

OTHER NASDAQ MARKETS

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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 a 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.

(f) The term “Participant Market” shall mean the securities 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.”

(j) “CAES” means the “Computer Assisted Execution System”, the computerized order routing and execution facility for ITS Securities, as from time to time modified or supplemented, that is operated by Nasdaq and made available to Nasdaq members. CAES functionality is offered through the Nasdaq Market Center pursuant to the Rule 4700 Series.

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 initial and continuing compliance with the following requirements:

(a) execution of an ITS/CAES Market Maker application agreement with Nasdaq at least two days prior to the requested date of registration. The application shall certify the member’s good standing with Nasdaq and shall demonstrate compliance with the net capital and other financial responsibility provisions of the Act. A member’s registration as an ITS/CAES market maker shall become effective upon receipt by the member of notice of approval of registration by Nasdaq;

(b) for Nasdaq members already registered as, ITS/CAES Market Makers, submission of a registration request to become registered in additional ITS securities. Registration shall become effective at the time the registration request is entered.

(c) compliance with SEC Rule 15c3-1;

(d) compliance with the ITS Plan, SEC Rule 11Ac1-1 and all applicable Nasdaq Rules;

(e) 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

(f) 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.

(g) election to participate in the Nasdaq Market Center and 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.

(h) 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. Obligations of ITS/CAES Market Makers

(a) An ITS/CAES Market Maker that registers in an issue shall enter quotations in the issue on the effective date of the issue's authorization. If quotations are not entered on the effective date of authorization and the ITS/CAES Market Maker remains inactive in the issue for five (5) business days, the ITS/CAES Market Maker's registration in the issue will be terminated.

(b) Pursuant to SEC Rule 11Ac1-1, a ITS/CAES Market Maker 's quotations in ITS Securities are required to be firm for the size displayed or, if no size is displayed, for a normal unit of trading. If a market maker displays quotations in a ITS Security in both another national securities exchange and in the Nasdaq Market Center, the market maker shall maintain identical quotations in each system.

(c) An ITS/CAES Market Maker's quotation must maintain continuous two-sided quotations for at least one normal unit of trading in the absence of the grant of an excused withdrawal or a functional excused withdrawal by Nasdaq.

(d) An ITS/CAES Market Maker shall be obligated to have available in close proximity to the Nasdaq terminal at which it makes a market in a ITS/CAES security a quotation service that disseminates the bid price and offer price then being furnished by or on behalf of other exchanges and ITS/CAES Market Makers trading and quoting that security.

(e) The minimum quotation increment for ITS Securities shall be \$0.01.

(f) An ITS/CAES Market Maker shall be open for business as of 9:30 a.m. Eastern Time and shall close no earlier than 4:00 p.m. Eastern Time. An ITS/CAES Market Maker shall designate a closing time for each security between 4:00 p.m. and 6:30 p.m. Eastern Time. A designated closing time may only be on the hour or half hour. An ITS/CAES Market Maker whose market is closed may re-open its market as late as 6:30 p.m. Eastern Time upon appropriate notification to Nasdaq.

(g) 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.

5222. Withdrawal of Quotations

(a) An ITS/CAES Market Maker that wishes to withdraw quotations in a ITS Security shall contact Nasdaq MarketWatch to obtain excused withdrawal status prior to withdrawing its quotations.

(b) Excused withdrawal status based on illness, vacations or physical circumstances beyond the ITS/CAES Market Maker's control may be granted for up to five (5) business days, unless extended by Nasdaq MarketWatch. Excused withdrawal status based on investment activity or advice of legal counsel, 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. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not normally constitute acceptable reasons for granting excused withdrawal status, unless Nasdaq has initiated a trading halt for ITS/CAES Market Makers in the security, pursuant to Rule 4120. Excused withdrawal status may be granted to a ITS/CAES Market Maker that is a distribution participant or an affiliated purchaser) in order to comply with SEC Rule 101 or 104, in accordance with the standards described in Rule 4619 with respect to Nasdaq Market Makers.

5223. Voluntary Termination of Registration

An ITS/CAES Market Maker may voluntarily terminate its registration in a ITS Security by withdrawing its quotations from Nasdaq. An ITS/CAES Market Maker that voluntarily terminates its registration in a ITS Security may not, however, re-register as an ITS/CAES Market Maker in that security for two (2) business days.

5224. Suspension and Termination of Quotations

Nasdaq may, pursuant to the procedures set forth in Nasdaq's Code of Procedure as set forth in the Rule 9000 Series, suspend, condition, limit, prohibit or terminate an ITS/CAES Market Maker's authority to enter quotations in one or more ITS Securities for violations of the applicable requirements or prohibitions of the Rule 4000, 5000 Rules Series.

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 CAES. The new two-sided quotation required of the ITS/CAES Market Maker will be entered as promptly as possible into CAES.

(d) Transactions in ITS securities executed in CAES 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	\$0.10
	\$15 or over	\$0.25 ¹
Network B	Under \$5	\$0.10
	\$5 or over	\$0.25 ²

¹ 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.

² 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 Fund Share, or

(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

(3) 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 ³
Network B	Under \$10	\$0.50
	\$10 or over	\$1.00 ⁴

The price range 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).

(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

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.

³ 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 two dollars.

⁴ 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.

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 his 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 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 .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 it could participate as principal (i.e., the parenthetical example above, the total amount of the security that it 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 his 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 Participant Market 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 he 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, it 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., 40.40), reflected on a netted share basis.

The pre-opening response shall be formatted as follows:
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 his 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 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 it 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 an ITS Participant Market (“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.

(9) The transaction involves DIAMONDS and SPDRs, and the execution occurs at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS. This exemption shall apply for a pilot period ending on such date specified by the SEC.

(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, (ii) if the initiating ITS/CAES Market Maker elects not to do so, 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, (ii) if the ITS/CAES Market Maker elects not to do so, 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 his 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.

IM 5262-1 Contemporaneous Sending Of Commitments

The terms “trade-through” and “third participating market center trade-through” do not include the situation where a member who initiates the purchase (sale) of an ITS Security, at a price which is higher (lower) than the price at which the security is being offered (bid) in another ITS Participant Market, sends contemporaneously through ITS to such ITS Participant Market a commitment to trade at such offer (bid) price or better and for at least the number of shares displayed with that market center’s better-priced offer (bid). A trade-through complaint sent in these circumstances is not valid, even if the commitment sent in satisfaction cancels or expires, and even if there is more stock behind the quote in the other market.

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 an ITS Participant Market 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 an ITS Participant Market has created what is referred to in this rule as a “crossed market.”

(c) (1) (A) Unless excused by operation of paragraphs (c)(1)(B) or (d) below an ITS/CAES Market Maker that makes a bid or offer and in so doing creates a locked or crossed market with a Non-Nasdaq ITS Participant Market and that receives a complaint through ITS/CAES from the party whose bid (offer) was locked or crossed (the “aggrieved party”), the ITS/CAES Market Maker responsible for the locking or crossing offer (bid) shall, as specified in the complaint, either promptly “ship” (i.e., satisfy through ITS/CAES the locked or crossed bid (offer) up to the size of its locking or crossing offer (bid)) or “unlock” (i.e., adjust his locking or crossing offer (bid) so as not to cause a locked or crossed market). If the complaint specifies “unlock”, it may nevertheless ship instead.

(B) If there is an error in a locking or crossing bid or offer that relieves the locking or crossing ITS/CAES Market Maker from its obligations under paragraph (c)(2) of Rule 11Ac1-1 and if the ITS/CAES Market Maker receives a “ship” complaint through ITS/CAES from the aggrieved party, the locking or crossing ITS/CAES Market Maker shall promptly cause the quotation to be corrected and, except as provided in paragraph (d) below, it shall notify the aggrieved party through ITS/CAES

of the error within two minutes of receipt of the complaint. If the locking or crossing ITS/CAES Market Maker fails to so notify the aggrieved party, it shall promptly ship.

(2) An ITS/CAES Market Maker that makes a bid or offer and in so doing creates a locked or crossed market with another ITS/CAES Market Maker shall promptly send to such other ITS/CAES Market Maker an order seeking either the bid or offer which was locked or crossed, unless excused by operation of paragraph (d) below. Such order shall be for either the number of shares it has bid for (offered) or the number of shares offered (bid for) 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 or order referred to above would be prohibited by an Nasdaq rule or 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.

(7) the locking or crossing bid or offer no longer prevails at the time the complaint is received by the ITS/CAES Market Maker.

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 ITS Participant Market, shall, upon executing the block trade, send to each other ITS Participant Market 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 ITS 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 an ITS Participant Market (or any derivative phrase), as that term is used in this Rule, means the current quotations from any 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 an ITS 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 participating market center 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 and the 9700 Series, 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.

5266. Market Participant Identifiers

(a) ITS/CAES market makers obligated to maintain a continuous two-sided quotation pursuant Rule 5221(c) shall have that quote displayed and attributed to them by a special market participant identifier (“MPID”). The first MPID issued to an ITS/CAES Market Maker shall be referred to as the ITS/CAES Market maker’s “Primary MPID.”

(b) For a six-month pilot period ending November 1, 2005, ITS/CAES market makers may request the use of additional MPIDs that shall be referred to as “Supplemental MPIDs.” ITS/CAES Market makers may be issued up to nine Supplemental MPIDs. An ITS/CAES Market maker may request the use of Supplemental MPIDs for displaying two-sided Attributable Quotes/Orders in Nasdaq for any security in which it is registered and meets the obligations set forth in Rule 5221; an ITS/CAES market maker may not use a Supplemental MPID for displaying one-sided Attributable Quotes/Orders. An ITS/CAES Market maker that fails to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use a Supplemental MPID for any purpose in that security.

(c) ITS/CAES Market makers that are permitted the use of Supplemental MPIDs for displaying Attributable Quotes/Orders pursuant to subparagraph (b) of this rule are subject to the same rules applicable to the ITS/CAES Market Maker's first quotation, with two exceptions: (1) the continuous two-sided quote requirement and the need to obtain an excused withdrawal, or functional excused withdrawal, as described in Rule 5221(c), as well as the procedures described in Rule 4710(b)(2)(B) and (b)(5), do not apply to ITS/CAES Market Makers' Supplemental MPIDs; and (2) Supplemental MPIDs may not be used by ITS/CAES Market Makers to engage in passive market making or to enter stabilizing bids pursuant to Nasdaq Rules 4614 and 4619.

IM-5266-1 - Procedures For Allocation of Second Displayable MPIDs

Nasdaq has a technological limitation on the number of displayed, attributable quotations in an individual security. Therefore, Nasdaq must consider the issuance and display of Supplemental MPIDs to be a privilege and not a right. Nasdaq has developed the following method for allocating the privilege of receiving and displaying Supplemental MPIDs with attributable display privileges ("display privileges") in an orderly, predictable, and fair manner on a stock-by-stock basis.

As described in Rule 5266, Nasdaq will automatically designate an ITS/CAES Market Maker's first MPID as a "Primary MPID" and any additional MPIDs as "Supplemental MPIDs." ITS/CAES Market Makers are required to use their Primary MPID in accordance with the requirements of a Primary MPID for ITS Securities. Regardless of the number of MPIDs used, ITS/CAES Market Makers will trade ITS Securities using Nasdaq systems in compliance with all pre-existing Nasdaq and SEC rules governing the trading of these securities - including the Intermarket System Plan and the Rule 5200 Series. The multiple MPID for ITS Securities program creates no exceptions to these obligations. ITS/CAES Market Makers may also use Supplemental MPIDs to enter non-attributable orders into SIZE.

Nasdaq has developed procedures to maintain a high level of surveillance and member compliance with its rules with respect to ITS/CAES Market Makers' use of both Primary and Supplemental MPIDs to display quotations in Nasdaq systems. If it is determined that one or more Supplemental MPIDs are being used improperly, Nasdaq will withdraw its grant of the Supplemental MPID(s) for all purposes for all securities. In addition, if an ITS/CAES Market Maker no longer fulfills the conditions appurtenant to its Primary MPID (e.g., by being placed into an unexcused withdrawal), it may not use a Supplemental MPID for any purpose in that security.

The first priority of Nasdaq's method for allocating the privilege of displaying Supplemental MPID is that each ITS/CAES Market Maker should be permitted to register to display a single quotation in a security under a Primary MPID before any is permitted to register to display additional quotations under Supplemental MPIDs. If all requests for Primary MPIDs have been satisfied, Nasdaq will then register Supplemental MPIDs to display Attributed Quotes/Orders in that security on a first-come-first-served

basis, consistent with the procedures listed below. If Nasdaq comes within ten MPIDs with display privileges of its maximum in a particular security, Nasdaq will temporarily cease registering Supplemental MPIDs with display privileges in that security and reserve those ten remaining display privileges for ITS/CAES market makers that may register their Primary MPID in that stock in the future. If Nasdaq allocates those reserved display privileges to ITS/CAES Market Makers requesting Primary MPIDs and then receives additional requests for Primary MPIDs, it will use the procedure described below to re-allocate display privileges to ITS/CAES Market Makers requesting Primary MPIDs.

For any stock in which Nasdaq has reached the maximum number of ITS/CAES Market Makers registered to display quotations, once each month, Nasdaq will rank each of the ITS/CAES Market Makers that has more than one Supplemental MPID with display privileges in the stock according to their monthly volume of trading, based on the volume of that ITS/CAES Market Maker's least used Supplemental MPID with display privileges. Nasdaq will withdraw the display privilege associated with the lowest volume Supplemental MPID of the ITS/CAES Market Maker in that ranking and assign that privilege to the first ITS/CAES Market Maker that requested a Primary MPID or Supplemental MPID, with Primary MPIDs always taking precedence. Nasdaq will repeat this process as many times as needed to accommodate all pending requests for Primary and Supplemental MPIDs. If after following this process (or at the outset of the allocation process) no ITS/CAES Market Maker has more than one Supplemental MPID with display privileges, ITS/CAES Market Makers will be ranked based upon the volume associated with their Supplemental MPID, and Nasdaq will withdraw the display privilege from the ITS/CAES Market Maker with the lowest volume Supplemental MPID.

ITS/CAES Market Makers that lose the display privilege associated with a Supplemental MPID will still be permitted to use the Supplemental MPID to enter non-attributable orders into SIZE for that security or any other, and to display additional quotes in stocks in which they are properly registered to do so, subject to the conditions described in the rule and this interpretive material.

The objective of the procedure is to re-allocate the display privileges from the least used Supplemental MPIDs to those ITS/CAES Market Makers requesting Primary or Supplemental MPIDs. For example, assume with respect to security WXYZ ITS/CAES Market Maker A has nine Supplemental MPIDs with display privileges (which is the maximum - 1 Primary MPID + 9 Supplemental MPIDs = 10 MPIDs with display privileges), ITS/CAES Market Maker B has three Supplemental MPIDs with display privileges, and ITS/CAES Market Maker C has three Supplemental MPIDs with display privileges and is requesting a fourth. After conducting the monthly ranking, one of B's Supplemental MPIDs is the least used in WXYZ, C has the next lowest volume Supplemental MPID with display privileges in the security, and A has the next lowest in the security after C (i.e., the order for forfeiting their display privilege is: B, C, then A). Based on this ranking, Nasdaq would re-allocate one of B's display privileges to C. As a result, A keeps its privileges for all nine of its Supplemental MPIDs in WXYZ, C adds a Supplemental MPID with display privileges in the security, and B loses a display

privilege in WXYZ - B does not lose use of the Supplemental MPID for submitting non-attributable orders in WXYZ to SIZE, and it does not lose display privileges in any other security in which it is authorized to use the Supplemental MPID.