EXHIBIT 5

Additions underscored
Deletions [bracketed]

NYSE MKT Rules

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Rule 72 - Equities. Priority of Bids and Offers and Allocation of Executions

[The provisions of this rule shall be in effect during a Pilot set to end on October 31, 2015.]

Priority of First Bid or Offer

(a)(i) As used in this rule, the term "displayable" shall mean that portion of interest that could be published as, or as part of, the Exchange BBO, including pegging interest. Displayable odd-lot orders will be published as part of the Exchange BBO if, when aggregated with other interest available for execution at that price point, the sum of the odd-lot order and other interest available at that price point would be equal to or greater than a round lot. The term "displayed interest" includes that part of an order that is published as, or as part of, the Exchange BBO, which may include one or more odd-lot orders. .

(ii) When a bid or offer, including pegging interest, is established as the only displayable bid or offer made at a particular price and such bid or offer is the only displayable interest when such price is or becomes the Exchange BBO (the "setting interest"), such setting interest shall be entitled to priority for allocation of executions at that price as described in this rule, subject to the provisions below.

(A) Odd-lot orders, including aggregated odd-lot orders that are displayable, are not eligible to be setting interest.

(B) If at the time displayable interest of a round lot or greater becomes the Exchange BBO, there is other displayable interest of a round lot or greater, including aggregated odd-lot orders that are equal to or greater than a round lot, at the price that becomes the Exchange BBO, no interest is considered to be a setting interest, and, therefore, there is no priority established

(C) If at the time displayable interest of a round lot or greater becomes the Exchange BBO, there is other displayable interest, the sum of which is less than a round lot, at the price that becomes the Exchange BBO, the displayable interest of a round lot or greater will be considered the only displayable bid or offer at that price point and is

therefore established as the setting interest entitled to priority for allocation of executions at that price as described in this rule.

(D) If executions decrement the setting interest to an odd-lot size, a round lot or PRL order that joins such remaining odd-lot size order is not eligible to be the setting interest.

(E) If as a result of cancellation, interest is or becomes the single displayable interest of a round lot or greater at the Exchange BBO, it becomes the setting interest.

(F) Only the portion of setting interest that is or has been published in the Exchange BBO shall be entitled to priority allocation of an execution. That portion of setting interest that is designated as reserve interest and therefore not displayed at the Exchange BBO (or not displayable if it becomes the Exchange BBO) is not eligible for priority allocation of an execution irrespective of the price of such reserve interest or the time it is accepted into Exchange systems. However, if, following an execution of part or all of setting interest, such setting interest is replenished from any reserve interest, the replenished volume of such setting interest shall be entitled to priority if the setting interest is still the only interest at the Exchange BBO.

(G) If non-pegging interest becomes the Exchange BBO, it shall be considered the setting interest even if pegging interest is pegging to such non-pegging interest, and it shall retain its priority even if subsequently joined at that price by a pegging interest. (See Rule 13 - Equities - Pegging Interest.)

Retention of Priority

(b)(i) Once priority is established by setting interest, such setting interest retains that priority for any execution at that price when that price is at the Exchange BBO. In the event that executions decrement the setting interest to an odd-lot size, such remaining portion of the setting interest retains its priority for any execution at that price when that price is the Exchange BBO.

(ii) For any execution of setting interest that occurs when the price of the setting interest is not the Exchange BBO, the setting interest does not have priority and is executed on parity.

(iii) Priority of setting interest shall not be retained after the close of trading on the Exchange or following the resumption of trading in a security after a trading halt in such security has been invoked pursuant to Rule 123D - Equities or following the resumption of trading after a trading halt invoked pursuant to the provisions of Rule 80B - Equities. Priority of the setting interest is not retained on any portion of the priority interest that is routed to an away market and is returned unexecuted unless such priority interest is greater than a round lot and the only other interest at the price point is odd-lot orders, the sum of which is less than a round lot.

Allocation of Executions

(c)(i) An automatically executing order will trade first with displayable bids (offers) and if there is insufficient displayable volume to fill the order, will trade next with non-displayable interest. All non-displayable interest will trade on parity.

    (ii) For the purpose of share allocation in an execution, each single Floor broker, the DMM and orders collectively represented in Exchange systems (referred to herein as "Book Participant") shall constitute individual participants. The orders represented in the Book Participant in aggregate shall constitute a single participant and will be allocated shares among such orders by means of time priority with respect to entry.

    (iii) In any execution at the Exchange BBO, a participant who has established priority as provided in (a) of this rule (i.e., is setting interest) shall receive fifteen percent (15%) of the volume of such executed amount or a minimum of one round lot, whichever is greater, until such setting interest has received a complete execution of its eligible priority interest. Setting interest that is decremented to an odd-lot size shall receive fifteen percent (15%) of the volume of such incoming interest rounded to the size of the setting interest, or the size of the incoming interest, whichever is less.

    (iv) Following the allocation of an execution to setting interest as provided in (c)(i) above, the remainder of the executed volume shall be allocated to each participant on parity. The participant with the priority interest (the setting interest) shall be included in such parity allocation.

Example for (c)(ii) and (iii):

Setting interest has 1,000 shares as the best bid of 20.05. There is an additional 600 shares of an e-Quote without priority at the same bid price. A market order to sell 500 shares arrives and is executed. The setting interest first receives 100 shares as its priority allocation (15% of 500 equals 75 shares, rounded up to 100 shares). The remainder of the execution is split on a parity basis between the two participants, with each receiving 200 shares. In total, the setting interest received 300 shares of the 500 share execution and the e-Quote received 200 shares.

    (v) If there is no setting interest for an execution at the Exchange BBO, allocation of the executed volume shall be on parity by participant except as set forth in subparagraph (c)(xi) of this rule.

    (vi) When an execution occurs at the Exchange BBO, interest that is displayed in the Exchange BBO shall be allocated before any interest that is not displayed. For purposes of this rule, "displayed" shall have the meaning as stated in subparagraph (a) above of this rule.

(vii) In allocating an execution that involves setting interest, whether such execution takes place at the Exchange BBO or otherwise, the volume allocated to the setting interest shall be allocated to the interest in the setting interest that is entitled to priority first.

(viii) Shares will be allocated in round lots or the size of the order if less than a round lot. In the event the number of shares to be executed at a price point is insufficient to allocate round lots to all the participants eligible to receive an execution at that price point, or the size of the order if less than a round lot, Exchange systems shall create an allocation wheel of the eligible participants at that price point and the available round lot shares will be distributed to the participants in turn. If an odd-lot sized portion of the incoming order remains after allocating all eligible round lots, the remaining shares will be allocated to the next eligible participant in less than a round lot. (See Examples below.)

(A) On each trading day, the allocation wheel for each security is set to begin with the participant whose interest is entered or retained first on a time basis. Thereafter, participants are added to the wheel as their interest joins existing interest at a particular price point. If a participant cancels his, her or its interest and then rejoins, that participant joins as the last position on the wheel at that time.

Parity Example 1

Assume there is interest of the Book Participant (representing orders entered by two different public customers), three Floor brokers and the DMM are bidding at the same price, with no participant having priority. An order to sell is received by the Exchange. Exchange systems will divide the allocations among the participants as follows:

Public Order #1 100 shares and Public Order #2 100 shares Book Participant

Floor Broker 1	Participant A
DMM	Participant B
Floor Broker 2	Participant C
Floor Broker 3	Participant D

A market order for 300 shares to sell entered in Exchange systems will allocate 100 shares to the Book Participant (Public Order #1), Participant A and Participant B above. Subsequently, another order to sell 300 shares at the same price is received by Exchange systems. Those shares will be allocated to Participant C, Participant D, and Book Participant (Public Order #2).

(B) The allocation wheel will move to the next participant when an odd-lot allocation completely fills the interest of such participant.

Parity Example 2

Assume there is interest of the Book Participant (representing orders entered by two different public customers), three Floor brokers and the DMM are bidding at the same price, with no participant having priority. An order to sell is received by the Exchange. Exchange systems will divide the allocations among the participants as follows:

Public Order #1 100 shares and Public Order #2 100 shares Book Participant

Floor Broker 1	Participant A 50 shares
DMM	Participant B 50 shares
Floor Broker 2	Participant C 300 shares
Floor Broker 3	Participant D 300 shares

A market order for 200 shares to sell entered in Exchange systems will allocate 100 shares to the Book Participant (Public Order #1), Participant A will receive 50 shares, Participant B above will receive 50 shares. Subsequently, another order to sell 300 shares at the same price is received by Exchange systems. Those shares will be allocated to Participant C, Participant D, and Book Participant (Public Order #2).

Parity Example 3

Assume there is interest of the Book Participant (representing orders entered by two different public customers), three Floor brokers and the DMM are bidding at the same price, with no participant having priority. An order to sell is received by the Exchange. Exchange systems will divide the allocations among the participants as follows:

Public Order #1 100 shares and Public Order #2 100 shares Book Participant

Floor Broker 1	Participant A Participant A 50 shares
DMM	Participant B 75 shares
Floor Broker 2	Participant C 300 shares
Floor Broker 3	Participant D 300 shares

A market order for 200 shares to sell entered in Exchange systems will allocate 100 shares to the Book Participant (Public Order #1), Participant A will receive 50 shares, Participant B above will receive 50 shares. Subsequently, another order to sell 300 shares at the same price is received by Exchange systems. The allocation wheel will start with Participant B. Participant B is allocated 25 shares, Participant C is allocated 100 shares, Participant D is allocated 100 shares, and Book Participant (Public Order #2) is allocated 75 shares. Exchange systems will retain Book Participant (Public Order #2) as the participant eligible to receive the next allocation at that price point.

(C) The allocation wheel will also move to the next participant where Exchange systems execute remaining displayable odd-lot interest prior to replenishing the displayable quantity of a participant.

Parity Example 4

Assume the available bid interest on the Exchange consists of a single Book Participant and two Floor brokers listed below in order of their position on the allocation wheel none of the participants have priority.

Public Order #1 100 shares and Public Order #2 100 shares Book Participant

Floor Broker 1	Participant A - 200 shares displayed and 4800 shares reserve
Floor Broker 2	Participant C - 500 shares displayed
Floor Broker 2	Participant C 500 shares displayed

An order to sell 350 shares is received by the Exchange. Exchange systems will divide the allocations among the participants as follows:

Participant A - 150 shares

Book Participant - 100 shares

Participant C - 100 shares

Each participant receives a round lot allocation. The Allocation wheel returns to Participant A as the first participant on the wheel and allocates the remaining 50 shares. The allocation wheel remains on Participant A. The remaining interest of the three participants is as follows:

Floor Broker 1 Participant A - 50 shares displayed and 4800 shares reserve Book
Participant Public Order #1 Participant B 400 shares displayed Floor Broker 2
Participant C 400 shares displayed

Prior to the system replenishing the displayed quantity of Participant A, an order to sell
100 shares is received by Exchange systems. The system will allocate 50 shares to
Participants A and B. The next allocation at the price point will begin with Participant
B.

(ix) When an execution occurs outside the Exchange BBO, the interest that is
displayable will be allocated before any interest that is non-displayable (i.e. reserve
interest). All interest that is displayable will be on parity among individual
participants' displayable interest. All interest that is non-displayable will be on parity
among individual participants' non-displayable interest.

(x) Incoming orders eligible for execution at price points between the Exchange BBO
shall trade with all available interest at the price. All Exchange interest available to
participate in the execution (e.g., d-quotes, s-quotes, Reserve Orders, MPL Orders,
and Capital Commitment Schedule interest (see Rule 1000 - Equities)) will trade on
parity.

(xi) DMM interest added intra day to participate in a verbal transaction with a Floor
broker or during a slow quote, will be allocated shares only after all other interest
eligible for execution at the price point are executed in full. DMM interest added at
the time of the slow quote or when verbally trading with a Floor broker not executed
during the transaction will be cancelled.

However, s-Quotes, if any, representing DMM interest present at the price point prior
to the verbal transaction with a Floor broker or during a slow quote will receive an
allocation on parity pursuant to the provisions of subparagraph (c)(v) of this rule
above.

(xii) An order that is modified to reduce the size of the order shall retain the time
stamp of original order entry. Any other modification to an order, such as increasing
the size or changing the price of the order, shall receive a new time stamp.

Priority of Cross Transactions

(d) When a member has an order to buy and an order to sell an equivalent amount of the
same security, and both orders are `block' orders and are not for the account of such
member or member organization, an account of an associated person, or an account with
respect to which the member, member organization or associated person thereof exercises
investment discretion, the member may `cross' those orders at a price at or within the
Exchange best bid or offer. The member's bid or offer shall be entitled to priority at such
cross price, irrespective of pre-existing displayed bids or offers on the Exchange at that

price. The member shall follow the crossing procedures of Rule 76 - Equities, and another member may trade with either the bid or offer side of the cross transaction only to provide a price which is better than the cross price as to all or part of such bid or offer. A member who is providing a better price to one side of the cross transaction must trade with all other displayed market interest on the Exchange at that price before trading with any part of the cross transaction. Following a transaction at the improved price, the member with the agency cross transaction shall follow the crossing procedures of Rule 76 - Equities and complete the balance of the cross. No member may break up the proposed cross transaction, in whole or in part, at the cross price. No DMM may effect a proprietary transaction to provide price improvement to one side or the other of a cross transaction effected pursuant to this paragraph. A transaction effected at the cross price in reliance on this paragraph shall be printed as `stopped stock'.

When a member effects a transaction under the provisions of this paragraph, the member shall, as soon as practicable after the trade is completed, complete such documentation of the trade as the Exchange may from time to time require.

Example 1

Assume the Exchange's market in XYZ is quoted 20 to 20.01, 40,000 shares by 30,000 shares. A member intending to effect a 25,000 share `agency cross' transaction at a price of 20 must bid 20 for 25,000 shares and offer 25,000 shares at 20.01. The member's bid at 20 has priority, and the proposed cross could not be broken up at that price. The proposed cross could however, be broken up at 20.01, as this would provide a better price to the seller. However, a member intending to trade with the offer side of the cross would first have to take the entire displayed 30,000 share offer at 20.01 before trading with any part of the offer side of the cross.

Example 2

Assume the Exchange's market in XYZ is quoted 20 to 20.35, 20,000 shares by 20,000 shares. A member intending to effect a 25,000 share `agency cross' transaction at a price of 20.05 must follow the crossing procedures of Rule 76 - Equities and bid 20.05 for 25,000 shares and offer 25,000 shares at 20.06. The member's bid at 20.05 has priority, and the proposed cross could not be broken up at this price. The proposed cross could, however, be broken up, in whole or in part, at 20.06, as this would provide a better price to the seller.

• • • *Supplementary Material:*

.10 Definition of a Block - For purposes of this rule, a `block' shall be at least 10,000 shares or a quantity of stock having a market value of $200,000 or more, whichever is less.

.40 Rule 72 - Equities does not apply to bonds traded through NYSE MKT Bonds (See Rule 86 - Equities).

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[Rule 104T- Equities. Dealings by DMMs

This version of Rule 104 - Equities is operative upon Securities and Exchange Commission approval of SR-NYSE-2008-46 and will cease operation no later than ten weeks after such approval of SR-NYSE-2008-46.

(a) No DMM shall effect on the Exchange purchases or sales of any security in which such DMM is registered, for any account in which he or she, his or her DMM unit or any other member or principal executive in such unit or officer or employee thereof is directly or indirectly interested, unless such dealings are reasonably necessary to permit such DMM to maintain a fair and orderly market, or to act as an odd-lot dealer in such security.

(aa)(i) The DMM shall have the ability to algorithmically quote in any security in reaction to certain information, which will not include information about incoming orders as such orders are entering Exchange systems.

(ii) The DMM shall have the ability to algorithmically execute transactions against the Exchange best bid or offer (`Hit Bid/Take Offer') in any security in reaction to certain information, which will not include information about incoming orders as such orders are entering Exchange systems. Hit Bid/Take Offer messages will be processed by the Display Book in such a manner that DMMs and other market participants will have a similar opportunity to trade with the Exchanges' published quotation.

(b) DMMs shall have the ability to establish systems employing algorithms to generate quoting and trading messages, as detailed below, which will be delivered to the Display Book® system via an external quote application programmed interface (`API').

(i) In reaction to information, including but not limited to, an incoming order as it is entering the Exchange systems, the DMM's system employing algorithms may generate messages for any of the following quoting or trading actions, provided such algorithmically-generated messages are in reaction to only one order at a time:

Quoting Messages:

  (A) supplement the size of the existing Exchange published best bid or offer;

  (B) place within the Display Book® system DMM reserve interest at the Exchange published best bid or offer as described in (d) below;

(C) layer within the Display Book® system DMM interest at varying prices outside the published Exchange quotation (`DMM interest');

(D) establish the Exchange best bid or offer; and

(E) withdraw previously established DMM interest at the Exchange best bid or offer.

Trading Messages:

(A) provide additional DMM volume to partially or completely fill an order either at the Exchange published best bid or offer price or at a sweep price;

(B) match better bids and offers published by other market centers where automatic executions are immediately available;

(C) provide price improvement to an order subject to the conditions set forth in (e) below; and

(D) trade with the Exchange published best bid or offer.

(ii) DMMs may open a security on a quote when there is no opening trade or with a transaction by sending an automated opening message through the API (see also Rule 123D - Equities).

(iii) Exchange systems shall:

(A) enforce the proper sequencing of incoming orders and algorithmically-generated messages; and

(B) ensure that algorithmically-generated messages to trade with the Exchange BBO are processed by the Display Book® in such a manner that DMMs and other market participants have a similar opportunity to trade with the published quotation.

(c)(i) All algorithmically-generated messages delivered via the API must include a code identifying the reason for the algorithmic action, the unique identifier of the order to which the algorithmically-generated message is reacting, (if any), the unique identifier of the order immediately preceding the generation of the algorithmically-generated message and any other information the Exchange may require. In addition,

(A) Algorithmically-generated messages to trade with the Exchange published BBO, as provided in (b)(i)(I) above, must include the unique identifier for the publicly-disseminated Exchange best bid or offer to which the algorithmic message is reacting.

(B) The Exchange will designate the reason codes, unique identifiers for orders and quotations and the format of any other required information for use in algorithmically-generated messages.

(C) Identification of a particular order and/or quotation in an algorithmically-generated message does not guarantee that the DMM will trade with that order or quotation or that the DMM has priority in trading with that order or quotation.

(D) The Exchange will automatically cancel algorithmically-generated messages that are unable to interact with the order or quotation identified by the message where the reason code and the proposed algorithmic action are inconsistent, where the message activity would create a locked or crossed market, where the identifiers described above in (c) are not designated, and in other similar situations.

(ii) The DMM system employing algorithms will not have access to the following types of information:

(A) information which identifies the firms entering orders, customer information, or an order's clearing broker;

(B) Floor broker agency interest files or aggregate Floor broker agency interest available at each price; or

(C) cancellation of an order, except for cancel and replace orders.

(iii) Algorithmically-generated messages must comply with all SEC and Exchange rules, policies and procedures governing DMM proprietary trading.

(iv) Algorithmically-generated messages must not create a locked or crossed market, as defined in Rule 19 - Equities.

(v) The Display Book® will not process algorithmically-generated messages during the time a block-size transaction (as defined in Rule 127 - Equities) involving orders on the Display Book® is being reported pursuant to manual reporting.

(vi) The Display Book® will not process algorithmically-generated messages when automatic executions are suspended, except:

(i) when automatic executions are suspended but autoquote is available, the Display Book® will process algorithmically-generated messages to improve the Exchange best bid or offer or supplement the size of an existing best bid or offer; and

(ii) where automatic executions and autoquote are suspended, the Display Book® will:

(1) process algorithmically-generated messages to layer within the Display Book® system DMM interest at prices outside the published Exchange quotation; and

(2) permit DMM to manually layer interest within the Display Book® system, as provided in (viii), below, at prices that are within a previously-established locking or crossing quotation.

(vii) Reserved.

(viii) DMMs shall have the ability to manually layer within the Display Book® system DMM interest, including reserve interest, at varying prices at and outside the Exchange BBO. Such interest remains in the Display Book® system until traded with or cancelled.

(ix) DMM algorithmically-generated messages will compete with or trade along with same-side discretionary e-Quotes^{SM} in the manner described in Rule 70.25 - Equities.

(d)(i) A DMM unit may maintain reserve interest consistent with Exchange rules governing Reserve Orders. Such reserve interest is eligible for execution in manual transactions.

(ii) After an execution involving DMM interest at the Exchange BBO that does not exhaust the DMM's interest at that price, the DMM's displayed interest will be automatically replenished from the reserve interest, if any, so that at least one round-lot of DMM interest is displayed.

(iii) DMM reserve interest will be on parity with Floor broker agency file reserve interest and, like it, shall yield to all other displayed interest eligible to trade at the Exchange bid or offer (See Rule 70.20(c) - Equities).

(e)(i) A DMM may provide algorithmically-generated price improvement to all or part of a marketable incoming order including an auction limit order and an auction market order. The price improvement to be supplied by the DMM must be at least one cent.

(f)(i) Each DMM unit shall maintain an electronic log of all algorithmically-generated messages, including the date and time of each algorithmically-generated message and such other information as the Exchange shall designate. Such log shall be maintained in accordance with SEC and Exchange rules regarding books and records and shall be capable of being provided to the Exchange upon request, in such time and in such format as the Exchange shall designate.

(ii) Each DMM unit shall notify the Exchange in writing, within such time as the Exchange shall designate, whenever the system employing algorithms or an individual algorithm is not operating and the time, cause, and duration of such non-operation.

(g) During the day, DMMs on the Floor may interact with the system employing the unit's algorithms or an individual algorithm with respect to the securities they are trading by:

(i) activating or deactivating the unit's algorithms from a group of pre-set algorithms made available by the DMM unit, or

(ii) adjusting the unit's pre-set parameters guiding algorithm decision-making.

(h) DMMs must have an independent third party auditor review on an annual basis all DMM unit systems employing algorithms and all algorithms to ensure that they operate in accordance with all SEC and Exchange rules, policies, and procedures. The Exchange shall have the right to request originals and copies of any reports, notes, analysis, documents and similar types of materials prepared by or on behalf of, or reviewed by such independent auditor, as the Exchange deems appropriate.

(i) Each DMM unit shall certify in the time, frequency, and manner as prescribed by the Exchange, that the system employing its algorithms and all algorithms operate in accordance with all SEC and Exchange rules, policies and procedures.

(j) DMMs, trading assistants and anyone acting on their behalf are prohibited from using the Display Book® system to access information about Floor broker agency interest excluded from the aggregated agency interest and Minimum Display Reserve Order information other than for the purpose of effecting transactions that are reasonably imminent where such Floor broker agency and Minimum Display Reserve Order interest information is necessary to effect such transaction.

(k) With respect to maintaining a continuous two-sided quote with reasonable size, DMM units must maintain a bid or an offer at the National Best Bid and National Best Offer ("inside") at least 10% of the trading day for securities in which the DMM unit is registered with an average daily volume on the Exchange of less than one million shares, and at least 5% for securities in which the DMM unit is registered with an average daily trading volume equal to or greater than one million shares. Time at the inside is calculated as the average of the percentage of time the DMM unit has a bid or offer at the inside. In calculating whether a DMM is meeting the 10% and 5% measure, credit will be given for executions for the liquidity provided by the DMM. Reserve or other hidden orders entered by the DMM will not be included in the inside quote calculations.

• • • *Supplementary Material:*

Functions of DMMs

.10 **Regular DMMs.**——Any member who expects to act regularly as specialist in any listed stock and to solicit orders therein must be registered as a regular DMM.

The function of a member acting as regular DMM on the Floor of the Exchange includes, in addition to the effective execution of commission orders entrusted to him, the maintenance, in so far as reasonably practicable, of a fair and orderly market on the Exchange in the stocks in which he is so acting. This is more specifically set forth in the following:

(1) The maintenance of a fair and orderly market implies the maintenance of price continuity with reasonable depth, and the minimizing of the effects of temporary disparity between supply and demand.

(2) In connection with the maintenance of a fair and orderly market, it is commonly desirable that a member acting as DMM engage to a reasonable degree under existing circumstances in dealings for his or her own account when lack of price continuity, lack of depth, or disparity between supply and demand exists or is reasonably to be anticipated.

(3) Transactions on the Exchange for his own account effected by a member acting as DMM must constitute a course of dealings reasonably calculated to contribute to the maintenance of price continuity with reasonable depth, and to the minimizing of the effects of temporary disparity between supply and demand, immediate or reasonably to be anticipated. Transactions not part of such a course of dealings or in acting as on odd-lot dealer are not to be effected.

(4) A DMM's quotation, made for his own account, should be such that a transaction effected thereon, whether having the effect of reducing or increasing the DMM's position, will bear a proper relation to preceding transactions and anticipated succeeding transactions.

(5)(i) Transactions on the Exchange by a DMM for the DMM's account are to be effected in a reasonable and orderly manner in relation to the condition of the general market, the market in the particular stock and the adequacy of the DMM's position to the immediate and reasonably anticipated needs of the round-lot and the odd-lot market.

(a) The following types of transactions are permitted when they are reasonably necessary to render the DMM's position adequate to such markets' needs:

  (I) Neutral Transactions

    (a) Definition - A neutral transaction is a purchase or sale by which a DMM liquidates or decreases a position.

    (b) Neutral Transactions may be made without restriction as to price.

    (c) Re-entry Obligation Following Neutral Transactions - The DMM's obligation to maintain a fair and orderly market may require re-entry on the opposite side of the

market trend after effecting one or more Neutral Transactions. Such re-entry transactions should be in accordance with the immediate and anticipated needs of the market.

(d) Neutral Transactions must yield parity to, and may not claim precedence based on size over, a customer order in the Crowd upon the request of the member representing such order, where such request has been documented as a term of the order, to the extent of the volume of such order that has been included in the quote prior to the transaction.

(e) The requirements contained in (5)(i)(a)(I)(d) above shall not apply to automatic executions involving the DMM dealer account.

(II) Non-Conditional Transactions

(a) Definition - A non-conditional transaction is a DMM's bid or purchase and offer or sale, that establishes or increases a position, other than a transaction that reaches across the market to trade with the Exchange bid or offer.

(b) Non-Conditional Transactions may be made without restriction as to price in order to:

(i) match another market's better bid or offer price;

(ii) bring the price of a security into parity with an underlying or related security or asset;

(iii) add size to an independently established bid or offer on the Exchange;

(iv) purchase at the published bid price on the Exchange;

(v) sell at the published offer price on the Exchange;

(vi) purchase or sell at a price between the Exchange published bid and published offer;

(vii) purchase below the published bid or sell above the published offer on the Exchange;

(c) Re-entry Obligation Following Non-Conditional Transactions - The DMM's obligation to maintain a fair and orderly market may require re-entry on the opposite side of the market trend after effecting one or more Non- Conditional Transactions. Such re-entry transactions should be commensurate with the size of the Non-Conditional Transactions and the immediate and anticipated needs of the market.

(b) During the operation of Rule 104.10(6) - Equities pursuant to the pilot program set to end on September 30, 2008, the provisions of this subparagraph (5)(b) shall not apply.

(I) The following types of transactions by a DMM for the DMM's account to establish or increase a position that reach across the market to trade with the Exchange bid or offer are not to be effected except when, with the approval of a Floor Official, the transactions are reasonably necessary to render the DMM's position adequate to the immediate and reasonably anticipated needs of the round-lot and the odd-lot market and the DMM reoffers or rebids where necessary after effecting such transaction:

(a) a purchase at a price above the last trade price on the Exchange;

(b) a sale at a price below the last trade price on the Exchange;

(c) the purchase of more than 50% of the stock offered in the market at a price equal to the last trade price where such last trade price was higher than the last differently priced regular way sale.

(c) Prohibited Transactions

(I) During the last ten minutes prior to the close of trading, a DMM with a long position in a security is prohibited from making a purchase in such security that results in a new high price on the Exchange for the day at the time of the DMM's transaction, except as provided in subparagraphs (5)(i)(a)(II)(b)(i) through (5)(i)(a)(II)(b)(ii) above.

(II) During the last ten minutes of trading, a DMM with a short position in a security is prohibited from making a sale in such security, that results in a new low price on the Exchange for the day at the time of the DMM's transaction, except as provided in subparagraphs (5)(i)(a)(II)(b)(i) through (5)(i)(a)(II)(b)(ii) above.

(6) DMM Transactions in Securities that Establish or Increase the DMM's Position:

The provisions of this rule are pursuant to a pilot program set to end on September 30, 2008.

(i) Definition - A `Conditional Transaction' is a DMM's transaction in a security that establishes or increases a position and reaches across the market to trade as the contra-side to the Exchange published bid or offer.

(ii) The following Conditional Transactions, may be made by a DMM without restriction as to price, provided they are followed by appropriate re-entry on the opposite side of the market commensurate with the size of the DMM's transaction. (`Appropriate' re-entry shall mean re-entry on the opposite side of the market at or before the price participation point or the `PPP'.):

(a) A DMM's purchase from the Exchange published offer that is priced above the last differently-priced trade on the Exchange and above the last differently-priced published offer on the Exchange; and

(b) A DMM's sale to the Exchange published bid that is priced below the last differently-priced trade on the Exchange and below the last differently-priced published bid on the Exchange.

(iii) Re-entry Obligations for Conditional Transactions:

(a) `PPPs'—The Exchange will periodically issue guidelines, called price participation points (`PPP'), that identify the price at or before which a DMM is expected to re-enter the market after effecting a Conditional Transaction. PPPs are only minimum guidelines and compliance with them does not guarantee that a DMM is meeting its obligations.

(b) Notwithstanding that a security may not have reached the PPP, the DMM may be required to re-enter the market immediately after a Conditional Transaction based on the price and/or volume of the DMM's trading in reference to the market in the security at the time of such trading. In such situations DMMs may not rely on the fact that there may have been one or more independent trades following the DMM's trading to justify a failure to re-enter the market.

(c) Immediate re-entry is required after the following Conditional Transactions:

(I) A purchase that (1) reaches across the market to trade with an Exchange published offer that is above the last differently priced trade on the Exchange and above the last differently priced published offer on the Exchange, (2) is 10,000 shares or more or has a market value of $200,000 or more, and (3) exceeds 50% of the published offer size.

(II) A sale that (1) reaches across the market to trade with an Exchange published bid that is below the last differently priced trade on the Exchange and below the last differently priced published bid on the Exchange, (2) is 10,000 shares or more or has a market value of $200,000 or more, and (3) exceeds 50% of the published bid size.

(III) Each trade at a separate price in a Sweep is viewed as a transaction with the published bid or offer for the purpose of subparagraphs (6)(iii)(c)(I) and (6)(iii)(c)(II) above.

(iv) The following Conditional Transactions may be made without restriction as to price:

(a) A DMM's purchase from the Exchange published offer that is priced above the last differently-priced trade on the Exchange or above the last differently-priced published offer on the Exchange; and

(b) A DMM's sale to the Exchange published bid that is priced below the last differently-priced trade on the Exchange or below the last differently-priced published bid on the Exchange.

(c) Re-entry obligations following transactions defined in subparagraphs (6)(iv)(a) and (6)(iv)(b) above are the same as for Non-Conditional Transactions pursuant to subparagraph (5)(i)(a)(II)(c) above.

(7) Reserved.

(8) When inquiry is made of a DMM as to the price at which a block of stock may be sold, the DMM may advise the broker of the `clean up' price for the block, after trading with the published bid (offer). If, as a result of this inquiry, the block is sold and the DMM participates as a dealer at the `clean up' price, he should also execute at the same price the executable buy orders held by him. The same principle applies in the event an inquiry is made with respect to an order to purchase a block of stock.

(9) A DMM's bid or offer in a registered security on the Exchange may not be inferior to the DMM's market maker bid or offer disseminated by an electronic communications network (as that term is defined in Securities and Exchange Commission Rule 600(b)(23) of Regulation NMS) or any other market center. A DMM may not disseminate a market maker bid or offer on another market center or electronic communications network at a price at which Exchange rules would preclude dissemination of such bid or offer on the Exchange.

.11 **Participation at openings or reopenings.**—A DMM should avoid participating as a dealer in opening or reopening a stock in such a manner as to upset the public balance of supply and demand as reflected by market and limited price orders, unless the condition of the general market or the DMM's position in light of the reasonably anticipated needs of the market makes it advisable to do so. He may, however, buy or sell stock as a dealer to minimize the disparity between supply and demand at an opening or reopening.

.11A Reserved.

.11B Reserved.

.11C See paragraph (d)(iv) of Rule 900 - Equities (Off-Hours Trading: Applicability and Definitions) in respect of (a) the impact of Off-Hours Trading on the calculation of stock positions.

.12 **DMM Investment Accounts.**—Under certain circumstances a DMM may assign registered securities to an investment account. Purchases creating or adding to a position in an investment account which are not reasonably necessary to permit the maintenance of a fair and orderly market or to act as an odd-lot dealer are not to be made.

In the maintenance of price continuity with reasonable depth, it is commonly desirable for a DMM to supply stock to the market, even though he may have to sell short to do so, to the extent reasonably necessary to meet the needs of the market.

A DMM may not effect a transfer of a registered security from his dealer account to an investment account if the transfer would result in creating a short position in the dealer account.

A DMM may not assign to an investment account any registered security which was purchased in the round-lot market on a `plus' or `zero plus' tick. In addition, in order to make such assignment, he must have maintained, with respect to purchases in that stock, a stabilization rate of at least 75%, measured by the Tick Test, as defined in Rule 112 - Equities for the day of purchase, and for the entire calendar week encompassing that day.

If a `net long' position is created as a result of the maintenance of an investment position in a registered security while a short position exists in the DMM's dealer account, the DMM may not cover such a short position by purchasing stock in the round-lot market on a `plus' tick. In addition, he must also limit his purchase to no more than 50% of the stock offered on a `zero plus' tick, and in no event may he purchase the final 100 shares offered.

See paragraph (d)(iii) of Rule 900 - Equities in respect of (a) the assignment of a registered security acquired through the Off-Hours Trading Facility to an investment account and (b) the purchase of securities through the Off-Hours Trading Facility to cover a short position in a dealer account.

Reporting Requirements

> In connection with investment positions in registered securities, a DMM shall report to the Exchange, on such form and in such format as the Exchange may from time to time prescribe, a record of all transactions effected for investment purposes. The DMM shall also report to the Exchange, on such form and in such format as the Exchange may from time to time prescribe, a record of all transactions effected for investment purposes for the account of any person specified in Rule 104.13 - Equities.

.13 **Investment Transactions.—**

(a) Any transactions effected for the benefit of any of the following persons in stocks in which a DMM is registered must be for investment purposes:

  (i) any member, principal executive, officer, employee or person or party active in the business of the DMM; or

(ii) the spouse and children of any of the above-named persons or parties who reside in the same household as such person or party.

(b) Any transaction included within paragraph (a) may only be made as follows:

(i) acquisitions at prices below the last different price—on "minus" or "zero minus" ticks; and

(ii) liquidations at prices above the last different price—on "plus" or "zero plus" ticks—except with the prior approval of the Exchange.

(c) All off-Floor orders entered for any of the above-named accounts must be identified so that such orders will not be executed prior to any agency order received by the DMM at the same price even though such agency order may be received subsequent to the identified order.

(d) No DMM, and no member or principal executive affiliated with such DMM, officer, employee or person active in the business of the DMM shall originate orders in stocks in which such DMM is registered for any account over which they exercise investment discretion.

(e) Transactions in a stock in which a DMM is registered effected for trust accounts, including "blind" accounts, for the benefit of such DMM or any person specified in paragraph (a) shall be subject to the provisions of this rule. Transactions in a fund which invests broadly in securities and which may from to time invest in a security in which a DMM is registered, shall not be subject to this rule.

.14 **LIFO transactions.**—A member acting as a DMM may not effect transactions for the purpose of adjusting a LIFO inventory in a stock in which he is so acting except as a part of a course of dealings reasonably necessary to assist in the maintenance of a fair and orderly market.

.15 **Relief DMMs.**—Any member registered as a regular DMM must either (1) be associated with other members also registered as regular DMMs in the same stocks, either through a partnership or a member corporation or a joint account, and arrange for at least one member of the group to be in attendance during the hours when the Exchange is open for business, or (2) arrange for the registration by at least one other member as relief DMM, who would always be available, in the regular DMM's absence, to take over the `book' and to service the market, so that there would be no interruption of the continuity of service during the hours when the Exchange is open for business.

The same obligations and responsibilities for the maintenance and stabilization of markets which rest upon regular DMMs, rest also upon relief DMM while in possession of the `book.'

Approval of the registration of a regular DMM as a relief DMM will be granted provided that the surrounding circumstances are such as to permit him to act in such relief capacity, and at the same time insure the adequate servicing of the stocks in which he is registered as a regular DMM and the proper performance of his dealer function therein.

.17 **Temporary DMMs.**—In the event of an emergency, such as the absence of the regular and relief DMMs, or when the volume of business in the particular stock or stocks is so great that it cannot be handled by the regular and relief DMMs without assistance, a Floor Governor may authorize a member of the Exchange who is not registered as a DMM or relief DMM in such stock or stocks, to act as temporary DMM for that day only.

A member who acts as a temporary DMM by such authority is required to file with Market Surveillance, at the end of the day, a report showing (a) the name of the stock or stocks in which he so acted, (b) the name of the regular DMM, (c) the time of day when he so acted, and (d) the name of the Floor Governor who authorized the arrangement. The necessary forms may be obtained at the Information Desk.

The Floor Governor will not give such authority for the purpose of permitting a member not registered as DMM or relief DMM habitually to relieve a regular DMM at lunch periods, etc.

If a temporary DMM substitutes for a regular DMM, and if no regular or relief DMM is present, the temporary DMM is expected to assume the obligations and responsibilities of regular DMMs for the maintenance and stabilization of the market.

.24 Relief DMMs.—

(1) A full time relief DMM, i.e., one who may be called upon to act as a relief DMM for an entire business day, shall have no financial requirement so long as his or her dealings while relieving the regular DMM are effected for the account of the regular DMM. A full time relief DMM must satisfy the financial requirements of Rule 103.20 - Equities with respect to the securities in which he or she is acting as a relief DMM if the relief DMM, or the DMM unit providing the relief DMM, participates in the profit and loss of the dealings by the relief DMM.

(2) There is no requirement with respect to a member registered as a part-time relief DMM, i.e., one who may be called upon to act as a relief DMM for less than the entire business day, usually for lunch periods, etc. Dealings effected by a part-time relief DMM while relieving the regular DMM must be made for the account of the regular DMM whom he is relieving.]

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Rule 104 - Equities. Dealings and Responsibilities of DMMs

[The provisions of this rule shall be in effect during a Pilot Set to end on October 31, 2015.

This version of Rule 104 - Equities is operative no later than five weeks after the approval by the Securities and Exchange Commission of SR-NYSE-2008-46.]

(a) DMMs registered in one or more securities traded on the Exchange must engage in a course of dealings for their own account to assist in the maintenance of a fair and orderly market insofar as reasonably practicable. The responsibilities and duties of a DMM specifically include, but are not limited to, the following:

(1) Assist the Exchange by providing liquidity as needed to provide a reasonable quotation and by maintaining a continuous two-sided quote with a displayed size of at least one round lot.

(A) With respect to maintaining a continuous two-sided quote with reasonable size, DMM units must maintain a bid or an offer at the National Best Bid and National Best Offer ("inside") at least 10% of the trading day for securities in which the DMM unit is registered with a consolidated average daily volume of less than one million shares, and at least 5% for securities in which the DMM unit is registered with a consolidated average daily volume equal to or greater than one million shares. Time at the inside is calculated as the average of the percentage of time the DMM unit has a bid or offer at the inside. In calculating whether a DMM is meeting the 10% and 5% measure, credit will be given for executions for the liquidity provided by the DMM. Reserve or other hidden orders entered by the DMM will not be included in the inside quote calculations.

(B) *Pricing Obligations*. For NMS stocks (as defined in Rule 600 under Regulation NMS) a DMM shall adhere to the pricing obligations established by this Rule during the trading day; provided, however, that such pricing obligations (i) shall not commence during any trading day until after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan processor, and (ii) shall be suspended during a trading halt, suspension, or pause, and shall not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor.

(i) Bid and Offer Quotations. At the time of entry of the DMM's bid (offer) interest, the price of the bid (offer) interest shall be not more than the Designated Percentage away from the then current National Best Bid (Offer), or if no National Best Bid (Offer), not more than the Designated Percentage away from the last reported sale from the responsible single plan processor. In the event that the National Best Bid (Offer) (or if no National Best Bid

(Offer), the last reported sale) increases (decreases) to a level that would cause the bid (offer) interest to be more than the Defined Limit away from the National Best Bid (Offer) (or if no National Best Bid (Offer), the last reported sale), or if the bid (offer) is executed or cancelled, the DMM shall enter new bid (offer) interest at a price not more than the Designated Percentage away from the then current National Best Bid (Offer) (or if no National Best Bid (Offer), the last reported sale), or identify to the Exchange current resting interest that satisfies the DMM's obligation according paragraph (1)(A), above.

(ii) The National Best Bid and Offer shall be determined by the Exchange in accordance with its procedures for determining protected quotations under Rule 600 under Regulation NMS.

(iii) For purposes of this Rule, the "Designated Percentage" shall be 8% for securities subject to Rule 80C(a)(i), 28% for securities subject to Rule 80C(a)(ii), and 30% for securities subject to Rule 80C(a)(iii), except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 80C is not in effect, the Designated Percentage shall be 20% for securities subject to Rule 80C(a)(i), 28% for securities subject to Rule 80C(a)(ii), and 30% for securities subject to Rule 80C(a)(iii).

(iv) For purposes of this Rule, the "Defined Limit" shall be 9.5% for securities subject to Rule 80C(a)(i), 29.5% for securities subject to Rule 80C(a)(ii), and 31.5% for securities subject to Rule 80C(a)(iii), except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 80C is not in effect, the Defined Limit shall be 21.5% for securities subject to Rule 80C(a)(i), 29.5% for securities subject to Rule 80C(a)(ii), and 31.5% for securities subject to Rule 80C(a)(iii).

Nothing in this Rule shall preclude a DMM from quoting at price levels that are closer to the National Best Bid and Offer than the levels required by this Rule.

(2) Facilitate openings and reopenings for each of the securities in which the DMM is registered as required under Exchange rules. This may include supplying liquidity as needed. (See Rule 123D - Equities for additional responsibilities of DMMs with respect to openings and Rule 13 - Equities with respect to Reserve Order interest procedures at the opening.) DMM and DMM unit algorithms will have access to aggregate order information in order to comply with this requirement. [(See Supplementary Material .05 of this Rule 104 - Equities with respect to odd-lot order information to the DMM unit algorithm.)]

(3) Facilitate the close of trading for each of the securities in which the DMM is registered as required by Exchange rules. This may include supplying liquidity as needed. (See Rule 123C - Equities for additional responsibilities of DMMs with

respect to closes and Rule 13 - Equities with respect to Reserve Order interest procedures at the close.) DMM and DMM unit algorithms will have access to aggregate order information in order to comply with this requirement.

(b) **DMM Unit Algorithms**

(i) DMM units shall have the ability to employ algorithms for quoting and trading consistent with Exchange and SEC regulations.

(ii) Exchange systems shall enforce the proper sequencing of incoming orders and algorithmically-generated messages and will prevent incoming DMM interest from trading with resting DMM interest. If the incoming DMM interest would trade with resting DMM interest only, the incoming DMM interest will be cancelled. If the incoming DMM interest would trade with interest other than DMM interest, the resting DMM interest will be cancelled.

(iii) Except as provided for in paragraphs (a)(2) and (a)(3) of this Rule, the DMM unit's system employing algorithms will have access to information with respect to orders entered on the Exchange, Floor Broker agency interest files or reserve interest, to the extent such information is made publicly available. DMM unit algorithms will receive the same information with respect to orders entered on the Exchange, Floor Broker agency interest files or reserve interest as is disseminated to the public by the Exchange and shall receive such information no sooner than it is available to other market participants.

(iv) The DMM unit's algorithm may place within Exchange systems trading interest to be known as a "Capital Commitment Schedule". (See Rule 1000 - Equities concerning the operation of the Capital Commitment Schedule.)

(v) All DMM unit trades via an algorithm must comply with all SEC and Exchange rules, policies and procedures governing DMM unit trading.

(vi) DMM units may not enter the following orders and modifiers: Market Orders, GTC Modifiers, MOO Orders, CO Orders, MOC Orders, LOC Orders, DNR Modifiers, DNI Modifiers, Sell "Plus" - Buy "Minus" Instructions, or Stop Orders.

(c) A DMM unit may maintain reserve interest consistent with Exchange rules governing Reserve Orders. Such reserve interest is eligible for execution in manual transactions.

(d) A DMM unit may provide algorithmically-generated price improvement to all or part of an incoming order that can be executed at or within the Exchange BBO through the use of Capital Commitment Schedule interest (see Rule 1000 - Equities). Any orders eligible for execution in the [Display Book® system]Exchange systems at the price of the DMM unit's interest will trade on parity with such interest, as will

any displayed interest representing a d-Quote enabling such interest to trade at the same price as the DMM unit's interest.

(e) DMM units shall provide contra side liquidity as needed for the execution of odd-lot quantities that are eligible to be executed as part of the opening, re-opening and closing transactions but remain unpaired after the DMM has paired all other eligible round lot sized interest.

(f) **Functions of DMMs**

    (i) Any member who expects to act as a DMM in any listed stock must be registered as a DMM. See Rule 103 - Equities for registration requirements for DMMs.

    (ii) The function of a member acting as a DMM on the Floor of the Exchange includes the maintenance, in so far as reasonably practicable, of a fair and orderly market on the Exchange in the stocks in which he or she is so acting. The maintenance of a fair and orderly market implies the maintenance of price continuity with reasonable depth, to the extent possible consistent with the ability of participants to use reserve orders, and the minimizing of the effects of temporary disparity between supply and demand. In connection with the maintenance of a fair and orderly market, it is commonly desirable that a member acting as DMM engage to a reasonable degree under existing circumstances in dealings for the DMM's own account when lack of price continuity, lack of depth, or disparity between supply and demand exists or is reasonably to be anticipated.

    (iii) The Exchange will supply DMMs with suggested Depth Guidelines for each security in which a DMM is registered. The administration of the Depth Guidelines will be contained in notices periodically issued to all DMMs. In connection with a DMM's responsibility to maintain a fair and orderly market, DMMs will be expected to quote and trade with reference to the Depth Guidelines where necessary.

    (iv) DMMs are designated as market maker on the Exchange for all purposes under the Securities Exchange Act of 1934 and the rules and regulations thereunder.

(g) **Transactions by DMMs**

(i) Transactions on the Exchange by a DMM for the DMM's account are to be effected in a reasonable and orderly manner in relation to the condition of the general market and the market in the particular stock.

    (A) The following types of transactions are permitted to render the DMM's position adequate to such markets' needs:

    (I) Neutral Transactions

(1) Definition - A neutral transaction is a purchase or sale by which a DMM liquidates or decreases a position.

(2) Neutral Transactions may be made without restriction as to price.

(3) Re-entry Obligation Following Neutral Transactions - The DMM's obligation to maintain a fair and orderly market may require re-entry on the opposite side of the market trend after effecting one or more Neutral Transactions. Such re-entry transactions should be in accordance with the immediate and anticipated needs of the market.

(II) Non-Conditional Transactions

(1) Definition - A non-conditional transaction is a DMM's bid or purchase and offer or sale that establishes or increases a position, other than a transaction that reaches across the market to trade with the Exchange BBO.

(2) Non-Conditional Transactions may be made without restriction as to price in order to:

(i) match another market's better bid or offer price;

(ii) bring the price of a security into parity with an underlying or related security or asset;

(iii) add size to an independently established bid or offer on the Exchange;

(iv) purchase at the published bid price on the Exchange;

(v) sell at the published offer price on the Exchange;

(vi) purchase or sell at a price between the Exchange BBO;

(vii) purchase below the published bid or sell above the published offer on the Exchange;

(3) Re-entry Obligation Following Non-Conditional Transactions - The DMM's obligation to maintain a fair and orderly market may require re-entry on the opposite side of the market trend after effecting one or more Non-Conditional Transactions. Such re-entry transactions should be commensurate with the size of the Non-Conditional Transactions and the immediate and anticipated needs of the market.

(III) Prohibited Transactions

(1) During the last ten minutes prior to the close of trading, a DMM with a long position in a security is prohibited from making a purchase in such security that results in a new high price on the Exchange for the day at the time of the DMM's transaction, except as provided in subparagraphs (g)(i)(A)(II)(2)(i) through (g)(i)(A)(II)(2)(ii) above.

(2) During the last ten minutes of trading, a DMM with a short position in a security is prohibited from making a sale in such security, that results in a new low price on the Exchange for the day at the time of the DMM's transaction, except as provided in subparagraphs (g)(i)(A)(II)(2)(i) through (g)(i)(A)(II)(2)(ii) above.

(h) DMM Transactions in Securities that Establish or Increase the DMM's Position:

(i) Definition - A "Conditional Transaction" is a DMM's transaction in a security that establishes or increases a position and reaches across the market to trade as the contra-side to the Exchange published bid or offer.

(ii) The following Conditional Transactions, may be made by a DMM without restriction as to price, provided they are followed by appropriate re-entry on the opposite side of the market commensurate with the size of the DMM's transaction. ("Appropriate" re-entry shall mean re-entry on the opposite side of the market at or before the price participation point or the "PPP".):

(A) A DMM's purchase from the Exchange published offer that is priced above the last differently-priced trade on the Exchange and above the last differently-priced published offer on the Exchange; and

(B) A DMM's sale to the Exchange published bid that is priced below the last differently-priced trade on the Exchange and below the last differently-priced published bid on the Exchange.

(iii) Re-entry Obligations for Conditional Transactions:

(A) "PPPs"—The Exchange will periodically issue guidelines, called price participation points ("PPP"), that identify the price at or before which a DMM is expected to re-enter the market after effecting a Conditional Transaction. PPPs are only minimum guidelines and compliance with them does not guarantee that a DMM is meeting its obligations.

(B) Notwithstanding that a security may not have reached the PPP, the DMM may be required to re-enter the market immediately after a Conditional Transaction based on the price and/or volume of the DMM's trading in reference to the market in the security at the time of such trading. In such situations DMMs may or may not rely on the fact and circumstance that there may have been one

or more independent trades following the DMM's trading to justify a failure to re-enter the market.

(C) Immediate re-entry is required after the following Conditional Transactions:

(I) A purchase that (1) reaches across the market to trade with an Exchange published offer that is above the last differently priced trade on the Exchange and above the last differently priced published offer on the Exchange, (2) is 10,000 shares or more or has a market value of $200,000 or more, and (3) exceeds 50% of the published offer size.

(II) A sale that (1) reaches across the market to trade with an Exchange published bid that is below the last differently priced trade on the Exchange and below the last differently priced published bid on the Exchange, (2) is 10,000 shares or more or has a market value of $200,000 or more, and (3) exceeds 50% of the published bid size.

(III) A sweep is viewed as a transaction with the published bid or offer for the purpose of subparagraphs (h)(iii)(C)(I) and (h)(iii)(C)(II) above.

(iv) The following Conditional Transactions may be made without restriction as to price:

(A) A DMM's purchase from the Exchange published offer that is priced above the last differently-priced trade on the Exchange or above the last differently-priced published offer on the Exchange; and

(B) A DMM's sale to the Exchange published bid that is priced below the last differently-priced trade on the Exchange or below the last differently-priced published bid on the Exchange.

(i) Re-entry obligations following transactions defined in subparagraphs (h)(iv)(A) and (h)(iv)(B) above are the same as for Non-Conditional Transactions pursuant to subparagraph (g)(i)(A)(3) above.

(j) **Trading Floor Functions of DMMs**

(i) A DMM may perform the following Trading Floor functions:

(A) maintain order among Floor brokers manually trading at the DMM's assigned panel;

(B) bring Floor brokers together to facilitate trading, which may include the DMM as a buyer or seller;

(C) assist a Floor broker with respect to an order by providing information regarding the status of a Floor broker's orders, helping to resolve errors or questioned trades, adjusting errors, and cancelling or inputting Floor broker agency interest on behalf of a Floor broker; and

(D) research the status of orders or questioned trades on his or her own initiative or at the request of the Exchange or a Floor broker when a Floor broker's handheld device is not operational, when there is activity indicating that a potentially erroneous order was entered or a potentially erroneous trade was executed, or when there otherwise is an indication that improper activity may be occurring.

(ii) The Exchange may make systems available to a DMM at the post that display the following information about securities in which the DMM is registered: (A) aggregated buying and selling interest; (B) the price and size of any individual order or Floor broker agency interest file and the entering and clearing firm information for such order, except that the display shall exclude any order or portion thereof that a market participant has elected not to display to a DMM; and (C) post-trade information. A DMM may not use any information provided by Exchange systems pursuant to this subparagraph (ii) in a manner that would violate Exchange rules or federal securities laws or regulations.

(iii) The DMM may provide market information that is available to the DMM at the post as described in subparagraph (j)(ii) to: (A) respond to an inquiry from a Floor broker in the normal course of business; or (B) visitors to the Trading Floor for the purpose of demonstrating methods of trading; provided, however, that a Floor broker may not submit an inquiry pursuant to this subparagraph (j)(iii) by electronic means and the DMM may not use electronic means to transmit market information to a Floor broker in response to a Floor broker's inquiry pursuant to this subparagraph (j)(iii).

(k) Temporary DMMs. In the event of an emergency, such as the absence of the DMM, or when the volume of business in the particular stock or stocks is so great that it cannot be handled by the DMMs without assistance, a Floor Governor may authorize a member of the Exchange who is not registered as a DMM in such stock or stocks, to act as temporary DMM for that day only.

A member who acts as a temporary DMM by such authority is required to file with [NYSE Regulation's Division of Market Surveillance]the Exchange, at the end of the day, a report showing (a) the name of the stock or stocks in which he so acted, (b) the name of the regular DMM, (c) the time of day when he so acted, and (d) the name of the Floor Governor who authorized the arrangement. The necessary forms may be obtained at the Information Desk.

The Floor Governor will not give such authority for the purpose of permitting a member not registered as DMM habitually to relieve another DMM at lunch periods, etc.

If a temporary DMM substitutes for a DMM, and if no DMM is present, the temporary DMM is expected to assume the obligations and responsibilities of DMMs for the maintenance of the market.

[• • • *Supplementary Material:*

.05 Odd-lot Order Information to DMM Unit Algorithm. DMM unit algorithm will receive odd-lot order-by-order information prior to the opening from Exchange systems until no later than October 31, 2009.]

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Rule 1000 - Equities. Automatic Execution of Limit Orders Against Orders Reflected in Exchange Published Quotation

[The provisions of this rule relating to the Capital Commitment Schedule shall be in effect during a Pilot scheduled to end on October 31, 2015.]

Maximum Order Size for Automatic Executions

Market and limit orders of such size as the Exchange may specify from time to time are eligible to initiate or participate in automatic executions. Orders up to 1,000,000 shares are eligible for automatic execution. Incoming orders of more than 1,000,000 shares that are marketable on arrival will be rejected. Upon advance notice to market participants, the Exchange may increase the order size eligible for automatic executions up to 5,000,000 shares on a security-by-security basis.

Maximum Systems Order Size Accepted by Exchange Systems

Exchange systems shall accept a maximum order size of up to 25,000,000 shares, except Floor broker systems shall accept a maximum order size of up to 99,000,000 shares.

(a) An automatically executing order shall receive an immediate, automatic execution against orders reflected in the Exchange published quotation, orders on the [Display Book®,]Exchange book, including Floor broker agency file interest ("e-Quotes"), Floor broker proprietary file interest ("G-quotes"), DMM interest, and interest placed in the Exchange's systems by DMMs pursuant to a Capital Commitment Schedule in accordance with, and to the extent provided by Exchange rules, including Rules 13 - Equities, 60 - Equities, 70 - Equities, 72 - Equities, and 104 - Equities, and shall be immediately reported as Exchange transactions, unless:

(i) trading in the subject security has been halted; or

(ii) a block-size transaction as defined in Rule 127.10 **-** Equities that involves orders [on the Display Book®]in the Exchange book is being reported manually; Automatic executions will resume when manual reporting is concluded.

(b) Automatic executions will resume in the same way autoquoting will resume, as provided in Rules 60(d)(ii) - Equities.

(c) Trading Collar. An incoming market order, including an elected stop order, or marketable limit order to buy (sell) will not execute or route to another market center at a price above (below) the Trading Collar.

   (i) Calculation of the Trading Collar. The Trading Collar shall be a specified percentage above the National Best Offer ("NBO") for buy orders and below the National Best Bid ("NBB") for sell orders. If the NBB or the NBO is greater than $0.00 up to and including $25.00, the specified percentage shall be 10%. If the NBB or NBO is greater than $25.00 up to and including $50.00, the specified percentage shall be 5%. If the NBB or NBO is greater than $50.00, the specified percentage shall be 3%. If the NBBO is crossed, the Exchange shall use the Exchange Best Offer ("BO") instead of the NBO for buy orders and the Exchange Best Bid ("BB") instead of the NBB for sell orders. If there is no NBB or BB, the lower boundary of the Trading Collar is zero. If there is no NBO or BO, the upper boundary of the Trading Collar is set to the maximum price that the System could handle.

   (ii) Trading Collars are applicable only when automatic executions are in effect. An incoming market or marketable limit order to buy (sell) shall execute and/or route up (down) to (and including) the Trading Collar and any remaining interest shall be cancelled, including if the Trading Collar equals a Price Band, as defined in Rule 80C - Equities. Unless it is a non-routable order to buy (sell), the buy (sell) order would route to all markets at or below (above) the Trading Collar. If there is no execution opportunity at the Exchange at a price above (below) the NBO (NBB) and at or below (above) the Trading Collar, a buy (sell) order, or remainder of partially executed order, that is priced at or above (below) the Trading Collar would not route and shall be cancelled.

   (iii) During a Short Sale Price Test, if the NBBO is crossed, short sale orders that would be re-priced to a Trading Collar shall be cancelled.

(d) Capital Commitment Schedule

(i) For each security in which it is registered, a DMM unit may place within Exchange systems a pool of liquidity to be available to fill or partially fill incoming orders in automatic executions and to be known as a "Capital Commitment Schedule" ("CCS") pursuant to the provisions of subparagraph (e) and (g) below. The CCS is the DMM unit's

commitment to trade a specified number of shares at specified price points in reaction to incoming contra side interest that is equal to or greater than one round lot, received through Exchange systems. CCS interest shall be used to trade at the Exchange BBO, at prices better than the Exchange BBO and at prices outside the Exchange BBO. CCS interest shall supplement displayed and non-displayed interest of the DMM on the [Display Book®]Exchange book.

(ii) CCS interest must be for a minimum of one round lot of a security and be entered at price points that are at, inside or away from the Exchange BBO.

(e) Executions at and Outside the Exchange Best Bid or Offer

(i) Automatically executing orders to buy shall trade with the Exchange published best offer. Automatically executing orders to sell shall trade with the Exchange published best bid. All displayed interest at the Exchange BBO shall be allocated in accordance with Rule 72 - Equities.

(ii) Where the volume associated with the Exchange published best bid (offer) is insufficient to fill an automatically executing order in its entirety, other than Regulation NMS-compliant Immediate or Cancel Order or Do Not Ship Order, the unfilled balance of such order (the "residual") shall trade with available contra-side interest in the following order:

(A) reserve interest at the Exchange published best bid (offer);

(B) DMM unit CCS interest at the Exchange published best bid (offer) if such CCS interest will fill the balance of such order at the best bid (offer). Any CCS interest eligible to participate in the execution at the Exchange BBO shall yield to all other interest at that price; or

(C) if a residual remains, it shall then "sweep" the [Display Book® system]Exchange book as set forth in (iii) below, until it is executed in full, its limit price, if any, is reached, a Trading Collar or Price Band is reached, or in the case of a Reg. NMS-compliant IOC order or Do Not Ship order, as described in Rule 13 - Equities, trading at a particular price on the Exchange would require cancellation because the order cannot be routed to another market center, whichever occurs first.

(iii) Automatic Execution of Orders in Executions Outside the Exchange BBO ("Sweeps")

(A) During a sweep (i.e., a trade that takes place at prices outside the Exchange BBO), the residual shall trade with the orders [on the Display Book® system]in the Exchange book and any broker agency interest files ("e-Quotes"), broker proprietary interest files ("G-Quotes") and/or DMM interest files capable of execution in accordance with Exchange rules, at each successive price lower than the displayed bid (in the case of a

sweeping sell order) or higher than the displayed offer (in the case of a sweeping buy order) unless the interest reaches a Trading Collar or Price Band, whichever is reached first.

(1) If the contra side order is not executed in full at the Exchange BBO, Exchange systems will then calculate the unfilled volume of the contra side order and review the additional displayed and non-displayed interest available in the [Display Book® system]Exchange book including the CCS interest submitted by the DMM unit and any protected bids or offers on markets other than the Exchange ("away interest") to determine the price at which the remaining volume of the contra side order can be executed in full. This is the "completion price".

(2) Exchange systems will then identify the next price that is one minimum price variation ("MPV") (as that term is defined in Rule 62 - Equities) or more inside the completion price (i.e., for an incoming contra side order to buy, one MPV lower, and for an incoming contra side order to sell, one MPV higher) at which the maximum volume of CCS interest exists to trade with the residual volume of the contra side order. This is the "better price" for CCS interest. The residual amount of the contra side order will be executed at the better price against the displayed, non-displayed and CCS interest, with CCS interest yielding to any other interest in Exchange systems at the better price.

(3) Any remaining volume of the contra side order that is unfilled following the trade with the CCS interest will trade against displayable and non-displayable interest pursuant to Rule 72 - Equities governing parity, but not CCS interest, at the price point at which the contra side order will be completed.

(4) During a sweep transaction, if Exchange systems review the displayed and non-displayed interest available in the [Display Book® system]Exchange book (including the CCS interest submitted by the DMM unit) and any protected bids or offers on markets other than the Exchange ("away interest") and determine that the order cannot be executed in full because: there is insufficient volume up to the order's limit price, if any, then Exchange systems may partially fill the order utilizing CCS interest when the DMM has designated such CCS interest for partial execution.

CCS interest shall be accessed by Exchange systems to partially fill Incoming Regulation NMS-compliant Immediate or Cancel Orders, Exchange Immediate or Cancel Orders and any order whose partial execution will result in a remaining unfilled quantity of less than one round lot even if such CCS interest is not designated for partial execution.

CCS interest utilized in the partial execution of an order will execute against the remaining shares of the incoming order at the order's limit price, if any.

(5) CCS interest may only participate once in the execution of a contra side order during a sweep.

(B) Where a bid or offer protected from a trade-through by Securities and Exchange Commission rule is better than an execution price during a sweep, the portion of the sweeping residual that satisfies the size of such better priced protected bid or offer ("away interest") will be automatically routed as an order to the market center publishing such better protected bid or offer except with respect to Regulation NMS compliant IOC orders or Do Not Ship orders, as described in Rule 13 - Equities. Such commitments to trade to satisfy away interest will be transmitted only after CCS interest has participated in an execution on the Exchange pursuant to the procedures contained in section (d)(iii) of this Rule.

(C) During a sweep, sell short orders, must comply with the conditions outlined in the Exchange Rule 440B.

(iv) Any residual of an auto ex limit order remaining after the sweep described in (d)(ii) above shall be displayed as a limit order [on the Display Book.®]in the Exchange book and will be bid (offered) at the order's limit price, if any.

(A) Exceptions:

Residuals will be cancelled in the manner described in Rule 13 for the following order types:

   (i) Regulation NMS-compliant Immediate or Cancel orders;

   (ii) NYSE Immediate or Cancel orders; and

   (iii) Intermarket sweep orders.

Auto ex orders that cannot be immediately executed shall be displayed as limit orders in the auction market.

(f) Price Improvement Offered by CCS Interest

(1) CCS interest may trade inside the Exchange BBO with interest arriving in the Exchange market that:

   (A) Will be eligible to trade at or through the Exchange BBO; or

   (B) Will be eligible to trade at the price of interest in Exchange systems representing non displayable reserve interest of Reserve Orders and Floor broker agency interest files reserve interest ("hidden interest") or MPL Orders; or

(C) Will be eligible to route to away market interest for execution

if the total volume of CCS interest, plus d-Quote interest in Floor broker agency interest files, plus any interest represented by hidden interest would be sufficient to fully complete the arriving interest at a price inside the Exchange BBO.

(2) In such an instance, the [Display Book® system]Exchange system will determine the price point inside the Exchange BBO at which the maximum volume of CCS interest will trade, taking into account the volume, if any, available from d-Quotes and hidden interest. The arriving interest will then be executed at that price, with all interest (CCS, d-Quote, hidden interest) trading on parity.

(g) CCS Trades With Non-Marketable Interest

(1) For purposes of this section, the term "non-marketable" means trading interest (i.e. displayable and non-displayable) that is at a price higher than the current Exchange bid (but below the current Exchange offer) or lower than the current Exchange offer (but above the current Exchange bid) including better bids and offers on other market centers.

(2) CCS interest may trade with non-marketable interest where such non-marketable interest will better the Exchange BBO (or will cancel in the case of an arriving IOC order) if the incoming interest may be executed in full by all interest available in the [Display Book®]Exchange book including CCS interest and d-quotes. Such trade will take place at the limit price of the arriving non-marketable interest. All interest trading with the incoming interest will trade on parity.

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Rule 107B - Equities. Supplemental Liquidity Providers

(a) For purposes of this Rule, a Supplemental Liquidity Provider ("SLP") is a member organization that electronically enters proprietary orders or quotes from off the Floor of the Exchange into the systems and facilities of the Exchange and is obligated to maintain a bid or an offer at the National Best Bid ("NBB") or the National Best Offer ("NBO") in each assigned security in round lots averaging at least 5% of the trading day (see Section (g) below). An SLP can be either a proprietary trading unit of a member organization ("SLP-Prop") or a registered market maker at the Exchange ("SLMM").[This pilot program will end on October 31, 2015.]

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Rule 500 - Equities. Applicability

(a) The Rules of this series (Rules 500 through 525 - Equities) shall apply to all transactions involving a UTP Security, as that term is defined in Rule 501(d) - Equities, that is granted unlisted trading privileges on the Exchange including the handling of

orders, the conduct of accounts, and other matters relating to the trading of UTP Securities on the Exchange. Except to the extent that the provisions of Rules 500-525 - Equities specifically conflict, all other Equities rules shall apply to transactions involving UTP Securities conducted on the Exchange. If any provisions of Rules 500-525 - Equities conflict with any other Equities rule, the Rule 500 series shall govern. Rule 475, 476, 476A, and 477 shall also apply to all transactions involving UTP Securities conducted on the Exchange.

[(b) Rules 500 - 525 - Equities shall operate as a pilot program. This pilot program will expire on the earlier of a permanent approval of these Rules by the Securities and Exchange Commission or on October 31, 2015.]

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