

**SECURITIES AND EXCHANGE
COMMISSION**

[Release No. 34-54044; File No. SR-NSX-2006-08]

**Self-Regulatory Organizations;
National Stock Exchange; Notice of
Filing of Proposed Rule Change and
Amendment No. 1 Thereto To Amend
Its Trading Rules To Provide for a
Strict Price-Time Priority Market and
Other Related Changes**

June 26, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 6, 2006, the National Stock ExchangeSM (“NSX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NSX. On June 22, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange is proposing to amend Chapter 11 of the Exchange Rules (relating to Trading Rules) in order to incorporate a strict price-time priority automatic execution trading model to replace the Exchange’s current market structure. In connection with the changes to its Trading Rules, the Exchange is also proposing to include certain new definitions and general provisions in the Exchange Rules, to move rules relating to exchange products to another new chapter of the Exchange Rules, and to make certain other technical changes in connection with the new trading system. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 inserted a new NSX Rule 2.11 relating to NSX Securities, LLC in the Exchange’s rules. Amendment No. 1 also revised NSX Rules 11.3(b) and 11.12 relating to crosses, Midpoint Crosses, and Clean Crosses, to reflect the delayed compliance date for Rule 611 of Regulation NMS under the Act and to add a requirement that Clean Crosses have an aggregate value of at least \$100,000. In addition, Amendment No. 1 made corresponding changes to Item 3 of the proposed rule change to reflect these additional rule changes and also made additional minor clarifying edits.

**RULES OF NATIONAL STOCK
EXCHANGE, INC.**

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**CHAPTER I. Adoption, Interpretation
and Application of Rules, and
Definitions**

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Rule 1.4. [Reserved.] Effective Time

(a) All Exchange Rules shall be effective when approved by the Commission in accordance with the Act and the rules and regulations thereunder, except for those Rules that are effective upon filing with the Commission in accordance with the Act and the rules thereunder and except as otherwise specifically provided in this Rule 1.4 or elsewhere in these Rules.

(b) Rule 11.11(c)(7)(iv) (relating to Sweep Orders) shall not become effective until the compliance date for Rule 611 of Regulation NMS under the Act (“Regulation NMS”).

(c) Prior to the compliance date for the appropriate sections of Regulation NMS, the following Rules shall only apply to quotations for securities subject to the Intermarket Trading System Plan:

(i) The second sentence of the lead-in to Rule 11.15 (Order Execution); and

(ii) Rule 11.22 (Locking or Crossing Quotations in NMS Stocks).

Rule 1.5. Definitions

A.

(1) No change.

Authorized Trader

(2) The term “Authorized Trader” or “AT” shall mean a person who may submit orders (or who supervises a routing engine that may automatically submit orders) to the Exchange’s trading facilities on behalf of his or her ETP Holder or Sponsored Participant.

B.–K. No change.

L. [Reserved.]

Listing Exchange

(1) The term “Listing Exchange” shall mean the national securities exchange or association on which a security is listed.

M. [Reserved.]

Market Maker

(1) The term “Market Maker” shall mean an ETP Holder that acts as a Market Maker pursuant to Chapter XI.

Market Maker Authorized Trader

(2) The term “Market Maker Authorized Trader” or “MMAT” shall mean an authorized trader who performs market making activities pursuant to Chapter XI on behalf of a Market Maker.

N. [Reserved.]

NSX Book

(1) The term “NSX Book” shall mean the System’s electronic file of orders.

O. No change.

P.

(1) No change.

Protected NBBO

(2) The term “Protected NBBO” shall mean the national best bid or offer that is a protected quotation.

Protected Quotation

(3) The term “protected quotation” means a bid or offer in a stock that (i) is displayed by an automated trading center; (ii) is disseminated pursuant to a national market system plan approved by the Commission; and (iii) is an automated quotation that is the best bid or best offer of a national securities exchange or association.

Q. [Reserved.]

Qualified Clearing Agency

(1) The term “Qualified Clearing Agency” means a clearing agency registered with the Commission pursuant to Section 17A of the Act that is deemed qualified by the Exchange.

R. [Reserved.]

Regular Trading Hours

(1) The term “Regular Trading Hours” means the time between 8:30 a.m. and 3:00 p.m. Central Time.

S.

Sponsored Participant

(1) The term “Sponsored Participant” shall mean a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to Rule 11.9.

Sponsoring ETP Holder

(2) The term “Sponsoring ETP Holder” shall mean a broker-dealer that has been issued an ETP by the Exchange who has been designated by a Sponsored Participant to execute, clear and settle transactions resulting from the System. The Sponsoring ETP Holder shall be either (i) a clearing firm with membership in a clearing agency registered with the Commission that maintains facilities through which transactions may be cleared or (ii) a correspondent firm with a clearing arrangement with any such clearing firm.

Statutory Disqualification

(3) The term “statutory disqualification” shall mean any statutory disqualification as defined in the Act.

System

(4) The term "System" shall mean the electronic securities communications and trading facility designated by the Board through which orders of Users are consolidated for ranking and execution.

T. [Reserved.]

Top of Book

(1) The term "Top of Book" shall mean the best-ranked order to buy (or sell) in the NSX Book as ranked pursuant to Rule 11.14.

U. [Reserved.]

User

(1) The term "User" shall mean any ETP Holder or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.9.

UTP Security

(2) The term "UTP Security" shall mean any security that is not listed on the Exchange but is traded on the Exchange pursuant to unlisted trading privileges.

V.-Z. No change.

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CHAPTER II. ETP Holders of the Exchange

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Rule 2.4. Restrictions

(a)-(e) No change.

Interpretations and Policies

.01-.02 No change.

[.03 An Exchange member may only give-up its own or another Exchange member's clearing number when executing a transaction on the Exchange; provided, however, that a member may give-up a non-member's clearing number when executing a transaction on the Exchange if (i) the non-member (a) is a registered broker-dealer and is a self-clearing member of the National Securities Clearing Corporation ("NSCC") and (b) consents to the disciplinary jurisdiction of the Exchange and agrees to adhere to all applicable Exchange By-Laws and Rules; and (ii) the executing member's guaranteeing clearing firm, who must be an Exchange member, agrees to accept financial responsibility for all transactions given-up to the non-member, including but not limited to, responsibility to clear and settle the non-member's trades in the event that the non-member or the NSCC does not accept any such trades].

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Rule 2.11 NSX Securities, LLC

For so long as NSX Securities, LLC ("NSX Securities") is affiliated with the

Exchange and is providing outbound routing of orders from the Exchange to other securities exchanges, facilities of securities exchanges, automated trading systems, electronic communications networks or other brokers or dealers (collectively, "Trading Centers") (such function of NSX Securities is referred to as the "Outbound Router"), each of the Exchange and NSX Securities shall undertake as follows:

1. The Exchange will regulate the Outbound Router function of NSX Securities as a facility (as defined in Section 3(a)(2) of the Act), subject to Section 6 of the Act. In particular, and without limitation, under the Act, the Exchange will be responsible for filing with the Commission rule changes and fees relating to the NSX Securities Outbound Router function and NSX Securities will be subject to exchange non-discrimination requirements.

2. The National Association of Securities Dealers ("NASD"), a self-regulatory organization unaffiliated with the Exchange or any of its affiliates, will carry out oversight and enforcement responsibilities as the designated examining authority pursuant to Rule 17d-1 of the Act with the responsibility for examining NSX Securities for compliance with the applicable financial responsibility rules.

3. An ETP Holder's use of NSX Securities to route orders to another Trading Center will be optional. Any ETP Holder that does not want to use NSX Securities may use other routers to route orders to other Trading Centers.

4. NSX Securities will not engage in any business other than (a) its Outbound Router function and (b) any other activities it may engage in as approved by the Commission.

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CHAPTER III. Rules of Fair Practice

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Rule 3.6. Fair Dealing with Customers

(a)-(f) No change.

Interpretations and Policies

.01 [Designated Dealers] ETP Holders who handle customer orders on the Exchange shall establish and enforce fixed standards for queuing and executing customer orders.

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CHAPTER V. Supervision

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Rule 5.5. Chinese Wall Procedures

(a) An [Exchange Designated Dealer] ETP Holder that trades for its own account in a security, acts as a Market

Maker on the Exchange, or has a specialist operation on another market (an ETP Holder engaged in any of the foregoing is referred to in this Rule 5.5 as a "specialist") must establish a functional separation ("Chinese Wall") between the specialist operation and any associated or affiliated persons as appropriate to its operation. [and further] Further, all ETP Holders must establish, maintain and enforce written procedures reasonably designed to prevent the misuse of material, non-public information, which includes review of employee and proprietary trading, memorialization and documentation of procedures, substantive supervision of interdepartmental communications by the [Exchange specialist] firm's Compliance Department and procedures concerning proprietary trading when the firm is in possession of material, non-public information. The [Exchange specialist] firm must obtain the prior written approval of the Exchange that it has complied with the requirements above in establishing functional separation as appropriate to the operation and that it has established proper compliance and audit procedures to ensure the maintenance of the functional separation. A copy of these Chinese Wall procedures, and any amendments thereto, must be filed with the Exchange's Surveillance Department.

(b)-(e) No change.

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CHAPTER XI. Trading Rules

Rule 11.1. Hours of Trading

(a) [Except as provided below, the hours of trading on the Exchange shall be from 8:30 a.m. to 3:05 p.m. local Chicago time during normal business days.

(b) Unless otherwise provided by the Board, the hours of trading for any security traded on the Exchange which is also traded on another national securities exchange or on the Nasdaq Stock Market (hereinafter "Nasdaq") ("dually traded") or exchanges and Nasdaq ("multiply traded") shall be, in addition to the hours of trading set forth in paragraph (a) of this Rule, the hours during which the security is traded on the principal exchange or Nasdaq.

(c) For purposes of this Chapter, the term "principal exchange," when used with respect to a dually or multiply-traded security, shall mean the exchange or Nasdaq with the greatest trading volume in that security for the preceding calendar month.] The Exchange shall open for the transaction of business during such hours as is

determined by the Board, with notice to ETP Holders.

(b) *The Exchange will be open for the transaction of business on business days. The Exchange will not be open for business on the following holidays: New Year's Day, Dr. Martin Luther King Jr. Day, Presidents Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas. When any holiday observed by the Exchange falls on a Saturday, the Exchange will not be open for business on the preceding Friday. When any holiday observed by the Exchange falls on a Sunday, the Exchange will not be open for business on the following Monday, unless otherwise indicated by the Exchange.*

Rule 11.2. [Unit] Units of Trading

[The unit of trading of stocks on the Exchange shall be 100 shares, and the unit of trading of bonds on the Exchange shall be \$1,000 original principal amount, except in the case of a dually or multiply-traded security where the principal exchange or Nasdaq shall have a different unit of trading or when the Board of the Exchange shall provide otherwise.]

One hundred (100) shares shall constitute a "round lot," any amount less than 100 shares shall constitute an "odd lot," and any amount greater than 100 shares that is not a multiple of a round lot shall constitute a "mixed lot."

Rule 11.3. Price Variations

(a) No change.

(b) *Except as provided in Rule 11.12(c) or (d), Crosses executed in accordance with Rule 11.12 must improve each side of the Top of Book by at least \$0.01 per share. No Crosses may be executed in increments smaller than those permitted by Rule 11.3(a), except for Midpoint Crosses (as defined in Rule 11.2(c)), which may be executed in increments as little as one-half the minimum increment permitted by Rule 11.3(a).*

Rule 11.4. [Trading Ex-Dividend, Etc.] Securities Eligible for Trading

[Transactions in stocks (except those made for "cash") shall be ex-dividend or ex-rights on the second business day preceding the record date fixed by the corporation or the date of the closing of the transfer books, except in the case of a dually or multiply-traded security where the principal exchange or Nasdaq on which a security is traded shall have a different rule or when the Board of the Exchange shall provide otherwise. Should such record date or such closing of transfer books occur upon a day other than a business day, this Rule shall

apply for the third preceding business day. Transactions in stocks made for "cash" shall be ex-dividend or ex-rights on the business day following said record date or date of closing of transfer books. In respect to stock dividends and/or splits which are 25% or greater, the ex-dividend date shall be the first business date following the payable date, except in the case of a dually or multiply-traded security where the principal exchange or Nasdaq on which such a security is traded shall have a different rule or when the Board of the Exchange shall provide otherwise.]

The Exchange shall designate securities for trading. Any class of securities listed or admitted to unlisted trading privileges on the Exchange pursuant to Chapter XV of these Rules shall be eligible to become designated for trading on the Exchange. All securities designated for trading are eligible for odd-lot, round-lot and mixed-lot executions, unless otherwise indicated by the Exchange or limited pursuant to these Rules.

Rule 11.5. [Orders to be Reduced and Increased on Ex-Date] Registration of Market Makers

[(a) Except in the case of a dually or multiply-traded security where the principal exchange or Nasdaq on which a security is traded shall have a different rule or the Board of the Exchange shall provide otherwise, when a security is quoted "ex-dividend," "ex-distribution," "ex-rights" or "ex-interest," the following kinds of orders shall be reduced in price and increased in shares, in the case of stock dividends and stock distributions which result in round lots, on the day the security sells ex: (i) Open buy orders; (ii) Open stock orders to sell (with open stop limit orders to sell, the limit, as well as the stop price, shall be reduced). The following orders shall not be reduced: (i) Open stop orders to buy; (ii) Open sell orders.

(b) The procedure to be followed in reducing the above kinds of orders shall be as follows: (i) In the case of a cash dividend disbursement, the price shall be reduced by the amount of such disbursement in an amount equal to, or a multiple of, the variation in which bids and offers are made. Should the disbursement be in an amount other than the variation in which bids and offers are made, or a multiple thereof, orders shall be reduced by the next higher variation; (ii) In the case of stock dividends or other stock distribution, open buy orders and open stop orders to sell shall be reduced in price by the proportional value of a stock dividend or stock distribution on the day a

security sells ex-dividend or ex-distribution. The new price of the order is determined by dividing the price of the original order by 100% plus the percentage value of the stock dividend or stock distribution. If, as a result of this calculation, the price is not equivalent to or is not a multiple of the variation of a dollar in which bids and offers are made in the particular security, the price should be rounded to the next lower variation; (iii) In the case of reverse splits, all orders (including open sell orders and open stop orders to buy) should be cancelled.

(c) In the case of a stock dividend or stock distribution, the procedure to be followed in increasing open buy orders and open stop orders to sell shall be as follows: (i) When there is a stock dividend or stock distribution which results in one of more full shares for each share held, the number of shares in open buy orders and open stop orders to sell shall be increased accordingly; (ii) When there is a stock dividend or stock distribution on less than a one-for-one basis which thus results in fractional shares, open buy orders and open stop orders to sell shall be increased to the lowest full round lot; (iii) When there is a stock dividend or stock distribution which results in fractional shares combined with full shares, the number of shares in open buy orders and open stop orders to sell shall be increased to the lowest full round lot.

(d) Open orders held by a member prior to the day a stock sells ex-dividend, ex-distribution or ex-rights shall be reduced in price and, if the above is applicable, increased in shares by the value of the dividend or distribution of rights, unless the member is otherwise instructed by the customer from whom the orders were received. In this regard, a customer may enter a Do Not Reduce or "DNR" order if he does not want the price of an order reduced for cash dividends, or a Do Not Increase or "DNI" order if he does not want an order increased in shares for stock dividends or stock distributions.]

(a) No ETP Holder shall act as a Market Maker in any security unless such ETP Holder is registered as a Market Maker in such security by the Exchange pursuant to this Rule and the Exchange has not suspended or cancelled such registration. Registered Market Makers are designated as dealers on the Exchange for all purposes under the Act and the rules and regulations thereunder.

(b) An applicant for registration as a Market Maker shall file an application in writing on such form as the Exchange may prescribe. Applications shall be

reviewed by the Exchange, which shall consider such factors including, but not limited to capital operations, personnel, technical resources, and disciplinary history. Each Market Maker must have and maintain minimum net capital of at least the amount required under Rule 15c3-1 of the Act.

(c) An applicant's registration as a Market Maker shall become effective upon receipt by the ETP Holder of notice of an approval of registration by the Exchange.

(d) The registration of a Market Maker may be suspended or terminated by the Exchange if the Exchange determines that:

(1) The Market Maker has substantially or continually failed to engage in dealings in accordance with Rule 11.8 or elsewhere in these Rules;

(2) The Market Maker has failed to meet the minimum net capital conditions set forth under paragraph (b) above; or

(3) The Market Maker has failed to maintain fair and orderly markets.

(e) Any registered Market Maker may withdraw its registration by giving written notice to the Exchange. The Exchange may require a certain minimum prior notice period for withdrawal, and may place such other conditions on withdrawal and re-registration following withdrawal, as it deems appropriate in the interests of maintaining fair and orderly markets.

(f) Any person aggrieved by any determination under this Rule or Rules 11.6 or 11.7 below may seek review under Chapter X of Exchange Rules governing adverse action.

Rule 11.6. [Types of Trading] Obligations of Market Maker Authorized Traders

[Issues listed on the Exchange and those admitted to unlisted trading privileges will be eligible for one of the following three types of trading:

- (a) Cabinet trading;
- (b) Qualified dealer trading;
- (c) Multiple dealer trading.]

(a) General. MMATs are permitted to enter orders only for the account of the Market Maker for which they are registered.

(b) Registration of Market Maker Authorized Traders. The Exchange may, upon receiving an application in writing from a Market Maker on a form prescribed by the Exchange, register a person as a MMAT.

(1) MMATs may be officers, partners, employees or other associated persons of ETP Holders that are registered with the Exchange as Market Makers.

(2) To be eligible for registration as a MMAT, a person must successfully

complete the General Securities Representative Examination (Series 7) and any other training and/or certification programs as may be required by the Exchange; provided, however, the requirement to complete the Series 7 Examination may be waived by the Exchange if the applicant MMAT has served as a dealer-specialist or market maker on a registered national securities exchange or association for at least two consecutive years within three years of the date of application.

(3) The Exchange may require a Market Maker to provide any and all additional information the Exchange deems necessary to establish whether registration should be granted.

(4) The Exchange may grant a person conditional registration as a MMAT subject to any conditions it considers appropriate in the interests of maintaining a fair and orderly market.

(5) A Market Maker must ensure that a MMAT is properly qualified to perform market making activities, including but not limited to ensuring the MMAT has met the requirements set forth in paragraph (b)(2) of this Rule.

(c) Suspension or Withdrawal of Registration.

(1) The Exchange may suspend or withdraw the registration previously given to a person to be a MMAT if the Exchange determines that:

(A) The person has caused the Market Maker to fail to comply with the securities laws, rules and regulations or the By-Laws, Rules and procedures of the Exchange;

(B) The person is not properly performing the responsibilities of a MMAT;

(C) The person has failed to meet the conditions set forth under paragraph (b) above; or

(D) The Exchange believes it is in the interest of maintaining fair and orderly markets.

(2) If the Exchange suspends the registration of a person as a MMAT, the Market Maker must not allow the person to submit orders into the System.

(3) The registration of a MMAT will be withdrawn upon the written request of the ETP Holder for which the MMAT is registered. Such written request shall be submitted on the form prescribed by the Exchange.

Rule 11.7. [Cabinet Trading] Registration of Market Makers in a Security

[Trading in securities for which there is no dealer participation may be provided through Exchange facilities. Bids and offers of members shall be registered in a book maintained for such purposes by the Exchange at a facility

located in Chicago, Illinois, or elsewhere as designated by the Exchange's Board.]

(a) A Market Maker may become registered in a newly authorized security or in a security already admitted to dealings on the Exchange by filing a security registration form with the Exchange. Registration in the security shall become effective on the first business day following the Exchange's approval of the registration, unless otherwise provided by the Exchange. In considering the approval of the registration of the Market Maker in a security, the Exchange may consider:

(1) The financial resources available to the Market Maker;

(2) The Market Maker's experience, expertise and past performance in making markets, including the Market Maker's performance in other securities;

(3) The Market Maker's operational capability;

(4) The maintenance and enhancement of competition among Market Makers in each security in which they are registered;

(5) The existence of satisfactory arrangements for clearing the Market Maker's transactions;

(6) The character of the market for the security, e.g., price, volatility, and relative liquidity.

(b) Voluntary Termination of Security Registration. A Market Maker may voluntarily terminate its registration in a security by providing the Exchange with a written notice of such termination. The Exchange may require a certain minimum prior notice period for such termination, and may place such other conditions on withdrawal and re-registration following withdrawal, as it deems appropriate in the interests of maintaining fair and orderly markets. A Market Maker that fails to give advanced written notice of termination to the Exchange may be subject to formal disciplinary action pursuant to Chapter VIII of these Rules.

(c) The Exchange may suspend or terminate any registration of a Market Maker in a security or securities under this Rule whenever the Exchange determines that:

(1) The Market Maker has not met any of its obligations as set forth in these Rules; or

(2) The Market Maker has failed to maintain fair and orderly markets.

A Market Maker whose registration is suspended or terminated pursuant to this Rule 11.7(c) may seek review under Chapter X of Exchange Rules governing adverse action.

(d) Nothing in this Rule will limit any other power of the Exchange under the By-Laws, Rules, or procedures of the

Exchange with respect to the registration of a Market Maker or in respect of any violation by a Market Maker of the provisions of this Rule.

Rule 11.8. [Qualified Dealer Trading] Obligations of Market Makers

(a) The Securities Committee may approve one or more Proprietary Members of the Exchange to be a "qualified dealer" for each designated issue (as defined in Rule 11.9 of this Chapter). Such qualified dealers shall perform the following functions:

(1) guarantee settlement for transactions occurring through the Exchange in issues for which the Proprietary Member is the qualified dealer and executes the transaction;

(2) act as a clearing contra-party for transactions occurring through the Exchange in issues for which the Proprietary member is a qualified dealer and executes the transaction;

(3) provide to all members during Exchange trading hours a continuous two-sided market in odd-lots of issues for which the Proprietary Member is designated a qualified dealer; and

(4) give precedence in trading to all public agency orders shown to the qualified dealer at prices equal to or better than the qualified dealer's own bid or offer.

(b) For purposes of Rule 11.8., a public agency order shall mean any order for the account of a person other than a member, which order is represented, as agent, by a member.

(c) Qualified dealer designation shall be used in those designated issues where there exists (i) an insufficient number of dealers to permit use of multiple dealer trading; (ii) insufficient computer capacity to permit use of multiple dealer trading; (iii) insufficient order flow to warrant use of multiple dealer trading; or (iv) other factors which would, in the judgment of the Securities Committee, make multiple dealer trading impracticable.

(d) Any person aggrieved by any determination under this Rule may seek review under the provisions of Exchange Rules for adverse action.]

(a) *General. ETP Holders who are registered as Market Makers in one or more securities traded on the Exchange must engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchange in accordance with these Rules. The responsibilities and duties of a Market Maker specifically include, but are not limited to, the following:*

(1) *Maintain continuous limit orders to buy and to sell for round lots in those*

securities in which the Market Maker is registered to trade;

(2) *Remain in good standing with the Exchange and in compliance with all Exchange Rules applicable to it;*

(3) *Inform the Exchange of any material change in financial or operational condition or in personnel;*

(4) *Maintain a current list of MMATs who are permitted to enter orders on behalf of the Market Maker and provide an updated version of this list to the Exchange upon any change in MMATs; and*

(5) *Clear and settle transactions through the facilities of a registered clearing agency. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another ETP Holder that clears trades through such agency.*

(b) *A Market Maker must satisfy the responsibilities and duties as set forth in paragraph (a) of this Rule during trading hours on all days in which the Exchange is open for business.*

(c) *A Market Maker shall be responsible for the acts and omissions of its MMATs.*

(d) *If the Exchange finds any substantial or continued failure by a Market Maker to engage in a course of dealings as specified in paragraph (a) of this Rule, such Market Maker will be subject to disciplinary action or suspension or revocation of the registration by the Exchange in one or more of the securities in which the Market Maker is registered. Nothing in this Rule will limit any other power of the Exchange under the By-Laws, Rules, or procedures of the Exchange with respect to the registration of a Market Maker or in respect of any violation by a Market Maker of the provisions of this Rule. Any ETP Holder aggrieved by any determination under this Rule may seek review under Chapter X of the Exchange Rules governing adverse action.*

(e) *Temporary Withdrawal. A Market Maker may apply to the Exchange to withdraw temporarily from its Market Maker status in the securities in which it is registered. The Market Maker must base its request on demonstrated legal or regulatory requirements that necessitate its temporary withdrawal, or provide the Exchange an opinion of counsel certifying that such legal or regulatory basis exists. The Exchange will act promptly on such request and, if the request is granted, the Exchange may temporarily reassign the securities to another Market Maker.*

Rule 11.9. [National Securities Trading System] *Access*

[(a) When used in Rule 11.9, unless the context otherwise requires—

(1) The term "System" means the National Securities Trading System, an electronic securities communication and execution facility designated by the Exchange's Board through which bids and offers of competing dealers, as well as public orders, are consolidated for review and execution by Users. The System combines the display of both the limit order file and current quotation/last sale information to Users with the matching and execution of like-priced orders, bids and offers according to programmed price/time and agency/principal priorities in order to give Users the ability to perform the brokerage and market-making functions performed on other exchanges. In addition, the System provides for the automatic execution of orders under predetermined conditions.

(2) The term "Nasdaq/NNM Security" shall mean any authorized security in the Nasdaq National Market which (1) satisfies all applicable requirements of the Rule 4300 Series of the NASD Rules and substantially meets the criteria set forth in the Rule 4300 Series of the NASD Rules; (2) is subject therefore to a transaction reporting plan approved by the Commission; (3) has been designated therefore as a national market system security pursuant to SEC Rule 11Aa2-1 and (4) as to which unlisted trading privileges have been granted pursuant to Section 12(f) of the Act.

(3) The term "Nasdaq System" means the NASD's automated Quotation System.

(4) The term "Approved Dealer" means a Designated Dealer, a Contributing Dealer, or a specialist or market maker registered as such with another exchange or Nasdaq with respect to any Designated Issue.

(5) The term "Designated Dealer" means a Proprietary Member who maintains a minimum net capital of at least the greater of \$500,000 or the amount required under Rule 15c3-1 of the Securities Exchange Act of 1934, as amended, and who has been approved by the Securities Committee to perform market functions by entering bids and offers for Designated Issues into the System.

(6) The term "Contributing Dealer" means a Proprietary Member who (i) maintains a minimum net capital of at least the greater of \$50,000 or the amount required under Rule 15c3-1 of the Securities Exchange Act, as amended; (ii) is registered with the

Exchange with respect to one or more Designated Issues; and (iii) provides to all Users through the System, during Exchange trading hours, regular bids and offers for round lots of Designated Issues for which he is registered.

(7) The term "User" means a Member of the Exchange or an Approved Dealer. Access Participant Members are considered to be Users in their limited capacity of executing transactions through the facilities of a Proprietary Member.

(8) The term "Designated Issue" means a security designated by the Securities Committee to be traded in the System.

(9) The term "public agency order" means any order for the account of a person other than a member, an Approved Dealer or a person who could become an Approved Dealer by complying with this Rule with respect to his use of the System, which order is represented, as agent, by a User.

(10) The term "professional agency order" means an order entered by a User as agent for the account of a broker-dealer, a futures commission merchant, or a member of a contract market.

(11) The term "Floor" means the electronically integrated System marketplace consisting of the premises on which System terminals are located and the System supervisory center.

(12) The term "limit order guarantee" means a guarantee to execute an order as principal upon the occurrence of a transaction in another market at the price of such order.

(13) The term "ITS BBO" means the best bid/ask quote among the Intermarket Trading System ("ITS") participants in those issues that are traded on ITS.

(14) The term "Nasdaq System BBO" means the best bid/ask quote generated by the Nasdaq System participants in those issues that are traded on the Nasdaq System.

(b) Any class of securities listed or admitted to unlisted trading privileges on the Exchange shall be eligible to become a Designated Issue. All Designated Issues are eligible for odd-lot, round-lot and partial round-lot executions.

(c) The Securities Committee shall approve one or more applicant Proprietary Members of the Exchange as a Designated Dealer for one or more Designated Issues. A Designated Dealer shall perform the following functions:

(i) Upon request of any User guarantee settlement, at such Designated Dealer's customary charge, for transactions, executed through the System in Designated Issues for which he is a Designated Dealer.

(ii) Upon request of any User, at such Designated Dealer's customary charge, act as clearing contra-party for transactions executed through the System in Designated Issues for which he is Designated Dealer.

(iii) Provide to all Users through the System, during the Exchange trading hours, continuous bids and offers for round lots of Designated Issues for which he is a Designated Dealer.

(iv) Guarantee the execution of public agency market orders in Designated Issues for which he is Designated Dealer in accordance with subparagraph (n) of this Rule 11.9. If there exist two or more Designated Dealers in a Designated Issue, then unless the Securities Committee has approved one member as the primary Designated Dealer in that issue, the guarantee obligation shall rotate among such Designated Dealers on a daily basis. For the purposes of this subsection, market order shall include marketable limit order, which is a limit order that is immediately executable because the ITS BBO or Nasdaq System BBO at the time the order is entered is equal to or better than the limit price on the order.

(v) Guarantee the execution in Designated Issues that are other than Nasdaq/NNM securities up to 1099 shares at the opening price of opening public agency market orders and limit orders which are priced better than such opening price ("marketable limit orders"). Guarantee the execution of market orders and marketable limit orders in Designated Issues that are Nasdaq/NNM securities up to 1099 shares at an opening price that is on or between the first unlocked/uncrossed Nasdaq System BBO. If there exist two or more Designated Dealers in a Designated Issue, then, unless the Securities Committee has approved one member as the primary Designated Dealer in that issue, the guarantee obligation shall rotate among such Designated Dealers on a daily basis.

(d) A Proprietary Member registered with the Exchange as a Contributing Dealer shall forfeit his right to continue as a Contributing Dealer if he fails to provide to all Users through the System, during Exchange trading hours, regular bids and offers for round lots of Designated Issues for which he is registered as a Contributing Dealer.

(e) Any specialist or market maker registered as such with another exchange or Nasdaq with respect to any Designated Issue may provide bids and offers with respect to that Designated Issue through the System to all Users so long as such specialist or market maker complies with the provisions of this

Rule with respect to his use of the System.

(f) Proprietary Members of the Exchange may provide bids and offers for their own accounts in any Designated Issue to all Users through the System so long as, in effecting transactions on the Exchange through the System, they comply with Section 11(a) of the Act and the rules and regulations thereunder.

(g) It shall be the responsibility of all Users when trading on the Exchange for the account of another person to effect such transactions through the System. Users may enter agency orders to buy and sell in Designated Issues through System terminals, which may have computer interfaces that have communications capability with the System and are directly linked to the System.

(h) The System shall display all current principal interest and agency orders of Users in Designated Issues, as well as the best bid/ask quotations of each ITS participant and Nasdaq System BBO quotations generated by the Nasdaq System participants in, and the last sale price for, Designated Issues, to each User for purposes of trading.

(1) Designated Dealers shall permit each Nasdaq System market maker, acting in its capacity as market maker, direct telephone access (or other such access as may be established between the Exchange and Nasdaq System) to the Designated Dealer in each Nasdaq/NNM Security in which such market maker is registered as a market maker. Such access shall include appropriate procedures to assure the timely response to communications received through telephone access. Nasdaq System market makers may use such telephone access (or other such access as may be established between the Exchange and Nasdaq System) to transmit orders for execution on the Exchange. Executions of Nasdaq System market maker orders shall be deemed to be transactions effected through the System and must be reported to the Exchange as promptly as possible and in any event within one minute of execution; and

(2) Designated Dealers may send orders from the Exchange via telephone (or other access as may be established between the Exchange and Nasdaq System) to any Nasdaq System market maker in each Nasdaq/NNM Security in which it displays quotations.

(i) The System offers two modes of order interaction selected by members:

(1) If automatic execution is selected, the System shall match and execute like-priced orders, bids and offers on an order by order basis only at the specific

instruction of Users, including Designated Dealers.

(2) If order delivery and automated response is selected, the System will deliver contra-side orders against displayed orders and quotations on an order by order basis only at the specific instruction of Users, including Designated Dealers. To be eligible for order delivery service, Users must demonstrate to Exchange examiners that the User's system can automatically process the inbound order and respond appropriately within 1 second.

(j) Limit orders to buy (sell) at a price inferior to the ITS or Nasdaq System BBO will be executed other than at the opening only after a regular way transaction in the Designated Issue is executed in another ITS participant market or Nasdaq System at a price which is equal to or less than (greater than) the limit price of the order.

(k) Public agency orders entered in the System which have not been executed may be removed from the System only by the User who entered the order for the purpose of canceling the order, transferring the order to another national market or, in the case of withdrawal by an Approved Dealer or Proprietary Member, executing such order immediately as principal pursuant to a limit order guarantee. Executions of public agency orders as principal pursuant to a limit order guarantee shall be deemed to be transactions effected on the Exchange in the same manner as if such transactions were executed through the System and must be reported to the Exchange as promptly as possible and in any event within one minute of execution.

(l) Public agency orders to buy or sell at a particular price shall, in all cases except execution of such an order pursuant to a limit order guarantee, have priority over all other bids and offers on the System at the same price. Subject to the following condition,

(1) All bids entered in the System shall be queued for execution so that the highest price bid shall be the first to be executed and so that, in the case of bids at the same price, except in the case of Approved Dealer bids entered pursuant to subparagraph (u), the bid entered earliest in time shall be the first to be executed; and

(2) All offers entered in the System shall be queued for execution so that the lowest price offered shall be the first to be executed and so that, in the case of offers at the same price, except in the case of Approved Dealer offers entered pursuant to subparagraph (u), the offer entered earliest in time shall be the first to be executed.

(m) It shall be the responsibility of each Approved Dealer or other Proprietary Member when trading on the Exchange for his own account or as agent for professional agency orders in round lots of Designated Issues to effect such transactions through the System and, in so doing, to yield priority to

(1) All public agency orders in the System at prices equal to, or better than, his order, bid or offer; and

(2) All orders, bids and offers of Approved Dealers and other Proprietary Members for their own accounts and as agents for professional agency orders in the System at prices better than his order, bid or offer or at the same price in the event any such orders, bids or offers were entered in the System (i) at an earlier time than his order, bid or offer, or (ii) in the case of Approved Dealers, for the purpose of trading for their own account against public agency orders which such Approved Dealers are representing as agent pursuant to subparagraph (u).

(n) Public Agency Guarantee.

(1) Public agency opening market orders and limit orders better than the opening price in securities that are other than Nasdaq/NNM securities which are entered prior to the opening up to 1099 shares shall be executed at the opening price. Market orders and marketable limit orders in Nasdaq/NNM securities up to 1099 shares shall be executed at an opening price on or between the first unlocked/uncrossed Nasdaq System BBO.

(2) Public agency market and marketable limit orders in all Designated Issues which are entered after the opening are guaranteed execution pursuant to the following requirements and limitations.

(3) The Designated Dealer of the day must accept and guarantee execution on all public agency market and marketable limit orders in accordance with this subparagraph (n).

(4) Subject to the requirements of the short sale rule, orders must be filed on the basis of the ITS or Nasdaq System BBO bid on a sell order or the ITS or Nasdaq System BBO offer on a buy order. Sell orders will be satisfied up to the size of the lesser of the ITS or Nasdaq System BBO bid or 1099 shares; buy orders up to the lesser of the ITS or Nasdaq System BBO offer or 1099 shares. No portion of an order larger than 1099 shares is subject to the public agency guarantee.

(5) The number of shares which the Designated Dealer of the day is obligated to execute is reduced by the number of shares executed in the System against any agency or principal interest, including interest of the Designated

Dealer of the Day, priced at the ITS or Nasdaq System BBO when the order enters the System.

(6) In unusual trading situations, a Designated Dealer may seek relief from the requirements of 2 through 5 above from an Exchange Floor Official or a member of the Exchange staff who would have authority to set execution prices. All execution guarantees and the requirements of Exchange Rule 12.6, Customer Priority, apply only during the hours of trading on the Exchange (8:30 a.m. to 3:05 p.m. local Chicago time).

(o) Prior to formatting any order, bid or offer into an ITS commitment to trade and issuing such a commitment to another ITS participant market, the System shall process such order, bid or offer as follows:

(1) If a principal bid or offer, the System shall first exhaust all interest at or better than such bid or offer which is resident in the System;

(2) If a public agency market or marketable limit order, the System shall first process the order pursuant to Exchange Rule 11.9(i) and (n) and then expose for fifteen seconds any remaining balance to all Approved Dealers, whether or not registered in the Designated Issue involved;

(3) If a professional agency order, the System shall exhaust all interest at or better than such order which is resident in the System and then, if the Board has authorized the System generation of ITS commitments to trade, and such a procedure is in effect, shall expose the order for fifteen seconds to all Approved Dealers, whether or not registered in the Designated Issue involved.

(p) Nothing in paragraphs (j) through (l) shall preclude an Approved Dealer or Proprietary Member from effecting an execution of a public agency order in a Designated Issue on the Exchange pursuant to a limit order guarantee.

(q) Confirmations. The System shall provide hard-copy confirmations of each transaction effected through the System promptly to each User (or his agent) who is a party to that transaction, supplying the following information: size, price, security, whether the User was a buyer or a seller and the transaction identification number.

(r) Access. Any User may obtain from the Exchange (or its designee) electronic means of direct access to the System upon the payment of such reasonable fees as the Board may specify from time to time in an effective rule filed with the Securities and Exchange Commission pursuant to Section 19(b)(2) or 19(b)(3) of the Act.

(s) The Board shall be responsible for the supervision of the National

Securities Trading System including the following:

(1) Affording to any person adversely affected by any prohibition or limitation with respect to access to services offered by the Exchange or any member in connection with the System the procedural rights available under Exchange Rules for adverse action.

(2) Requiring all persons participating in the System to maintain such additional records and to provide such access to those records as the Exchange shall determine are in the public interest or appropriate for the protection of investors and the maintenance of fair and orderly markets.

(3) Requiring all Users participating in the System to comply with all Exchange Rules. Approved Dealers and Proprietary Members shall apprise customers promptly when they have acted as principal in effecting transactions with customers, unless earlier notification and consent is required by law.

(t) Neither the Exchange nor its agents, employees or contractors shall be liable to its members, member organizations, successors, representatives or customers thereof, or any persons associated therewith, for any claims arising out of the use or enjoyment by such member, member organization, successor, representative, customer, or associated person, of the facilities afforded by the Exchange, including, without limitation, the National Securities Trading System and the Automated Extension Processing System.

(u) Public agency market and marketable limit orders which an Approved Dealer represents as agent may be preferenced to such Approved Dealer in accordance with the price-time and agency/principal priorities set forth in Rule 11.9(l) and (m). Notwithstanding subparagraphs (c) and (n), an Approved Dealer shall be Dealer of the day with respect to orders preferenced under this subparagraph (u).

Additionally, Designated Dealers shall be allowed to preference their customer order flow that is related to index arbitrage only on plus or zero plus ticks when the Dow Jones Industrial Average ("DJIA") declines by 50 points or more from the previous day's closing value.

Interpretations and Policies

.01 Limit Order Protection

Public agency limit orders in securities other than Nasdaq/NNM Securities shall be filled if one of the following conditions occur:

(a) The bid or offering at the limit price has been exhausted in the primary

market (NOTE: Orders will be executed in whole or in part, based on the rules of priority and precedence, on a share for share basis with trades executed at the limit price in the primary market);

(b) There has been a price penetration of the limit in the primary market; or

(c) The issue is trading at the limit price on the primary market, unless it can be demonstrated that such order would not have been executed if it had been transmitted to the primary market or the customer and the Designated Dealer agree to a specific volume related or other criteria for requiring a fill.

(d) With respect to paragraph (c) above, if the issue has traded in a primary market's after-hours closing price trading session, the Designated Dealer shall fill limit orders designated as eligible for limit order protection based on volume that prints in a primary market's after-hours closing price trading session (a "GTX" order) at such limit price. In unusual trading situations, a Designated Dealer may seek relief from the above requirements from two Trading Practices Committee members or a designated member of the Exchange staff who would have the authority to set execution prices.

(v)(1) Applicability. This rule is applicable only to Portfolio Depository Receipts. Except to the extent inconsistent with this rule, or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Board shall be applicable to the trading on the Exchange of such securities. Portfolio Depository Receipts are included within the definition of "security" or "securities" as such terms are used in the Constitution and Rules of the Exchange.

(2) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(a) Portfolio Depository Receipt. The term "Portfolio Depository Receipt" means a security (i) that is based on a unit investment trust ("Trust") which holds the securities which comprise an index or portfolio underlying a series of Portfolio Depository Receipts; (ii) that is issued by the Trust in a specified aggregate minimum number in return for a "Portfolio Deposit" consisting of specified numbers of shares of stock plus a cash amount; (iii) that, when aggregated in the same specified minimum number, may be redeemed from the Trust which will pay to the redeeming holder the stock and cash then comprising the "Portfolio Deposit"; and (iv) that pays holders a periodic cash payment corresponding to the regular cash dividends or distributions

declared with respect to the component securities of the stock index or portfolio of securities underlying the Portfolio Depository Receipts, less certain expenses and other charges as set forth in the Trust prospectus.

(b) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Portfolio Depository Receipts means the Exchange, an institution (including the Trustee for a series of Portfolio Depository Receipts), or a reporting service designated by the Exchange, or by the exchange that lists a particular series of Portfolio Depository Receipts (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the Trust in connection with issuance of Portfolio Depository Receipts; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depository Receipts, net asset value, or other information relating to the creation, redemption or trading of Portfolio Depository receipts.

(3) Members and member organizations shall provide to all purchasers of a series of Portfolio Depository Receipts a written description of the terms and characteristics of such securities, in a form approved by the Exchange, not later than the time a confirmation of the first transaction in such a series is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series of Portfolio Depository Receipts that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or to the public making specific reference to a series of Portfolio Depository Receipts as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of Portfolio Depository Receipts] is available from your broker. It is recommended that you obtain and review such circular before purchasing [the series of Portfolio Depository Receipts]. In addition, upon request you may obtain from your broker a prospectus for [the series of Portfolio Depository Receipts]."

A member or member organization carrying omnibus account for a non-member broker-dealer is required to inform such non-member that execution

of an order to purchase a series of Portfolio Depositary Receipts for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule.

Upon request of a customer, a member or member organization shall also provide a prospectus for the particular series of Portfolio Depositary Receipts.

(4) Designation of an Index or Portfolio. The trading of Portfolio Depositary Receipts based on one or more stock indices or securities portfolios, whether by listing or pursuant to unlisted trading privileges, shall be considered on a case by case basis. The Portfolio Depositary Receipts based on each particular stock index or portfolio shall be designated as a separate series and shall be identified by a unique symbol. The stocks that are included in an index or portfolio on which Portfolio Depositary Receipts are based shall be selected by the Exchange or by such other person as shall have a proprietary interest in and authorized use of such index or portfolio, and may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(5) Initial and Continued Listing and/or Trading. A Trust upon which a series of Portfolio Depositary Receipts is based will be traded on the Exchange, whether by listing or pursuant to unlisted trading privileges, subject to application of the following criteria:

(a) Commencement of Trading—For each Trust, the Exchange will establish a minimum number of Portfolio Depositary Receipts required to be outstanding at the time of commencement of trading on the Exchange.

(b) Continued Trading—Following the initial twelve month period following formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in, removal from listing of, or termination of unlisted trading privileges for a Trust upon which a series of Portfolio Depositary Receipts is based under any of the following circumstances: (i) If the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Portfolio Depositary Receipts for 30 or more consecutive trading days; or (ii) if the value of the index or portfolio of securities on which the Trust is based is no longer calculated or available; or (iii) if such other event shall occur or

condition exists which in the opinion of the Exchange, makes future dealings on the Exchange inadvisable.

Upon termination of a Trust, the Exchange requires that Portfolio Depositary Receipts issued in connection with such Trust be removed from Exchange listing or have their unlisted trading privileges terminated. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(c) Term—The stated term of the Trust shall be stated in the Trust Prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(d) Trustee—The trustee must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed as co-trustee.

(e) Voting—Voting rights shall be as set forth in the Trust prospectus. The Trustee of a Trust may have the right to vote all of the voting securities of such Trust.

(6) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value, the current value of the portfolio of securities required to be deposited to the Trust; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depositary Receipts; net asset value; or other information relating to the creation redemption or trading of Portfolio Depositary Receipts, resulting from any negligent act or omission by the Exchange, or the Reporting Authority, or any agent of the Exchange or any act, condition or cause beyond the reasonable control of the Exchange or its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more of the underlying securities. The Exchange makes no warranty, express or implied, as to the results to be obtained by any person or entity from the use of

Portfolio Depositary Receipts or any underlying index or data included therein and the Exchange makes no express or implied warranties, and disclaims all warranties or merchantability or fitness for a particular purpose with respect to Portfolio Depositary Receipts or any underlying index or data included therein. This limitation of liability shall be in addition to any other limitation contained in the Exchange's Articles of Incorporation, By-Laws or Rules.

Interpretations and Policies

.01 The Exchange will trade pursuant to unlisted trading privileges, Portfolio Depositary Receipts based on the Standard and Poor's Corporation's S&P 500 Index, known as SPDRs.

.02 The Exchange will trade, pursuant to unlisted trading privileges, Portfolio Depositary Receipts based on the Standard and Poor's Corporation's S&P MidCap 400 Index, known as MidCap SPDRs.

“Standard & Poor's”, “S&P”, “S&P 500”, “Standard & Poor's 500”, and “500” are trademarks of the McGraw-Hill Companies, Inc. and have been licensed for use by the Exchange.

(w)(1) Applicability. This rule is applicable only to Trust Issued Receipts. Except to the extent inconsistent with this rule, or unless the context otherwise requires, the provisions of the Constitution and all the rules and policies of the Board shall be applicable to the trading on the Exchange of such securities. Trust Issued Receipts are included within the definition of “security” or “securities” as such terms are used in the Constitution and Rules of the Exchange. The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Trust Issued Receipts that meet the criteria of this Rule.

(2) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the following meanings herein specified:

(a) Trust Issued Receipt. A Trust Issued Receipt is a security (a) that is issued by a trust (“Trust”) which holds specific securities deposited with the Trust; (b) that when aggregated in some specified minimum number, may be surrendered to the Trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.

(3) Designation. The Exchange may trade, whether by listing or pursuant to unlisted trading privileges, Trust Issued

Receipts based on one or more securities. The Trust Issued Receipts based on particular securities shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Trust Issued Receipts shall be selected by the Exchange or by such other person as shall have a proprietary interest in such Trust Issued Receipts.

(4) Initial and Continued Listing. Trust Issued Receipts will be traded on the Exchange subject to application of the following criteria:

(a) Initial Listing—For each Trust, the Exchange will establish a minimum number of Trust Issued Receipts required to be outstanding at the time of commencement of trading on the Exchange.

(b) Continued Listing—Following the initial twelve month period following formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in or removal from listing of a Trust upon which a series of Trust Issued Receipts is based under any of the following circumstances: (i) If the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days; (ii) if the Trust has more than 50,000 receipts issued and outstanding; (iii) if the market value of all receipts issued and outstanding is less than \$1,000,000; or (iv) if any other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Upon termination of a Trust, the Exchange requires that the Trust Issued Receipts issued in connection with such Trust be removed from Exchange listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(c) Term—The stated term of the Trust shall be as stated in the Trust prospectus; however, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(d) Trustee—The Trustee must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

(e) Voting—Voting rights shall be set forth in the Trust prospectus.

(5) Member Obligations. Members and member organizations shall provide to all purchasers of newly issued Trust Issued Receipts a prospectus for the series of Trust Issued Receipts.

(6) Trading Issues. Trust Issued Receipts may be acquired, held, or transferred only in round-lot amounts (or round-lot multiples) of 100 receipts. Orders for less than a round-lot multiple, will be executed to the extent of the largest round-lot multiple.

Interpretations and Policies

.01 The Exchange may approve a series of Trust Issued Receipts for trading, whether by listing or pursuant to unlisted trading privileges, pursuant to Rule 19b-4(e) under the Securities Act of 1934, provided that the following criteria are satisfied:

(a) Each security underlying the Trust Issued Receipt must be registered under Section 12 of the Exchange Act;

(b) Each company whose securities are underlying securities for the Trust Issued Receipt must have a minimum public float of at least \$150 million;

(c) Each security underlying the Trust Issued Receipt must be listed on a national securities exchange or traded through the facilities of NASDAQ as a reported national market system security;

(d) Each company whose securities are underlying securities for the Trust Issued Receipt must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period;

(e) Each company whose securities are underlying securities for the Trust Issued Receipt must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least \$1 million; and

(f) The most heavily weighted security in the Trust Issued Receipt cannot initially represent more than 20% of the overall value of the Trust Issued Receipt.

(x) Index Fund Shares

(1) Applicability. This Chapter is applicable only to Index Fund Shares. Except to the extent inconsistent with this Chapter, or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Exchange shall be applicable to the trading on the Exchange of Index Fund Shares. Index Fund Shares are included within the definition of “security” or “securities” as such terms are used in the Constitution and Rules of the Exchange.

(2) Definitions. The following terms as used in the Rules shall, unless the

context otherwise requires, have the meanings herein specified:

(a) Index Fund Shares means a security (a) that is issued by an open-end management investment company based on a portfolio of stocks that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index; (b) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount with a value equal to the next determined net asset value; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holders request by such open-end investment company which will pay to the redeeming holder the stock and/or cash with a value equal to the next determined net asset value.

(b) Reporting Authority. The term “Reporting Authority” in respect of a particular series of Index Fund Shares means the Exchange, a subsidiary of the Exchange, or an institution or reporting service designated by the Exchange or its subsidiary as the official source for calculating and reporting information to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Index Fund Shares.

Nothing in this section shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Index Fund Shares must be designated by the Exchange, the term “Reporting Authority” shall not refer to an institution or reporting service not so designated.

(3) Disclosure. Upon request of a customer, members and member organizations shall provide to all purchasers of Index Fund Shares a prospectus for the series of Index Fund Shares.

(4) Designation. The trading of Index Fund Shares based on one or more securities, whether by listing or pursuant to unlisted trading privileges, shall be considered on a case-by-case basis. Each issue of Index Fund Shares shall be based on each particular stock index or portfolio and shall be a designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series

of Index Fund Shares shall be selected by the Exchange or its agent, a wholly-owned subsidiary of the Exchange, or by such other person thereof, as shall have authorized use of such index. Such index or portfolio may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(5) Initial and Continued Listing and/or Trading. Each series of Index Fund Shares will be traded on the Exchange, whether by listing or pursuant to unlisted trading privileges, subject to application of the following criteria:

(a) Commencement of Trading—For each Series, the Exchange will establish a minimum number of Index Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.

(b) Continued Trading—Following the initial twelve month period following commencement of trading on the Exchange of a series of Index Fund Shares, the Exchange will consider the suspension of trading, the removal from listing, or termination of unlisted trading privileges for such series under any of the following circumstances: (i) If there are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days; (ii) if the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available; or (iii) if such other event shall occur or condition exist which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Upon termination of an open-ended management investment company, the Exchange requires that Index Fund Shares issued in connection with such entity be removed from Exchange listing.

(c) Voting. Voting rights shall be as set forth in the applicable open-end management investment company prospectus.

Interpretations and Policies

.01 The Exchange may approve a series of Index Fund Shares for listing pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(a) Eligibility Criteria for Index Components. Upon the initial listing of a series of Index Fund Shares each component of an index or portfolio underlying a series of Index Fund Shares shall meet the following criteria as of the date of the initial deposit of securities to the fund in connection with the initial issuance of shares of

such fund: (i) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least \$75 million; (ii) The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio; (iii) The most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio; (iv) The underlying index or portfolio must include a minimum of 13 stocks; and (v) All securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including the Nasdaq SmallCap Market).

(b) Index Methodology and Calculation. (i) The index underlying a series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology; (ii) If the index is maintained by a broker-dealer, the broker-dealer shall erect a “fire-wall” around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer; and (iii) The current index value will be disseminated every 15 seconds over the Consolidated Tape Association’s Network B.

(c) Disseminated Information. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

(d) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at commencement of trading.

(e) Minimal Fractional Trading Variation. The minimum fractional trading variation may vary among different series of Index Fund Shares but will be set at $\frac{1}{16}$ th, $\frac{1}{32}$ nd, or $\frac{1}{64}$ th of \$1.00.

(f) Hours of Trading. Trading will occur between 9:30 a.m. and either 4 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by the Exchange.

(g) Surveillance Procedures. The Exchange will utilize existing surveillance procedures for Index Fund Shares.

(h) Applicability of Other Rules. The provisions of the Exchange Rules and By-Laws will apply to all series of Index Fund Shares.

.02 The following paragraphs only apply to series of Index Fund Shares that are the subject of an order by the Securities and Exchange Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940. The Exchange will inform members and member organizations regarding application of these provisions to a particular series of Index Fund Shares by means of an Information Circular prior to commencement of trading in such series. The Exchange requires that members and member organizations provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series of Index Fund Shares that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of Index Fund Shares as an investment vehicle must include a statement in substantially the following form: “A circular describing the terms and characteristics of [the series of Index Fund Shares] has been prepared by the [open-end management investment company name] and is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of Index Fund Shares].”

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Index Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule.

Upon request of a customer, member or member organization shall also

provide a prospectus for the particular series of Index Fund Shares.]

(a) *General.* The System shall be available for entry and execution of orders by Users with authorized access. To obtain authorized access to the System, each User must enter into a User Agreement with the Exchange in such form as the Exchange may provide ("User Agreement").

(b) *Sponsored Participants.* A Sponsored Participant may obtain authorized access to the System only if such Sponsored Participant is a registered broker or dealer and a self-clearing member of a Qualified Clearing Agency, and only if such access is authorized in advance by one or more Sponsoring ETP Holders as follows:

(1) *Sponsored Participants must enter into and maintain customer agreements with one or more Sponsoring ETP Holders establishing proper relationship(s) and account(s) through which the Sponsored Participant may trade on the System. Such customer agreement(s) must incorporate the Sponsorship Provisions set forth in paragraph (2) below.*

(2) *For a Sponsored Participant to obtain and maintain authorized access to the System, a Sponsored Participant and its Sponsoring ETP Holder must agree in writing to the following Sponsorship Provisions:*

(A) *Sponsored Participant and its Sponsoring ETP Holder must have entered into and maintained a User Agreement with the Exchange. The Sponsoring ETP Holder must designate the Sponsored Participant by name in its User Agreement as such.*

(B) *Sponsoring ETP Holder acknowledges and agrees that*

(i) *All orders entered by the Sponsored Participants and any person acting on behalf of or in the name of such Sponsored Participant and any executions occurring as a result of such orders are binding in all respects on the Sponsoring ETP Holder,*

(ii) *Sponsoring ETP Holder is responsible for any and all actions taken by such Sponsored Participant and any person acting on behalf of or in the name of such Sponsored Participant, and*

(iii) *Sponsoring ETP Holder shall pay when due all amounts, if any, payable to the Exchange or any other third parties that arise from the Sponsored Participants access to and use of the System. Such amounts include, but are not limited to applicable exchange and regulatory fees.*

(C) *Sponsoring ETP Holder shall comply with the Exchange's Articles of Incorporation, By-Laws, Rules and procedures, and Sponsored Participant*

shall comply with the Exchange's Articles of Incorporation, By-Laws, Rules and procedures, as if Sponsored Participant were an ETP Holder.

(D) *Sponsored Participant shall maintain, keep current and provide upon request to the Sponsoring ETP Holder and the Exchange a list of Authorized Traders who may obtain access to the System on behalf of the Sponsored Participant. Sponsored Participant shall be subject to the obligations of Rule 11.10 with respect to such Authorized Traders.*

(E) *Sponsored Participant shall familiarize its Authorized Traders with all of the Sponsored Participant's obligations under this Rule and will assure that they receive appropriate training prior to any use or access to the System.*

(F) *Sponsored Participant may not permit anyone other than Authorized Traders to use or obtain access to the System.*

(G) *Sponsored Participant shall take reasonable security precautions to prevent unauthorized use or access to the System, including unauthorized entry of information into the System, or the information and data made available therein. Sponsored Participant understands and agrees that Sponsored Participant is responsible for any and all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of Authorized Traders, and for the trading and other consequences thereof.*

(H) *Sponsored Participant acknowledges its responsibility to establish adequate procedures and controls that permit it to effectively monitor its employees, agents and customers' use and access to the System for compliance with the terms of this agreement.*

(3) *The Sponsoring ETP Holder must provide the Exchange with a written statement in form and substance acceptable to the Exchange acknowledging its responsibility for the orders, executions and actions of its Sponsored Participant at issue, including without limitation responsibility to clear and settle the Sponsored Participant's trades in the event that the Sponsored Participant or its Qualified Clearing Agency does not accept any such trades.*

Rule 11.10. [National Securities Trading System Fees] Authorized Traders

[A. Trading Fees

(a) *Agency Transactions.* As in the case for Preferred transactions, members acting as an agent will be

charged the per share incremental rates as noted below for public agency transactions:

Avg. daily share * volume	Charge per share
1 to 250,000	\$0.0015
250,001 to 500,000	0.0013
500,001 to 750,000	0.0009
750,001 to 1,250,000	0.0007
1,250,001 and higher	0.0005

* Odd-Lot Shares Excluded.

(b) *Odd-Lot Transactions.* Members will be charged \$0.50 per odd-lot transaction when acting as agent or principal, except that members will earn a credit of \$0.50 for every four round-lot transactions executed (agency, professional agency or principal) on the Exchange and printed on the Consolidated Tape by the Exchange. Notwithstanding the forgoing credit, there will be a minimum charge of \$0.10 per odd-lot transaction.

(c) *Agency Order Mix Fee.* Agency limit orders shall be charged based on the percentage of public agency market order shares executed on the Exchange during the trading month, according to the following schedule:

Percent of market order shares executed	Agency limit order mix fee
25 and higher	No Charge.
20 to 24.99	\$0.005 per share.
15 to 19.99	\$0.010 per share.
10 to 14.99	\$0.015 per share.
Less than 10	\$0.020 per share.

(d) *Professional Agency Transactions.* Members will be charged \$0.0025 per share (\$0.25/100 shares) for professional agency (Rule 11.9(a)(8)) transactions.

(e) *Crosses and Meets*

(1) *Users executing crosses and meets in Tape A securities shall be charged \$0.0005 per share per side for average daily volume up to 5 million shares per day and \$0.000025 per share per side for average daily volume up above 5 million shares, with a maximum charge of \$37.50 per firm per side of transaction.*

(2) *Users, who are not registered as Qualified or Designated Dealers in the securities in which they are executing crosses and meets in Tape C securities (Nasdaq NM and SmallCap securities), shall pay no transaction fees.*

(3) *Dealers executing crosses in Tape C securities (Tape "C" Transactions are defined as transactions conducted in Nasdaq securities pursuant to unlisted trading privileges) in which they are registered shall be charged a per share fee as noted below:*

Average daily number of shares	Fee per share
Up to 5 million shares	\$0.001
5 million shares and above	0.000025

(4) Users executing crosses and meets in Tape A, B or C securities through the Exchange's System Supervisory Center shall be charged \$15 per contra-party, up to a maximum of \$75 per side of transaction. This transaction fee shall be in lieu of any transaction fee otherwise applicable under Paragraphs (A)(e)(1) through (A)(e)(3) above.

(f) ITS Transactions. All ITS transactions, whether inbound or outbound, will be charged \$0.001 per share.

(g) Proprietary (Principal) Transactions.

(1)(A) All Designated Dealers in securities other than Nasdaq securities, except those acting as Preferencing Dealers or Contributing Dealers, will be charged \$0.001 per share (\$0.10/100 shares) for principal transactions.

(B) For a pilot period commencing October 1, 2002 and lasting through June 30, 2006, members that execute orders in Nasdaq securities against previously displayed quotes/orders of other members shall pay \$0.004 per share for such execution. The Exchange shall pass on to the member displaying the quote/order executed against \$0.003 per share and the Exchange shall retain \$0.001 per share.

(2) Designated Dealers acting as "Dealer of the Day" will be charged \$0.0025 per share (\$0.25/100 shares) for principal transactions.

(3) Contributing Dealers will be charged \$0.02 per share (\$2.00/100 shares) for principal transactions.

(4) Members executing principal transactions in securities for which they are not registered as a Designated or Contributing Dealer will be charged \$0.02 per share (\$2.00/100 shares).

(h)(1) Preferred Transactions. Designated Dealers that are preferencing transactions in Tape A securities are charged for one side of their preferred transactions and are subject to the incremental rates as noted below:

Avg. daily principal share* volume	Charge per share
1 to 250,000	\$0.0015
250,001 to 500,000	0.0013
500,001 to 750,000	0.0009
750,001 to 1,250,000	0.0007
1,250,001 and higher	0.0005

* Odd-lot shares excluded.

(2) Dealers executing preferencing transactions in Tape C securities are charged for one side of their preferred

transactions and are subject to the following incremental rates:

Avg. daily principal share** volume	Charge per share
Up to 5 million shares	\$0.001
5 million shares and above	0.000025

** Odd-lot shares excluded.

(i) Transaction Fee Cap. The monthly transaction fees charged to each member shall be equal to the lesser of (1) the amounts assessed pursuant to Paragraphs (A)(a) through (A)(h) of this Rule 11.10 or (2) \$50,000.

(j) Revenue Sharing Program. After the Exchange earns total operating revenue sufficient to offset actual expenses and working capital needs, a percentage of all Specialist Operating Revenue ("SOR") shall be eligible for sharing with Designated Dealers. SOR is defined as operating revenue that is generated by specialist firms. SOR consists of transaction fees, book fees, technology fees, and market data revenue that is attributable to specialist firm activity. SOR shall not include any investment income or regulatory monies. The sharing of SOR shall be based on each Designated Dealer's pro rata contribution to SOR in excess of \$75,000 per quarter. In no event shall the amount of revenue shared with Designated Dealers exceed SOR. To the extent market data revenue is subject to any adjustment, SOR revenue may be adjusted accordingly.

(k) Tape "B" Transactions. Except as provided in Paragraph (A)(e)(4) above, the Exchange will not impose a transaction fee on Consolidated Tape "B" securities. In addition, Members will receive a 50 percent pro rata transaction credit of gross Tape "B" revenue; provided that, however, calculation of the transaction credit will be based on net Tape "B" revenues in those fiscal quarters where the overall revenue retained by the Exchange does not offset actual expenses and working capital needs. To the extent market data revenue from Tape "B" transactions is subject to any adjustment, credits provided under this program may be adjusted accordingly.

(l) Reserved.

(m) DD Issue/Book Fees. Designated Dealers will be charged a monthly book fee based on the following incremental schedule:

Number of issues	Fee per issue
0 to 150	\$30.00
151 to 300	20.00
301 to 500	15.00
501 and higher	2.00

(n) NSTS Internal Customer Port Charge. For purposes of this charge, a "Port" shall be defined as a TCP/IP address. For each port utilized on the Exchange mainframe a \$350.00 per month charge will be assessed to the member.

(o) Technology Fee. Every Member of the Exchange shall be assessed a fee of \$1,250.00 per month to help offset technology expenses incurred by the Exchange.

(p) Clearing Related Fee Passed Through to Member. The Exchange will pass onto members the entire amount of the clearing related fees allocated to the Exchange by the clearing agent for transactions which the Exchange submits to clearing on behalf of members.

(q) Regulatory Transaction Fee. Under Section 31 of the Act, the Exchange must pay certain fees to the Commission. To help fund the Exchange's obligations to the Commission under Section 31, this Regulatory Transaction Fee is assessed to members. To the extent there may be any excess monies collected under this Rule, the Exchange may retain those monies to help fund its general operating expense. Each member engaged in executing transactions on the Exchange shall pay, in such manner and at such times as the Exchange shall direct, a Regulatory Transaction Fee equal to (i) the rate determined by the Commission to be applicable to covered sales occurring on the Exchange in accordance with Section 31 of the Act multiplied by (ii) the member's aggregate dollar amount of covered sales occurring on the Exchange during any computational period.

(r) Workstation Fee. Every member using the Exchange Workstation shall be charged \$1,000.00 per device per month.

B. Membership Fees.

Item	Fee
Yearly Membership Dues (Quarterly Charge \$625)	\$2,500
New Member Application Fee	1,000
Transfers	350
Responsible Party Change Firm Registration/Name Change	

C. Transaction Credit De Minimis. For all rebates applicable to Tape A and Tape B Transactions, no member shall be eligible for a rebate for any quarter unless the total rebate calculation for that quarter exceeds \$500.00.]

(a) An ETP Holder shall maintain a list of ATs who may obtain access to the System on behalf of the ETP Holder or the ETP Holder's Sponsored Participants. The ETP Holder shall

update the list of ATs as necessary. ETP Holders must provide the list of ATs to the Exchange upon request.

(b) An ETP Holder must have reasonable procedures to ensure that all ATs comply with all Exchange Rules and all other procedures related to the System.

(c) An ETP Holder must suspend or withdraw a person's status as an AT if the Exchange has determined that the person has caused the ETP Holder to fail to comply with the Rules of the Exchange and the Exchange has directed the ETP Holder to suspend or withdraw the person's status as an AT.

(d) An ETP Holder must have reasonable procedures to ensure that the ATs maintain the physical security of the equipment for accessing the facilities of the Exchange to prevent the improper use or access to the systems, including unauthorized entry of information into the systems.

Rule 11.11. Orders and Modifiers

Users may enter into the System the types of orders listed in this Rule 11.11, subject to the limitations set forth in this Rule or elsewhere in these Rules.

(a) General Order Types.

(1) Market Order. An order to buy or sell a stated amount of a security that is to be executed at the best price obtainable when the order reaches the Exchange. A market order that is designated as "NSX Only" will be cancelled if when reaching the Exchange, it cannot be executed in accordance with Rule 11.15(a)(i) on the System. Market orders that are not designated as "NSX Only" and that cannot be executed in accordance with Rule 11.15(a)(i) on the System when reaching the Exchange will be eligible for routing away pursuant to Rule 11.15.

(2) Limit Order. An order to buy or sell a stated amount of a security at a specified price or better. A "marketable" limit order is a limit order to buy (sell) at or above (below) the Protected NBBO offer (bid) for the security.

(b) Time-in-Force. Limit orders must have one of the following time-in-force terms.

(1) Immediate-or-Cancel ("IOC") Order. A limit order that is to be executed in whole or in part as soon as such order is received, and the portion not so executed is to be treated as cancelled. An order designated as IOC is not eligible for routing away pursuant to Rule 11.15.

(2) Day Order. A limit order to buy or sell which, if not executed, expires at the closing of the regular trading session for such security on its Listing Exchange. Any Day Order entered into the System before the opening of

business on the Exchange as determined pursuant to Rule 11.1, or after the closing of the regular trading session for such security on its Listing Exchange, will be rejected.

(3) Day + Order. A limit order to buy or sell which, if not executed, expires at the closing of business on the Exchange (as determined pursuant to Rule 11.1) on the day on which it was entered. Any Day + Order entered into the System before the opening of business or after the closing of business on the Exchange as determined pursuant to Rule 11.1 will be rejected.

(4) Any limit orders entered with a "Good 'til Cancel" (GTC) or similar time-in-force term will be automatically converted into Day Orders.

(5) Any limit orders entered with a "Good 'til Extended Hours" (GTX) or similar time-in-force term will be automatically converted into Day + Orders.

(c) Other Types of Orders and Order Modifiers.

(1) ITS Order. An order entered into the System via the Intermarket Trading System ("ITS") as described in Chapter XIV of these Rules. ITS Orders are executable in round lots only. All ITS Orders shall be treated as Immediate-or-Cancel (IOC).

(2) Reserve Order. A limit order with a portion of the quantity displayed ("display quantity") and with a reserve portion of the quantity ("reserve quantity") that is not displayed.

(3) Odd Lot Order. An order to buy or sell an odd lot. Odd Lot Orders are only eligible to be protected quotations if aggregated to form a round lot.

(4) Mixed Lot Order. An order to buy or sell a mixed lot. Odd lot portions of Mixed Lot Orders are only eligible to be protected quotations if aggregated to form a round lot.

(5) Post Only Order. A limit order that is to be posted on the Exchange and not routed away to another trading center. A Post Only Order will be rejected without execution if it is immediately marketable when entered.

(6) NSX Only Order. An order that is to be executed on the Exchange pursuant to Rule 11.15(a) or cancelled, without routing away to another trading center.

(7) Sweep Order. A limit order that instructs the System to "sweep" the market.

(i) Sweep Orders may be designated as "Protected Sweep," "Full Sweep," or "Destination Sweep." Sweep Orders not carrying any such designation shall be treated as Protected Sweep Orders.

(A) A Protected Sweep Order will be converted into one or more limit orders with sizes equal to the sizes of protected

quotations in the NSX Book and at away trading centers to be executed in accordance with Rule 11.15(b).

(B) A Full Sweep Order will be converted into one or more limit orders with sizes equal to the sizes of the best available quotations (including manual quotations) in the NSX Book and at away trading centers in accordance with Rule 11.15(b).

(C) A Destination Sweep Order will be routed to an away trading center specified by the User, after the order is exposed to the NSX Book.

(ii) When entering a Protected Sweep Order or Full Sweep Order, Users shall designate the Sweep Order as "Sweep and Post," "Sweep and Cancel," or a combination thereof.

(A) Any unfilled portion of a Sweep Order designated "Sweep and Post" following the market sweep described in subsection (i) above will be converted into a Post Only Order.

(B) Any unfilled portion of a Sweep Order designated "Sweep and Cancel" after the completion of the market sweep described in subsection (i) above will be cancelled.

(iii) A Sweep Order entered as part of a "Cross/Sweep" message pursuant to Rule 11.12 shall be treated identically to a Sweep Order designated "Sweep and Cancel" except as otherwise provided in Rule 11.12.

(iv) Any order converted from a Protected Sweep Order or Full Sweep Order for routing to other trading centers or for execution against the NSX Book shall be marked as an intermarket sweep order or "ISO".

(8) Incoming Intermarket Sweep Order. The System will accept incoming intermarket sweep orders (as such term is defined in Regulation NMS) from other trading centers. Such orders must be marked "ISO" in order to be eligible for treatment as an intermarket sweep order. Such orders, if appropriately marked, will be considered immediate-or-cancel (IOC) and will be executed without regard to protected quotations at away markets consistent with Regulation NMS.

(9) Destination Specific Order. A market or limit order that instructs the System to route the order to a specified away trading center, after exposing the order to the NSX Book. Users can access markets offering bids and offers other than protected quotations (i.e., manual quotations) by entering a Destination Specific Order. A Destination Specific Order must have an order type and a time-in-force term permitted by this Rule 11.11.

(d) Cancel/Replace Messages. A User may, by appropriate entry in the System, cancel or replace an existing

order entered by the User, subject to the following limitations.

(i) Orders may only be cancelled or replaced if the order has a time-in-force term other than IOC and if the order has not yet been executed.

(ii) If an order has been routed to another trading center, the order will be placed in a "Cancel Pending" state until the routing process is completed. Executions that are completed when the order is in the "Cancel Pending" state will be processed normally.

(iii) Only the price and quantity terms of the order may be changed by a Replace Message. If a User desires to change any other terms of an existing order the existing order must be cancelled and a new order must be entered.

(iv) Notwithstanding anything to the contrary in these Exchange Rules, no cancellation or replacement of an order will be effective until the User has received written confirmation of the cancellation or replacement from the Exchange.

Rule 11.12. Cross Message

(a) Subject to the restrictions of this Rule, Users may enter a cross message (a "Cross") instructing the System to match for execution the identified buy-side of the Cross with the identified sell-side of the Cross at a specified price (the "cross price").

(b) Except as provided in paragraphs (c), (d) or (f) below, no Cross will be executed by the System, unless:

(1) The buy-side of the Cross is at a price less (by at least \$0.01 per share) than the lowest displayed order to sell in the NSX Book, and (following the compliance date for Rule 611 of Regulation NMS) is at a price equal to or less than the Protected NBBO offer; and

(2) The sell-side of the Cross is at a price greater (by at least \$0.01 per share) than the highest displayed order to buy in the NSX Book, and (following the compliance date for Rule 611 of Regulation NMS) is at a price equal to or greater than the Protected NBBO bid.

(c) Midpoint Cross. A Cross that is priced at the midpoint of the Protected NBBO (or, prior to the compliance date for Rule 611 of Regulation NMS, at the midpoint of the best bid and offer on the Exchange) (a "Midpoint Cross") may be executed on the System if it improves each side of the Top of Book by at least half the minimum increment permitted by Rule 11.3(a).

(d) Clean Cross. A Cross meeting the following requirements (a "Clean Cross") may be executed on the System at a price equal to or better than each side of the Top of Book:

(1) The Cross is for at least 5,000 shares and has an aggregate value of at least \$100,000;

(2) Neither side of the Cross is for the account of the User entering the Cross; and

(3) The size of the Cross is greater than the size of the interest at each side of the Top of Book;

(4) Following the compliance date for Rule 611 of Regulation NMS, the price of the Cross is equal to or better than the Protected NBBO.

(e) If either side of a Cross is for the account of the User entering the Cross (a "Proprietary Cross"), the User must comply with Exchange Rule 12.6 (the Customer Priority Rule). Without limiting the foregoing, no User shall enter a Proprietary Cross if the User is holding a customer order in the security unless the price of the Proprietary Cross improves the price that could have been received by the customer order by at least \$0.01.

(f) Cross/Sweep. Users may enter a "Cross/Sweep" message into the System involving both a Sweep Order and a Cross.

(1) Upon receipt of a Cross/Sweep message, the System will enter a Protected Sweep Order for the User's account in an amount necessary to execute against all protected quotations that, if not swept, would prohibit the Cross from being executed by the System pursuant to paragraph (b) above. The Cross will be executed on the System simultaneously with the Sweep Order, unless the Protected Sweep Order would be for an amount of shares in excess of the size of the Cross, in which case both the Protected Sweep Order and the Cross shall be cancelled without execution.

(2) No User shall enter a Cross/Sweep if either side of the Cross is for the account of a customer, unless the User fully discloses to such customer all of the material facts relating to the Sweep Order, including price(s) of the Sweep Order and the fact that the Sweep Order is for the account of the User.

Rule 11.13. Proprietary and Agency Orders; Modes of Order Interaction

(a) Except as otherwise provided in these Rules, Users may enter proprietary orders and agency orders for the account of a customer. Proprietary orders accepted by the System from Users are subject to the same ranking and execution processes as agency orders. A User that enters a proprietary order into the System shall mark the order with the appropriate designator to identify the order as proprietary. All agency orders shall be designated as such and with each agency order, the

User shall include a unique account number or other identifier that enables the User to identify the User's customer on whose behalf the order is being entered.

(b) The System offers two modes of order interaction selected by Users:

(1) If automatic execution is selected, the System shall match and execute like-priced orders on an order by order basis only at the specific instruction of Users.

(2) If order delivery and automated response is selected, the System will deliver contra-side orders against displayed orders on an order by order basis only at the specific instruction of Users. To be eligible for order delivery service, Users must demonstrate to Exchange examiners that the User's system can automatically process the inbound order and respond appropriately within 1/2 of a second. If no response to an inbound order is received within 1/2 of a second, the User's displayed order will be cancelled.

Rule 11.14. Priority of Orders

(a) Ranking. Orders of Users shall be ranked and maintained in the NSX Book based on the following priority:

(1) The highest-priced order to buy (or lowest-priced order to sell) shall have priority over all other orders to buy (or orders to sell) in all cases.

(2) Where orders to buy (or sell) are made at the same price, the order clearly established as the first entered into the System at such particular price shall have precedence at that price, up to the number of shares of stock specified in the order.

(3) In the event that less than the full size of an order is executed, the unexecuted size of the order shall retain priority at the same limit price in accordance with paragraphs (1) and (2) above.

(4) The displayed quantity of a Reserve Order shall have time priority as of the time of display. If the displayed quantity of the Reserve Order is decremented such that 99 shares or fewer would be displayed, the displayed portion of the Reserve Order shall be refreshed for (i) the original displayed quantity, or (ii) the entire reserve quantity, if the remaining reserve quantity is smaller than the original displayed quantity. After the refresh, the displayed portion of the Reserve Order shall have time priority as of the time of the refresh. The reserve quantity of a Reserve Order shall have no time priority until displayed. If all displayed orders and displayed portions of Reserve Orders at a given price are executed, and following such execution any marketable contra-side orders

remain outstanding, then such contra-side orders shall be executed against the refreshed displayed portions of Reserve Orders at such price based on the time priority as determined by this paragraph (4).

(b) Dissemination. The best-ranked order(s) to buy and the best-ranked order(s) to sell in the NSX Book and the aggregate displayed size of such orders associated with such prices shall be collected and made available to quotation vendors for dissemination pursuant to the requirements of Rule 602 of Regulation NMS.

Rule 11.15. Order Execution

Subject to the restrictions on short sales under these Exchange Rules or the Act and the rules and regulations thereunder, orders shall be matched for execution by following this Rule. For any execution to occur during Regular Trading Hours, however, the price must be equal to or better than the Protected NBBO, unless the order is marked ISO or unless the execution falls within another exception set forth in Rule 611(b) of Regulation NMS.

(a) Orders Other than Sweep Orders.

(i) Execution against NSX Book. An incoming order (other than a Sweep Order) shall first attempt to be matched for execution against orders in the NSX Book. An incoming order to buy (other than a Sweep Order) will be automatically executed to the extent that it is priced at an amount that equals or exceeds any order to sell in the NSX Book. Such order to buy shall be executed at the price(s) of the lowest order(s) to sell having priority in the NSX Book. An incoming order to sell (other than a Sweep Order) will be automatically executed to the extent that it is priced at an amount that equals or is less than any other order to buy in the NSX Book. Such order to sell shall be executed at the price(s) of the highest order(s) to buy having priority in the NSX Book.

(ii) Routing to Away Trading Centers. Unless the terms of the order direct otherwise, if an order (other than a Sweep Order) has not been executed in its entirety pursuant to paragraph (a)(i) of this Rule, the order shall be eligible for routing away as follows:

(A) The order will be converted into one or more limit orders, as necessary, to be matched for execution against each protected quotation at the Protected NBBO available at away trading centers. Each such converted limit order shall be priced at the price of the protected quotation that it is to be matched for execution against.

(B) Each converted limit order will be routed to the applicable trading center

for execution against the applicable protected quotation at the Protected NBBO. No orders routed away pursuant to this subsection (ii) shall be marked ISO.

(iii) Following steps (i) and (ii) above, unless the terms of the order direct otherwise, any unfilled portion of the order originally entered into the System shall be ranked in the NSX Book in accordance with the terms of such order under Rule 11.14 and such order shall be eligible for execution under this Rule 11.15.

(b) Sweep Orders.

(i) Protected Sweep Orders. A Protected Sweep Order will be matched for execution in the NSX Book in accordance with paragraph (a)(i), and will simultaneously be converted into one or more additional limit orders, as necessary, with sizes equal to the size of each protected quotation that is superior (or in the case of a Protected Sweep Order designated "Sweep and Post", superior or equal) to the limit price of the Protected Sweep Order. Each converted limit order will be routed to the applicable trading center for execution.

(ii) Full Sweep Orders. A Full Sweep Order will be matched for execution in the NSX Book in accordance with paragraph (a)(i), and will simultaneously be converted into one or more additional limit orders, as necessary, with sizes equal to the size of each quotation available at an away trading center that (A) is the best bid or offer of a national securities exchange or association, and (B) is superior (or, in the case of a Full Sweep Order designated "Sweep and Post", superior or equal) to the limit price of the Full Sweep Order. Each converted limit order will be routed to the applicable trading center for execution.

(iii) Destination Sweep Orders. A Destination Sweep Order will be matched for execution in the NSX Book in accordance with paragraph (a)(i), and if it cannot be matched for execution in accordance with paragraph (a)(i), will be routed to the specified away trading center for execution.

(iv) Any order converted from a Protected Sweep Order or Full Sweep Order for routing to other trading centers or for execution against the NSX Book shall be marked as an intermarket sweep order or "ISO".

(v) Following the steps described above, any unfilled portion of the Sweep Order will either be cancelled or ranked in the NSX Book in accordance with the terms of the Sweep Order.

(c) Special Rules for Orders Routed to Other Trading Centers.

(i) An order that is routed away may be executed in whole or in part subject to the applicable trading rules of the relevant trading center. While an order remains outside the System, it shall have no time standing, relative to other orders received from Users at the same price which may be executed against the NSX Book. Requests from Users to cancel their orders while the order is routed away to another trading center and remains outside the System shall be processed, subject to the applicable trading rules of the relevant trading center.

(ii) Where an order or portion of an order is routed away and is not executed either in whole or in part at the other trading center (i.e., all attempts at the fill are declined or timed-out), the order shall be ranked in the NSX Book in accordance with the terms of such order under Rule 11.14 and such order shall be eligible for execution under this Rule 11.15, unless the terms of the order provide otherwise.

(d) Display of Automated Quotations. The System will be operated as an "automated market center" within the meaning of Regulation NMS, and in furtherance thereof, will display "automated quotations" within the meaning of Regulation NMS at all times except in the event that a systems malfunction renders the System incapable of displaying automated quotations. The Exchange shall communicate to ETP Holders its procedures concerning a change from automated to manual quotations.

Rule 11.16. Trade Execution and Reporting

Executions occurring as a result of orders matched against the NSX Book shall be reported by the Exchange to an appropriate consolidated transaction reporting system to the extent required by the Act and the rules and regulations thereunder. Executions occurring as a result of orders routed away from the System shall be reported to an appropriate consolidated transaction reporting system by the relevant reporting trading center. The Exchange shall promptly notify Users of all executions of their orders as soon as such executions take place.

Rule 11.17. Clearance and Settlement

(a) Each ETP Holder must either (1) be a member of a Qualified Clearing Agency, or (2) clear transactions executed on the Exchange through another ETP Holder that is a member of a Qualified Clearing Agency. Each Sponsored Participant must be a member of a Qualified Clearing Agency. If an ETP Holder clears transactions

through another ETP Holder that is a member of a Qualified Clearing Agency ("clearing member"), such clearing member shall affirm to the Exchange in writing, through letter of authorization, letter of guarantee or other agreement acceptable to the Exchange, its agreement to assume responsibility for clearing and settling any and all trades executed by the ETP Holder designating it as its clearing firm. The rules of any such clearing agency shall govern with respect to the clearance and settlement of any transactions executed by the ETP Holder on the Exchange.

(b) Each transaction executed within the System shall be automatically processed for clearance and settlement on a locked-in basis.

(c) Except as required by any Qualified Clearing Agency, the Exchange will reveal the identity of an ETP Holder or ETP Holder's clearing firm in the following circumstances:

(1) for regulatory purposes or to comply with an order of a court or arbitrator; or

(2) when a Qualified Clearing Agency ceases to act for an ETP Holder or the ETP Holder's clearing firm, and determines not to guarantee the settlement of the ETP Holder's trades.

11.18. LIMITATION OF LIABILITY

(A) NEITHER THE EXCHANGE NOR ITS AGENTS, EMPLOYEES, CONTRACTORS, OFFICERS, DIRECTORS, COMMITTEE MEMBERS OR AFFILIATES ("EXCHANGE RELATED PERSONS") SHALL BE LIABLE TO ANY USER OR ETP HOLDER, OR SUCCESSORS, REPRESENTATIVES OR CUSTOMERS THEREOF, OR ANY PERSONS ASSOCIATED THEREWITH, FOR ANY LOSS, DAMAGES, CLAIM OR EXPENSE:

(1) GROWING OUT OF THE USE OR ENJOYMENT OF ANY FACILITY OF THE EXCHANGE, INCLUDING, WITHOUT LIMITATION, THE SYSTEM; OR

(2) ARISING FROM OR OCCASIONED BY ANY INACCURACY, ERROR OR DELAY IN, OR OMISSION OF OR FROM THE COLLECTION, CALCULATION, COMPILATION, MAINTENANCE, REPORTING OR DISSEMINATION OF ANY INFORMATION DERIVED FROM THE SYSTEM OR ANY OTHER FACILITY OF THE EXCHANGE, RESULTING EITHER FROM ANY ACT OR OMISSION BY THE EXCHANGE OR ANY EXCHANGE RELATED PERSON, OR FROM ANY ACT OR CONDITION OR CAUSE BEYOND THE REASONABLE CONTROL OF THE EXCHANGE OR ANY EXCHANGE RELATED PERSON,

INCLUDING, BUT NOT LIMITED TO, FLOOD, EXTRAORDINARY WEATHER CONDITIONS, EARTHQUAKE OR OTHER ACTS OF GOD, FIRE, WAR, TERRORISM, INSURRECTION, RIOT, LABOR DISPUTE, ACCIDENT, ACTION OF GOVERNMENT, COMMUNICATIONS OR POWER FAILURE, OR EQUIPMENT OR SOFTWARE MALFUNCTION.

(B) EACH ETP HOLDER EXPRESSLY AGREES, IN CONSIDERATION OF THE ISSUANCE OF THE ETP, TO RELEASE AND DISCHARGE THE EXCHANGE AND ALL EXCHANGE RELATED PERSONS OF AND FROM ALL CLAIMS AND DAMAGES ARISING FROM THEIR ACCEPTANCE AND USE OF THE FACILITIES OF THE EXCHANGE (INCLUDING, WITHOUT LIMITATION, THE SYSTEM).

(C) NEITHER THE EXCHANGE NOR ANY EXCHANGE RELATED PERSON MAKES ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS TO USERS AS TO RESULTS THAT ANY PERSON OR PARTY MAY OBTAIN FROM THE SYSTEM FOR TRADING OR FOR ANY OTHER PURPOSE, AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, TITLE, AND NON-INFRINGEMENT WITH RESPECT TO THE SYSTEM ARE HEREBY DISCLAIMED.

Rule 11.19. Clearly Erroneous Executions

(a) Definition. For purposes of this Rule, the terms of a transaction executed on the Exchange are "clearly erroneous" when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security. A transaction made in clearly erroneous error and cancelled by both parties may be removed, if the parties do not object, subject to the approval of the Exchange.

(b) Request for Exchange Review. An ETP Holder that receives an execution on an order that was submitted erroneously to the Exchange for its own or customer account may request that the Exchange review the transaction under this Rule. Such request for review shall be made via telephone, facsimile or e-mail and submitted within fifteen (15) minutes of the trade in question. Upon receipt, the counterparty to the trade, if any, shall be notified by the Exchange as soon as practicable. Thereafter, an Officer of the Exchange or such other designee of the Exchange ("Officer") shall review the transaction under dispute and determine whether it is clearly erroneous, with a view toward maintaining a fair and orderly market and the protection of investors and the

public interest. Each party to the transaction shall provide, within thirty (30) minutes of the request for review, any supporting written information as may be reasonably requested by Officer to aid resolution of the matter. Either party to the disputed trade may request the supporting written information provided by the other party on the matter.

(c) Review Procedures.

(1) Determination by Officer. Unless both parties (or party, in the case of a cross) to the disputed transaction agree to withdraw the initial request for review, the transaction under dispute shall be reviewed, and a determination shall be rendered by the Officer. If the Officer determines that the transaction is not clearly erroneous, the Officer shall decline to take any action in connection with the completed trade. In the event that the Officer determines that the transaction in dispute is clearly erroneous, the Officer shall declare the transaction null and void or modify one or more of the terms of the transaction to achieve an equitable rectification of the error that would place the parties in the same position, or as close as possible to the same position that they would have been in, had the error not occurred. The parties shall be promptly notified of the determination.

(2) Appeal to CEE Panel. If a party affected by a determination made under this Rule so requests within the time permitted below, the Clearly Erroneous Execution Panel ("CEE Panel") will review decisions made by the Officer under this Rule, including whether a clearly erroneous execution occurred and whether the correct adjustment was made.

(A) The CEE Panel will be comprised of the Exchange's Chief Regulatory Officer ("CRO"), or a designee of the CRO, and representatives from two (2) ETP Holders.

(B) The Exchange shall designate the ETP Holder representatives to be called upon to serve on the CEE Panel as needed. In no case shall a CEE Panel include a person related to a party to the trade in question. To the extent reasonably possible, the Exchange shall call upon the designated representatives to participate on a CEE Panel on an equally frequent basis.

(C) A request for review on appeal must be made via facsimile or e-mail within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The CEE Panel shall review the facts and render a decision within the time frame prescribed by the Exchange.

(D) The CEE Panel may overturn or modify an action taken by the Officer under this Rule. All determinations by the CEE Panel shall constitute final action by the Exchange on the matter at issue.

(d) Abuse of Process. An abuse of the process described in subsections (c) and (d) above may subject the abusing User to disciplinary action under Chapter VIII.

(e) System Disruption and Malfunctions. In the event of any disruption or a malfunction in the use or operation of any electronic communications and trading facilities of the Exchange, or extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest exist, the Officer, on his or her own motion, may review such transactions and declare such transactions arising out of the use or operation of such facilities during such period null and void or modify the terms of these transactions if the Officer determines that the transaction(s) are clearly erroneous, or that such actions are necessary for the maintenance of a fair and orderly market or for the protection of investors and the public interest. Any such action of the Officer pursuant to this subsection (e) shall be taken as promptly as practicable following detection of the erroneous transaction. Each ETP Holder involved in the transaction shall be notified as soon as practicable, and the ETP Holder aggrieved by the action may appeal such action in accordance with the provisions of subsection (c)(2).

Rule 11.20. Trading Halts Due to Extraordinary Market Volatility

(a) Trading in stocks will halt on the Exchange and will not reopen for the time periods described in this paragraph (a) if the Dow Jones Industrial Average reaches Level 1 below its closing value on the previous trading day:

(1) before 1:00 p.m. Central Time, for one hour;

(2) at or after 1:00 p.m. but before 1:30 p.m. Central Time, for 30 minutes.

If the Dow Jones Industrial Average reaches Level 1 below its closing value on the previous trading day at or after 1:30 p.m. Central Time, trading will continue through the facilities of the Exchange until the close, unless the Dow Jones Industrial Average reaches Level 2 below its closing value on the previous trading day, at which time trading will be halted for the remainder of the day.

(b) Trading in stocks will halt on the Exchange and will not re-open for the time periods described in this paragraph (b) if the Dow Jones Industrial Average reaches Level 2 below its closing value on the previous trading day:

(1) before 12:00 noon Central Time, for two hours;

(2) at or after 12:00 noon but before 1:00 p.m. Central Time, for one hour;

(3) at or after 1:00 p.m. Central Time, for the remainder of the day.

(c) If the Dow Jones Industrial Average reaches Level 3 below its closing value on the previous trading day, trading in stocks will halt on the Exchange and will not reopen for the remainder of the day.

(d) On the occurrence of any trading halt pursuant to this Rule, all outstanding orders in the System will be cancelled.

Commentary:

.01 Levels 1, 2 and 3 will be calculated at the beginning of each calendar quarter, using the average closing value of the Dow Jones Industrial Average for the month prior to the beginning of the quarter. Level 1 will be 10% of such average closing value calculation; Level 2 will be 20% of such average closing value calculation; Level 3 will be 30% of such average closing value calculation. Each Level will be rounded to the nearest fifty points. The values of Levels 1, 2 and 3 will remain in effect until the next calculation.

.02 The restrictions in this Rule will apply whenever the Dow Jones Industrial Average reaches the trigger values notwithstanding the fact that at any given time, the calculation of the value of the average may be based on the prices of less than all of the stocks included in the average.

.03 The reopening of trading following a trading halt under this Rule will be conducted pursuant to procedures adopted by the Exchange and communicated by notice to its ETP Holders.

.04 Nothing in this Rule should be construed to limit the ability of the Exchange to otherwise halt or suspend the trading in any stock or stocks traded on the Exchange pursuant to any other Exchange Rule or policy.

Rule 11.21. Short Sales

All short sale orders shall be identified as either short sale or short sale exempt when entered into the System. Any marketable order entered in the System that, if matched for execution, would violate the short sale provisions of the Act or the rules and regulations thereunder shall be cancelled. The foregoing shall not be in

limitation of the Exchange's ability to adopt additional Rules, interpretations or policies relating to short sales.

Rule 11.22. Locking or Crossing Quotations in NMS Stocks

(a) Definitions. For purposes of this Rule, the following definitions shall apply:

(1) The terms automated quotation, effective national market system plan, intermarket sweep order, manual quotation, NMS stock, protected quotation, regular trading hours, and trading center shall have the meanings set forth in Rule 600(b) of Regulation NMS.

(2) The term crossing quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that is higher than the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that is lower than the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

(3) The term locking quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that equals the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that equals the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

(b) Prohibition. Except for quotations that fall within the provisions of paragraph (d) of this Rule, Users shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross a protected quotation, and any manual quotations that lock or cross a quotation previously disseminated pursuant to an effective national market system plan.

(c) Manual quotations. If a User displays a manual quotation that locks or crosses a quotation previously disseminated pursuant to an effective national market system plan, such User shall promptly either withdraw the manual quotation or route an intermarket sweep order to execute against the full displayed size of the locked or crossed quotation.

(d) Exceptions.

(1) The locking or crossing quotation was displayed at a time when the trading center displaying the locked or crossed quotation was experiencing a

failure, material delay, or malfunction of its systems or equipment.

(2) The locking or crossing quotation was displayed at a time when a protected bid was higher than a protected offer in the NMS stock.

(3) The locking or crossing quotation was an automated quotation, and the User displaying such automated quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of any locked or crossed protected quotation.

(4) The locking or crossing quotation was a manual quotation that locked or crossed another manual quotation, and the User displaying the locking or crossing manual quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of the locked or crossed manual quotation.

Rule 11.23. Riskless Principal Transactions

(a) A "riskless principal transaction" is defined as two offsetting principal transaction legs in which an ETP Holder, (i) after having received an order to buy a security that it holds for execution on the Exchange, purchases the security as principal at the same price, exclusive of markups, markdowns, commissions and other fees, to satisfy all or a portion of the order to buy or (ii) after having received an order to sell a security that it holds for execution on the Exchange, sells the security as principal at the same price, exclusive of markups, markdowns, commissions and other fees, to satisfy all or a portion of the order to sell.

(b) A last sale report for only the initial offsetting transaction leg of a riskless principal transaction shall be submitted to the respective consolidated tape in accordance with the rules and procedures of the market where that transaction leg occurred. A last sale report for the second offsetting transaction leg of a riskless principal transaction shall not be submitted by the Exchange to the respective consolidated tape provided that the second offsetting transaction leg is submitted to the Exchange for execution and designated with a riskless principal modifier by the ETP Holder.

(c) An ETP Holder must have written policies and procedures to assure that its riskless principal transactions comply with this Rule. At a minimum these policies and procedures must require that the customer order be received prior to the offsetting transactions, and that the second offsetting transaction leg be executed within 60 seconds of the initial offsetting transaction leg. An ETP

Holder must also have supervisory systems in place that produce records that enable the ETP Holder and the Exchange to accurately and readily reconstruct, in a time-sequenced manner, all orders related to each riskless principal transaction.

CHAPTER XII. Trading Practice Rules

Rule 12.6. Customer Priority

(a)-(c) No change. (d) The provisions of paragraphs (a) and (b) of this Rule also shall not apply if an ETP Holder engages in trading activity to facilitate the execution, on a riskless principal basis, of another order from its customer (whether its own customer or the customer of another member) (the "facilitated order"), provided that the requirements of Rule 11.23 are satisfied. Any transaction handled by an ETP Holder on other than an agency basis that does not satisfy the requirements of Exchange Rule 11.23 remains a transaction that, unless otherwise exempt, is subject to the provisions of paragraphs (a) and (b) of this Rule. This exemption applies to both offsetting transaction legs of a riskless principal transaction but only to the extent of the actual number of shares that are required to satisfy the facilitated order.

Interpretations and Policies

.01 If [a Designated Dealer] an ETP Holder holds for execution on the Exchange a customer buy order and a customer sell order that can be crossed, the [Designated Dealer] ETP Holder shall cross them without interpositioning itself as a dealer.

.02 For a pilot period lasting through June 30, 2006:

(a) [A Designated Dealer] An ETP Holder shall be deemed to have violated Rule 12.6 if, while holding a customer limit order (as rounded to a penny increment) representing the NBBO, the [Designated Dealer] ETP Holder, for his own account, trades with an incoming market or marketable limit order at a price which is less than one penny better than the price of such customer limit order (not the quoted price) held by such [Designated Dealer] ETP Holder.

(b) [A Designated Dealer] An ETP Holder shall be deemed to have violated Rule 12.6 if, while holding a customer limit order (as rounded to a penny increment) at a price outside the NBBO, the [Designated Dealer] ETP Holder, for his own account, trades with an incoming market or marketable limit order at a price which is less than the nearest penny increment to the actual

price of the customer limit order (not the quoted price) held by such [Designated Dealer] ETP Holder.

CHAPTER XIV. Intermarket Trading System Plan

Rule 14.9. ITS "Trade-Throughs" and "Locked Markets"

(a)-(e) No change. (f) This Rule 14.9 shall cease to be operational on the compliance date for the provisions of Regulation NMS relating to trade-throughs and locked markets.

CHAPTER XV. Listed Securities and Other Exchange Products

15.10. Portfolio Depositary Receipts

(1) Applicability. This rule is applicable only to Portfolio Depositary Receipts. Except to the extent inconsistent with this rule, or unless the context otherwise requires, the provisions of the By-Laws and all other rules and policies of the Board shall be applicable to the trading on the Exchange of such securities. Portfolio Depositary Receipts are included within the definition of "security" or "securities" as such terms are used in the By-Laws and Rules of the Exchange.

(2) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(a) Portfolio Depositary Receipt. The term "Portfolio Depositary Receipt" means a security (i) that is based on a unit investment trust ("Trust") which holds the securities which comprise an index or portfolio underlying a series of Portfolio Depositary Receipts; (ii) that is issued by the Trust in a specified aggregate minimum number in return for a "Portfolio Deposit" consisting of specified numbers of shares of stock plus a cash amount; (iii) that, when aggregated in the same specified minimum number, may be redeemed from the Trust which will pay to the redeeming holder the stock and cash then comprising the "Portfolio Deposit"; and (iv) that pays holders a periodic cash payment corresponding to the regular cash dividends or distributions declared with respect to the component securities of the stock index or portfolio of securities underlying the Portfolio Depositary Receipts, less certain expenses and other charges as set forth in the Trust prospectus.

(b) Reporting Authority. The term "Reporting Authority" in respect of a

particular series of Portfolio Depository Receipts means the Exchange, an institution (including the Trustee for a series of Portfolio Depository Receipts), or a reporting service designated by the Exchange, or by the exchange that lists a particular series of Portfolio Depository Receipts (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the Trust in connection with issuance of Portfolio Depository Receipts; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depository Receipts, net asset value, or other information relating to the creation, redemption or trading of Portfolio Depository receipts.

(3) ETP Holders shall provide to all purchasers of a series of Portfolio Depository Receipts a written description of the terms and characteristics of such securities, in a form approved by the Exchange, not later than the time a confirmation of the first transaction in such a series is delivered to such purchaser. In addition, ETP Holders shall include such a written description with any sales material relating to a series of Portfolio Depository Receipts that is provided to customers or the public. Any other written materials provided by an ETP Holder to customers or to the public making specific reference to a series of Portfolio Depository Receipts as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of Portfolio Depository Receipts] is available from your broker. It is recommended that you obtain and review such circular before purchasing [the series of Portfolio Depository Receipts]. In addition, upon request you may obtain from your broker a prospectus for [the series of Portfolio Depository Receipts]." An ETP Holder carrying omnibus account for a non-ETP Holder broker-dealer is required to inform such non-ETP Holder that execution of an order to purchase a series of Portfolio Depository Receipts for such omnibus account will be deemed to constitute agreement by the non-ETP Holder to make such written description available to its customers on the same terms as are directly applicable to ETP Holders under this Rule.

Upon request of a customer, an ETP Holder shall also provide a prospectus

for the particular series of Portfolio Depository Receipts.

(4) Designation of an Index or Portfolio. The trading of Portfolio Depository Receipts based on one or more stock indices or securities portfolios, whether by listing or pursuant to unlisted trading privileges, shall be considered on a case by case basis. The Portfolio Depository Receipts based on each particular stock index or portfolio shall be designated as a separate series and shall be identified by a unique symbol. The stocks that are included in an index or portfolio on which Portfolio Depository Receipts are based shall be selected by the Exchange or by such other person as shall have a proprietary interest in and authorized use of such index or portfolio, and may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(5) Initial and Continued Listing and/or Trading. A Trust upon which a series of Portfolio Depository Receipts is based will be traded on the Exchange, whether by listing or pursuant to unlisted trading privileges, subject to application of the following criteria:

(a) Commencement of Trading—For each Trust, the Exchange will establish a minimum number of Portfolio Depository Receipts required to be outstanding at the time of commencement of trading on the Exchange.

(b) Continued Trading—Following the initial twelve month period following formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in, removal from listing of, or termination of unlisted trading privileges for a Trust upon which a series of Portfolio Depository Receipts is based under any of the following circumstances: (i) If the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Portfolio Depository Receipts for 30 or more consecutive trading days; or (ii) if the value of the index or portfolio of securities on which the Trust is based is no longer calculated or available; or (iii) if such other event shall occur or condition exists which in the opinion of the Exchange, makes future dealings on the Exchange inadvisable.

Upon termination of a Trust, the Exchange requires that Portfolio Depository Receipts issued in connection with such Trust be removed from Exchange listing or have their unlisted trading privileges terminated. A Trust may terminate in accordance with the provisions of the Trust prospectus,

which may provide for termination if the value of securities in the Trust falls below a specified amount.

(c) Term—The stated term of the Trust shall be stated in the Trust Prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(d) Trustee—The trustee must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed as co-trustee.

(e) Voting—Voting rights shall be as set forth in the Trust prospectus. The Trustee of a Trust may have the right to vote all of the voting securities of such Trust.

(6) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value, the current value of the portfolio of securities required to be deposited to the Trust; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depository Receipts; net asset value; or other information relating to the creation redemption or trading of Portfolio Depository Receipts, resulting from any negligent act or omission by the Exchange, or the Reporting Authority, or any agent of the Exchange or any act, condition or cause beyond the reasonable control of the Exchange or its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more of the underlying securities. The Exchange makes no warranty, express or implied, as to the results to be obtained by any person or entity from the use of Portfolio Depository Receipts or any underlying index or data included therein and the Exchange makes no express or implied warranties, and disclaims all warranties or merchantability or fitness for a particular purpose with respect to Portfolio Depository Receipts or any underlying index or data included therein. This limitation of liability shall be in addition to any other limitation

contained in the Exchange's Articles of Incorporation, By-Laws or Rules.

Interpretations And Policies

.01 The Exchange will trade pursuant to unlisted trading privileges, Portfolio Depositary Receipts based on the Standard and Poor's Exchange's S&P 500 Index, known as SPDRs.

.02 The Exchange will trade, pursuant to unlisted trading privileges, Portfolio Depositary Receipts based on the Standard and Poor's Exchange's S&P MidCap 400 Index, known as MidCap SPDRs.

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15.11. Trust Issued Receipts

(1) *Applicability.* This rule is applicable only to Trust Issued Receipts. Except to the extent inconsistent with this rule, or unless the context otherwise requires, the provisions of the By-Laws and all the rules and policies of the Board shall be applicable to the trading on the Exchange of such securities. Trust Issued Receipts are included within the definition of "security" or "securities" as such terms are used in the By-Laws and Rules of the Exchange. The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Trust Issued Receipts that meet the criteria of this Rule.

(2) *Definitions.* The following terms as used in the Rules shall, unless the context otherwise requires, have the following meanings herein specified:

(a) *Trust Issued Receipt.* A Trust Issued Receipt is a security (a) that is issued by a trust ("Trust") which holds specific securities deposited with the Trust; (b) that when aggregated in some specified minimum number, may be surrendered to the Trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.

(3) *Designation.* The Exchange may trade, whether by listing or pursuant to unlisted trading privileges, Trust Issued Receipts based on one or more securities. The Trust Issued Receipts based on particular securities shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Trust Issued Receipts shall be selected by the Exchange or by such

other person as shall have a proprietary interest in such Trust Issued Receipts.

(4) *Initial and Continued Listing.* Trust Issued Receipts will be traded on the Exchange subject to application of the following criteria:

(a) *Initial Listing.*—For each Trust, the Exchange will establish a minimum number of Trust Issued Receipts required to be outstanding at the time of commencement of trading on the Exchange.

(b) *Continued Listing.*—Following the initial twelve month period following formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in or removal from listing of a Trust upon which a series of Trust Issued Receipts is based under any of the following circumstances: (i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days; (ii) if the Trust has more than 50,000 receipts issued and outstanding; (iii) if the market value of all receipts issued and outstanding is less than \$1,000,000; or (iv) if any other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Upon termination of a Trust, the Exchange requires that the Trust Issued Receipts issued in connection with such Trust be removed from Exchange listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(c) *Term.*—The stated term of the Trust shall be as stated in the Trust prospectus; however, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(f) *Trustee.*—The Trustee must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

(g) *Voting.*—Voting rights shall be set forth in the Trust prospectus.

(5) *ETP Holder Obligations.* ETP Holders shall provide to all purchasers of newly issued Trust Issued Receipts a prospectus for the series of Trust Issued Receipts.

(6) *Trading Issues.* Trust Issued Receipts may be acquired, held, or

transferred only in round-lot amounts (or round-lot multiples) of 100 receipts. Orders for less than a round-lot multiple, will be executed to the extent of the largest round-lot multiple.

Interpretations and Policies

.01 The Exchange may approve a series of Trust Issued Receipts for trading, whether by listing or pursuant to unlisted trading privileges, pursuant to Rule 19b-4(e) under the Act, provided that the following criteria are satisfied:

(a) Each security underlying the Trust Issued Receipt must be registered under Section 12 of the Act;

(b) Each company whose securities are underlying securities for the Trust Issued Receipt must have a minimum public float of at least \$150 million;

(c) Each security underlying the Trust Issued Receipt must be listed on a national securities exchange or traded through the facilities of NASDAQ as a reported national market system security;

(d) Each company whose securities are underlying securities for the Trust Issued Receipt must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period;

(e) Each company whose securities are underlying securities for the Trust Issued Receipt must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least \$1 million; and

(f) The most heavily weighted security in the Trust Issued Receipt cannot initially represent more than 20% of the overall value of the Trust Issued Receipt.

15.12. Index Fund Shares

(1) *Applicability.* This Chapter is applicable only to Index Fund Shares. Except to the extent inconsistent with this Chapter, or unless the context otherwise requires, the provisions of the By-Laws and all other rules and policies of the Exchange shall be applicable to the trading on the Exchange of Index Fund Shares. Index Fund Shares are included within the definition of "security" or "securities" as such terms are used in the By-Laws and Rules of the Exchange.

(2) *Definitions.* The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(a) *Index Fund Shares* means a security (a) that is issued by an open-end management investment company based on a portfolio of stocks that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign

or domestic stock index; (b) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount with a value equal to the next determined net asset value; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holders request by such open-end investment company which will pay to the redeeming holder the stock and/or cash with a value equal to the next determined net asset value.

(b) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Index Fund Shares means the Exchange, a subsidiary of the Exchange, or an institution or reporting service designated by the Exchange or its subsidiary as the official source for calculating and reporting information to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Index Fund Shares.

Nothing in this section shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Index Fund Shares must be designated by the Exchange, the term "Reporting Authority" shall not refer to an institution or reporting service not so designated.

(3) Disclosure. Upon request of a customer, ETP Holders shall provide to all purchasers of Index Fund Shares a prospectus for the series of Index Fund Shares.

(4) Designation. The trading of Index Fund Shares based on one or more securities, whether by listing or pursuant to unlisted trading privileges, shall be considered on a case-by-case basis. Each issue of Index Fund Shares shall be based on each particular stock index or portfolio and shall be a designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Index Fund Shares shall be selected by the Exchange or its agent, a wholly-owned subsidiary of the Exchange, or by such other person thereof, as shall have authorized use of such index. Such index or portfolio may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(5) Initial and Continued Listing and/ or Trading. Each series of Index Fund Shares will be traded on the Exchange, whether by listing or pursuant to unlisted trading privileges, subject to application of the following criteria:

(a) Commencement of Trading—For each Series, the Exchange will establish a minimum number of Index Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.

(b) Continued Trading—Following the initial twelve month period following commencement of trading on the Exchange of a series of Index Fund Shares, the Exchange will consider the suspension of trading, the removal from listing, or termination of unlisted trading privileges for such series under any of the following circumstances: (i) if there are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days; (ii) if the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available; or (iii) if such other event shall occur or condition exist which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Upon termination of an open-ended management investment company, the Exchange requires that Index Fund Shares issued in connection with such entity be removed from Exchange listing.

(c) Voting—Voting rights shall be as set forth in the applicable open-end management investment company prospectus.

Interpretations and Policies

.01 The Exchange may approve a series of Index Fund Shares for listing pursuant to Rule 19b-4(e) under the Act provided each of the following criteria is satisfied:

(a) Eligibility Criteria for Index Components. Upon the initial listing of a series of Index Fund Shares each component of an index or portfolio underlying a series of Index Fund Shares shall meet the following criteria as of the date of the initial deposit of securities to the fund in connection with the initial issuance of shares of such fund: (i) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least \$75 million; (ii) The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio; (iii) The most heavily weighted component stock

cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio; (iv) The underlying index or portfolio must include a minimum of 13 stocks; and (v) All securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including the Nasdaq SmallCap Market).

(b) Index Methodology and Calculation. (i) The index underlying a series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology; (ii) If the index is maintained by a broker-dealer, the broker-dealer shall erect a "fire-wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer; and (iii) The current index value will be disseminated every 15 seconds over the Consolidated Tape Association's Network B.

(c) Disseminated Information. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

(d) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at commencement of trading.

(e) Minimal Fractional Trading Variation. The minimum fractional trading variation may vary among different series of Index Fund Shares but will be set at 1/16th, 1/32nd, or 1/64th of \$1.00.

(f) Hours of Trading. Trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by the Exchange.

(g) Surveillance Procedures. The Exchange will utilize existing surveillance procedures for Index Fund Shares.

(h) Applicability of Other Rules. The provisions of the Exchange Rules and By-Laws will apply to all series of Index Fund Shares.

.02 The following paragraphs only apply to series of Index Fund Shares that are the subject of an order by the Securities and Exchange Commission

exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940. The Exchange will inform ETP Holders regarding application of these provisions to a particular series of Index Fund Shares by means of an Information Circular prior to commencement of trading in such series. The Exchange requires that ETP Holders provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, ETP Holders shall include such a written description with any sales material relating to a series of Index Fund Shares that is provided to customers or the public. Any other written materials provided by an ETP Holder to customers or the public making specific reference to a series of Index Fund Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of Index Fund Shares] has been prepared by the [open-end management investment company name] and is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of Index Fund Shares]."

An ETP Holder carrying an omnibus account for a non-ETP Holder broker-dealer is required to inform such non-ETP Holder that execution of an order to purchase a series of Index Fund Shares for such omnibus account will be deemed to constitute agreement by the non-ETP Holder to make such written description available to its customers on the same terms as are directly applicable to ETP Holders under this rule.

Upon request of a customer, an ETP Holder shall also provide a prospectus for the particular series of Index Fund Shares.

* * * * *

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

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

the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Background

The Exchange is proposing a series of rule changes in connection with a new electronic trading system (the "System") the Exchange is developing to replace the Exchange's current National Securities Trading System ("NSTS"). The Exchange states that the System would provide for a new trading platform and structure in order to take advantage of opportunities in the marketplace and the implementation of Regulation NMS ("Regulation NMS") under the Act, as amended, and the rules and regulations thereunder.⁴ The System would have different priority rules than that of NSTS. For example, NSTS and the Exchange's current trading rules allow preferencing by dealers under certain circumstances.⁵ The Exchange states that the System (and the proposed rule change described in this submission) would provide for strict price-time priority execution, with no priority of execution distinction made for principal or agency orders.⁶

The proposed rule change, as amended, also incorporates the trade-through rule of Regulation NMS⁷ by requiring that, for any execution to occur on the Exchange during regular trading hours,⁸ the price must be equal to or better than the national best bid or offer that is a "protected quotation" within the meaning of Regulation NMS (the "Protected NBBO"), unless an exception to the trade-through rule of Regulation NMS is available.⁹ NSX proposes to route orders that cannot be executed at the Protected NBBO on the Exchange to away markets for execution.¹⁰ Finally, with the System the Exchange proposes to retain an option for order delivery,¹¹ but to require that Users requesting order

delivery be able to process inbound orders and respond within 1/2 of a second.¹²

With this proposed rule change, the Exchange is proposing to substantially revise Chapter XI of its Rules (relating to Trading Rules), in order to incorporate priority rules and other features consistent with the System. In connection with the proposed changes to the trading rules, the Exchange is also proposing changes to certain other aspects of its rules as follows:

1. Revisions to Chapter I to incorporate new definitions and other general provisions;

2. One change to Chapter II concerning the ETP Holder admission process and related provisions;

3. Revisions to Chapter XV, to incorporate provisions relating to specifications for other products (e.g., exchange-traded funds) that are currently located in Chapter XI of the Exchange's Rules; and

4. Certain other technical changes in order to be consistent with the new trading rules and related changes being proposed.¹³

Finally, in connection with the new System and the proposed changes to the Exchange's trading rules, the Exchange is requesting that the Commission approve NSX Securities LLC ("NSX Securities") to be a facility (as defined in Section 3(a)(2) of the Act) of the Exchange.

Trading Rules

Chapter XI of the Exchange's Rules is proposed to be substantially revised in order to accommodate the proposed new market structure. The Exchange states that, although certain aspects of NSX's current Chapter XI have been retained in part, as noted below, for the most part proposed Chapter XI is not based on current Exchange Rules. In general, the proposed Chapter is ordered as follows: (1) Introductory provisions, such as hours of trading and price variations; (2) Registration and obligations of Market Makers (which are optional in this proposed market structure); (3) Access to the System; (4) Types of orders and messages that can be entered into the System; (5) Order priority and execution; and (6) Clearance and settlement, clearly erroneous executions, and other miscellaneous provisions.

¹² See proposed NSX Rule 11.13(b).

¹³ The Exchange states that a proposed new Chapter XVI relating to dues, fees, assessments and other charges and Exchange rebate programs will be filed with the Commission by the Exchange at a later date. This will replace the Exchange's current fee schedule contained in NSX Rule 11.10, which is being removed in connection with the proposed changes to Chapter XI described herein.

⁴ 17 CFR 242.600 *et seq.*

⁵ See current NSX Rule 11.9, particularly NSX Rules 11.9(l), (m) and (u).

⁶ See proposed NSX Rules 11.13 and 11.14.

⁷ 17 CFR 242.611.

⁸ "Regular Trading Hours" is defined as between 8:30 a.m. and 3:00 p.m. Central Time. See proposed NSX Rule 1.5(R)(1). This is consistent with the definition of "regular trading hours" set forth in Regulation NMS. See 17 CFR 242.600(b)(64).

⁹ See proposed NSX Rule 11.15.

¹⁰ See proposed NSX Rule 11.15(a)(ii).

¹¹ See current NSX Rule 11.9(i).

A. Hours of Trading, Units of Trading, Price Variations, and Securities Eligible for Trading

Proposed NSX Rule 11.1 generally provides for trading hours as determined by the Board of Directors of the Exchange (the "Board"), with notice to ETP Holders.¹⁴ Current NSX Rule 11.1 provides for specific hours of trading.¹⁵ The Exchange is proposing this change to provide greater flexibility to respond to market conditions. The Exchange is also proposing to set forth the specific holidays it observes.¹⁶

NSX Rule 11.2 is proposed to be changed to define 100 shares as a "round lot," any amount less than 100 shares as an "odd lot" and any amount greater than 100 shares that is not a multiple of a round lot as a "mixed lot".¹⁷ The Exchange is also proposing to remove current language in NSX Rule 11.2 and elsewhere relating to bonds, as it has not traded bonds for many years.

The Exchange states that the language of proposed NSX Rule 11.3(a) is identical to the language of current NSX Rule 11.3. Proposed NSX Rule 11.3(b) requires that Crosses (as described in proposed NSX Rule 11.12 and Section D below) must improve each side of the Exchange's best bid or offer ("Top of Book") by at least \$0.01 per share, subject to limited exceptions as described in Section D below. Proposed NSX Rule 11.4 provides that any class of securities listed or admitted to unlisted trading privileges on the Exchange may be designated for trading by the Exchange.¹⁸

B. Market Makers

Proposed NSX Rules 11.5 through 11.8 set forth the registration process and obligations of Market Makers. NSX states that Market Makers are purely optional in this proposed market structure. The Exchange states that it does not expect Market Makers to play a significant role on the Exchange at the outset, but is including these provisions in order to provide flexibility as it expands the System's functionality to provide for additional order types and other features that may make Market Maker registration more attractive.

Proposed NSX Rule 11.5 provides for a registration process for Market Makers.

No ETP Holder may act as a Market Maker in any security on the Exchange unless the ETP Holder is registered as a Market Maker in the security.¹⁹ The Exchange plans to administer the Market Maker application process in similar fashion to its administration of applications for equity trading permits, which is described below. Market Makers must file an application for registration in the form prescribed by the Exchange. When reviewing such applications, the Exchange would consider factors such as the applicant's capital, operations, personnel, technical resources, and disciplinary history. Market Makers must maintain at least the minimum net capital required under Rule 15c3-1 under the Act.²⁰ The Exchange may suspend or terminate the registration of a Market Maker if the Exchange determines that (1) the Market Maker has substantially or continually failed to engage in dealings in accordance with the Exchange Rules; (2) the Market Maker has failed to meet the minimum net capital requirements described above; or (3) the Market Maker has failed to maintain fair and orderly markets.²¹ A Market Maker may withdraw its registration by giving written notice to the Exchange, subject to the Exchange's right to require a minimum prior notice period or to place such other conditions on withdrawal (and re-registration following withdrawal) as it deems appropriate in the interests of maintaining fair and orderly markets.²²

Proposed NSX Rule 11.6 provides for the registration of Market Maker Authorized Traders ("MMATs") who are permitted to enter orders for the account of the Market Maker for which they are registered. MMATs may be officers, partners, employees, or other associated persons of Market Makers, and must register as an MMAT on the form prescribed by the Exchange.²³ MMATs must successfully complete a "Series 7" examination, unless the Exchange waives this requirement for applicant MMATs who have served as dealer-specialists or market makers on another national securities exchange or association for at least two consecutive

years within three years of the MMAT application.²⁴ The Exchange may grant conditional registration as an MMAT subject to conditions the Exchange deems appropriate in the interests of maintaining a fair and orderly market.²⁵ The Exchange may also suspend or withdraw the registration of an MMAT if (1) the MMAT has caused its Market Maker to fail to comply with securities laws or the By-laws, Rules and procedures of the Exchange; (2) the MMAT is not properly performing its responsibilities as an MMAT or has failed to meet the conditions of registration described above; or (3) the Exchange believes suspension or withdrawal is in the interest of maintaining fair and orderly markets to suspend or withdraw the MMAT's registration.²⁶ The Exchange would also withdraw the registration of an MMAT upon the written request of the ETP Holder for which the MMAT is registered.²⁷

Proposed NSX Rule 11.7 provides for a registration process for Market Makers in a particular security. Market Makers must register in a particular security by filing a security registration form with the Exchange. Unless otherwise provided by the Exchange, such registration shall become effective on the first business day following the Exchange's approval of the registration.²⁸ In considering the approval of a Market Maker's registration in a particular security, the Exchange may consider the Market Maker's financial resources; the Market Maker's experience, expertise and past performance in making markets; the Market Maker's operational capability; the effect on competition among Market Makers; the Market Maker's clearing arrangements; and the character of the market for the security.²⁹ A Market Maker may terminate its registration in a security by giving written notice to the Exchange, subject to the Exchange's right to require a minimum prior notice period or impose such other conditions as it deems appropriate in the interests of maintaining fair and orderly markets.³⁰ Proposed NSX Rule 11.7(c) allows the Exchange to terminate such registration if the Market Maker has not met its obligations as set forth in the

¹⁴ See proposed NSX Rule 11.1(a).

¹⁵ See current NSX Rule 11.1(a).

¹⁶ See proposed NSX Rule 11.1(b).

¹⁷ See proposed NSX Rule 11.2.

¹⁸ This proposed Rule is generally consistent with current NSX Rule 11.9(b). Current Rules 11.4 and 11.5 are proposed to be replaced in their entirety, as they relate to trading ex-dividend and related issues that will no longer apply because no orders will remain in the System beyond a single trading day.

¹⁹ See proposed NSX Rule 11.5(a). Registered Market Makers will be designated as dealers on the Exchange for all purposes under the Act and the rules and regulations thereunder.

²⁰ See proposed NSX Rule 11.5(b).

²¹ See proposed NSX Rule 11.5(d).

²² See proposed NSX Rule 11.5(e).

²³ See proposed NSX Rule 11.6(b). Market Makers must ensure that their MMATs are in compliance with NSX Rules and are properly qualified to perform market-making activities on the Exchange. See proposed NSX Rule 11.6(b)(5). Market Makers are responsible for the acts and omissions of their MMATs. See proposed NSX Rule 11.8(c).

²⁴ See proposed NSX Rule 11.6(b)(2).

²⁵ See proposed NSX Rule 11.6(b)(4).

²⁶ See proposed NSX Rule 11.6(c)(1).

²⁷ See proposed NSX Rule 11.6(b)(3).

²⁸ *Id.*

²⁹ See proposed NSX Rule 11.7(a).

³⁰ See proposed NSX Rule 11.7(b). A Market Maker may also withdraw temporarily from its Market Maker status in a security if legal or regulatory requirements necessitate. See proposed NSX Rule 11.8(e).

Exchange Rules or has not maintained fair and orderly markets.

Proposed NSX Rule 11.8 sets forth certain obligations of Market Makers. Market Makers generally must engage in a course of dealings for their own account to assist in the maintenance of fair and orderly markets on the Exchange.³¹ Market Makers are specifically required, among other things, to maintain continuous limit orders to buy and sell for round lots in those securities in which Market Makers is registered to trade; to comply with all Exchange Rules; to inform the Exchange of a material change in the financial or operation condition or in the personnel of the Market Maker; to maintain a current list of MMATs and provide an updated version of this list to the Exchange upon any change in MMATs; and to clear and settle transactions through the facilities of a registered clearing agency.³² Substantial or continued failure to comply with these requirements may subject a Market Maker to suspension or revocation of the Market Maker's registration in one or more securities, or other disciplinary action.³³

C. Access to the System and Authorized Traders

Orders may be entered on the System only by Users who have obtained authorized access by entering into a User Agreement with the Exchange in the form prescribed by the Exchange.³⁴ In addition to ETP Holders, non-ETP Holders may enter into User Agreements and thereby access the System, subject to the requirements of proposed NSX Rule 11.9. A non-ETP Holder accessing the System is known as a "Sponsored Participant."³⁵ A Sponsored Participant, to obtain access to the System, must be a registered broker or dealer and a self-clearing member of a qualified clearing agency ("Qualified Clearing Agency"),³⁶ and must enter into an agreement with a Sponsoring ETP Holder³⁷ pursuant to which the Sponsoring ETP Holder agrees to be responsible for any and all actions taken by or on behalf of the

Sponsored Participant.³⁸ The Sponsored Participant must also (1) agree to comply with the Exchange's Rules and procedures as if the Sponsored Participant were an ETP Holder; (2) maintain a current list of its Authorized Traders who may access the System on behalf of the Sponsored Participant (and provide such list to the Sponsoring ETP Holder and the Exchange on request); (3) familiarize its Authorized Traders with the Sponsored Participant's obligations and assure that they receive appropriate training; (4) take reasonable security precautions to prevent access to the System by anyone other than the Sponsored Participant's Authorized Traders; and (5) establish adequate procedures and controls to effectively monitor the Sponsored Participant's employees, agents and customers' use and access to the System.³⁹ The Exchange intends to administer the Sponsored Participant access provisions of proposed NSX Rule 11.9 in a fashion similar to its current non-member give-up rule.⁴⁰

Proposed NSX Rule 11.10 requires that ETP Holders maintain a list of Authorized Traders ("ATs") who may obtain access to the System on behalf of the ETP Holder or the ETP Holder's Sponsored Participant, and requires that an ETP Holder provide such list to the Exchange upon request.⁴¹ An ETP Holder must have reasonable procedures to ensure that its ATs (1) comply with all Exchange Rules and other procedures relating to the System; and (2) maintain the physical security of the System and the equipment used to access it.⁴² An ETP Holder must suspend or withdraw a person's status as an AT if the Exchange so directs after determining that the AT has caused the ETP Holder to fail to comply with the Exchange Rules.⁴³

D. Types of Orders and Messages That May Be Entered Into the System

Proposed NSX Rule 11.11 allows Users (*i.e.*, ETP Holders and Sponsored Participants) to enter market orders and limit orders with various time-in-force terms and other modifiers. The System would not allow a time-in-force term longer than Day +.⁴⁴ Unexecuted Day

orders would expire at the closing of trading on the exchange where the security is listed. Unexecuted Day + orders would expire at the closing of trading on NSX.⁴⁵ Other order types permitted to be entered into the System include Reserve Orders,⁴⁶ Odd Lot and Mixed Lot Orders,⁴⁷ Post Only Orders,⁴⁸ and NSX Only Orders.⁴⁹

A Sweep Order type is provided for in proposed NSX Rule 11.11(c)(7). A Sweep Order that is designated as a "Protected Sweep Order" would be converted into one or more limit orders to be matched for execution against protected quotations on the Exchange and at away markets to the extent the prices of such protected quotations are superior to the limit price of the Sweep Order.⁵⁰ A Sweep Order that is designated as a "Full Sweep Order" would be converted into one or more limit orders to be matched for execution against the best available quotation on the Exchange and each other market (automated and manual) with a price superior to the limit price of the Sweep Order.⁵¹ The Exchange states that all

⁴⁵ See proposed NSX Rule 11.11(b)(2)-(5).

⁴⁶ A Reserve Order is a limit order with a portion of the quantity displayed (the "displayed quantity") and with a reserve, or undisplayed, portion of the quantity ("reserve quantity"). See proposed NSX Rule 11.11(c)(2).

⁴⁷ See proposed NSX Rule 11.11(c)(3)-(4). Odd Lot and Mixed Lot Orders are only eligible to be protected quotations if aggregated to form a round lot.

⁴⁸ A Post Only Order is a limit order that is to be posted on the Exchange and not routed away to another trading center. A Post Only Order will be rejected without execution if it is immediately marketable on the System when entered. See proposed NSX Rule 11.11(c)(5).

⁴⁹ An NSX Only Order is an order that is to be cancelled (without routing away to another trading center) if it cannot be executed on the Exchange within the System's execution parameters. See proposed NSX Rule 11.11(c)(6).

⁵⁰ See proposed NSX Rule 11.11(c)(7)(i)(A). A Protected Sweep Order that is designated "Sweep and Post", meaning the unfilled portion of the Sweep Order following the market sweep will be posted on the NSX Book, will be converted into one or more limit orders and matched for execution against protected quotations with prices superior or equal to the limit price of the Protected Sweep Order. See proposed NSX Rules 11.11(c)(7)(ii); 11.15(b)(i).

If a limit order that has been converted from a Protected Sweep Order cannot be executed against the protected quotation that it was routed to execute against because the protected quotation is no longer available (due to a race condition), the limit order will be available for execution against other orders in the applicable market that are priced the same as or better than such limit order.

⁵¹ See proposed NSX Rule 11.11(c)(7)(i)(B). A Full Sweep Order that is designated "Sweep and Post", meaning the unfilled portion of the Sweep Order following the market sweep will be posted on the NSX Book, will be converted into one or more limit orders and matched for execution against the best available quotation on the Exchange and each other market (automated and manual) with a price superior or equal to the limit price of the Full

³¹ See proposed NSX Rule 11.8(a).

³² See proposed NSX Rule 11.8(a).

³³ See proposed NSX Rule 11.8(d). Current NSX Rules 11.6 through 11.9, which relate to various types of trading on the Exchange, are proposed to be replaced in their entirety with the proposed Rules described herein.

³⁴ See proposed NSX Rule 11.9(a).

³⁵ See proposed NSX Rule 1.5(S)(1).

³⁶ "Qualified Clearing Agency" is defined in proposed NSX Rule 15(Q)(1) as a clearing agency registered with the Commission pursuant to Section 17A of the Act that is deemed qualified by the Exchange.

³⁷ See proposed NSX Rule 1.5(S)(2).

³⁸ See proposed NSX Rule 11.9(b). The Sponsoring ETP Holder must also agree to pay when due any amounts arising from the Sponsored Participant's access to the System. See proposed NSX Rule 11.9(b)(2)(B)(iii).

³⁹ See proposed NSX Rule 11.9(b)(2)(D)-(H).
⁴⁰ See Interpretation and Policy .03 of Section 2.4 of the NSX Rules.

⁴¹ See proposed NSX Rule 11.10(a).

⁴² See proposed NSX Rule 11.10(b), (d).

⁴³ See proposed NSX Rule 11.10(c).

⁴⁴ See proposed NSX Rule 11.11(a)(3), which defines a Day + Order type.

limit orders converted from Protected Sweep Orders and Full Sweep Orders would be deemed intermarket sweep orders under Regulation NMS⁵² and shall be so marked.⁵³ A Sweep Order designated "Destination Sweep Order" would be routed to an away trading center specified by the User, after the order has been exposed to the System's electronic file of orders (the "NSX Book").⁵⁴ The System would also accept incoming intermarket sweep orders from other markets and would execute these consistent with the requirements of Regulation NMS.⁵⁵

The System would allow Users to enter a "Destination Specific Order" instructing the Exchange to route the order to a specified away trading center, after exposing the order to the NSX Book.⁵⁶ The Exchange states that it has included this order type in order to allow Users to access manual markets if they so choose.

Proposed NSX Rule 11.11(e) allows a User to cancel or replace an existing order entered into the System by the User, subject to certain limitations.⁵⁷ No cancellation or replacement of an order would be effective until the User has received written confirmation of the cancellation and replacement from the Exchange.⁵⁸

Proposed NSX Rule 11.12 allows a User to post a cross message ("Cross") on the System if the price of the trade is better than the best bid and offer on NSX, and (following the compliance date for Rule 611 of Regulation NMS) if it is equal to or better than the Protected NBBO. Crosses must improve each side of the Top of Book by at least one penny a share, except in the case of a Midpoint Cross and a Clean Cross. A Midpoint

Cross may improve the Top of Book by as little as one-half the minimum increment provided in NSX Rule 11.3(a), if it is priced at the midpoint of the Protected NBBO (or, prior to the compliance date for Rule 611 of Regulation NMS, if it is priced at the midpoint of the best bid and offer on the Exchange).⁵⁹ A Clean Cross may be executed on the System at a price equal to or better than the Top of Book if (i) it is for at least 5,000 shares and has an aggregate value of at least \$100,000, (ii) neither side of the Cross is for the account of the User, (iii) the size of the Cross is greater than the size of the total interest on NSX at the Cross price, and (iv) following the compliance date for Rule 611 of Regulation NMS, it is at a price equal to or better than the Protected NBBO.⁶⁰ The Exchange states that the requirements of the Midpoint Cross and the Clean Cross are substantively similar to rules of other national securities exchanges.⁶¹

NSX Rule 11.12(e) requires that all Users entering a proprietary Cross comply with the Exchange's Customer Priority Rule (*i.e.*, the price of the Cross must be better than any customer order the User is holding by at least \$0.01). A User may also post a "Cross/Sweep" message that enters a Sweep Order for the account of the User sweeping all protected quotations that are superior to the Cross price, and simultaneously executes the Cross. In connection with any Cross/Sweep, the User must fully disclose the material facts relating to the Sweep Order to any customer for whose account either side of the Cross is being executed.⁶²

Proposed NSX Rule 11.13(a) provides that proprietary and agency orders shall be subject to the same ranking and execution processes. Users must identify all orders as either proprietary or agency, and for all agency orders, must include an identifier that enables the User to identify the User's customer on whose behalf the order is being entered.⁶³

Proposed NSX Rule 11.13(b) contains the Exchange's proposed order delivery rule. The Exchange states that this rule is substantively identical to the Exchange's current order delivery rule,⁶⁴ except that it requires that Users

selecting order delivery demonstrate their ability to automatically process the inbound order and respond appropriately within 1/2 a second. If no response to an inbound order is received within 1/2 a second from a User selecting order delivery, the User's displayed order would be cancelled.⁶⁵ The Exchange is proposing to change the required response time from 1 second to 1/2 a second in order to provide the Exchange with a "buffer" to ensure that the Exchange meets the definition of an "automated trading center" under Regulation NMS.⁶⁶ Based on current processing speeds in the securities industry, the Exchange believes that its Users should have no problem complying with this required response time.

E. Order Priority and Execution

Proposed NSX Rules 11.14 and 11.15 set forth the priority and execution parameters of the System. The Exchange states that orders are prioritized on a strict price-time basis, first by price and then by time.⁶⁷ Only the displayed portion of a Reserve Order has time priority.⁶⁸

Incoming orders (other than Sweep Orders) are first matched for execution against orders in the NSX Book.⁶⁹ Proposed NSX Rule 11.15 reflects the trade-through rule of Regulation NMS⁷⁰ by requiring that, for any execution on NSX to occur during Regular Trading Hours (*i.e.*, between 8:30 a.m. and 3:00 p.m. Central Time), the price must be equal to or better than the Protected NBBO unless the order is marked as an intermarket sweep order or unless another exception to the trade-through rule of Regulation NMS is available. Orders that cannot be executed within these parameters are eligible for routing to away trading centers for execution at the Protected NBBO.

Unless the terms of the order direct otherwise, any order other than a Sweep Order that cannot be executed on the Exchange would be converted into one or more limit orders, as necessary, to match the price of each protected quotation at the Protected NBBO available at away markets, and these limit orders would be routed to the applicable market for execution against the applicable protected quotation at the Protected NBBO.⁷¹

Unless the terms of the order direct otherwise, any order not executed in

Sweep Order. See proposed NSX Rules 11.11(c)(7)(ii); 11.15(b)(ii).

If a limit order that has been converted from a Full Sweep Order cannot be executed against the quotation that it was routed to execute against because the quotation is no longer available (due to a race condition), the limit order will be available for execution against other orders in the applicable market that are priced the same as or better than such limit order.

⁵² 17 CFR 242.600(b)(30).

⁵³ See proposed NSX Rule 11.11(c)(7)(iv).

⁵⁴ See proposed NSX Rule 11.11(c)(7)(i)(C).

⁵⁵ See proposed NSX Rule 11.11(c)(9).

⁵⁶ See proposed NSX Rule 11.11(c)(8).

⁵⁷ These limitations include the following: (1) An order may only be cancelled or replaced if it has a time-in-force term longer than immediate-or-cancel and if the order has not yet been executed; (2) An order routed to another trading center that the User wishes to cancel will be placed in a "Cancel Pending" state until the routing process is completed, and executions received while an order is in a "Cancel Pending" state will be processed normally; and (3) Only the price and quantity terms of an order may be changed by a replace message. See proposed NSX Rule 11.11(e)(i)-(iii).

⁵⁸ See proposed NSX Rule 11.11(e)(iv).

⁵⁹ See proposed NSX Rule 11.12(c).

⁶⁰ See proposed NSX Rule 11.12(d). Pursuant to proposed NSX Rule 11.3(b), Clean Crosses may not be executed in increments smaller than those permitted by NSX Rule 11.3(a).

⁶¹ See, e.g., PCX Equities, Inc. Rule 7.6(a), Commentary .05, and Rule 7.31(y) (relating to Midpoint Cross); Boston Stock Exchange Rules Chapter II, Section 18 (relating to Clean Cross).

⁶² See proposed NSX Rule 11.12(f).

⁶³ See proposed NSX Rule 11.13(a).

⁶⁴ See current NSX Rule 11.9(i).

⁶⁵ See proposed NSX Rule 11.13(b).

⁶⁶ 17 CFR 242.600(b)(4).

⁶⁷ See proposed NSX Rule 11.14(a).

⁶⁸ See proposed NSX Rule 11.14(a)(4).

⁶⁹ See proposed NSX Rule 11.15(a)(i).

⁷⁰ 17 CFR 242.611.

⁷¹ See proposed NSX Rule 11.15(a)(ii).

full on the Exchange which by its terms is not eligible for routing away, or which is not executed in full when routed away, would be ranked in the NSX Book in accordance with order priority rules of proposed NSX Rule 11.14.⁷²

Sweep Orders would be matched for execution in the NSX Book to the extent possible at the Protected NBBO, and simultaneously converted into one or more limit orders and routed to away markets to be matched for execution against quotations in accordance with the terms of the Sweep Order (as described in Section D above).⁷³

Proposed NSX Rule 11.15(d) states that the System would be operated as a “automated market center” within the meaning of Regulation NMS, and would display automated quotations at all times except in the event that a systems malfunction renders the System incapable of displaying automated quotations. The Exchange states that it would communicate to its ETP Holders its procedures relating to any change from automated to manual quotations in the event of such a systems malfunction.

F. Other Trading-Related Rules

Proposed NSX Rules 11.16 through 11.22 relate to other trading-related matters such as clearance and settlement, clearly erroneous executions, trading halts, short sales, and locked and crossed markets. Purposed NSX Rule 11.16 describes the Exchange’s trade reporting processes. Pursuant to proposed NSX Rule 11.16, the Exchange would report all executions occurring on the System to an appropriate consolidated transaction reporting system to the extent required by law, and would promptly notify Users of all executions of their orders as soon as executions take place.

Proposed NSX Rule 11.17 covers clearance and settlement. Proposed NSX Rule 11.17(a) requires that each ETP Holder either be a member of a Qualified Clearing Agency or clear transactions executed on the Exchange through another ETP Holder that (i) is a member of a Qualified Clearing Agency and (ii) agrees to be responsible for such clearance and settlement. The Exchange states that trading on the System would be on an anonymous basis.

The Exchange states that proposed NSX Rule 11.18 is based on NSX’s current limitation of liability rule set forth in NSX Rule 11.9(t), but has been expanded in three ways. First, proposed NSX Rule 11.18 describes with greater

specificity the categories of actions for which the Exchange would not be liable. Second, proposed NSX Rule 11.8(B) contains an agreement by each ETP Holder to release and discharge the Exchange and its related persons from all claims and damages arising from the ETP Holder’s use of the facilities of the Exchange (including the System). Third, proposed NSX Rule 11.8(C) contains a disclaimer by the Exchange of any and all express or implied warranties relating to the System.

Proposed NSX Rule 11.19 provides for a review process for determining clearly erroneous executions. The process generally involves a review by an Exchange officer upon request of an ETP Holder (which must be submitted within 15 minutes of the trade in question), with an appeal to a Clearly Erroneous Execution Panel available for parties affected by the officer’s determination.⁷⁴

Proposed NSX Rule 11.20 incorporates the New York Stock Exchange’s “circuit breaker” tests based upon reductions to the Dow Jones Industrial Average. Proposed NSX Rule 11.21, relating to short sales, requires that all short sale orders entered into the System be identified either as “short sale” or “short sale exempt”. It also provides that any marketable order entered in the System which, if matched for execution, would violate the short sale provisions under the Act and, therefore, would be cancelled.

Proposed NSX Rule 11.22 relates to locking or crossing quotations and is substantively identical to the proposed rule language that was provided to NSX and other national securities exchanges by the Commission.

Proposed NSX Rule 11.23 relates to riskless principal transactions. A “riskless principal transaction” is defined as “two offsetting principal transaction legs in which an ETP Holder, (i) after having received an order to buy a security that it holds for execution on the Exchange, purchases the security as principal at the same price, exclusive of markups, markdowns, commissions and other fees, to satisfy all or a portion of the order to buy or (ii) after having received an order to sell a security that it holds for execution on the Exchange, sells the security as principal at the same price, exclusive of markups, markdowns, commissions and other fees, to satisfy

all or a portion of the order to sell.”⁷⁵ The Exchange states that only the initial offsetting transaction leg of an appropriately designated riskless principal transaction would be submitted by the Exchange to the appropriate consolidated tape.⁷⁶ An ETP Holder must have written policies and procedures to assure compliance with this proposed Rule, which must require (at a minimum) that the customer order be received prior to the offsetting transactions, and that the second offsetting transaction leg be executed within 60 seconds of the initial offsetting transaction leg.⁷⁷ The Exchange’s customer priority rules applicable to proprietary trading would not apply to a riskless principal transaction meeting the standards of NSX Rule 11.23 that is executed by an ETP Holder to facilitate the execution of a customer order.⁷⁸

Other Proposed Rule Changes

A. Chapter I—Adoption, Interpretation, and Application of Rules; Definitions

Chapter I is proposed to be revised to incorporate certain new definitions and other provisions relating to the proposed trading rule changes described above. Specifically, proposed NSX Rule 1.4 provides for different effective times of certain of the new trading rules described above. Proposed NSX Rule 1.4 provides that the Exchange’s proposed rule relating to Sweep Orders (proposed NSX Rule 11.11(c)(7)(iv)) shall not become effective until the compliance date for Rule 611 of Regulation NMS, and provides that the proposed Trading Rules relating to the trade-through rule and locked and crossed markets (*i.e.*, proposed NSX Rules 11.15 and 11.22) shall only apply to quotations for securities subject to the Intermarket Trading System Plan until the compliance date for those sections of Regulation NMS relating to trade-throughs and locked and crossed markets, respectively.

NSX Rule 1.5 is proposed to be revised to include a number of additional definitions used in the proposed changes to Chapter XI.

⁷⁵ Proposed NSX Rule 11.23(a).

⁷⁶ See proposed NSX Rule 11.23(b).

⁷⁷ See proposed NSX Rule 11.23(c). ETP Holders must also have supervisory systems that produce records enabling the ETP Holder and the Exchange to accurately and readily reconstruct, in a time-sequenced manner, all orders related to each riskless principal transaction. See proposed NSX Rule 11.23(c).

⁷⁸ See proposed NSX Rule 12.6(d).

⁷⁴ See proposed NSX Rule 11.19(c). In addition to the process provided for in proposed NSX Rule 11.19, the Exchange has adopted internal guidelines concerning clearly erroneous executions. The Exchange states that its staff uses these guidelines to help determine what constitutes a clearly erroneous execution.

⁷² See proposed NSX Rule 11.15(a)(iii).

⁷³ See proposed NSX Rule 11.15(b).

B. Chapter II—Equity Trading Permits and ETP Holders

In Chapter II, relating to ETPs and ETP Holders, Interpretation .03 under NSX Rule 2.4 is proposed to be deleted, because it is being substantively replaced by proposed NSX Rule 11.9 providing for Sponsored Participants.

C. Chapter XV—Listed Securities and Other Exchange Products

Chapter XV is proposed to be revised to move provisions relating to specifications for certain products (e.g. index funds) from NSX Rules 11.9(v)–(x) to Chapter XV.⁷⁹ The Exchange states that certain terminology and cross-reference changes have been made to these provisions, but no substantive changes have been made.

D. Other Technical Changes To Rules

The Exchange states that other technical changes are proposed to be made to certain provisions of the NSX Rules in order to be consistent with the proposed changes described above. These changes include the following:

1. A change to Interpretation .01 of NSX Rule 3.6, requiring that all ETP Holders who handle customer orders on the Exchange establish and enforce fixed standards for queuing and executing customer orders. This interpretation formerly only applied to Designated Dealers on the Exchange. As the position of Designated Dealer is proposed to be removed in connection with the proposed new market structure, this interpretation is proposed to be revised to apply to all ETP Holders.

2. NSX Rule 5.5 (relating to “Chinese Wall” procedures) is proposed to be revised to apply to any ETP Holder that trades for its own account in a security or has a specialist operation in a security.⁸⁰

3. The interpretations under NSX Rule 12.6, the Exchange’s Customer Priority Rule, are proposed to be revised to apply to all ETP Holders that conduct both proprietary and agency trading, rather than only Designated Dealers.

4. NSX Rule 14.9, relating to Intermarket Trading System “trade-throughs” and locked and crossed markets, is proposed to be deleted simultaneously with the compliance date for those provisions of Regulation NMS relating to trade-throughs and locked and crossed markets. The Exchange believes this change is appropriate because proposed NSX Rules 11.15 and 11.22 provide

restrictions on trade-throughs and locked and crossed markets that are consistent with Regulation NMS and the Commission’s guidance on these issues. The Exchange is not proposing any additional changes to Chapter XIV relating to the Intermarket Trading System (“ITS”) Plan at this time, because it understands that the ITS Plan will be phased out of existence and replaced with new linkages in the near future in connection with the implementation of Regulation NMS.

NSX Securities, LLC

In connection with the proposed changes to the trading rules described above, the Exchange requests that the Commission approve NSX Securities, LLC (“NSX Securities”) to be a facility (as defined in Section 3(a)(2) of the Act) of the Exchange.

The Exchange states that NSX Securities, a wholly-owned subsidiary of the Exchange, is registering as a broker-dealer, has applied for membership in the National Association of Securities Dealers, Inc. (“NASD”), and is applying to become an ETP Holder. The Exchange states that NSX Securities plans to provide an optional routing service for the Exchange, in which NSX Securities would route orders to other securities exchanges, facilities of securities exchanges, automated trading systems, electronic communications networks or other brokers or dealers (collectively, “Trading Centers”) from the Exchange (such function of NSX Securities is referred to as the “Outbound Router”).⁸¹

NSX states that, as an Outbound Router, NSX Securities would receive instructions from the Exchange, route orders to other Trading Centers in accordance with those instructions and be responsible for reporting resulting executions back to the Exchange. In addition, all orders routed through NSX Securities would be subject to the terms and conditions of the Exchange Rules.

NSX states that it would regulate the Outbound Router function of NSX Securities as a facility (as defined in Section 3(a)(2) of the Act) subject to Section 6 of the Act. As such, the Exchange states that the Outbound Router function of NSX Securities would be subject to the Commission’s continuing oversight. In particular, and without limitation, under the Act, NSX states that it is responsible for filing with the Commission rule changes and fees relating to the NSX Securities Outbound Router function, and NSX

Securities would be subject to exchange non-discrimination requirements.⁸²

Pursuant to Rule 17d–1 under the Act, where a member of the Securities Investor Protection Corporation is a member of more than one self-regulatory organization (“SRO”), the Commission shall designate to one of such organizations the responsibility for examining such member for compliance with the applicable financial responsibility rules.⁸³ The SRO designated by the Commission is referred to as a “Designated Examining Authority.” As noted above, NSX Securities is applying to become an ETP Holder of the Exchange, and has applied for membership in the NASD. The NASD is an SRO not affiliated with NSX or any of its affiliates. NSX understands that, once NSX Securities is approved as a member of the NASD, the NASD would become the Designated Examining Authority for NSX Securities pursuant to Rule 17d–1 of the Act with the responsibility for examining NSX Securities for compliance with the applicable financial responsibility rules.

ETP Holders’ use of NSX Securities to route orders to another Trading Center would be optional, as described above. Those ETP Holders who choose to use the Outbound Routing service of NSX Securities must sign an NSX Securities Routing Agreement (which is incorporated into the Exchange’s User Agreement). Among other things, the NSX Securities Routing Agreement provides that all orders routed through NSX Securities are subject to the terms and conditions of the Exchange Rules.

The Exchange recognizes that after its demutualization becomes effective,⁸⁴ its ownership of NSX Securities “by virtue of NSX Securities being an ETP Holder “ would be in violation of proposed limitations⁸⁵ to be set forth in the Exchange Rules, unless the Exchange’s

⁸² See, e.g., Section 6(b)(5) of the Act, 15 U.S.C. 78f(b)(5).

⁸³ 17 CFR 240.17d–1. Pursuant to Rule 17d–1 under the Act, in making such designation the Commission shall take into consideration the regulatory capabilities and procedures of the SROs, availability of staff, convenience of location, unnecessary regulatory duplication, and such other factors as the Commission may consider germane to the protection of investors, the cooperation and coordination among self-regulatory organizations, and the development of a national market system for the clearance and settlement of securities transactions.

⁸⁴ See Securities Exchange Act Release Nos. 53721 (April 25, 2006), 71 FR 26155 (May 3, 2006) (notice of filing of File No. SR–NSX–2006–03) (“Demutualization Rule Filing”); and 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (order approving File No. SR–NSX–2006–03).

⁸⁵ See proposed NSX Rule 2.10 on page 146 of the Demutualization Rule Filing.

⁷⁹ See proposed NSX Rules 15.10–15.12.

⁸⁰ The Rule currently only applies to Designated Dealers.

⁸¹ The optional routing of orders to away markets by the System is described above.

ownership of NSX Securities is approved by the Commission.

The Exchange further recognizes that the ownership of NSX Securities by the Exchange may pose a conflict of interest between the regulatory responsibilities of the Exchange and the broker or dealer activities of NSX Securities. This is because the financial interests of the Exchange may conflict with the responsibilities of the Exchange as an SRO regarding NSX Securities.

The Exchange believes, however, that such conflict may be mitigated with the following proposed undertakings of the Exchange and NSX Securities.

A. Proposed Undertakings

Each of the Exchange and NSX Securities undertakes as follows:

1. The Exchange will regulate the Outbound Router function of NSX Securities as a facility (as defined in Section 3(a)(2) of the Act), subject to Section 6 of the Act. In particular, and without limitation, under the Act, the Exchange will be responsible for filing with the Commission rule changes and fees relating to the NSX Securities Outbound Router function and NSX Securities will be subject to exchange non-discrimination requirements.

2. NASD, an SRO unaffiliated with the Exchange or any of its affiliates, will carry out oversight and enforcement responsibilities as the Designated Examining Authority designated by the Commission pursuant to Rule 17d-1 of the Act with the responsibility for examining NSX Securities for compliance with the applicable financial responsibility rules.

3. An ETP Holder's use of NSX Securities to route orders to another Trading Center will be optional. Any ETP Holder that does not want to use NSX Securities may use other routers to route orders to other Trading Centers.⁸⁶

4. NSX Securities will not engage in any business other than (1) its Outbound Router function and (2) any other activities it may engage in as approved by the Commission.⁸⁷

NSX is reflecting these undertakings in proposed NSX Rule 2.11.

B. Request for Approval

In sum, the Exchange believes that the proposed undertakings of the Exchange

⁸⁶ An ETP Holder may choose to enter a Post Only Order or an NSX Only Order into the System. The terms of each such order provide that, if the order is not executable on the System, the order will be cancelled and returned to the ETP Holder, at which time the ETP Holder could choose to route the order to another market. See proposed NSX Rule 11.11(c)(5)-(6).

⁸⁷ NSX Securities' outbound routing function includes the clearing functions that it may perform for trades with respect to orders routed to other trading centers.

and NSX Securities set forth above would address the potential conflict of interest with the regulatory responsibilities of the Exchange and the ownership and operation of NSX Securities by the Exchange. Consequently, subject to the proposed undertakings set forth above, the Exchange requests that the Commission approve NSX Securities to be a facility (as defined in Section 3(a)(2) of the Act)⁸⁸ of the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act⁸⁹ in general, and furthers the objectives of Section 6(b)(5)⁹⁰ in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, generally, in that it protects investors and the public interest.

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

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

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

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

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

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

- (a) by order approve such proposed rule change, as amended; or
- (b) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

change, as amended, is consistent with the Act. 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NSX-2006-08 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-NSX-2006-08. This file number should be included on the subject line if e-mail 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 Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NSX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NSX-2006-08 and should be submitted on or before July 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹¹

Nancy M. Morris,
Secretary.

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⁸⁸ 15 U.S.C. 78c(a)(2).

⁸⁹ 15 U.S.C. 78f(b).

⁹⁰ 15 U.S.C. 78f(b)(5).

⁹¹ 17 CFR 200.30-3(a)(12).