

# OTHER NASDAQ MARKETS

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## **5000. OTHER NASDAQ MARKETS**

### **5100. NASDAQ INTERNATIONAL SERVICE RULES**

#### **5101. Applicability**

(a) These Rules shall be known as the "International Rules" and govern operation of the Nasdaq International Service ("Nasdaq International" or "Service"), as well as the obligations, access to and use of the Service by the following parties: broker/dealers admitted to membership in Nasdaq (collectively, "Nasdaq members"); associated persons of such Nasdaq members; and any non-member broker/dealer having the status of an approved affiliate. Unless otherwise indicated, the requirements of the International Rules are in addition to those contained in the By-Laws and other Rules of Nasdaq.

(b) Rules 5106, 5108, 5109, and 5112 of the International Rules establish requirements that apply exclusively to participation in the Service during the European Session. As such, these provisions of the International Rules supersede the Rule , 4640, 6300 and 6600 Series: and Rules 6410, 6420 and 6450. Non-compliance with any applicable requirement will subject the Nasdaq member and/or its associated person(s) to regulatory action under Nasdaq's Code of Procedure, the Rule 9000 Series.

(c) Unless otherwise indicated within a particular provision of the International Rules, all procedures, requirements, and prohibitions shall apply with equal force to Nasdaq members, their associated persons, and approved affiliates that participate in the Service.

#### **5102. Definitions**

Unless the context otherwise requires, or unless defined in the International Rules, the terms used herein shall retain their present meanings as defined in the By-Laws and other Rules of Nasdaq .

(a) "Approved affiliate" means a broker/dealer that meets all of the following requirements:

(1) it is not admitted to membership in Nasdaq, any other registered national securities exchange, or the NASD;

(2) it is authorized to conduct securities business in the United Kingdom in accord with all applicable provisions of the Financial Services Act of 1986, or any successor law;

(3) it controls, is controlled by, or is under common control with a Nasdaq member (hereinafter referred to as a "control relationship"); and

(4) it has been approved by Nasdaq to participate as a Service market

- maker, in an agency capacity, on behalf of the Nasdaq member with whom it has a control relationship.
- (b) "Domestic Session" refers to the market session operated by Nasdaq between the hours of 9:30 a.m. and 4:00 p.m. Eastern Time on each U.S. business day.
- (c) "European-only market maker" means a broker/dealer that is registered with the Nasdaq to make markets in one or more qualified securities in the SERVICE, but is not registered in the same security(ies) for purposes of making a market during the Domestic Session.
- (d) "European Session" refers to the market session supported by the Service during the hours specified in Rule 5103.
- (e) "International market maker" means a broker/dealer that is registered with Nasdaq to make markets in one or more qualified securities in the SERVICE and is also registered with Nasdaq to make markets in the same security(ies) during the Domestic Session.
- (f) The terms "Nasdaq International" and "Service" refer to an extension of the basic automation capabilities that support Nasdaq members' market making in the Nasdaq National Market (NNM), and other exchange-listed securities traded pursuant to unlisted trading privileges to the business hours fixed by Rule 5103.
- (g) "Non-NNM security" means every qualified security in the subset defined by Rule 5104(b).
- (h) "Qualified security" means any security that satisfies the requirements contained in Rule 5104.
- (i) "Service market maker" includes any Nasdaq member that is registered as a European-only or International market maker in one or more qualified securities, and any approved affiliate registered as a European-only market maker in one or more qualified securities.

### **5103. Normal Business Hours**

The Nasdaq International market session (hereinafter referred to as the "European Session") will run from 3:30 a.m. to 9:00 a.m. Eastern Time on each business day in the U.S.; pre-opening procedures will commence at 2:30 a.m. Eastern Time. Appropriate adjustments will be made in the event that the U.S. and the U.K. move to (or from) daylight-saving time on different dates. All times referenced in the International Rules relate to the Eastern Time zone of the U.S.

**5104. Qualified Securities**

Nasdaq deems the following classes of securities qualified for inclusion in Nasdaq International:

- (a) any Nasdaq security that is designated an NNM security;
- (b) any non-Canadian, foreign security or ADR that is included in Nasdaq but not designated an NNM security; and
- (c) any equity security that is listed on another registered national securities exchange and traded pursuant to unlisted trading privileges.

Inclusion of a qualified security in Nasdaq International requires a market making commitment by one or more broker/dealers that participate as Service market makers.

**5105. Access**

(a) Access to the market making capabilities provided by Nasdaq International is restricted to broker/dealers that are either Nasdaq members or approved affiliates and that have all equipment and communication lines specified by Nasdaq for receipt of Nasdaq Workstation Service. Additionally, Nasdaq members that participate as Service market makers, either directly or through the agency of an approved affiliate, must satisfy the same financial and operational requirements applicable to market makers in Nasdaq securities and/or securities listed on another registered national securities exchange and traded pursuant to unlisted trading privileges during the Domestic Session.

(b) Nasdaq members that utilize Nasdaq Workstation units to receive Level 2 Nasdaq Service during the Domestic Session can also receive real-time quotation information entered by Service market makers. Similar access terms will be provided to non-member, Level 2 subscribers utilizing Nasdaq Workstation units.

**5106. Requirements Applicable to Market Makers****(a) Service Market Maker**

Nasdaq members and approved affiliates can function as Service market makers by registering with Nasdaq in one or more qualified securities. Two classifications of market makers are authorized: (1) European-only and (2) International. Nasdaq members can register in either capacity in any qualified security; approved affiliates are limited to European-only registration. At the time of registration, a Service market maker must select one of the following time periods to define its daily market making commitment, on a security-by-security basis: 3:30 a.m. to 9:00 a.m.; 5:30 a.m. to 9:00 a.m., and 7:30 a.m. to 9:00 a.m. Every Service market maker must fulfill the market making obligations specified below in each of its registered securities while participating in the European Session. Based on experience gained with Service market makers' use of

the multiple openings, Nasdaq may determine to alter the specified times by up to one hour or to eliminate an opening altogether.

**(b) Market Maker Obligations**

The following requirements and procedures govern a broker/dealer's participation in Nasdaq International as a Service market maker.

**(1) Registration**

(A) Quotations and quotation size may be entered into the Service only by a Service market maker.

(B) To function as a Service market maker, a Nasdaq member must initially obtain registration as a European-only or International market maker by filing an application with Nasdaq . The application shall certify the Nasdaq member's good standing with Nasdaq , demonstrate compliance with the net capital and other financial responsibility provisions of the Act and the rules thereunder, and specify the qualified security(ies) in which the member is seeking to register as a European-only or International market maker. Initial registration as a Service market maker shall become effective upon the member's receipt of Nasdaq's notice approving such registration.

(C) For an approved affiliate to function as a Service market maker, it must initially obtain registration as a European-only market maker by filing an application with Nasdaq . Such application must be co-signed by a registered principal of the Nasdaq member for whom the approved affiliate will act as agent. The application shall certify the following: the Nasdaq member's good standing with Nasdaq ; the approved affiliate's authorization to conduct securities business in the United Kingdom in accord with all applicable provisions of the Financial Services Act of 1986 or any successor law; and the Nasdaq member's ability to comply and its assumption of compliance with the net capital and other financial responsibility requirements of the Act and the rules thereunder in respect of the approved affiliate's market making in the Service as agent for the Nasdaq member. The application shall also specify the qualified security(ies) in which the approved affiliate is seeking to register as a European-only market maker. Initial registration as a Service market maker shall become effective upon the approved affiliate's receipt of Nasdaq's notice approving such registration.

(D) A Service market maker may become registered in a newly qualified security by telephoning Market Operations. If registration is requested within five (5) business days after the issue becomes qualified, registration shall take effect at the time the request is entered.

(E) A Service market maker may register in additional qualified securities by entering a registration request via its Nasdaq Workstation unit authorized for receipt of the Service. If registration is requested respecting a security that has been a qualified security for more than five (5) days, and the requirements of either subparagraph (B) or (C) above are satisfied, registration shall take effect on the day after the registration request is entered.

(F) Registration in a qualified security shall be terminated by Nasdaq if the Service market maker fails to enter quotations in that security within five (5) business days after its registration in that security first became effective.

## **(2) Normal Business Hours**

Service market makers must be open for business, on each U.S. business day, during the time periods established by their registration in one or more qualified securities. By virtue of the multiple openings feature, a Service market maker would have the flexibility, for example, to register and quote markets in some securities during the 5:30 a.m. to 9:00 a.m. segment and others during the 7:30 a.m. to 9:00 a.m. segment. This flexibility is equally available to Nasdaq members and approved affiliates that participate as Service market makers. Appropriate adjustments will be made in the event that the U.S. and U.K. move to (or from) daylight savings time on different dates.

## **(3) Character of Quotations**

(A) For each security in which a Nasdaq member has registered as a Service market maker, it shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain two-sided quotations in the Service during the hours specified above in subparagraph (2), above, subject to the procedures for excused withdrawal set forth in subparagraph (4) below. An approved affiliate registered as a Service market maker shall assume identical obligations in each of its registered securities. Purchases and sales effected to fulfill those obligations shall be deemed to be made for the account of the Nasdaq member on whose behalf the approved affiliate acts as agent.

(B) A Service market maker that receives an offer to buy or sell from another Nasdaq member or approved affiliate shall execute a transaction for at least a normal unit of trading at its displayed quotations as disseminated through the Service at the time of receipt of any such offer. If a Service market maker displays a quotation for a size greater than a normal unit of trading, it shall, upon receipt of an offer to buy or sell from another Nasdaq member or approved affiliate, execute a

transaction at least at the size displayed.

(C) A Service market maker shall enter and maintain quotations that are reasonably related to the prevailing market. If it appears that such market maker's quotations are no longer reasonably related to the prevailing market, Nasdaq may require the firm to re-enter its quotations. However, if that Service market maker fails to re-enter its quotations, Nasdaq may suspend the market maker's quotations in one or all of the qualified securities in which it is registered.

(D) If a Service market maker's ability to enter or update quotations is impaired, the market maker shall immediately contact Market Operations to request the withdrawal of its quotations.

(E) If a Service market maker's ability to enter or update quotations is impaired and it elects to remain in the Service, the market maker shall execute an offer to buy or sell received from another Nasdaq member or approved affiliate at its quotations as disseminated through the Service.

(F) A Service market maker should refrain from entering quotations into the Service that exceed the guidelines for maximum allowable spreads set forth below:

| <b>SPREAD GUIDELINES</b> |                                 |
|--------------------------|---------------------------------|
| <u>Average Spread</u>    | <u>Maximum Allowable Spread</u> |
| 1/8 or less              | 1/4                             |
| 1/4                      | 1/2                             |
| 3/8                      | 3/4                             |
| 1/2                      | 1                               |
| 5/8                      | 1                               |
| 3/4                      | 1 1/2                           |
| 7/8                      | 1 1/2                           |
| 1                        | 1 1/2                           |
| 1 1/8                    | 1 5/8                           |
| 1 1/4                    | 1 3/4                           |
| 1 3/8                    | 1 7/8                           |
| 1 1/2                    | 2                               |
| 1 5/8                    | 2                               |
| 1 3/4                    | 3                               |
| 1 7/8                    | 3                               |
| 2                        | 3                               |
| 2 1/8                    | 3                               |
| 2 1/4                    | 3                               |
| 2 3/8                    | 3                               |
| 2 1/2                    | 3                               |
| 2 5/8                    | 4                               |
| 2 3/4                    | 4                               |
| 2 7/8                    | 4                               |

For an average spread of 3 or more, the maximum allowable spread is 125 percent of the average spread rounded to the next highest whole number.

Nasdaq regards these spread parameters as guidelines rather than absolute requirements. Nonetheless, Nasdaq will continuously monitor the quotation spreads of every Service market maker and consider taking regulatory action upon finding a pattern of excessive spreads disseminated during European Sessions. A pattern of excessive spreads will be deemed to exist where a Service market maker exceeds the applicable guideline on five or more occasions in the same qualified security during a calendar month or exceeds the applicable guideline respecting at least 10% of its quotation updates entered into the Service during a calendar month.

(G) A Service market maker shall not, except under extraordinary circumstances, enter or maintain quotations in the Service during the European Session if: the bid quotation entered is equal to or greater than the asked quotation of another Service market maker displaying quotations in the same qualified security; or the asked quotation is equal to or less than the bid quotation of another Service market maker displaying quotations in the same qualified security.

(H) A Service market maker shall, prior to entering a quotation that locks or crosses another quotation, make reasonable efforts to avoid such locked or crossed market by executing transactions with all Service market makers whose quotations would be locked or crossed. A Service market maker whose quotations are causing a locked or crossed market is required to execute transactions at its quotations as displayed through the Service at the time of receipt of any order.

#### **(4) Withdrawal of Quotations**

(A) A Service market maker that wishes to withdraw its quotations in a qualified security shall contact Market Operations to obtain excused withdrawal status prior to effecting withdrawal. Excused withdrawals shall be granted by Market Operations only upon the demonstration of the existence of one of the circumstances set forth in subparagraphs (B) and (C) below.

(B) Excused withdrawal status based on physical circumstances beyond the Service market maker's control may be granted for up to five (5) business days, unless extended by Market Operations. Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon written request, be

granted for not more than sixty (60) days. Excused withdrawal status based on religious holidays or national holidays in the U.K. may be granted only if the request is received by Nasdaq five (5) business days in advance and is approved by Nasdaq . Excused withdrawal status based on vacation may be granted only if: the request for withdrawal is received by Nasdaq twenty (20) business days in advance, and is approved by Nasdaq ; the request includes a list of the securities for which withdrawal is requested; and the request is made by a Service market maker with three (3) or fewer Nasdaq Workstation units authorized for market making in the Service. The following shall not constitute acceptable reasons for granting excused withdrawal status: pending news, a sudden influx of orders or price changes, or the desire to effect transactions with competitors.

(C) Excused withdrawal status may be granted to a Service market maker that fails to maintain a clearing arrangement with a registered clearing agency or with another party that is a member of such an agency and is therefore withdrawn from participation in Nasdaq's Automated Confirmation Transaction Service. However, if Nasdaq finds that the Service market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be deemed a voluntary termination pursuant to subparagraph (5) below.

#### **(5) Voluntary Termination of Registration**

A Service market maker may voluntarily terminate its registration in a qualified security by withdrawing its quotations in that security from the Service. A market maker that voluntarily terminates its registration in a qualified security may re-register to quote that security in the Service in accord with procedures contained in paragraph (b)(1)(E) above. Nonetheless, if an International market maker voluntarily terminates both the domestic and European components of its registration in a qualified security that is included in Nasdaq (qualified Nasdaq security), this Nasdaq member cannot re-register to quote that qualified Nasdaq security during the Domestic Session until twenty (20) business days have elapsed. This waiting period would not apply where an International market maker in a qualified Nasdaq security had terminated the European component of its registration but maintained the domestic component.

#### **(6) Stabilizing Bids**

(A) A Service market maker may enter a stabilizing bid in the Service for a qualified Nasdaq security, which bid will be identified with the appropriate identifier on the quotation display. Only one market maker in an issue may enter a stabilizing bid. A stabilizing bid will not be displayed unless one market maker in addition to the market maker entering the stabilizing bid is registered in the issue and enters quotations

during the European Session.

(B) A stabilizing bid, a pre-effective stabilizing bid, or a penalty bid may be entered into the Service. A stabilizing bid must be available for all freely tradeable outstanding securities of the same class being offered.

(C) Notice to Nasdaq

(i) A Service market maker that wishes to enter a stabilizing bid shall so notify Market Operations in writing prior to the first day on which the stabilizing bid is to appear in the Service. The notice shall include: the name of the qualified Nasdaq security and its Nasdaq symbol; the date on which the security's registration will become effective, if it is already quoted in the Service; whether the stabilizing bid will be a penalty bid or a penalty-free bid; and a copy of the preliminary prospectus or shelf registration statement, unless Nasdaq determines otherwise.

(ii) In the case of a pre-effective stabilizing bid, the notice shall include: the name of the qualified Nasdaq security and its Nasdaq symbol; the contemplated effective date of the offering; whether it is contemplated that the pre-effective stabilizing bid will be converted to a stabilizing bid and, if so, whether the stabilizing bid will be a penalty bid or a penalty-free bid; and a copy of the preliminary prospectus, unless Nasdaq determines otherwise.

(iii) A service market maker that has provided the written notice prescribed above shall also contact Market Operations for authorization on the day the market maker wishes to enter the stabilizing bid into the Service.

(D) A Service market maker shall not enter a stabilizing bid at the same time that it is quoting any other bid or offer in the qualified Nasdaq security.

(E) A Service market maker entering a stabilizing bid shall report all purchases made on the stabilizing bid and enter "zero volume" for sales during the period in which the stabilizing bid is in effect.

#### **5107. Reserved**

#### **5108. Reports**

Every Nasdaq member and approved affiliate that functions as a Service market maker shall submit the following reports to Nasdaq at the frequency specified:

(a) A Service market maker shall report each business day any data relating to qualified securities quoted in the Service as Nasdaq shall require.

(b) A Service market maker shall report monthly such data on qualified securities that are quoted in the Service as Nasdaq shall require.

(c) A Service market maker shall make such other reports as Nasdaq may prescribe from time to time.

#### **5109. Clearance and Settlement of International Transactions**

(a) Nasdaq members and approved affiliates that effect international transactions must clear and settle all such transactions through a clearing agency registered with the Commission that uses a continuous net settlement system. This requirement may be satisfied through direct participation in a suitable clearing agency or through a clearing arrangement with another party.

(b) For purposes of this Rule, the term "international transaction" means every transaction having the following three characteristics: (1) the transaction involves a qualified security quoted in the Service by at least one registered market maker; (2) the transaction is consummated during the hours of the European Session between two Nasdaq members, two approved affiliates, or a Nasdaq member and an approved affiliate; and (3) the transaction involves at least one Nasdaq member (acting in a principal or agency capacity) that is registered as a European- only or International market maker in any qualified security, or alternatively, at least one approved affiliate (acting in a principal or agency capacity) that is registered as a European-only market maker in any qualified security.

(c) Participation in the Automated Confirmation Transaction Service is mandatory for self-clearing Nasdaq members participating in the Service directly or through an approved affiliate.

#### **5110. Suspension and Termination of Quotations by Nasdaq Action**

Nasdaq may, pursuant to the procedures set forth in the Nasdaq Code of Procedure, the Rule 9000 Series, suspend, condition, limit, prohibit or terminate a Service market maker's authority to enter quotations in one or more qualified securities for violations of the applicable requirements or prohibitions contained in the Nasdaq By-Laws or Rules.

#### **5111. Termination of Access**

Nasdaq may, upon notice, terminate access to Nasdaq International in the event that a Service market maker fails to qualify under specified standards of eligibility for Nasdaq membership or participation in the Service, or fails to pay promptly for services

rendered by Nasdaq or its subsidiaries.

## **5112. Transaction Reporting Requirements**

During the European Session, broker/dealers registered as International or European-only market makers shall observe the following requirements for reporting transaction information to Nasdaq on qualified securities quoted in Nasdaq International:

### **(a) Definitions**

(1) "International Participant" includes any Nasdaq member registered as an International or European-only market maker in at least one qualified security, and any approved affiliate registered as a European-only market maker in at least one qualified security.

(2) "Reportable transaction" means any round-lot or mixed-lot transaction in a Service security effected during the European Session with an International Participant being on one or both sides. The following are not deemed to be reportable transactions:

(A) transactions which are part of a primary distribution by an issuer or of a registered secondary distribution (other than shelf registrations) or of an unregistered secondary distribution;

(B) transactions executed on and reported to a securities exchange domiciled outside the U.S.;

(C) transactions made in reliance on Section 4(2) of the Securities Act of 1933;

(D) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for a Service security, e.g., to enable the seller to make a gift; and

(E) purchases or sales of Service 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 preestablished consideration unrelated to the current market.

(3) "Service security" means any qualified security that is quoted in Nasdaq International by at least one registered market maker.

(4) "Trade report" refers to the entry of the following elements of information for each reportable transaction: security symbol, price (exclusive of commission, mark-up, or mark-down), volume, and a symbol indicating whether the transaction is a buy, sell or cross.

**(b) Timely Trade Reports**

International Participants shall enter trade reports on all reportable transactions within three minutes of execution via a Nasdaq Workstation unit authorized for receipt of Nasdaq International or through a CTCL. Trade reports not submitted within three minutes of execution shall be designated as late by addition of the "SLD" indicator. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Nasdaq Rule 2110 .

**(c) Obligation to Submit Trade Reports on Reportable Transactions**

(1) In transactions between two International Participants that are both Service market makers in the affected Service security, only the party representing the sell side shall report.

(2) In transactions between two International Participants where only one is a Service market maker in the affected Service security, the latter party shall report.

(3) In transactions between two International Participants where neither is a Service market maker in the affected Service security, only the party representing the sell side shall report.

(4) In transactions between an International Participant and a non-member (other than an approved affiliate), the International Participant shall report. Where an International Participant acts as a dual agent in a reportable transaction, it shall be reported only once by the International Participant.

(5) In transactions between an International Participant and another Nasdaq member that is not an International Participant, only the International Participant shall report.

**(d) Aggregation of Trade Reports**

(1) The following procedures and requirements apply exclusively to an International Participant registered as a Service market maker in a particular Service security.

(2) Under the following conditions, individual trade reports in a Service security at the same price may be aggregated into a single trade report by a Service market maker in that security:

(A) orders received prior to opening of the European Session and simultaneously executed at the opening;

(B) orders received during a trading halt and executed simultaneously when trading resumes;

(C) orders relayed to the trading department of the Service market maker for simultaneous execution at the same price;

(D) simultaneous executions by the Service market maker of customer transactions at the same price, e.g., multiple limit orders being executed at the same time when a limit price has been reached; or

(E) orders received or initiated by the Service market maker that are impractical to report individually and are executed at the same price within two minutes of execution of the initial transaction; provided, however, that no individual order of 10,000 shares or more may be aggregated in a trade report and that the aggregated trade report shall be made within three minutes of the initial execution reported therein.

(3) In no instance shall a Service market maker delay entry of its opening quotations or resumption of trading in a Service security for the purpose of aggregating trade reports. Further, a Service market maker is prohibited from withholding a trade report in anticipation of aggregating the transaction with others.

(4) A Service market maker shall identify aggregated trade reports and the underlying order tickets in a manner prescribed by Nasdaq .

**(e) Time Stamping of Transactions**

All trade tickets for reportable transactions shall be time-stamped at the time of execution. Nasdaq members and approved affiliates that utilize screen-based systems for executing transactions shall satisfy this requirement by ensuring that such a system assigns an appropriate execution time to each reportable transaction.

**(f) Weekly Reports**

International Participants shall submit trade reports weekly respecting Service securities in the following circumstances:

(1) European-only market makers. Transactions in Service securities executed outside hours of the European Session;

(2) International market makers. Transactions in Service securities executed outside the hours of both the European Session and the Domestic Session;

(3) European-only and International Market Makers. Transactions in Service securities that were effected during the European Session and were omitted inadvertently from reported volume during the preceding week's European Sessions.

### **5113. Audit Trail Requirements**

All existing requirements for submitting audit trail information to Nasdaq, either directly or through a registered clearing agency, shall extend to Nasdaq members'/approved affiliates' participation in Nasdaq International. The applicable requirements were published in NASD Notices to Members 84-55 (October 15, 1984), 85-24 (April 12, 1985), and 85-72 (October 30, 1985), which notices are hereby incorporated by reference.

## **5200. INTERMARKET TRADING SYSTEM/COMPUTER ASSISTED EXECUTION SYSTEM**

### **5210. Definitions**

(a) The term "Non-Nasdaq ITS Participant Market" shall mean a participant in the ITS Plan that is a national securities exchange (other than Nasdaq) or national securities association.

(b) The term "ITS Plan" shall mean the plan agreed upon by the ITS participants, as from time to time amended in accordance with the provisions therein, and approved by the Commission pursuant to Section 11A(a)(3)(B) of the Act and SEC Rule 11Aa3-2 thereunder.

(c) The term "ITS Security" shall mean any security which may be traded through the ITS System by an ITS/CAES Market Maker.

(d) The term "ITS System" shall mean the communications network and related equipment that links electronically the Non-Nasdaq ITS Participant Markets and ITS/CAES Market Makers as described in the Plan.

(e) The term "ITS/CAES Market Maker" shall mean a member of Nasdaq that is registered as a market maker with Nasdaq for the purposes of participation in ITS through CAES with respect to one or more ITS securities in which it is then actively registered. The term "ITS/CAES Market Maker" shall also include a member of Nasdaq that meets the definition of electronic communications network ("ECN"), as defined in SEC Rule 11Ac-1-1(a)(8), or alternative trading system ("ATS"), subject to SEC Regulation ATS Rule 301(b), and has voluntarily chosen to register with Nasdaq and meets the terms of registration set forth in the Nasdaq-provided agreement linking ECNs and ATSS to the CAES system. Registration as an ITS/CAES Market Maker is mandatory for all registered CQS market makers in securities eligible for inclusion in the ITS/CAES linkage.

(f) The term "Participant Market" shall mean the securities trading market of each participating Non-Nasdaq ITS Market, and the markets of ITS/CAES Market Makers in ITS securities.

(g) The term "Pre-Opening Application" shall mean the application of the System which permits a specialist or ITS/CAES Market Maker who wishes to open its market in an ITS Security to obtain pre-opening interests from other specialists and ITS/CAES Market Makers.

(h) The term "Previous Day's Consolidated Closing Price" shall mean the last price at which a transaction in a security was reported by the consolidated last sale reporting system on the last previous day on which transactions were reported by such system; provided, however, that the "previous day's consolidated closing price" for all Network A or Network B eligible Securities shall be the last price at which a transaction in the stock was reported by the New York Stock Exchange, Inc. (NYSE) or the American Stock Exchange, Inc. (Amex), if, because of unusual market conditions, the NYSE or the Amex price is designated as such pursuant to the ITS plan.

(i) A "Third Participating Market Center Trade-Through," as that term is used in this Rule, occurs whenever an ITS/CAES Market Maker initiates the purchase of an ITS Security by sending a commitment to trade-through the System and such commitment results in an execution at a price which is higher than the price at which the security is being offered (or initiates the sale of such a security by sending a commitment to trade-through the System and such commitment results in an execution at a price which is lower than the price at which the security is being bid for) at the time of the purchase (or sale) in another ITS Participant Market as reflected by the offer (bid) then being displayed by ITS/CAES Market Makers from such other market center. The member described in the foregoing sentence is referred to in this Rule as the "member who initiated a third participating market center trade-through."

Selected NASD Notices to Members: 94-81.

## **5220. ITS/CAES Registration**

In order to participate in ITS, a market maker or ECN/ATS must be registered with Nasdaq as an ITS/CAES Market Maker in each security in which a market will be made in ITS. Such registration shall be conditioned upon the ITS/CAES Market Maker's continuing compliance with the following requirements:

(a) registration as a CQS market maker pursuant to Rule 6320 and compliance with the Rule 6300 Series;

(b) execution of an ITS/CAES Market Maker application agreement with Nasdaq at least two days prior to the requested date of registration;

- (c) compliance with SEC Rule 15c3-1;
- (d) compliance with the ITS Plan, SEC Rule 11Ac1-1 and all applicable Nasdaq Rules;
- (e) the maintenance of continuous two-sided quotations in the absence of the grant of an excused withdrawal or a functional excused withdrawal by Nasdaq;
- (f) maintenance of the physical security of the equipment used to interface with the ITS System located on the premises of the ITS/CAES Market Makers to prevent the unauthorized entry of communications into the ITS System; and
- (g) acceptance and settlement of each ITS System trade that the ITS System identifies as effected by such ITS/CAES Market Maker, or if settlement is to be made through another clearing member, guarantee of the acceptance of settlement of such identified ITS System trade by the clearing member on the regularly scheduled settlement date.
- (h) election to participate in ITS/CAES through either automatic execution or order delivery. As a part of its contractual obligation required under subsection (i) below, Market Makers choosing order delivery status are required to satisfactorily demonstrate to Nasdaq the technical capacity to properly and timely respond to orders delivered through CAES.
- (i) with respect to order delivery ITS/CAES Market Makers, execution of an addendum to the ITS/CAES Market Maker application agreement at least two business days prior to the requested date of operation.

#### **5221. Suspension or Revocation of ITS/CAES Registration**

Failure by an ITS/CAES Market Maker to comply with the ITS Plan or any of the rules identified herein shall subject such ITS/CAES Market Maker to censure, fine, suspension or revocation of its registration as an ITS/CAES Market Maker, or any other fitting penalty.

#### **5230. ITS Operations**

(a) All transactions effected through ITS shall be on a "regular way" basis. Each transaction effected through ITS shall be cleared and settled through a clearing agency registered with the Commission which maintains facilities through which ITS transactions may be compared and settled.

(b) Any "commitment to trade," which is transmitted by an ITS/CAES Market Maker to another Non-Nasdaq ITS Participant Market through ITS, shall be firm and irrevocable for the period of either one or two minutes (specified in accordance with

subparagraph (7) below) following transmission by the sender. All such commitments to trade shall, at a minimum:

- (1) include the number or symbol which identifies the ITS/CAES Market Maker;
  - (2) direct the commitment to a particular Non-Nasdaq Participant Market;
  - (3) specify the security which is the subject of the commitment;
  - (4) designate the commitment as either a commitment to buy or a commitment to sell;
  - (5) specify the amount of the security to be bought or sold, which amount shall be for one unit of trading or any multiple thereof;
  - (6) specify:
    - (A) a price equal to the offer or bid price then being furnished by the destination Non-Nasdaq Participant Market, which price shall represent the price at or below which the security is to be bought or the price at or above which the security is to be sold, respectively;
    - (B) a price at the execution price in the case of a commitment to trade sent in compliance with the block trade rule; or
    - (C) that the commitment is a commitment to trade "at the market;"
  - (7) specify either one minute or two minutes as the time period during which the commitment shall be irrevocable, but if the time period is not specified in the commitment, a two minute period shall be assumed. It should be noted that the period of time represented by these designations may be changed in the future by action of the ITS Operating Committee, whose decision as to the applicable period shall be binding upon ITS/CAES Market Makers;
  - (8) designate the commitment "short" or "short exempt" whenever it is a commitment to sell which, if it should result in an execution in the receiving market, would result in a short sale to which the provisions of SEC Rule 10a-1(a) under the Act would apply.
- (c) If a commitment to trade is directed to an ITS/CAES Market Maker, and the execution of such commitment exhausts the size of the quotation being displayed by the ITS/CAES Market Maker, then such ITS/CAES Market Maker shall be placed in a functional excused withdrawal state pending the input of a new two-sided quotation with size into Nasdaq's Consolidated Quotation Service. The new two-sided quotation required of the ITS/CAES Market Maker will be entered as promptly as possible into

Nasdaq's Consolidated Quotation Service.

(d) Transactions in ITS securities executed in CAES by ITS/CAES Market Makers or received through the ITS System and executed by an ITS/CAES Market Maker are reported to the CTA Plan Processor by the CAES System at the price specified in the commitment or if executed at a better price, the execution price.

#### **5240. Pre-Opening Application - Opening by ITS/CAES Market Maker**

The pre-opening application enables an ITS/CAES Market Maker or Non-Nasdaq ITS Participant Market in any Participant Market who wishes to open its market in an ITS Security to obtain through the ITS System or CAES, any pre-opening interest of a Non-Nasdaq ITS Participant Market or other ITS/CAES Market Makers registered in that security and/or market makers in other Participant Markets.

##### **(a) Notification Requirement - Applicable Price Change, Initial Notification**

(1) Whenever an ITS/CAES Market Maker, in an opening transaction in any ITS/CAES Security, anticipates that the opening transaction will be at a price that represents a change from the security's previous day's consolidated closing price of more than the "applicable price change" (as defined below), the ITS/CAES Market Maker shall notify the other Participant Markets of the situation by sending a "pre-opening notification" through the System. Thereafter, the ITS/CAES Market Maker shall not open the security in its market until not less than three minutes after its transmission of the pre-opening notification. The "applicable price changes" are:

| Security  | Consolidated Closing Price | Applicable Price Change (More Than) |
|-----------|----------------------------|-------------------------------------|
| Network A | Under \$15                 | 1/8 point                           |
|           | \$15 or over               | 1/4 point <sup>1</sup>              |
| Network B | \$5 or over                | 1/8 point                           |
|           | Under \$5                  | 1/4 point <sup>2</sup>              |

For transactions involving securities trading in decimal-based increments, the "applicable price changes" are:

| Security  | Consolidated Closing Price | Applicable Price Change (More Than) |
|-----------|----------------------------|-------------------------------------|
| Network A | <u>Under \$15</u>          | <u>\$0.10</u>                       |
|           | <u>\$15 or over</u>        | <u>\$0.25<sup>1</sup></u>           |
| Network B | <u>Under \$5</u>           | <u>\$0.10</u>                       |
|           | <u>\$5 or over</u>         | <u>\$0.25<sup>2</sup></u>           |

<sup>1</sup>If the previous day's consolidated closing price of a Network A Eligible Security exceeded \$100 dollars and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is one dollar.

<sup>2</sup>If the previous day's consolidated closing price of a Network B Eligible Security exceeded \$75 and the security is not a Portfolio Deposit Receipt, Index Funs Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is one dollar.

(2) A pre-opening notification shall:

(A) be designated as a pre-opening notification (POA);

(B) identify the ITS/CAES Market Maker and the security involved; and

(C) indicate the "applicable price range" by being formatted as a standardized pre-opening administrative message as follows:

POA MMID/XYZ [RANGE]

(3) The price range shall not exceed the "applicable price range" shown below:

| Security  | Consolidated Closing Price   | Price Range          |
|-----------|------------------------------|----------------------|
| Network A | Under \$50                   | 1/2 point            |
|           | \$50 or over <sup>[**]</sup> | 1 point <sup>3</sup> |
| Network B | Under \$10                   | 1/2 point            |
|           | \$10 or over                 | 1 point <sup>4</sup> |

For transactions involving securities trading in decimal-based increments, the price range shall not exceed the "applicable price range" shown below:

| Security  | Consolidated Closing Price | Price Range         |
|-----------|----------------------------|---------------------|
| Network A | Under \$50                 | \$0.50              |
|           | \$50 or over               | \$1.00 <sup>3</sup> |
| Network B | Under \$10                 | \$0.50              |
|           | \$10 or over               | \$1.00 <sup>4</sup> |

The price range also shall not straddle the previous day's consolidated closing price, although it may include it as an endpoint (e.g., a 1/8-5/8 price range would be permissible if the previous day's consolidated closing price were 1/8 or 5/8, but not if the closing price were 1/4, 3/8 or 1/8).

For transactions involving securities trading in decimal-based increments, the price range also shall not straddle the previous day's consolidated closing price, although it may include it as an endpoint (e.g., a 40.15 - 40.65 price range would be permissible if the previous day's consolidated closing price were 40.15 - 40.65, but not if the closing price were within the price range 40.16 - 40.64.

<sup>3</sup>If the previous day's consolidated closing price of an ITS security exceeded \$100 dollars and the Security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is two dollars.

<sup>4</sup>If the previous day's consolidated closing price of a Network B Eligible Security exceeded \$75 and the security is not a Portfolio Deposit Receipt, Index Funds Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is two dollars.

### **(b) Subsequent Notifications**

If, after sending a pre-opening notification, the situation in an ITS/CAES Market Maker's market changes the ITS/CAES Market Maker may have to issue a subsequent pre-opening notification. The three situations requiring subsequent notifications are described below. Subsequent pre-opening notifications shall be standardized pre-opening administrative messages. After sending a subsequent notification, the ITS/CAES Market Maker shall wait either (1) one minute or (2) until the balance of the original three-minute waiting period expires whichever is longer, before opening its market (i.e., if more than one minute of the initial waiting period has not yet expired at the time the subsequent notification is sent, the ITS/CAES Market Maker must wait for the rest of the period to pass before opening its market).

#### **(1) Increase or Decrease in Applicable Price Range**

Where, prior to the ITS/CAES Market Maker's opening of its market in the security, its anticipated opening price shifts so that it (A) is outside of the price range specified in its pre-opening notification but (B) still represents a change from the previous day's consolidated closing price of more than the applicable price change, the ITS/CAES Market Maker shall issue a replacement pre-opening notification (an "additional" notification) through the system before opening its market in the security. An additional notification contains the same kind of information as is required in an original pre-opening notification.

#### **(2) Shift to within Applicable Price Change Parameter**

(A) The ITS/CAES Market Maker shall, by issuing a "cancellation" notification through the system, notify the Non-Nasdaq Participant Market(s) of the receiving market maker(s) prior to opening the security if the price at which the ITS/CAES Market Maker anticipates

opening its market shifts so that it (i) is outside of the price range specified in its pre-opening notification but (ii) does not represent a change from the previous day's consolidated closing price of more than the applicable price change.

(B) Notwithstanding the preceding sentence, in situations where the price range in an initial or additional notification includes price variations equal to or less than the applicable price change parameters, the "cancellation" notification signifies that the anticipated opening price (i) may or may not be outside of the price range specified in the pre-opening notification and (ii) does not represent a change from the previous day's consolidated closing price of more than the applicable price change.

Example: CTA close at 30. Pre-Opening Notification sent with any one of the following price ranges: 30 - 30 1/2; 30 1/8 - 30 5/8; or 30 1/4 - 30 3/4. It is then determined that the stock will open at 29 3/4 or 29 7/8. Under paragraph (b)(2)(A), the specialist "shall" send cancellation notification. If it is subsequently determined that stock will open at 30, 30 1/8, or 30 1/4, the specialist need not reindicate stock pursuant to paragraph (b)(2)(B).

**Example for Decimal-Based Securities:**

CTA close at 30. Pre-Opening Notification sent with a price range at or within the following range: 30.10 - 30.60 It is then determined that the stock will open at a price within the range of 29.75 to 29.99. Under paragraph (b)(2)(A), the specialist "shall" send cancellation notification. If it is subsequently determined that stock will open at a price within the range of 30 -30.25, the specialist need not reindicate stock pursuant to paragraph (b)(2)(B).

**(3) Participation as Principal Precluded ("Second Look")**

If a responding market maker who has shown in its pre-opening response interest as a principal at a price better than the anticipated opening price would be precluded from participation as principal in the opening transaction (e.g., its responding principal interest is to sell at a price 1/8 or more below the opening price established by paired agency orders), the ITS/CAES Market Makers shall send a "second look" notification through the System, notifying such responding market maker of the price and size at which the ITS/CAES Market Maker could participate as principal (i.e., in the parenthetical example above, the total amount of the security that it would have to sell at the 1/8-better price to permit the opening transaction to occur at that price).

For securities trading in decimal-based increments, if a responding market maker who has shown in his pre-opening response interest as a principal at a price better than the anticipated opening price would be precluded from participation as principal in the

opening transaction (e.g. his responding principal interest is to sell at a price .01 or more below the opening price established by paired agency orders), the ITS/CAES Market Makers shall send a "second look" notification through the System, notifying such responding market maker of the .01 price and size at which he could participate as principal (i.e., the parenthetical example above, the total amount of the security that he would have to sell at the .01 better price to permit the opening transaction to occur at that price).

**(c) Tape Indications**

If the CTA Plan or Nasdaq's rules requires or permits that an "indication of interest" (i.e., an anticipated opening price range) in a security be furnished to the consolidated last sale reporting system prior to the opening of trading or the reopening of trading following a halt or suspension in trading in one or more ITS Securities, then the furnishing of an indication of interest in such situations shall, without any other additional action required of the ITS/CAES Market Maker, (1) initiate the pre-opening process, and (2) if applicable, substitute for and satisfy the requirements of paragraphs (a), (b)(1), and (b)(2) (while the furnishing of an indication of interest to the consolidated last sale reporting system satisfies the notification requirements of this rule, an ITS/CAES Market Maker should also transmit the indication through the System in the format of a standardized pre-opening administrative message.) In any such situation, the ITS/CAES Market Maker shall not open or reopen the security until not less than three minutes after its transmission of the opening or reopening indication of interest. For the purpose of paragraphs (b)(3), (d), (f), and (g) through (i), "pre-opening notification" includes an indication of interest furnished to the consolidated last sale reporting system.

**(d) Pre-Opening Responses - Decision on Opening Transaction**

Subject to paragraph (e), If an ITS/CAES Market Maker who has issued a pre-opening notification receives "pre-opening responses" through the system containing "obligations to trade" from market makers in other Non-Nasdaq Participant Markets ("responding market makers"), the ITS/CAES Market Maker shall combine those obligations with orders it already holds in the security and, on the basis of this aggregated information, decide upon the opening transaction in the security. If the ITS/CAES Market Maker has received more than one pre-opening response from a Non-Nasdaq Participant Market, the ITS/CAES Market Maker shall include in such combination only those obligations to trade from such Participant Market as are specified in the most recent response, whether or not the most recent response expressly cancels the preceding response(s). An original or revised response received after the ITS/CAES Market Maker has effected its opening transaction shall be to no effect.

**(e) Pre-Opening Responses from Open Markets**

(1) An ITS/CAES Market Maker must accept only those pre-opening responses sent to Nasdaq by market makers in other Non-Nasdaq Participant Markets prior to the opening of their markets for trading in the security. Following a halt or suspension in trading

declared by Nasdaq in an ITS Security, an ITS/CAES Market Maker must accept only those pre-opening responses sent by market makers to Nasdaq from other non-Nasdaq Participant Markets that halted trading in the security contemporaneously with Nasdaq and that had not resumed trading in the security at the time the pre-opening response was sent.

(2) In the event that one or more market makers from Participant Markets that have already opened trading in a security or, with respect to a halt or suspension in trading, either did not halt trading in the security contemporaneously with Nasdaq, or has already resumed trading in the security, respond to a pre-opening notification in that security, the ITS/CAES Market Maker need not, but may in its discretion, accept such responses for the purpose of inclusion in the opening or reopening transaction. In the event that a Participant Market opens or, with respect to a halt or suspension in trading, resumes trading in a security subsequent to a market maker in the Participant Market sending a pre-opening response but prior to the opening or reopening transaction in ITS/CAES, the market maker who sent the pre-opening response to Nasdaq must confirm the pre-opening response by sending an administrative message through the system stating that the response remains valid. If the market maker fails to so confirm the pre-opening response, the ITS/CAES Market Maker need not, but may in its discretion, accept the original response for the purpose of inclusion in the opening or reopening transaction.

**(f) Allocation of Imbalances**

Whenever pre-opening responses from one or more responding market makers include obligations to take or supply as principal more than 50 percent of the opening imbalance, the ITS/CAES Market Maker may take or supply as principal 50 percent of the imbalance at the opening price, rounded up or down as may be necessary to avoid the allocation of odd lots. In any such case, where the pre-opening response is from more than one responding market maker, the ITS/CAES Market Maker shall allocate the remaining imbalance (which may be greater than 50 percent if the ITS/ CAES Market Maker elects to take or supply less than 50 percent of the imbalance) among them in proportion to the amount each obligated himself to take or supply as principal at the opening price in its pre-opening response, rounded up or down as may be necessary to avoid the allocation of odd lots. For the purpose of this paragraph, multiple responding market makers in the same ITS Security in the same Participant Market shall be deemed to be a single responding market maker.

**(g) Treatment of Obligations to Trade**

In receiving a pre-opening response, an ITS/CAES Market Maker shall accord to any obligation to trade as agent included in the response the same treatment as it would to an order entrusted to it as agent at the same time such obligation was received.

**(h) Responses Increasing the Imbalances**

An ITS/CAES Market Maker shall not reject a pre-opening response that has the

effect of further increasing the existing imbalance for that reason alone.

**(i) Reports of Participation**

Promptly following the opening in any security as to which an ITS/CAES Market Maker issued a pre-opening notification, the ITS/CAES Market Maker shall report to each Participant responsible for a market in which one or more responding market makers are located (1) the amount of the security purchased and/or sold, if any, by the responding market maker(s) in the opening transaction and the price thereof, or (2) if the responding market maker(s)'s response included agency or principal interest at the opening price that did not participate in the opening transaction, the fact that such interest did not so participate.

**5250. Pre-Opening Application - Openings on Non-Nasdaq Participant Markets**

**(a) Pre-Opening Responses**

Whenever an ITS/CAES Market Maker who has received a pre-opening notification from another ITS/CAES Market Maker or Non-Nasdaq ITS Participant Market as provided in the ITS Plan in any ITS Security as to which it is registered as an ITS/CAES Market Maker wishes to participate in the opening of that security in the Participant Market from which the pre-opening notification was issued, the ITS/CAES Market Maker may do so by sending obligations to trade-through the System to such Participant Market in a pre-opening response. A pre-opening response shall be designated as a pre-opening response (POR), identify the security, and show the ITS/CAES Market Maker's buy and/or sell, interest (if any), both as principal for its own account ("P") and as agent for orders left with him ("A"), at each price level within the price-range indicated in the pre-opening notification (e.g., 40 3/8), reflected on a netted share basis.

For securities trading in decimal-based increments, whenever an ITS/CAES Market Maker who has received a pre-opening notification from another ITS/CAES Market Maker or Non-Nasdaq ITS Participant Market as provided in the ITS Plan in any ITS Security as to which he is registered as an ITS/CAES Market Maker wishes to participate in the opening of that security in the Participant Market from which the pre-opening notification was issued, he may do so by sending obligations to trade-through the System to such Participant Market in a pre-opening response. A pre-opening response shall be designated as a pre-opening response (POR), identify the security, and show the ITS/CAES Market Maker's buy and/or sell, interest (if any), both as principal for his own account ("P") and as agent for orders left with him ("A"), at each price level within the price-range indicated in the pre-opening notification (e.g., 40.40 ), reflected on a netted share basis.

The pre-opening response shall be formatted as follows:

POR (MMID) BUY [SELL] A-P 40 3/8

For securities trading in decimal-based increments the pre-opening response shall be POR (MMID) BUY (SELL) A-P 40.40.

The response may also show market orders separately.

#### **(b) Revised Responses**

An ITS/CAES Market Maker may cancel or modify its pre-opening response by sending through the System a revised response that cancels the obligations to trade contained in its original response and, if a modification is desired, that substitutes new obligations to trade stating the ITS/CAES Market Maker's aggregate interest (i.e., its interest reflected in the original response plus any additional interest and/or minus any withdrawn interest) at each price level. Each succeeding response, even if it fails to expressly cancel its predecessor response, shall supersede the predecessor response in its entirety. Any revised response shall be to no effect if received in the Participant Market from which the pre-opening notification was issued after the security has opened in such Participant Market.

#### **(c) Pre-Opening Notification from Other Markets**

No ITS/CAES Market Maker whether acting as principal or agent, shall send an obligation to trade, commitment to trade or order in any security through the System to any other Participant Market, prior to the opening of trading in such security on such other market (or prior to the resumption of trading in such security on such other market following the initiation of a halt or suspension in trading in the security) until a pre-opening notification as to such security has been issued from such other market or a quotation has been disseminated from such other market pursuant to SEC Rule 11Ac1- 1. No ITS/CAES Market Maker that has opened for trading or, with respect to a halt or suspension of trading initiated by another Participant Market, did not halt trading in the security reasonably contemporaneously with the Participant Market or resumed trading during such trading halt or suspension, shall respond to a pre-opening notification.

#### **(d) Sole Means of Pre-Opening Routing**

Once a pre-opening notification as to any security is received by the ITS/CAES Market Maker through the System, the ITS/CAES Market Makers in such security shall submit obligations to trade that security as principal for its own account to the market from which the pre-opening notification was issued only through the Pre-Opening Application and shall not send orders to trade that security for its own account to such market for participation at the opening in that market by any other means. However, this restriction shall not apply to any order sent to such market by the ITS/CAES Market Maker prior to the issuance of the pre-opening notification.

#### **(e) Duration of Obligations to Trade**

Responses to pre-opening notifications shall be voluntary, but each obligation to trade that an ITS/CAES Market Maker includes in any pre-opening response, or in any

modification of a pre-opening response, shall remain binding on him, until the security has opened in the market from which the pre-opening notification was issued or until a cancellation or modification of such obligation has been received in such market, and until a subsequent cancellation or modification thereof has been received in such market.

#### **(f) Request for Participation Report**

The ITS Plan anticipates that an ITS/CAES Market Maker who has sent one or more obligations to trade in response to a pre-opening notification will request a report through the System as to its participation if it does not receive a report as required promptly following the opening. If, on or following trade date, the ITS/CAES Market Maker does request a report through the System as to its participation before 4:00 p.m. Eastern Time, and does not receive a response by 9:30 a.m. Eastern Time on the next trading day, it need not accept a later report. If the ITS/CAES Market Maker fails to so request a report, it must accept a report until 4:00 p.m. Eastern Time on the third trading day following the trade date (i.e., on T+3). Nasdaq does not intend this paragraph to relieve the ITS/CAES Market Maker of the obligation, when it does not receive a report, to request a report as soon as it reasonably should expect to have received it.

#### **5260. System Trade and Quotations**

##### **5261. Obligation to Honor System Trades**

If an ITS/CAES Market Maker or clearing member acting on its behalf is reported on the clearing tape (as adjusted) at the close of any trading day, or shown by the activity reports developed by CAES as constituting a side of a System trade, such ITS/CAES Market Maker or clearing member shall honor such trade on the scheduled settlement date.

##### **5262. Trade-Throughs**

(a) A member registered as an ITS/CAES Market Maker in an ITS/CAES security, shall avoid purchasing or selling such security, whether as principal or agent, at a price which is lower than the bid or higher than the offer displayed from a Non-Nasdaq ITS Participant Market or ITS/CAES Market Maker ("trade-through"), unless the following conditions apply:

- (1) the size of the bid or offer that is traded-through is for 100 shares;
- (2) the ITS/CAES Market Maker is unable to avoid the trade-through because of the systems/equipment failure or malfunction;
- (3) the transaction which constituted the trade-through is not a "regular way" contract;
- (4) the bid or offer that is traded-through is being displayed from a Market Center whose members are relieved of their obligations under SEC Rule 11Ac1-

1(C)(2) with respect to such bid or offer;

(5) the bid or offer that is traded-through has caused a locked or crossed market in the ITS Security;

(6) the commitment received by an ITS/CAES Market Maker which caused the trade-through was originated by a Non-Nasdaq ITS Participant Market;

(7) The transaction involves (A) purchases and sales effected by ITS/CAES Market Makers participating in an opening (or reopening) transaction or (B) any "Block Transaction" as defined in the ITS/CAES Rules; or

(8) In the case of a Third Participating Market Center Trade-Through, either:

(A) the ITS/CAES Market Maker who initiated the trade-through (i) had sent a commitment to trade promptly following the trade-through that satisfies the bid or offer traded-through, and (ii) preceded the commitment with an administrative message stating that the commitment was in satisfaction of a third participating market center trade-through; or

(B) a complaint with respect to the trade-through was not received by Nasdaq through the System from the aggrieved party promptly following the trade-through, and, in any event, within ten (10) minutes from the time the aggrieved party sent a complaint through the System to the Non-Nasdaq ITS Participant Market that received the commitment to trade that caused the trade-through, which first complaint must have been received within five (5) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system.

(b) (1) If a trade-through occurs and a complaint is promptly received by Nasdaq either through the ITS System from the appropriate Non-Nasdaq ITS Participant Market whose member is the aggrieved party or from an ITS/CAES Market Maker, then:

(A) If ITS/CAES Market Makers are on both sides of a principal trade, the price of the transaction which constituted the trade-through shall be corrected, by agreement of the parties, to a price at which a trade-through would not have occurred and the price correction shall be reported through the consolidated last sale reporting system; otherwise (i) the initiating ITS/CAES Market Maker shall satisfy, or cause to be satisfied, the bid or offer traded through in its entirety at the price of such bid or offer or at the price that caused the trade-through (as determined in accordance with subparagraph (E) below, or, if the initiating ITS/CAES Market Maker elects not to do so, (ii) the transaction shall be voided.

(B) If an ITS/CAES Market Maker executed the transaction and the contra- side was not an ITS/CAES Market Maker (i) the ITS/CAES Market Maker registered in the security shall satisfy, or cause to be satisfied, the bid or offer traded-through in its entirety at the price of such bid or offer, or, if the ITS/CAES Market Maker elects not to do so, (ii) the price of the transaction which constituted the trade-through shall be corrected by the ITS/CAES Market Maker to a price at which a trade-through would not have occurred and the price correction shall be reported through the consolidated last sale reporting system.

(C) If ITS/CAES Market Makers are on both sides of a trade and one or both are acting as agent, the price of the transaction which constituted the trade- through shall be corrected, by agreement of the parties, to a price at which a trade- through would not have occurred and the price correction shall be reported through the consolidated last sale reporting system; otherwise, the ITS/CAES Market Maker that initiated the transaction shall satisfy, or cause to be satisfied the bid or offer traded through in its entirety at the price of such bid or offer.

(D) Whenever the provisions of subparagraphs (B) and (C) above apply, the customer's order or a portion thereof which was executed in the transaction which constituted the trade-through (whether such order or a portion thereof was executed by the member who initiated the trade-through or by the member on the contra side of the transaction, or both) shall receive the price which caused the trade-through, or the price at which the bid or offer traded through was satisfied, if it was satisfied pursuant to subparagraph (B) above, or the adjusted price, if there was an adjustment pursuant to subparagraph (B) above, whichever price is most beneficial to the order or a portion thereof. Money differences resulting from the application of this paragraph shall be the liability of the member who initiated the trade-through.

(E) The price at which the bid or offer traded through shall be satisfied shall be the price of such bid or offer except if (i) the transaction that constituted the trade-through was of "block size" but did not constitute a "block trade" (as those terms are defined in the Block Trade Rule) and (ii) the ITS/CAES Market Maker who initiated the trade-through did not make every reasonable effort to satisfy, or cause to be satisfied, through the System the bid or offer traded through at its price and in its entirety within two (2) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system. In the case of such exception, the price at which the bid or offer traded through shall be satisfied shall be the price that caused the trade-through.

(2) Such complaint shall be considered promptly received when no more than five minutes expire from the time the report of the transaction was disseminated over the high speed line of the consolidated last sale reporting system, unless the transaction is between an ITS/CAES Market Maker and another ITS/CAES Market Maker or Non-Nasdaq ITS Participant Market. In the later case, the complaint must be received within ten minutes from the time the aggrieved party sent a complaint through the System to the ITS/CAES Market Maker or Non-Nasdaq ITS Participant Market that received the commitment to trade that caused the trade-through, which first complaint must have been received within five minutes from the time the report of the transaction was disseminated over the high speed line of the consolidated last sale reporting system.

(c) (1) Nasdaq shall notify the ITS/CAES Market Maker of any trade-through complaint received from a Non-Nasdaq ITS Participant Market or ITS/CAES Market Maker. Upon receipt of such notification, the ITS/CAES Market Maker shall promptly respond to the complaining Non-Nasdaq ITS Participant Market or ITS/CAES Market Maker. Such response shall set forth either: (A) the conditions specified in paragraph (a) above, or (B) the corrective action to be taken under paragraph (b) above. If there is more than one ITS/CAES Market Maker that is registered in the ITS Security and participating in the transaction, then the ITS/CAES Market Maker that initiated the transaction will receive notification of the trade-through complaint.

(2) If it is ultimately determined that an ITS/CAES Market Maker has engaged in a trade-through but has not taken corrective action required by paragraph (b) above then the ITS/CAES Market Maker shall be liable for the lesser of (A) the actual loss proximately caused by the trade-through and suffered by the aggrieved party, or (B) the loss proximately caused by the trade-through which would have been suffered by the aggrieved party had the ITS/CAES Market Maker purchased or sold the security subject to the trade-through in order to mitigate its loss and had such purchase or sale been effected at the "loss basis price." For purposes of this subparagraph the "loss basis price" shall be the price of the next transaction, as reported by the high speed line of the consolidated last sale reporting system in the security in question, after one hour has elapsed from the time the complaint is received (or, if the complaint is so received within the last hour in which transactions are reported on the high speed line of the consolidated last sale reporting system on any day, then the price of the opening transaction in such security reported on such high speed line on the next day on which the security is traded).

(3) Any ITS/CAES Market Maker that becomes the subject of a trade-through by another Non-Nasdaq ITS Participant Market or ITS/CAES Market Maker may take whatever steps are necessary to mitigate any potential loss resulting from the trade-through of its bid or offer. Such action shall be promptly communicated to the offending Non-Nasdaq ITS Participant Market.

(4) The provisions of this trade-through rule shall not apply in respect to any Participant Market which does not have in effect a similar rule imposing similar obligations and responsibilities.

(5) If a complaint of a purported trade-through is received by Nasdaq and the complained-of transaction resulted from an ITS/CAES Market Maker's execution of a commitment to trade received from another ITS/CAES Market Maker or Non-Nasdaq ITS Participant Market, the ITS/CAES Market Maker should, if circumstances permit, make reasonable efforts to notify the complaining party, as promptly as practicable following receipt of the complaint, (A) that the transaction was not initiated by the ITS/CAES Market Maker and (B) of the identity of the ITS/CAES Market Maker or Non-Nasdaq ITS Participant Market that originated the commitment. Neither compliance nor non-compliance with the preceding sentence shall be the basis for any liability of the ITS/CAES Market Maker for any loss associated with the complained-of transaction.

### **5263. Locked or Crossed Markets**

(a) A member registered as an ITS/CAES Market Maker in an ITS/CAES Security that makes a bid (offer) for such security at a price which equals the offering (bid) price at that time from a Non-Nasdaq ITS Participant Market or ITS/CAES Market Maker has created what is referred to in this rule as a "locked market."

(b) A member registered as an ITS/CAES Market Maker in an ITS/CAES Security that makes a bid (offer) for such security at a price which exceeds (is less than) the offering (bid) price at that time from a Non-Nasdaq ITS Participant Market or ITS/CAES Market Maker has created what is referred to in this rule as a "crossed market."

(c) An ITS/CAES Market Maker who makes a bid or offer and in so doing creates a locked or crossed market with another ITS Participant or ITS/CAES Market Maker shall promptly send to such other Non-Nasdaq ITS Participant Market or ITS/CAES Market Maker a commitment to trade seeking either the bid or offer which was locked or crossed, unless excused by operation of paragraph (d) below. Such commitment shall be for either the number of shares the ITS/CAES Market Maker has bid for (offered) or the number of shares offered (bid for) on the Non-Nasdaq ITS Participant Market or by the ITS/CAES Market Maker, whichever is less.

(d) The provisions of paragraph (c) above shall not apply when:

(1) the bid or offer in the ITS Participant Market is for 100 shares;

(2) the issuance of the commitment to trade referred to above would be prohibited by SEC Rule 10a-1 under the Act;

(3) the ITS/CAES Market Maker who causes a locked or crossed market is unable to comply with the provisions of paragraph (c) above because of a

systems/equipment failure or malfunction;

(4) the bid or offer that causes the locked or crossed market is not for a "regular way" contract;

(5) the locked or crossed market occurs at a time when, with respect to the ITS Security which is the subject of the locked or crossed market, members of the ITS Participant Market to which the commitment to trade would be sent pursuant to paragraph (c) above are relieved of their obligations under SEC Rule 11Ac1-1(c)(2);

(6) the transaction involves (A) purchases and sales effected by ITS/CAES Market Maker's participating in an opening or (reopening) transaction or (B) any "Block Transaction" as defined in the ITS/CAES Rules.

#### **5264. Block Transactions**

(a) An ITS/CAES Market Maker who executes a "block transaction" in an ITS/CAES security in which it is registered as an ITS/CAES Market Maker at an execution price outside the best quotation for the security displayed by any Non-Nasdaq Participant Market or other ITS/CAES Market Maker, shall, upon executing the block trade, send to each other Participant Market and each ITS/CAES Market Maker displaying a bid or offer (as the case may be) superior to the execution price, a commitment to trade, at the execution price, to satisfy the number of shares displayed in that Participant Market's bid or offer.

(b) For purposes of this Rule, a block transaction shall be a trade that:

(1) involves 10,000 or more shares of a common stock traded through ITS (an "ITS Security") or a quantity of any such security having a market value of \$200,000 or more ("block size");

(2) is effected at a price outside the bid or offer displayed from another ITS Participant Market; and

(3) involves either:

(A) a cross of block size (where the member represents all of one side of the transaction and all or a portion of the other side); or

(B) any other transaction of block size (i.e., in which the ITS/CAES Market Maker represents an order of block size on one side of the transaction only) that is not the result of an execution at the current bid or offer of the ITS/CAES Market Maker.

Contemporaneous transactions at the same price filling an order or orders

then or theretofore represented by the ITS/CAES Market Maker (including transactions resulting from commitments to trade sent by the ITS/CAES Market Maker pursuant to paragraph (a) above) shall be deemed to constitute a single transaction for the purpose of this definition.

(c) A "current bid or offer" of the ITS/CAES Market Maker, as that term is used in paragraph (b)(3)(B) above, means the price of the current quotation displayed by the ITS/CAES Market Maker established independently of the order to buy or sell.

(d) A "bid or offer" displayed from another Non-Nasdaq ITS Participant Market (or any derivative phrase), as that term is used in this Rule, means the current quotations from another ITS Participant Market displayed to the ITS/CAES Market Maker as required by the ITS Plan, and does not include "away-from-the-market" limit orders or other interests that may be represented in such other ITS Participant Market.

(e) Inapplicability. Paragraph (a) above shall not apply under the following conditions:

(1) the size of the better priced bid or offer displayed by another ITS Participant Market was for 100 shares;

(2) the ITS/CAES Market Maker representing the block-size order(s) made every reasonable effort to satisfy through ITS a better-priced bid or offer displayed by another ITS Participant Market but was unable to because of a systems/equipment failure or malfunction;

(3) the block trade was not a "regular way" contract;

(4) the bid or offer that is traded through is being displayed from a Participant Market whose members are relieved of their obligations under SEC Rule 11Ac1-1(c)(2) with respect to such bid or offer;

(5) the bid or offer that is traded through has caused a locked or crossed market in the ITS Security;

(6) the better priced bid or offer was being displayed from an ITS Participant Market whose members were relieved of their obligations with respect to such bid or offer under SEC Rule 11Ac 1-1(c)(2) pursuant to the "unusual market" exception to SEC Rule 11Ac1-1(b)(3); or

(7) the better priced bid or offer had caused a "locked or crossed market," in the ITS Security that was the subject of the block trade.

#### **5265. Authority to Cancel or Adjust Transactions**

(a) In circumstances in which Nasdaq deems it necessary to maintain a fair and

orderly market and to protect investors and the public interest, Nasdaq may, pursuant to the procedures set forth in Rule 11890 of the Uniform Practice Code, declare any transaction arising out of the use or operation of the ITS/CAES System, null and void on the grounds that one or more of the terms of the transaction are clearly erroneous; and Nasdaq may reallocate stock between ITS/CAES Market Makers to correct an erroneous transaction.

(b) For purposes of this Rule, the terms of the transaction are clearly erroneous when there is an obvious error in any term, such as price, number of shares or other unit of trading, identification of the security, or if a specific commitment to trade has been executed with the wrong ITS/CAES Market Maker.