

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-62021; File No. S7-24-89)

April 30, 2010

Joint Industry Plan; Notice of Filing of Amendment No. 21 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis Submitted by the BATS Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE Amex, Inc., and NYSE Arca, Inc.

Pursuant to Rule 608 of the Securities Exchange Act of 1934 (the “Act”)¹ notice is hereby given that on April 27, 2010,² the operating committee (“Operating Committee” or “Committee”)³ of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (“Nasdaq/UTP Plan” or “Plan”) filed with the Securities and Exchange Commission (“Commission”) amendments to the Plan.⁴ These amendments represent Amendment No. 21 to the Plan and reflect: an update of the

¹ 17 CFR 242.608.

² As originally submitted, the Amendment did not have all the required signatures. The Commission received the missing signature on April 27, 2010.

³ The Plan Participants (collectively, “Participants”) are the: BATS Exchange, Inc. (“BATS”); Chicago Board Options Exchange, Incorporated (“CBOE”); Chicago Stock Exchange, Inc. (“CHX”); Financial Industry Regulatory Authority, Inc. (“FINRA”); International Securities Exchange LLC (“ISE”); NASDAQ OMX BX, Inc. (“BX”); NASDAQ OMX PHLX, Inc. (“PHLX”); Nasdaq Stock Market LLC (“Nasdaq”); National Stock Exchange, Inc. (“NSX”); New York Stock Exchange LLC (“NYSE”); NYSE Amex, Inc. (“NYSEAmex”); and NYSE Arca, Inc. (“NYSEArca”).

⁴ The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of Nasdaq securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan

names and addresses of certain Participants; the merger of the definition of the Plan's transaction reporting system with the definition of the Plan's quotation system under the term "Nasdaq Systems;" the introduction of a capacity planning process into the Plan and the allocation among the Participants of the costs associated with their capacity needs; the deletion from the Plan of an outdated telephone-access requirement; the incorporation into the Plan of the existing fees applicable to Quotation Information and Transaction Reports disseminated pursuant to the Plan; the removal from the Plan of the provisions governing the right of Participants to direct the Plan processor to create and make available depth-of-book displays; the incorporation into the Plan of the existing practice of compensating FINRA for the FINRA data that the Participants include in the information that they make available under the Plan; and, miscellaneous non-substantive corrections to the existing language of the Plan. Amendment No. 21 was unanimously approved by the Committee.⁵ The Commission is publishing this notice of filing to solicit comments from interested persons on Amendment No. 21.⁶

I. Rule 608(a) of Regulation NMS

A. Purposes of the Amendment

1. Update of Participant Information.

The Participants propose to amend the Plan to reflect changes in the corporate names and street addresses of BX, PHLX, and NYSEAmex.

2. Merger of Definitions.

serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. See Securities Exchange Act Release No. 55647 (April 19, 2007) 72 FR 20891 (April 26, 2007).

⁵ See letter from Thomas P. Knorrning, Chairman, OTC/UTP Operating Committee, to Elizabeth Murphy, Secretary, Commission, dated February 26, 2010.

⁶ The complete text of the Plan, as amended by Amendment No. 21, is attached as Exhibit A.

The Participants believe that merging the definition of the Plan’s transaction reporting system with the definition of the Plan’s quotation system under the term “Nasdaq Systems” will simplify the language of the Plan and make it easier to follow.

3. Capacity Planning Process.

The amendments seek to introduce a capacity planning process into the Plans. The proposed capacity planning process requires each Participant to submit its projected capacity needs directly to the Plan’s Processor. The process avoids any need for Participants to share their individual capacity needs with one another. The Processor will provide each Participant with aggregate capacity projections for all Participants, but will not share any individual Participant’s capacity projections with any other Participant. Under the proposed plan:

a. Semi-Annual Planning Cycles.

- i. The Participants will engage in the capacity planning process on a semi-annual basis. (In addition to the semi-annual capacity planning process, the Processor may recommend to the Operating Committee emergency planning cycles as may be reasonably necessary.) At the start of each semi-annual capacity planning cycle, the Processor will determine and inform each Participant of the total amount of system capacity currently available and each Participant will develop and submit to the Processor an initial set of projected capacity needs.
- ii. Once it receives all of the initial sets of projected capacity needs, the Processor will aggregate the initial projected

capacity requirements for all of the Participants and will notify each Participant as to:

- (1) the initial aggregate capacity projections for all Participants;
- (2) the percentage of capacity requirements attributable to that Participant; and,
- (3) the amount of any projected excess capacity or any projected deficit capacity.

(The Processor determines the excess or deficit by comparing the capacity that the then existing systems under the Plan can provide and the aggregate projected capacity needs of the Participants.)

- iii. Each Participant will then notify the Processor of its final projected capacity needs.
- iv. Based on the information that the Processor provides, the Operating Committee will determine and advise the Processor of any increase or decrease that they propose to make to the capacity of the systems. However, in directing the Processor to make any proposed change, the Participants must cause the system to have no less capacity than the capacity necessary to meet the aggregate projected capacity requirements for the system for all Participants.

- v. The Processor will then submit to each Participant a written proposal for increasing or decreasing total system capacity and each Participant's proportionate share of the estimated costs for implementing any change. Each Participant's proportionate share of the costs will reflect that Participant's percentage of the final projected capacity requirements for all Participants.
 - vi. The Processor will bill each Participant directly and each Participant will pay the Processor for the services that the Processor renders to it. The cost of the services for each Participant will be its proportionate share of the total cost to all of the Participants.
 - vii. Each Participant will be entitled to use its proportionate share of the final capacity requirements of all Participants and, at no extra cost, of any excess capacity. If the Processor determines that a Participant is using more than its proportionate share of the aggregate capacity and the excess capacity, that Participant may be subject to a fine. The proceeds from any such fine will be distributed to each of the other Participants in accordance with their proportionate shares.
- b. Intra-Cycle Capacity Transfers.

- i. In between the semi-annual capacity planning cycles, a Participant may seek to increase or decrease the amount of capacity available to it by notifying the Processor of its desire for more or less capacity. Under those circumstances, a Participant may purchase additional capacity only if another Participant has submitted to the Processor an unfilled request to sell a portion of its capacity or if excess capacity exists in the system at that time. A Participant may sell some of its capacity only if another Participant has submitted to the Processor an unfilled request to purchase additional capacity.
- ii. If the Processor is able to match Participants' requests to buy and sell capacity within a planning cycle, the Processor will effect the sale for the Participants without revealing either Participants' identity.
- iii. If a Participant determines to acquire available excess capacity, the Processor shall adjust each Participant's proportionate share of system costs based on the new amount of capacity available to the Participant acquiring the available excess capacity.

c. Non-Disclosure.

Under this plan, the Processor will not disclose to any Participant: the initial or final projected capacity requirements of any other Participant; the percentage of the aggregate amount

of capacity attributable to any other Participant; or any other Participant's between-planning-cycles request to increase or decrease capacity.

4. Deletion of Telephone Access Requirement.

In adopting Regulation NMS under the Act, the Commission required each Participant to provide for fair and efficient order-execution access to quotations in each security displayed through its trading facility.⁷

Section IX (Market Access) of the Nasdaq/UTP Plan cites this requirement and provides a "safe harbor" to assure compliance while each Participant adopted such systems and other changes as might be necessary to allow it to comply with the fair-and-efficient-access requirement. Specifically, Section IX requires Participants to permit each FINRA market participant to have direct telephone access to the specialist, trading post, market maker and supervisory center in the securities that trade on that Participant unless the Participant complies with the fair-and-efficient-access requirements of Regulation NMS.

Because the Participants have now had sufficient time to comply with the fair-and-efficient-access requirements of Regulation NMS, the direct-telephone-access requirement has become outdated and the Participants feel it is no longer necessary. For that reason, the Participants propose to delete the direct-telephone-access requirement from Section IX.

5. Incorporation of Existing Fees.

In order to increase the transparency of the fees that the Participants impose under the Nasdaq/UTP Plan for the receipt and use of Quotation Information and Transaction Reports that the Participants disseminate pursuant to the Plan, the Participants propose to add a new Exhibit 2 to the Nasdaq/UTP Plan. Exhibit 2 would reflect the fees for services under the Nasdaq/UTP

⁷ See 17 CFR 242.610.

Plan. Although those fees (other than the cable television distribution fees) are currently reflected in the rulebook of Nasdaq, the Participants believe that moving them to the Nasdaq/UTP Plan will make it easier for recipients of Plan data to locate them.

Specifically:

- (i) the usage fees for UTP Level 1 Service set forth in current Nasdaq Rule 7011 (for professional and nonprofessional subscribers) will appear verbatim as subsections (a) and (b) of proposed Exhibit 2;
- (ii) the automated voice response service fee set forth in current Nasdaq Rule 7020 will appear verbatim as subsection (c) of proposed Exhibit 2;
- (iii) the “per query” fee for the UTP Level 1 entitlement set forth in current Nasdaq Rule 7028 will appear verbatim as subsection (d) of proposed Exhibit 2; and,
- (iv) the annual administrative fee set forth in current Nasdaq Rule 7019(a) will be modified to refer to the UTP Level 1 entitlement and will appear as subsection (f) of proposed Exhibit 2.

In addition, subsection (e) of proposed Exhibit 2 would codify the current pricing for distribution of the UTP Level 1 service via cable television, pricing that Nasdaq first established in 1997.⁸

6. Removal of “Depth-of-Book Displays” Provision.

Section XXI (Depth of Book Display) of the Nasdaq/UTP Plan currently affords each Participant the opportunity to seek to have the Processor under the Plan collect, consolidate, and

⁸ The monthly charge for distribution of UTP Level 1 Service through a cable television distribution system is currently as follows:

First 10 million Subscriber Households	\$2.00 per 1,000 households
Next 10 million Subscriber Households	\$1.00 per 1,000 households
For Subsequent Subscriber Households	\$0.50 per 1,000 households

disseminate that Participant's depth-of-book quotation information, so long as doing so would not interfere with the Plan's core functionality. Because none of the Participants has demonstrated interest in pursuing such a product through the Plan and because several Participants have pursued the creation and dissemination of their own proprietary depth-of-book products outside of the Plan, the Participants propose to delete Section XXI from the Plan.

7. FINRA Compensation.

For some time, the fees that the Participants charge for the receipt and use of quotation and transaction information for Nasdaq-listed securities under the Nasdaq/UTP Plan have also entitled data recipients to receive and use quotation and last sale information relating to over-the-counter securities. Historically, the Nasdaq/UTP Participants have compensated FINRA for the value represented by its quotation and last sale information relating to over-the-counter securities by allocating to FINRA 6.25 percent of gross revenues collected under the Nasdaq/UTP Plan for any particular calendar year. (The allocation is made prior to subtracting the Processor's costs and the Administrator's costs from gross revenue.)

In the interests of transparency, the Participants propose to add to Exhibit 1 to the Nasdaq/UTP Plan a specific reference to this FINRA allocation for the receipt and use of quotation and last sale information relating to over-the-counter securities.

8. Non-Substantive Changes.

In the interests of "cleaning up" certain Nasdaq/UTP Plan language, the Participants propose to make certain non-substantive clarifications and corrections to make the Plan more easily understood and to fix typographical and grammatical errors and the like.

B. Governing or Constituent Documents

The amendments do not affect the governing or constituent documents of the Processor. However, in connection with the Participants' proposed capacity planning process, the Participants have proposed to adopt Exhibit 3 ("UTP Capacity Planning Process") to the Nasdaq/UTP Plan to govern, in part, the rights and obligations of the Processor under the proposed capacity planning process. In addition, Attachment 1 to Exhibit 3 provides a "Processor Capacity Planning Process Calendar" and Attachment 2 to Exhibit 3 sets Processor-administered penalties for Participants that exceed their proportionate share of capacity.

C. Implementation of Amendment

The amendments would take effect upon their approval by the Commission.

D. Development and Implementation Phases

The Participants propose to commence to plan for their capacity needs pursuant to the proposed pay-for-capacity practice with the capacity planning cycle that will begin in March 2010. They propose to commence paying for capacity in accordance with the proposed amendments in July 2010, in conjunction with the completion of the March 2010 planning cycle.

E. Analysis of Impact on Competition

The proposed amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed capacity planning process subjects each Participant to the same terms and conditions for procuring system capacity under the Plan.

F. Written Understanding or Agreements relating to Interpretation of, or Participation in, Plan

As a result of the amendments, the Participants have agreed in writing to comply with:

1. capacity planning procedures (See proposed Exhibit 3);

2. deadlines set forth in a capacity planning calendar (See proposed Attachment 1 to proposed Exhibit 3); and,
3. penalties for exceeding capacity requests (See to the calendar (See proposed Attachment 1 to proposed Exhibit 3).

The Participants have no other written understandings or agreements relating to interpretation of the Plans as a result of the amendments.

G. Approval by Sponsors in Accordance with Plan

In accordance with Section XVI of the Nasdaq/UTP Plan, each Participant has agreed to the amendments.

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

The proposed capacity planning process for use of Nasdaq/UTP Plan systems is described in detail above.

I. Terms and Conditions of Access

The proposed capacity planning process for use of Nasdaq/UTP Plan systems is described in detail above.

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

Not applicable. The fees and charges that the Participants propose to incorporate into the Nasdaq/UTP Plan are currently applicable fees and charges. The Participants are not proposing any new fees or charges.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 601(a) of Regulation NMS

A. Equity Securities for which Transaction Reports Shall be Required by the Plan

Not applicable.

B. Reporting Requirements

As described above, the amendments provide a new process pursuant to which the Participants under the Plans can plan for the capacity needs of the systems that they use to gather market data from their respective marketplaces for consolidation and distribution to the public.

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

Not applicable.

D. Manner of Consolidation

Not applicable.

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

Not applicable.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

G. Terms of Access to Transaction Reports

Not applicable.

H. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

The Commission seeks general comments on Amendment No. 21. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 S7-24-89 on the subject line.

Paper comments:

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

All submissions should refer to File Number S7-24-89. This file number should be included on the subject line if 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 written statements with respect to the proposed Plan amendment that are filed with the Commission, and all written communications relating to the proposed Plan amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for Web site viewing and printing at the Office of the Secretary of the Committee, currently located at the CBOE, 400 S. LaSalle Street, Chicago, IL 60605. 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 S7-24-89 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(27).

Exhibit A

Nasdaq UTP Plan

Amended and Restated Plan

Amendment No. 21

The undersigned registered national securities association and national securities exchanges (collectively referred to as the “Participants”), have jointly developed and hereby enter into this Nasdaq Unlisted Trading Privileges Plan (“Nasdaq UTP Plan” or “Plan”).

I. Participants.

The Participants include the following:

A. Participants

1. BATS Exchange, Inc.
8050 Marshall Drive
Lenexa, Kansas 66214
2. Chicago Board Options Exchange, Inc.
400 South LaSalle Street, 26th Floor
Chicago, Illinois 60605
3. Chicago Stock Exchange
440 South LaSalle Street
Chicago, Illinois 60605
4. Financial Industry Regulatory Authority, Inc.
1735 K Street, N.W.
Washington, D.C. 20006
5. International Securities Exchange, LLC
60 Broad Street
New York, New York 10004
6. NASDAQ OMX BX, Inc.
One Liberty Plaza
New York, New York 10006
7. NASDAQ OMX PHLX, Inc.
1900 Market Street
Philadelphia, Pennsylvania 19103

8. National Stock Exchange, Inc.
101 Hudson, Suite 1200
Jersey City, NJ 07302
9. New York Stock Exchange LLC
11 Wall Street
New York, New York 10005
10. NYSE Amex LLC
20 Broad Street
New York, New York 10005
11. NYSE Arca, Inc.
100 South Wacker Drive
Suite 1800
Chicago, IL 60606
12. The Nasdaq Stock Market LLC
1 Liberty Plaza
165 Broadway
New York, NY 10006

B. Additional Participants

Any other national securities association or national securities exchange, in whose market Eligible Securities become traded, may become a Participant, provided that said organization executes a copy of this Plan, provides to the Processor its Projected Processor Capacity Requirements, as specified in Exhibit 3, and pays its share of development costs as specified in Section XIII.

II. Purpose of Plan

The purpose of this Plan is to provide for the collection, consolidation and dissemination of Quotation Information and Transaction Reports in Eligible Securities from the Participants in a manner consistent with the Exchange Act. The Participants commenced publication of Quotation Information and Transaction Reports on Eligible Securities as contemplated by this Plan on July 12, 1993.

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

III. Definitions

A. "Current" means, with respect to Transaction Reports or Quotation Information, such Transaction Reports or Quotation Information during the fifteen (15) minute period

immediately following the initial transmission thereof by the Processor.

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

A security shall cease to be an Eligible Security for purposes of this Plan if: (i) the security does not substantially meet the requirements from time to time in effect for continued listing on Nasdaq, and thus is suspended from trading; or (ii) the security has been suspended from trading because the issuer thereof is in liquidation, bankruptcy or other similar type proceedings. The determination as to whether a security substantially meets the criteria of the definition of Eligible Security shall be made by the exchange on which such security is listed provided, however, that if such security is listed on more than one exchange then such determination shall be made by the exchange on which, the greatest number of the transactions in such security were effected during the previous twelve-month period.

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

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

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

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

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

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

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

J. "UTP Trade Data Feed" means the service that provides Vendors and Subscribers

with Transaction Reports.

K. “Nasdaq Security” or “Nasdaq-listed Security” means any security listed on the Nasdaq Global Market or Nasdaq Capital Market.

L. “News Service” means a person who receives Transaction Reports or Quotation Information provided by the Nasdaq System or provided by a Vendor, on a Current basis, in connection with such person's business of furnishing such information to newspapers, radio and television stations and other news media, for publication at least fifteen (15) minutes following the time when the information first has been published by the Processor.

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

N. “Participant” means a registered national securities exchange or national securities association that is a signatory to this Plan.

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

P. “Processor” means the entity selected by the Participants to perform the processing functions set forth in the Plan.

Q. “Quotation Information” means all bids, offers, displayed quotation sizes, the market center identifiers and, in the case of FINRA, the FINRA Participant that entered the quotation, withdrawals and other information pertaining to quotations in Eligible Securities required to be collected and made available to the Processor pursuant to this Plan.

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

S. “Subscriber” means a person who receives Current Quotation Information or Transaction Reports provided by the Processor or provided by a Vendor, for its own use or for distribution on a non-Current basis, other than in connection with its activities as a Vendor.

T. “Transaction Reports” means reports required to be collected and made available pursuant to this Plan containing the stock symbol, price, and size of the transaction executed, the Market in which the transaction was executed, and related information, including a buy/sell/cross indicator and trade modifiers, reflecting completed transactions in Eligible Securities.

U. “Vendor” means a person who receives Current Quotation Information or

Transaction Reports provided by the Processor or provided by a Vendor, in connection with such person's business of distributing, publishing, or otherwise furnishing such information on a Current basis to Subscribers, News Services or other Vendors.

IV. Administration of Plan

A. Operating Committee: Composition

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

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

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

B. Operating Committee: Authority

The Operating Committee shall be responsible for:

1. Overseeing the consolidation of Quotation Information and Transaction Reports in Eligible Securities from the Participants for dissemination to Vendors, Subscribers, News Services and others in accordance with the provisions of the Plan;
2. Periodically evaluating the Processor;
3. Setting the level of fees to be paid by Vendors, Subscribers, News Services or others for services relating to Quotation Information or Transaction

Reports in Eligible Securities, and taking action in respect thereto in accordance with the provisions of the Plan;

4. Determining matters involving the interpretation of the provisions of the Plan;
5. Determining matters relating to the Plan's provisions for cost allocation and revenue-sharing; and
6. Carrying out such other specific responsibilities as provided under the Plan.

C. Operating Committee: Voting

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

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

- a. amendments to the Plan;
- b. amendments to contracts between the Processor and Vendors, Subscribers, News Services and others receiving Quotation Information and Transaction Reports in Eligible Securities;
- c. replacement of the Processor, except for termination for cause, which shall be governed by Section V(B) hereof;
- d. reductions in existing fees relating to Quotation Information and Transaction Reports in Eligible Securities; and
- e. except as provided under Section IV(C)(3) hereof, requests for system changes; and
- f. all other matters not specifically addressed by the Plan.

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

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

- a. requests for system changes reasonably related to the function of the Processor as defined under the Plan. All other requests for system changes

shall be governed by Section IV(C)(1)(e) hereof.

b. interpretive matters and decisions of the Operating Committee arising under, or specifically required to be taken by, the provisions of the Plan as written;

c. interpretive matters arising under Rules 601 and 602 of Regulation NMS; and

d. denials of access (other than for breach of contract, which shall be handled by the Processor),

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

D. Operating Committee: Meetings

Regular meetings of the Operating Committee may be attended by each Participant's designated representative and/or its alternate representative(s), and may be attended by one or more other representatives of the parties. Meetings shall be held at such times and locations as shall from time to time be determined by the Operating Committee.

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

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

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

Any action may be taken without a meeting if a consent in writing, setting forth the action so taken, is sent to and signed by all Participant representatives entitled to vote with

respect to the subject matter thereof. All the approvals evidencing the consent shall be delivered to the Chairman of the Operating Committee to be filed in the Operating Committee records. The action taken shall be effective when the minimum number of Participants entitled to vote have approved the action, unless the consent specifies a different effective date.

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

Meetings may be held by conference telephone and action may be taken without a meeting if the representatives of all Participants entitled to vote consent thereto in writing or other means the Operating Committee deems acceptable.

E. Advisory Committee

- (a) Formation. Notwithstanding any other provision of this Plan, an Advisory Committee to the Plan shall be formed and shall function in accordance with the provisions set forth in this section.
- (b) Composition. Members of the Advisory Committee shall be selected for two year terms as follows:
 - (1) Operating Committee Selections. By affirmative vote of a majority of the Participants entitled to vote, the Operating Committee shall select at least one representative from each of the following categories to be members of the Advisory Committee: (i) a broker-dealer with a substantial retail investor customer base, (ii) a broker-dealer with a substantial institutional investor customer base, (iii) an alternative trade system, (iv) a data vendor, and (v) an investor.
 - (2) Participant Selections. Each Participant shall have the right to select one member of the Advisory Committee. A Participant shall not select any person employed by or affiliated with any participant or its affiliates or facilities.
- (c) Function. Members of the Advisory Committee shall have the right to submit their views to the Operating Committee on Plan matters, prior to a decision by the Operating Committee on such matters. Such matters shall include, but not be limited to, any new or modified product, fee, contract, or pilot program that is offered or used pursuant to the Plan.
- (d) Meetings and Information. Members of the Advisory Committee shall have the right to attend all meetings of the Operating Committee and to receive any information concerning Plan matters that is distributed to the Operating

Committee; provided, however, that the Operating Committee may meet in executive session if, by affirmative vote of a majority of the Participants entitled to vote, the Operating Committee determines that an item of Plan business requires confidential treatment.

V. Selection and Evaluation of the Processor

A. Generally

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

B. Termination of the Processor for Cause

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

C. Factors To Be Considered in Termination for Cause

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

D. Processor's Right to Appeal Termination for Cause

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

E. Process for Selecting New Processor

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

1. the entity that will:
 - a) draft the Operating Committee's request for proposal for bids on a new processor;
 - b) assist the Operating Committee in evaluating bids for the new processor; and
 - c) otherwise provide assistance and guidance to the Operating Committee in the selection process.
2. the minimum technical and operational requirements to be fulfilled by the Processor;
3. the criteria to be considered in selecting the Processor; and
4. the entities (other than Plan Participants) that are eligible to comment on the selection of the Processor.

Nothing in this provision shall be interpreted as limiting Participants' rights under Section IV or Section V of the Plan or other Commission order.

VI. Functions of the Processor

A. Generally

The Processor shall collect from the Participants, and consolidate and disseminate to Vendors, Subscribers and News Services, Quotation Information and Transaction Reports in Eligible Securities in a manner designed to assure the prompt, accurate and reliable collection, processing and dissemination of information with respect to all Eligible Securities in a fair and non-discriminatory manner. The Processor shall commence operations upon the Processor's notification to the Participants that it is ready and able to commence such operations.

B. Collection and Consolidation of Information

For as long as Nasdaq is the Processor, the Processor shall be capable of receiving Quotation Information and Transaction Reports in Eligible Securities from Participants by the Plan-approved, Processor sponsored interface, and shall consolidate and disseminate such

information via the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed to Vendors, Subscribers and News Services.

C. Dissemination of Information

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

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

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

1. Best Bid and Offer

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

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

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

2. Quotation Data Streams

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

3. Transaction Reports

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

D. Closing Reports

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

E. Statistics

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

F. Capacity Planning

1. The Processor shall provide computer and communications facility capacity in accordance with a capacity planning process set forth in Exhibit 3, which process may be modified by the Operating Committee from time to time, requiring a simple majority vote.

2. The Processor shall establish information barriers to ensure that information revealed by any Plan Participant to the Processor during the capacity planning process is not shared with any other Plan Participant, including Nasdaq, other than information that is aggregated for all Plan Participants.

3. Plan Participants shall cooperate fully in the capacity planning process including complying with all requirements set forth in Exhibit 3.

VII. Administrative Functions of the Processor

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

VIII. Transmission of Information to Processor by Participants

A. Quotation Information

Each Participant shall, during the time it is open for trading be responsible promptly to collect and transmit to the Processor accurate Quotation Information in Eligible Securities through any means prescribed herein.

Quotation Information shall include:

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

B. Transaction Reports

Each Participant shall, during the time it is open for trading, be responsible promptly to collect and transmit to the Processor Transaction Reports in Eligible Securities executed in its Market by means prescribed herein. With respect to orders sent by one Market to another Market for execution, each Participant shall adopt procedures governing the reporting of transactions in Eligible Securities specifying that the transaction will be reported by the Participant whose member sold the security. This provision shall apply only to transactions between Participants.

Transaction Reports shall include:

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

All such Transaction Reports shall be transmitted to the Processor within 90 seconds after the time of execution of the transaction. Transaction Reports transmitted beyond the 90-second period shall be designated as "late" by the appropriate code or message.

The following types of transactions are not required to be reported to the Processor pursuant to the Plan:

1. transactions that are part of a primary distribution by an issuer or of a registered secondary distribution or of an unregistered secondary distribution;
2. transactions made in reliance on Section 4(2) of the Securities Act of 1933;
3. transactions in which the buyer and the seller have agreed to trade at a price unrelated to the current market for the security, e.g., to enable the seller to make a gift;
4. odd-lot transactions;
5. the acquisition of securities by a broker-dealer as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange;
6. purchases of securities pursuant to a tender offer; and
7. purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market.

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

The following symbols shall be used to denote the marketplaces:

CODE	PARTICIPANT
A	NYSE Amex LLC
Z	BATS Exchange, Inc.
B	NASDAQ OMX BX, Inc.
W	Chicago Board Options Exchange, Inc.
M	Chicago Stock Exchange, Inc.
I	International Securities Exchange, LLC
D	Financial Industry Regulatory Authority, Inc.

Q	Nasdaq Stock Market LLC
C	National Stock Exchange, Inc.
N	New York Stock Exchange LLC
P	NYSE Arca, Inc.
X	Nasdaq OMX PHLX, Inc.

D. Whenever a Participant determines that a level of trading activity or other unusual market conditions prevent it from collecting and transmitting Quotation Information or Transaction Reports to the Processor, or where a trading halt or suspension in an Eligible Security is in effect in its Market, the Participant shall promptly notify the Processor of such condition or event and shall resume collecting and transmitting Quotation Information and Transaction Reports to it as soon as the condition or event is terminated. In the event of a system malfunction resulting in the inability of a Participant or its members to transmit Quotation Information or Transaction Reports to the Processor, the Participant shall promptly notify the Processor of such event or condition. Upon receiving such notification, the Processor shall take appropriate action, including either closing the quotation or purging the system of the affected quotations.

IX. Market Access

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

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

X. Regulatory Halts

A. Whenever, in the exercise of its regulatory functions, the Listing Market for an Eligible Security determines that a Regulatory Halt is appropriate pursuant to Section III.S, the Listing Market will notify all other Participants pursuant to Section X.E and all other Participants shall also halt or suspend trading in that security until notified that the halt or suspension is no longer in effect. The Listing Market shall immediately notify the Processor of such Regulatory Halt as well as provide notice that a Regulatory Halt has been lifted. The Processor, in turn, shall disseminate to Participants notice of the Regulatory Halt (as well as notice of the lifting of a Regulatory Halt through the UTP Quote Data Feed. This notice shall serve as official notice of a Regulatory Halt for purposes of the Plan only, and shall not substitute or otherwise supplant notice that a Participant may recognize or require under its own rules. Nothing in this provision shall be read so as to supplant or be inconsistent with a Participant's own rules on trade halts, which rules apply to the Participant's own members. The Processor will reject any quotation information or transaction reports received from any Participant on an Eligible Security that has a Regulatory Halt in effect.

B. Whenever the Listing Market determines that adequate publication or dissemination of information has occurred so as to permit the termination of the Regulatory Halt then in effect, the Listing Market shall promptly notify the Processor and each of the other Participants that conducts trading in such security pursuant to Section X.F. Except in extraordinary circumstances, adequate publication or dissemination shall be presumed by the Listing Market to have occurred upon the expiration of one hour after initial publication in a national news dissemination service of the information that gave rise to the Regulatory Halt.

C. Except in the case of a Regulatory Halt, the Processor shall not cease the dissemination of quotation or transaction information regarding any Eligible Security. In particular, it shall not cease dissemination of such information because of a delayed opening, imbalance of orders or other market-related problems involving such security. During a Regulatory Halt, the Processor shall collect and disseminate Transaction Information but shall cease collection and dissemination of all Quotation Information.

D. For purposes of this Section X, "Listing Market" for an Eligible Security means the Participant's Market on which the Eligible Security is listed. If an Eligible Security is dually listed, Listing Market shall mean the Participant's Market on which the Eligible Security is listed that also has the highest number of the average of the reported transactions and reported share volume for the preceding 12-month period. The Listing Market for dually-listed Eligible Securities shall be determined at the beginning of each calendar quarter.

E. For purposes of coordinating trading halts in Eligible Securities, all Participants are required to utilize the national market system communication media ("Hoot-n-Holler") to provide real-time information to all Participants. Each Participant shall be required to continuously monitor the Hoot-n-Holler system during market hours, and the failure of a Participant to do so at any time shall not prevent the Listing Market from initiating a Regulatory Halt in accordance with the procedures specified herein.

1. The following procedures shall be followed when one or more Participants

experiences extraordinary market activity in an Eligible Security that is believed to be caused by the misuse or malfunction of systems operated by or linked to one or more Participants.

- a. The Participant(s) experiencing the extraordinary market activity or any Participant that becomes aware of extraordinary market activity will immediately use best efforts to notify all Participants of the extraordinary market activity utilizing the Hoot-n-Holler system.
- b. The Listing Market will use best efforts to determine whether there is material news regarding the Eligible Security. If the Listing Market determines that there is undisclosed material news, it will immediately call a Regulatory Halt pursuant to Section X.E.2.
- c. Each Participant(s) will use best efforts to determine whether one of its systems, or the system of a direct or indirect participant in its market, is responsible for the extraordinary market activity.
- d. If a Participant determines the potential source of extraordinary market activity pursuant to Section X.1.c., the Participant will use best efforts to determine whether removing the quotations of one or more direct or indirect market participants or barring one or more direct or indirect market participants from entering orders will resolve the extraordinary market activity. Accordingly, the Participant will prevent the quotations from one or more direct or indirect market participants in the affected Eligible Securities from being transmitted to the Processor.
- e. If the procedures described in Section X.E.1.a.-d. do not rectify the situation, the Participant(s) experiencing extraordinary market activity will cease transmitting all quotations in the affected Eligible Securities to the Processor.
- f. If the procedures described in Section X.E.1.a-e do not rectify the situation within five minutes of the first notification through the Hoot-n-Holler system, or if Participants agree to call a halt sooner through unanimous approval among those Participants actively trading impacted Eligible Securities, the Listing Market may determine based on the facts and circumstances, including available input from Participants, to declare an Extraordinary Market Regulatory Halt in the affected Eligible Securities. Simultaneously with the notification of the Processor to suspend the dissemination of quotations across all Participants, the Listing Market must notify all Participants of the trading halt utilizing the Hoot-n-Holler system.

g. Absent any evidence of system misuse or malfunction, best efforts will be used to ensure that trading is not halted across all Participants.

2. If the Listing Market declares a Regulatory Halt in circumstances other than pursuant to Section X.E.1.f., the Listing Market must, simultaneously with the notification of the Processor to suspend the dissemination of quotations across all Participants, notify all Participants of the trading halt utilizing the Hoot-n-Holler system.

F. If the Listing Market declares a Regulatory Halt, trading will resume according to the following procedures:

1. Within 15 minutes of the declaration of the halt, all Participants will make best efforts to indicate via the Hoot-n-Holler their intentions with respect to canceling or modifying transactions.

2. All Participants will disseminate to their members information regarding the canceled or modified transactions as promptly as possible, and in any event prior to the resumption of trading.

3. After all Participants have met the requirements of Section X.F.1-2, the Listing Market will notify the Participants utilizing the Hoot-n-Holler and the Processor when trading may resume. Upon receiving this information, Participants may commence trading pursuant to Section X.A.

XI. Hours of Operation

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

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

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

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

execution;

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

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

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

D. The Processor shall collect, process and disseminate Quotation Information in Eligible Securities at other times between 4:00 a.m. and 9:30 a.m. ET, and after 4:00 p.m. ET, when any Participant or FINRA Participant is open for trading, until 8:00 p.m. ET (the “Additional Period”); provided, however, that the national best bid and offer quotation will not be disseminated before 4:00 a.m. or after 8:00 p.m. ET. Participants that enter Quotation Information or submit Transaction Reports to the Processor during the Additional Period shall do so for all Eligible Securities in which they enter quotations.

XII. Undertaking by All Participants

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

XIII. Financial Matters

A. Development Costs

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

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

B. Cost Allocation, Revenue Sharing, and Fees

The provisions governing cost allocation and revenue sharing among the Participants are set forth in Exhibit 1 to the Plan. The provisions governing fees applicable to Quotation Information and Transaction Reports disseminated pursuant to the Plan are set forth in Exhibit 2 to the Plan.

C. Maintenance of Financial Records

The Processor shall maintain records of revenues generated and development and operating expenditures incurred in connection with the Plan. In addition, the Processor shall provide the Participants with: (a) a statement of financial and operational condition on a quarterly basis; and (b) an audited statement of financial and operational condition on an annual basis.

XIV. Indemnification

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

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

XV. Withdrawal

Any Participant may withdraw from the Plan at any time on not less than 30 days prior written notice to each of the other Participants. Any Participant withdrawing from the Plan shall remain liable for, and shall pay upon demand, any fees for equipment or services being provided to such Participant pursuant to the contract executed by it or an agreement or schedule of fees covering such then in effect.

A withdrawing Participant shall also remain liable for its proportionate share, without any right of recovery, of administrative and operating expenses, including start-up costs and other sums for which it may be responsible pursuant to Section XIV hereof. Except as aforesaid, a withdrawing Participant shall have no further obligation under the Plan or to any of the other Participants with respect to the period following the effectiveness of its withdrawal.

XVI. Modifications to the Plan

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

XVII. Applicability of Securities Exchange Act of 1934

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

XVIII. Operational Issues

A. Each Participant shall be responsible for collecting and validating quotes and last sale reports within its own system prior to transmitting this data to the Processor.

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

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

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

1. Basic Message Validation

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

b) Input must be for an Eligible Security.

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

XIX. Headings

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

XX. Counterparts

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

IN WITNESS WHEREOF, this Plan has been executed as of the ___ day of _____, 2010, by each of the Signatories hereto.

NYSE AMEX LLC

BATS EXCHANGE, INC.

BY: _____

BY: _____

NASDAQ OMX BX, INC.

CHICAGO STOCK EXCHANGE, INC.

BY: _____

BY: _____

CHICAGO BOARD OPTIONS EXCHANGE, INC.

FINRA

BY: _____

BY: _____

INTERNATIONAL SECURITIES EXCHANGE, LLC

NATIONAL STOCK EXCHANGE, INC.

BY: _____

NEW YORK STOCK EXCHANGE LLC

BY: _____

NYSE ARCA, INC.

BY: _____

NASDAQ OMX PHLX, INC.

BY: _____

THE NASDAQ STOCK MARKET LLC

BY: _____

BY: _____

Exhibit 1

1. Each Participant eligible to receive revenue under the Plan will receive an annual payment for each calendar year that is equal to the sum of the Participant's Trading Shares and Quoting Shares, as defined below, in each Eligible Security for the calendar year. In the event that total net distributable operating income (as defined below) is negative, each Participant eligible to receive revenue under the Plan will receive an annual bill for each calendar year to be determined according to the same formula (described in this paragraph) for determining annual payments to eligible Participants. Unless otherwise stated in this agreement, a year shall run from January 1 to December 31 and quarters shall end on March 31, June 30, September 30, and December 31. Processor shall endeavor to provide Participants with written estimates of each Participant's percentage of total volume within five business days of month end.
2. Security Income Allocation. The Security Income Allocation for an Eligible Security shall be determined by multiplying (i) the "net distributable operating income" of this Nasdaq UTP Plan for the calendar year by (ii) the Volume Percentage for such Eligible Security (the "initial allocation"), and then adding or subtracting any amounts specified in the reallocation set forth below. The Volume Percentage for an Eligible Security shall be determined by dividing (A) the square root of the dollar volume of transaction reports disseminated by the Processor in such Eligible Security during the calendar year by (B) the sum of the square roots of the dollar volume of transaction reports disseminated by the Processor in each Eligible Security during the calendar year. If the initial allocation of net distributable operating income in accordance with the Volume Percentage of an Eligible Security equals an amount greater than \$4.00 multiplied by the total number of qualified transaction reports in such Eligible Security during the calendar year, the excess amount shall be subtracted from the initial allocation for such Eligible Security and reallocated among all Eligible Securities in direct proportion to the dollar volume of transaction reports disseminated by the Processor in Eligible Securities during the calendar year. A transaction report with a dollar volume of \$5000 or more shall constitute one qualified transaction report. A transaction report with a dollar volume of less than \$5000 shall constitute a fraction of a qualified transaction report that equals the dollar volume of the transaction report divided by \$5000.
3. Trading Share. The Trading Share of a Participant in an Eligible Security shall be determined by multiplying (i) an amount equal to fifty percent of the Security Income Allocation for the Eligible Security by (ii) the Participant's Trade Rating in the Eligible Security. A Participant's Trade Rating in an Eligible Security shall be determined by taking the average of (A) the Participant's percentage of the total dollar volume of transaction reports disseminated by the Processor in the Eligible Security during the calendar year, and (B) the 25 Participant's percentage of the total number of qualified transaction reports disseminated by the Processor in the Eligible Security during the calendar year.

4. Quoting Share. The Quoting Share of a Participant in an Eligible Security shall be determined by multiplying (A) an amount equal to fifty percent of the Security Income Allocation for the Eligible Security by (B) the Participant's Quote Rating in the Eligible Security. A Participant's Quote Rating in an Eligible Security shall be determined by dividing (A) the sum of the Quote Credits earned by the Participant in such Eligible Security during the calendar year by (B) the sum of the Quote Credits earned by all Participants in such Eligible Security during the calendar year. A Participant shall earn one Quote Credit for each second of time (with a minimum of one full second) multiplied by dollar value of size that an automated best bid (offer) transmitted by the Participant to the Processor during regular trading hours is equal to the price of the national best bid (offer) in the Eligible Security and does not lock or cross a previously displayed automated quotation. An automated bid (offer) shall have the meaning specified in Rule 600 of Regulation NMS of the Act for an "automated quotation." The dollar value of size of a quote shall be determined by multiplying the price of a quote by its size.

5. For purposes of this Exhibit 1, net distributable operating income for any particular calendar year shall be calculated by adding all revenues from the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed including revenues from the dissemination of information respecting Eligible Securities to foreign marketplaces, and also including FINRA quotation data and last sale information for securities classified as OTC Equity Securities under FINRA's Rule 6400 Series (the "FINRA OTC Data") (collectively, "the Data Feeds"), and subtracting from such revenues 6.25% to compensate FINRA for the FINRA OTC Data, after which are subtracted the costs incurred by the Processor, set forth below, in collecting, consolidating, validating, generating, and disseminating the Data Feeds. These costs include¹⁰, but are not limited to, the following:
 - a. The Processor costs directly attributable to creating OTC Montage Data Feed, including:
 1. cost of collecting Participant quotes into the Processor's quote engine;
 2. cost of processing quotes and creating OTC Montage Data Feed messages within the Processor's quote engine;
 3. cost of the Processor's communication management subsystem that distributes OTC Montage Data Feed to the market data vendor network for further distribution.

¹⁰ All costs associated with collecting, consolidating, validating, generating, and disseminating the FINRA OTC Data are borne directly by FINRA and not the Plan and the Participants. Such costs are established in and subject to a separate bilateral contractual agreement between FINRA and the Processor (acting as FINRA's vendor in this capacity). The Processor is responsible for insuring that no costs associated with the FINRA OTC Data are incorporated with the costs incurred by the Processor on behalf of the UTP Plan.

- b. The costs directly attributable to creating the UTP Quote Data Feed, including:
 - 1. the costs of collecting each Participant's best bid, best offer, and aggregate volume into the Processor's quote engine and, in the case of FINRA, the costs of identifying the FINRA Participant(s) that constitute FINRA's Best Bid and Offer quotations;
 - 2. cost of calculating the national best bid and offer price within the Processor's quote engine;
 - 3. cost of creating the UTP Quote Data Feed message within the Processor's quote engine;
 - 4. cost of the Processor's communication management subsystem that distributes the UTP Quote Data Feed to the market data vendors' networks for further distribution.

- c. The costs directly attributable to creating the UTP Trade Data Feed, including:
 - 1. the costs of collecting each Participant's last sale and volume amount into the Processor's quote engine
 - 2. cost of determining the appropriate last sale price and volume amount within the Processor's trade engine;
 - 3. cost of utilizing the Processor's trade engine to distribute the UTP Trade Data Feed for distribution to the market data vendors.
 - 4. cost of the Processor's communication management subsystem that distributes the UTP Trade Data Feed to the marker data vendors' networks for further distribution.

- d. The additional costs that are shared across all Data Feeds, including:
 - 1. telecommunication Operations costs of supporting the Participant lines into the Processor's facilities;
 - 2. Telecommunications Operations costs of supporting the external market data vendor network;
 - 3. Data Products account management and auditing function with the market data vendors;
 - 4. Market Operations costs to support symbol maintenance, and other data integrity issues;

5. overhead costs, including management support of the Processor, Human Resources, Finance, Legal, and Administrative Services; and
 6. Costs of establishing and supporting the Security Income Allocation System.
- e. Processor costs excluded from the calculation of net distributable operating income include trade execution costs for transactions executed using a Nasdaq service and trade report collection costs reported through a Nasdaq service, as such services are market functions for which Participants electing to use such services pay market rate.
- f. For the purposes of this provision, the following definitions shall apply:
1. “quote engine” shall mean the Nasdaq’s NT or Tandem system that is operated by Nasdaq to collect quotation information for Eligible Securities;
 2. “trade engine” shall mean the Nasdaq Tandem system that is operated by Nasdaq for the purpose of collecting last sale information in Eligible Securities.
6. At the time a Participant implements a Processor-approved electronic interface with the Processor, the Participant will become eligible to receive revenue.
7. Processor shall endeavor to provide Participants with written estimates of each Participant’s quarterly net distributable operating income within 45 calendar days of the end of the quarter, and estimated quarterly payments or billings shall be made on the basis of such estimates. All quarterly payments or billings shall be made to each eligible Participant within 45 days following the end of each calendar quarter in which the Participant is eligible to receive revenue, provided that each quarterly payment or billing shall be reconciled against a Participant’s cumulative year-to-date payment or billing received to date and adjusted accordingly, and further provided that the total of such estimated payments or billings shall be reconciled at the end of each calendar year and, if necessary, adjusted by March 31st of the following year. Interest shall be included in quarterly payments and in adjusted payments made on March 31st of the following year. Such interest shall accrue monthly during the period in which revenue was earned and not yet paid and will be based on the 90-day Treasury bill rate in effect at the end of the quarter in which the payment is made. Monthly interest shall start accruing 45 days following the month in which it is earned and accrue until the date on which the payment is made.

In conjunction with calculating estimated quarterly and reconciled annual payments under this Exhibit 1, the Processor shall submit to the Participants a quarterly itemized statement setting forth the basis upon which net operating income was calculated, including a quarterly itemized statement of the Processor costs set forth in Paragraph 3 of

this Exhibit. Such Processor costs and Plan revenues shall be adjusted annually based solely on the Processor's quarterly itemized statement audited pursuant to Processor's annual audit. Processor shall pay or bill Participants for the audit adjustments within thirty days of completion of the annual audit. By majority vote of the Operating Committee, the Processor shall engage an independent auditor to audit the Processor's costs or other calculation(s), the cost of which audit shall be shared equally by all Participants. The Processor agrees to cooperate fully in providing the information necessary to complete such audit.

Exhibit 2

Fees for UTP Services

(a) Level 1 Service.

The charge for each interrogation device receiving UTP Level 1 Service is \$20.00 per month. This Service includes the following data:

- (1) inside bid/ask quotations calculated for securities listed in The Nasdaq Stock Market;
- (2) last sale information on Nasdaq-listed securities

UTP Level 1 Service also includes FINRA OTC Data.

(b) Non-Professional Services.

- (1) The charge for distribution of UTP Level 1 Service to a non-professional subscriber shall be \$1.00 per interrogation device per month.
- (2) A "non-professional" is a natural person who is neither:
 - (A) registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association or any commodities or futures contract market or association;
 - (B) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor
 - (C) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

(c) Automated Voice Response Service Fee.

The monthly charge for distribution of UTP Level 1 Service through automated voice response services shall be \$21.25 for each voice port.

(d) Per Query Fee:

The charge for distribution of UTP Level 1 Service through a per query system shall be \$.005 per query.

(e) Cable Television Ticker Fee.

The monthly charge for distribution of UTP Level 1 Service through a cable television distribution system shall be as set forth below:

First 10 million Subscriber Households	\$2.00 per 1,000 households
Next 10 million Subscriber Households	\$1.00 per 1,000 households
For Subsequent Subscriber Households	\$0.50 per 1,000 households

(f) Annual Administrative Fees.

The annual administrative fee to be paid by distributor for access to UTP Level 1 Service shall be as set forth below:

Delayed distributor	\$250
0–999 real-time terminals	\$500
1,000–4,999 real-time terminals	\$1,250
5,000–9,999 real-time terminals	\$2,250
10,000+ real-time terminals	\$3,750

Exhibit 3

UTP CAPACITY PLANNING PROCESS

This document sets forth a capacity planning process for the Processor and includes certain procedures to facilitate that process. The capacity planning process will be done on a semi-annual basis and will cover the then current six-month period and each of the next two six-month periods, with each six-month period commencing on January 1st and July 1st, as appropriate (referred to collectively as the “Capacity Planning Period”), provided however that, notwithstanding the foregoing, the first Capacity Planning Period shall cover the then current six-month period and each of the next two six-month periods.

All information specified in this document that is required to be submitted by each of the Participants to the Processor, by the Processor to each of the Participants, and by the Operating Committee to the Processor, shall be submitted within the time frames set forth in the capacity planning process calendar attached hereto as Attachment 1, which may be modified from time to time by the Operating Committee.

PROJECTED PROCESSOR CAPACITY REQUIREMENTS

Each Participant’s “Projected Processor Capacity Requirements” shall consist of the following two components:

1. the projected peak quote/trade messages per second for such Participant calculated on a 5-second peak (the “Projected Peak 5-second MPS”); and
2. the projected peak total quote/trade transactions per day for such Participant.

Each Participant’s projected requirements for both of these components shall include whatever buffer factor the Participant deems adequate for its needs and shall reflect the Participant’s anticipated requirements as of the beginning of each six-month period in the applicable Capacity Planning Period.

Each Participant shall submit to the Processor in writing, which may include email, an “initial” set of Projected Processor Capacity Requirements as of the beginning of each six-month period in the applicable Capacity Planning Period. Once the Processor receives the initial Projected Processor Capacity Requirements from all the Participants, the Processor will aggregate both components – the Projected Peak 5-second MPS and the projected peak total transactions per day – to determine the initial Projected Processor Capacity Requirements for all Participants. The Processor will notify each Participant in writing, which may include email, of a) the aggregate initial Projected Processor Capacity Requirements; and b) the percentage of the aggregate initial Projected Peak 5-second MPS that is attributable to such Participant.

Once each Participant receives the foregoing information, each such Participant shall submit to the Processor in writing, which may include email, its final Projected Processor Capacity Requirements. The Processor will then notify each Participant in writing, which may include

email, of: a) the aggregate final Projected Processor Capacity Requirements; and b) the percentage of the aggregate final Projected Peak 5-second MPS that is attributable to such Participant.

The Processor will not disclose to any Participant the initial or final individual capacity projections of any other Participant or the percentage of the Peak 5-second MPS attributable to any other Participant.

In the event that a Participant fails to notify the Processor of its final Projected Processor Capacity Requirements within the required time frame, then such Participant's final Projected Processor Capacity Requirements for: a) each six-month period for which the required notice was not given on a timely basis shall be deemed to be the same as that for the latest six-month period covered by the Participant's most recent final Projected Processor Capacity Requirements provided to the Processor within the required time frame; and b) each six-month period for which the required notice was previously given on a timely basis shall remain the same.

PROCESSOR SYSTEM CAPACITY CHANGES

The Processor shall, on a semi-annual basis, determine and inform each Participant in writing, which may include email, of the total amount of the then-current system capacity available for each of the two capacity components – the Peak 5-second MPS and the peak total transactions per day (referred to as “Total System Capacity”).

The Projected Processor Capacity Requirements for all Participants shall be referred to as the “Base Capacity.” The amount, if any, by which Total System Capacity exceeds Base Capacity, shall be referred to as “Excess Capacity.” The amount, if any, by which Total System Capacity is less than the Base Capacity shall be referred to as “Deficit Capacity.” At the time that the Processor notifies each Participant of the initial and final aggregate Projected Processor Capacity Requirements, the Processor shall also determine, based on such initial and final capacity projections, respectively, and inform each Participant in writing, which may include email, of, the amount of any projected Excess Capacity and/or any projected Deficit Capacity at the beginning of each six-month period in the applicable Capacity Planning Period.

On a semi-annual basis, the Operating Committee shall determine and advise the Processor in writing, which may include email, of any changes (i.e., increases or decreases) that it proposes be made to the Total System Capacity, including any required ancillary systems and network capacity changes (“System Capacity Changes”); provided, however, that any System Capacity Changes must result in the Total System Capacity meeting or exceeding Base Capacity. The Processor will develop a written proposal for System Capacity Changes and submit it to the Operating Committee, which proposal will include the timeframe and estimated costs for implementing the System Capacity Changes. If the Processor's proposal is accepted, such acceptance will be set forth in the minutes of the applicable Operating Committee meeting. The Processor will then implement such System Capacity Changes. Such System Capacity Changes implemented by the Processor may, in the Processor's discretion reasonably exercised and with the prior approval of the Operating Committee, result in creating some additional amount of Excess Capacity.

EMERGENCY CAPACITY PLANNING PROCESS

In addition to the semi-annual capacity planning process described above, the Processor may recommend to the Operating Committee emergency planning cycles (“EPC”) as may be reasonably necessary. The Processor shall submit a recommendation to the Operating Committee detailing the EPC request and required timeframe for response, via e-mail. The Operating Committee, at an emergency meeting if necessary, shall determine whether to approve the request.

PAYMENT FOR SERVICES

Each Participant’s “Proportionate Share” shall be the percentage of the final Projected Peak 5-second MPS for all Participants that is attributable to such Participant. A Participant’s Proportionate Share shall remain in effect until the next System Capacity Change is implemented, provided, however, that such Proportionate Share may change from time to time in accordance with the provisions set forth in the following two Sections of this Exhibit. The cost for such services shall be such Participant’s Proportionate Share of the cost of the services rendered by the Processor to all Participants, unless otherwise agreed to by the Processor and the Operating Committee. Each Participant shall be entitled to use its Proportionate Share of the Base Capacity and the Excess Capacity, if any, at no additional cost. If, however, the report(s) generated by the Processor setting forth daily system activity for Participants shows that a Participant’s actual Peak 5-second MPS exceeds such Participant’s Proportionate Share of the Base Capacity and the Excess Capacity, if any, (e.g., via dynamic throttling) such Participant may be required, in accordance with the provisions set forth in Attachment 2, which may be modified from time to time by the Operating Committee, to: a) pay a penalty to the Processor in the amount set forth in Attachment 2; and b) increase its capacity projections in the next Capacity Planning Period to reflect at least such actual Peak 5-second MPS. Any such penalty shall be divided and distributed to each of the other Participants in accordance with their Proportionate Shares.

PURCHASE OF CAPACITY

Without limiting the generality of the foregoing, a Participant may increase its Proportionate Share of the Base Capacity by purchasing all or a portion of the “Available Base Capacity” (as such term is defined in Item 1, below) and/or Excess Capacity, if any (collectively with “Available Base Capacity, hereinafter referred to as “Capacity”), subject to the following:

1. A Participant wishing to purchase Capacity shall advise the Processor in writing of the amount of Capacity (expressed as UTP 5-second MPS) it wishes to purchase. A Participant shall only be entitled to purchase Capacity (and such request shall only be filled) if, and to the extent that:
 - a. there are any currently outstanding unfilled request(s) from other Participant(s) to decrease Base Capacity (referred to as “Available Base Capacity”); and/or
 - b. there is Excess Capacity.

Furthermore, all requests to purchase Capacity shall be filled first through any Available Base Capacity, and second through any Excess Capacity. All Participant requests to purchase Capacity shall be filled on a “first come, first served” basis.

2. Within two (2) trading days of receipt of such notice, the Processor shall confirm the request directly with such Participant. The Processor shall fill the request if, and to the extent that, there is sufficient Available Base Capacity and/or Excess Capacity. The Processor shall then notify all Participants in writing of:
 - a. the amount of Available Base Capacity and/or Excess Capacity that remains, if any; and/or
 - b. the amount by which any Participant request(s) to increase Capacity remains unfilled.
3. A Participant’s request to increase Capacity shall remain outstanding until filled, or cancelled by such Participant, or the next System Capacity Change, whichever occurs first. Whenever a request is cancelled, the Processor shall then notify all Participants in writing whether, and the extent to which, any Participant request(s) to increase Capacity remain in effect.
4. The Processor will not disclose to any other Participant the Participant(s) that have requested purchasing, and/or that have purchased, Capacity.
5. Whenever a Participant purchases Available Base Capacity such Participant’s Proportionate Share of the Base Capacity shall be increased accordingly, effective on the first trading day that the Processor implements the requisite technical changes to reflect the changes in such Participant’s Base Capacity. As of such date, the costs associated, for that Participant, shall be increased to the extent of the resulting increase in that Participant’s Proportionate Share. The Processor shall notify such Participant of its new Proportionate Share and the effective date of such change.
6. Whenever a Participant purchases a portion (or all) of the Excess Capacity, such Participant’s Proportionate Share of the Base Capacity shall be increased accordingly, effective on the first trading day that the Processor implements the requisite technical changes to reflect the changes in such Participant’s Base Capacity. As of such date:
 - a. the costs allocated to that Participant shall be increased to the extent of the resulting increase in that Participant’s Proportionate Share; and
 - b. there shall be a corresponding reduction in:
 - i. each of the other Participant’s Proportionate Share of the Base Capacity; and
 - ii. the costs allocated to the other Participants shall be decreased, to the extent of the resulting decrease in each such Participant’s Proportionate Share. The Processor shall notify each Participant of its new Proportionate Share and the effective date of such change.

REDUCTION OF BASE CAPACITY

Without limiting the generality of the foregoing, a Participant may be entitled to decrease its Proportionate Share by reducing its Base Capacity, subject to the following:

1. A Participant wishing to reduce its Base Capacity shall advise the Processor in writing of the amount of its Base Capacity it wishes to decrease (which decrease shall be expressed as UTP 5-second MPS). A Participant shall only be entitled to decrease its Base Capacity (and such request shall only be filled) if, and to the extent that, there are any currently outstanding unfilled requests from other Participant(s) to increase Capacity. All Participant requests to decrease Base Capacity shall be filled on a “first come, first served” basis.
2. Within two (2) trading days of receipt of such notice, the Processor shall confirm the request directly with such Participant. The Processor shall fill the request if, and to the extent that, there are any currently outstanding unfilled requests from other Participant(s) to increase Capacity. The Processor shall then notify all Participants in writing of:
 - a. the amount of Available Base Capacity that remains, if any; and/or
 - b. the amount by which any Participant request(s) to decrease Base Capacity remain unfilled.
3. A Participant’s request to decrease Base Capacity shall remain outstanding until filled, or cancelled by such Participant, or the next System Capacity Change, whichever occurs first. Whenever a request is cancelled, the Processor shall then notify all Participants in writing whether, and the extent to which, any Participant request(s) to decrease Base Capacity remain in effect.
4. The Processor will not disclose to any other Participant the Participant(s) that have requested decreasing, and/or that have decreased, Base Capacity.

Whenever a Participant reduces its Base Capacity pursuant to this Section, such Participant’s Proportionate Share of the Base Capacity shall be decreased accordingly, effective on the first trading day that the Processor implements the requisite technical changes to reflect the changes in such Participant’s Base Capacity. As of such date, the costs associated, for that Participant, shall be decreased to the extent of the resulting decrease in that Participant’s Proportionate Share. The Processor shall notify such Participant of its new Proportionate Share and the effective date of such change.

ATTACHMENT 1

Processor Capacity Planning Process Calendar
(Approximately 3.5 Calendar Months)

Step #	Description	Duration (Trading Days)	Start Date	End Date
1	The Processor requests initial capacity projections from Participants via email.	1	st 1 trading day in 3 rd month of applicable Capacity Planning Period	st 1 trading day in 3 rd month of applicable Capacity Planning Period
2	Participants submit initial capacity projections to the Processor via email.	10		
3	The Processor advises each Participant of initial capacity projections for all Participants, current system capacity, and any projected Excess and/or Deficit Capacity, via email.	5		
4	Participants submit final capacity projections to the Processor via email.	15		
5	The Processor advises each Participant of final capacity projections for all Participants, current system capacity, and any projected Excess and/or Deficit Capacity, via email.	5		
6	At a meeting of the Operating Committee at which the Processor is present, the Operating Committee will determine and then advise the Processor in writing (i.e., by minutes of such meeting) of any System Capacity Changes.	5		
7	The Processor submits a proposal to the Operating Committee for System Capacity Changes, including estimated timeframes and costs for implementing them, via e-mail. The Processor will notify each Participant via email of: a) the aggregate final Projected Processor Capacity Requirements; and b) the percentage of the aggregate final Projected Peak 5-second MPS that is attributable to such Participant.	20		
8	At a meeting of the Operating Committee at which the Processor is present, the Operating Committee will decide and then advise the Processor in writing (i.e., by minutes of such meeting) if it accepts the Processor's proposal for System Capacity Changes.	10		

ATTACHMENT 2

UTP Capacity Process - Penalties for Exceeding Proportionate Share

Scenario	Description	Penalty	Increase Projections
Participant System Problem/ Recovery	Participant’s actual peak 5-second MPS exceeds its Proportionate Share for 30 consecutive seconds artificially (e.g., due to draining of queued data following a system recovery).	None	No
Occasional (inconsistent)	Participant’s actual peak 5-second MPS exceeds its Proportionate Share for 30 consecutive seconds on no more than 2 days during a month.	None	No
Regular	Participant’s actual peak 5-Second MPS exceeds its Proportionate Share for 30 consecutive seconds on each of 3 or more days during a month.	<p>Participant’s penalty will be calculated and billed according to the following formula:</p> <ul style="list-style-type: none"> • (Total MPS in Excess) x (Penalty MPS \$ Rate) <p>To find the Total MPS in Excess for any month:</p> <ol style="list-style-type: none"> 1. determine which days during the month (“Days in Excess”) the Participant exceeded its proportionate share of MPS for 30 or more consecutive seconds (each, a “Period in Excess”), whether it did so once or multiple times on any day; 2. for each Day in Excess during a month, determine that day’s “Highest Period in Excess”; and 3. add the Participant’s MPS in excess of its Proportionate Share for each Day in Excess’ Highest Period in Excess. <p>A day’s “Highest Period in Excess” refers to the Period in Excess during which the Participant exceeded its Proportionate Share of MPS by more than it did during the day’s other Periods in Excess.</p> <p>To find the Penalty MPS \$ Rate for any month, multiply twice the current monthly MPS \$ rate by the percentage of trading days during the month that were Days in Excess; that is: (2 x current monthly MPS \$ rate) x (# Days in Excess / # trading days in the month)</p>	Yes – to be determined

Notes:

1. The Processor reports containing daily/monthly/quarterly activity by Participant will be used to determine if any of the above penalty criteria have been met.
2. The Processor will notify a Participant in the event it has been assessed a penalty.
3. Participant penalties will be distributed to the other Participants based on each Participant’s Proportionate Share.

4. Reports provided by the Processor to the Participants will include the total monthly costs, that Participant's Proportionate Share, any penalties to be paid by that Participant, any redistribution of penalties paid by other Participant(s) and the number of Participants who paid penalties broken down by Quote and Trade separately.
 - Participant's Monthly Costs are Total Monthly Costs multiplied by Participant's Proportionate Share.

UTP Capacity Planning

Participant Projected Processor Capacity Requirements - Input Document

Participant Name: _____

Initial Projected Requirements:

Period Beginning:	Projected Peak 5 second MPS		Projected Peak Total Daily Transactions	
	UTP Quote	UTP Trade	UTP Quote	UTP Trade

Approved By: _____ Date Submitted: _____

Final Projected Requirements:

Period Beginning:	Projected Peak 5 second MPS		Projected Peak Total Daily Transactions	
	UTP Quote	UTP Trade	UTP Quote	UTP Trade

Approved By: _____ Date Submitted: _____