aggregate development costs previously paid by Plan Participants to the Processor, which aggregate development costs totaled \$439,530, with the result that each Participant's share of all development costs is the same.

Each Participant shall bear the cost of implementation of any technical enhancements to the Nasdaq system made at its request and solely for its use, subject to reapportionment should any other Participant subsequently make use of the enhancement, or the development thereof.

B. Cost Allocation, Revenue Sharing, and Fees

The provisions governing cost allocation and revenue sharing among the Participants are set forth in Exhibit 1 to the Plan.

C. Maintenance of Financial Records

The [Processor] *Administrator* shall maintain records of revenues generated and development and operating expenditures incurred in connection with the Plan. In addition, the [Processor] *Administrator* shall provide the Participants with: (a) A statement of financial and operational condition on a

quarterly basis; and (b) an audited statement of financial and operational condition on an annual basis.

[XIV.]XV. Indemnification

Each Participant agrees, severally and not jointly, to indemnify and hold harmless each other Participant, Nasdaq, and each of its directors, officers, employees and agents (including the Operating Committee and its employees and agents) from and against any and all loss, liability, claim, damage and expense whatsoever incurred or threatened against such persons as a result of any Transaction Reports, Quotation Information or other information reported to the Processor, *Competing Consolidators, and Self-Aggregators* by such Participant and disseminated by the Processor, *Competing Consolidators, and Self-Aggregators* to Vendors]. This indemnity agreement shall be in addition to any liability that the indemnifying Participant may otherwise have.

Promptly after receipt by an indemnified Participant of notice of the commencement of any action, such indemnified Participant will, if a claim in respect thereof is to be made against an indemnifying Participant, notify the indemnifying Participant in writing of the commencement thereof; but the omission to so notify the indemnifying Participant will not relieve the indemnifying Participant from any liability which it may have to any indemnified Participant. In case any such action is brought against any indemnified Participant and it promptly notifies an indemnifying Participant of the commencement thereof, the indemnifying Participant will be entitled to participate in, and, to the extent that it may wish, jointly with any other indemnifying Participant similarly notified, to assume and control the defense thereof with counsel chosen by it. After notice from the indemnifying Participant of its election to assume the defense thereof, the indemnifying Participant will not be liable to such indemnified Participant for any legal or other expenses subsequently incurred by such indemnified Participant in connection with the defense thereof but the indemnified Participant may, at its own expense, participate in such defense by counsel chosen by it without, however, impairing the indemnifying Participant's control of the defense. The indemnifying Participant may negotiate a compromise or settlement of any such action, provided that such compromise or settlement does not require a

contribution by the indemnified Participant.

[XV.]XVI. Withdrawal

Any Participant may withdraw from the Plan at any time on not less than 30 days prior written notice to each of the other Participants. Any Participant withdrawing from the Plan shall remain liable for, and shall pay upon demand, any fees for equipment or services being provided to such Participant pursuant to the contract executed by it or an agreement or schedule of fees covering such then in effect. A withdrawing Participant shall also remain liable for its proportionate share, without any right of recovery, of administrative and operating expenses, including startup costs and other sums for which it may be responsible pursuant to Section XIV hereof. Except as aforesaid, a withdrawing Participant shall have no further obligation under the Plan or to any of the other Participants with respect to the period following the effectiveness of its withdrawal.

[XVI.]XVII. Modifications to the Plan

Except as the Plan otherwise provides, the Plan may be modified from time to time when authorized by the agreement of all of the Participants, subject to the approval of the Commission or when such modification otherwise becomes effective pursuant to Section 11A of the Exchange Act and Rule 608 of Regulation NMS.

In the case of a “Ministerial Amendment,” the Chairman of the Plan’s Operating Committee may modify the Plan by submitting to the Commission an appropriate amendment that sets forth the modification, provided that the amendment is the subject of advance notice to the Participants of not less than 48 hours. Such an amendment shall only become effective in accordance with Section 11A of the Exchange Act and Rule 608 of Regulation NMS.

“Ministerial Amendment” means an amendment to the Plan that pertains solely to any one or more of the following:

- (1) Admitting a new Participant into the Plan;
- (2) changing the name or address of a Participant;
- (3) incorporating a change that the Commission has implemented by rule and that requires no conforming language to the text of the Plan (e.g., the Commission rule establishing the Advisory Committee);
- (4) incorporating a change (i) that the Commission has implemented by rule, (ii) that requires conforming language to the text of the Plan (e.g., the

Commission rule amending the revenue allocation formula), and (iii) that a majority of all Participants has voted to approve;

(5) incorporating a purely technical change, such as correcting an error or an inaccurate reference to a statutory provision, or removing language that has become obsolete (e.g., language regarding ITS).

[XVII.]XVIII. Applicability of Securities Exchange Act of 1934

The rights and obligations of the Participants and of *Competing Consolidators, Self-Aggregators, Vendors, News Services, Subscribers* and other persons contracting with Participant in respect of the matters covered by the Plan shall at all times be subject to any applicable provisions of the Act, as amended, and any rules and regulations promulgated thereunder.

[XVIII.]XIX. Operational Issues

A. Each Participant shall be responsible for collecting and validating quotes and last sale reports within its own system prior to transmitting this data to the Processor, *Competing Consolidators, and Self-Aggregators*.

B. Each Participant may utilize a dedicated Participant line into the Processor to transmit trade and quote information in Eligible Securities to the Processor. The Processor shall accept from Exchange Participants input for only those issues that are deemed Eligible Securities.

C. The Processor shall consolidate trade and quote information from each Participant and disseminate this information on the Processor’s existing vendor lines.

D. The Processor shall perform gross validation processing for quotes and last sale messages in addition to the collection and dissemination functions, as follows:

1. Basic Message Validation

(a) The Processor may validate format for each type of message, and reject nonconforming messages.

(b) Input must be for an Eligible Security.

2. Logging Function—The Processor shall return all Participant input messages that do not pass the validation checks (described above) to the inputting Participant, on the entering Participant line, with an appropriate reject notation. For all accepted Participant input messages (i.e., those that pass the validation check), the information shall be retained in the Processor system.

[XIX.]XX. Headings

The section and other headings contained in this Plan are for reference purposes only and shall not be deemed to be a part of this Plan or to affect the meaning or interpretation of any provisions of this Plan.

[XX.]XXI. Counterparts

This Plan may be executed by the Participants in any number of counterparts, no one of which need contain the signature of all Participants. As many such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

[XXI.]Depth of Book Display

The Operating Committee has determined that the entity that succeeds Nasdaq as the Processor should have the ability to collect, consolidate, and disseminate quotations at multiple price levels beyond the best bid and best offer from any Participant that voluntarily chooses to submit such quotations while determining that no Participant shall be required to submit such information. The Operating Committee has further determined that the costs of developing, collecting, processing, and disseminating such depth of book data shall be borne exclusively by those Participants that choose to submit this information to the Processor, by whatever allocation those Participants may choose among themselves. The Operating Committee has determined further that the primary purpose of the Processor is the collection, processing and dissemination of best bid, best offer and last sale information (“core data”), and as such, the Participants will adopt procedures to ensure that such functionality in no way hinders the collecting, processing and dissemination of this core data.

Therefore, implementing the depth of book display functionality will require a plan amendment that addresses all pertinent issues, including:

- (1) Procedures for ensuring that the fully-loaded cost of the collection, processing, and dissemination of depth-of-book information will be tracked and invoiced directly to those Plan Participants that voluntarily choose to send that data, voluntarily, to the Processor allocating in whatever manner those Participants might agree; and
- (2) Necessary safeguards the Processor will take to ensure that its processing of depth-of-book data will not impede or hamper, in any way, its core Processor functionality of collecting, consolidating, and disseminating National Best Bid and Offer data,

exchange best bid and offer data, and consolidated last sale data.

Upon approval of a Plan amendment implementing depth of book display, this article of the Plan shall be automatically deleted.]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93628; File No. SR-Phlx-2021-56]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Order Approving a Proposed Rule Change To Amend Options 4A, Section 12 Regarding the Calculation of the Closing Volume Weighted Average Price for Options on the Nasdaq-100® Volatility Index in Certain Circumstances

November 19, 2021.

I. Introduction

On September 23, 2021, Nasdaq PHLX LLC (“Exchange” or “Phlx”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder, ² a proposed rule change to amend the process used to calculate the final settlement price for Nasdaq-100 Volatility Index (“Volatility Index” or “VOLQ”) options in certain circumstances. The proposed rule change was published for comment in the *Federal Register* on October 7, 2021. ³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change ⁴

Overview

The Commission previously approved the listing and trading of VOLQ options. ⁵ VOLQ is an index that measures changes in 30-day implied volatility as expressed by options on the Nasdaq-100 Index (“NDX”). ⁶ The

calculation of the final settlement price for VOLQ options, the Closing Volume Weighted Average Price or “Closing VWAP,” is based on one-second time observations of the NDX component options ⁷ over a 300 second period of time (the “Closing Settlement Period”). ⁸ The Closing Settlement period commences at 9:32:010 a.m. on the expiration day, and continues each second for the next 300 seconds. ⁹ Now, the Exchange proposes to amend the process used to calculate the final settlement price for VOLQ options in the event any of the underlying NDX component options do not have a trade or quote during the Closing Settlement Period.

Closing VWAP Calculation in the Event One or More Component Option Series Do Not Have a Trade or Quote During Any One Second of the Observation Period

First, the Exchange proposes if, during any one second of the observation period, any of the thirty-two NDX option series used for the Closing VWAP during that second ¹⁰ does not have a trade or quote, the index calculator would look back and use the most recent published quote midpoint during that day for the One Second VWAP ¹¹ for the option component that does not have a trade or quote. ¹² If there is no One Second VWAP to utilize for any of the thirty-two NDX option series during the Closing Settlement Period, then the index calculator will consider that Closing Settlement Period invalid

⁷ The Closing VWAP is calculated using one-second time observations of the prices and sizes of executed orders or quotes in the underlying NDX component options. See Options 4A, Section 12(b)(6)(D)(II).

⁸ See Options 4A93628A, Section 12(b)(6)(D)(II).

⁹ See Options 4A, Section 12(b)(6)(D)(II).

¹⁰ The thirty-two component Volatility Index option inputs may change each second depending upon the movement of the Nasdaq-100 Index. See Notice, *supra* note 3, n.5 at 55897.

¹¹ At the end of individual one-second time observations during the Closing Settlement Period, the number of contracts resulting from orders and quotes executed on Phlx, Nasdaq ISE, LLC, and Nasdaq GEMX, LLC at each price during the observation period is multiplied by that price to yield a reference number (“Reference Number”). See Options 4A, Section 12(b)(6)(D)(II). All Reference Numbers are then summed, and that sum is then divided by the total number of contracts traded during the observation period [Sum of (contracts traded at a price × price) ÷ total contracts traded] to calculate a Volume Weighted Average Price for that observation period (a “One Second VWAP”) for that component option. See *id.*

¹² The Exchange would utilize a quote from the Opening Process only in the event an options series was able to open. See Notice, *supra* note 3, at 55898. If the Opening Process did not complete for an options series, there would be no value to obtain for a component during a look back. See *id.*

and will be unable to determine a Closing VWAP at that time.

Second, in the event the Closing Settlement Period is invalid and a Closing VWAP cannot be determined, the Exchange proposes that the index calculator will then roll the Closing Settlement Period forward by one second and determine if there is a One Second VWAP for each of the thirty-two NDX option series for all 300 consecutive seconds of the new Closing Settlement Period. If there is a One Second VWAP for all of the thirty-two NDX option series for all 300 consecutive seconds, a Closing VWAP will be calculated. If a One Second VWAP is not present for all of the thirty-two NDX option series during the new observation period, the index calculator will again roll the Closing Settlement Period forward by one second. The index calculator would continue to roll the Closing Settlement Period forward by one second until such time as it is able to capture a One Second VWAP for each of the thirty-two NDX option series for all 300 consecutive seconds. At that time, a Closing VWAP will be calculated.

The Exchange states that the proposal seeks to create an automated, non-discretionary process by which the Exchange would determine the Closing VWAP in the event any of the thirty-two underlying NDX component options do not have a trade or quote during the Closing Settlement Period. ¹³ The Exchange further states that it does not anticipate utilizing the alternative Closing VWAP calculation on a regular basis. ¹⁴ According to the Exchange, a review of 43 expiration dates from January 2018 through July 2021 revealed invalid values for only 2 expiration dates. ¹⁵

Closing VWAP Calculation in the Event of a Trading Halt

The Exchange also proposes that, in the event of a trading halt in one or more options, excluding a trading halt in all Nasdaq-100 index options, prior to the completion of the Closing Settlement Period, the Exchange would continue to look back for a One Second VWAP prior to looking forward. In the event a trading halt caused market makers to not submit a valid width quote in certain components during the Opening Process, the alternative

¹³ See Notice, *supra* note 3, at 55897.

¹⁴ See *id.*

¹⁵ See Notice, *supra* note 3, at 55897. The Exchange states that it reviewed the 9,660 NBBO inputs for the VOLS computation for 9:32:01 for the five minute Closing Settlement Period for each expiration date. See *id.* at 55897 n.11.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 93237 (October 1, 2021), 86 FR 55896 (“Notice”).

⁴ Additional information regarding the proposal can be found in the Notice, *supra* note 3.

⁵ See Securities Exchange Act Release No. 91781 (May 5, 2021), 86 FR 25918 (May 11, 2021) (SR-Phlx-2020-41) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade Options on a Nasdaq-100 Volatility Index) (“Approval Order”).

⁶ See *id.* at 25919.