

EXHIBIT 5

Additions underlined

Deletions [bracketed]

Rule 15A. Order Protection Rule**[(a) Definitions**

(1) An "Exchange trade-through", as that term is used in this Rule, occurs whenever a member on the Exchange initiates the purchase on the Exchange of a security traded through ITS ("an ITS Security") at a price which is higher than the price at which the security is being offered (or initiates the sale on the Exchange of such a security 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 participating market center as reflected by the offer (bid) then being displayed on the Exchange from such other market center. The member described in the foregoing sentence is referred to in this Rule as the "member who initiated a trade-through".

(2) A "third participating market center trade-through", as that term is used in this Rule, occurs whenever a member on the Exchange 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 participating market center as reflected by the offer (bid) then being displayed on the Exchange 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."

(3) A "trade-through", as that term is used in this Rule, means either an Exchange trade-through or a third participating market center trade-through.

(4) A "locked market", as that term is used in this Rule, occurs whenever the Exchange disseminates a bid (offer) for an ITS Security at a price which equals or exceeds (is less than) the price of the offer (bid) for the security then being displayed from another ITS participating market center (the "locked offer (bid)"). This Rule refers to the bid (offer) that causes the locked market as the "locking bid (offer)".

(5) As used in this Rule in reference to the Cincinnati Stock Exchange, Inc. ("CSE"), a contra party shall be "within another ITS participating market center" if he is a "User" (which has the meaning assigned to it in CSE Rule 11.9 as in effect on January 26, 1981) participating in the transaction through the CSE's "National Securities Trading System".

(6) "ITS/CAES Market Maker", as that term is used in this Rule, means a NASD member that is registered as a market maker with the NASD for the purposes of the Applications with respect to one or more specified "ITS/CAES securities" as more fully described in the ITS Plan.

(b) Trade-Throughs

(1) When purchasing or selling, either as principal or agent, any ITS Security on the Exchange or by issuing a commitment to trade through the System, members on the Exchange should avoid initiating a trade-through unless one or more of the provisions of paragraph (b)(3) below are applicable.

(2)

(A) Except as provided in paragraph (b)(3) below, if a trade-through occurs and a complaint thereof is received by the Exchange through the System from the party whose bid or offer was traded-through ("the aggrieved party"), then:

(i) except as provided in paragraph (b)(2)(A)(ii) below, (a) the member who initiated the trade-through shall satisfy, or cause to be satisfied, through the System the bid or offer traded-through in its entirety either at the price of such bid or offer or at the price that caused the trade-through (as determined in accordance with paragraph (b)(2)(B) below), or (b) if he elects not to do so (and, in the case of a third participating market center trade-through, he obtains the agreement of the contra party within the ITS participating market center that received the commitment that caused the trade-through), then the price of the transaction that constituted the trade-through shall be corrected 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; or

(ii) in the case of an Exchange trade-through only, if the member who initiated the trade-through and the member on the contra side of the transaction had each originated his side of the transaction while on the Exchange for his own account or for any account in which he has an interest, the transaction shall be deemed void and a cancellation thereof shall be reported through the consolidated last sale reporting system.

(B) The price at which the bid or offer traded-through shall be satisfied pursuant to clause (a) of paragraph (b)(2)(A)(i) 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 Exchange's ITS Block Trade Policy) and (ii) the member 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.

(C) Whenever paragraph (b)(2)(A)(i) applies, if the member who initiated the trade-through, or the member (or the broker-dealer within another ITS participating market center) on the contra side of the transaction, was, or if both such parties were, executing (in whole or in part) orders that originated from off their respective floors (or, in the case of a contra party who is a User or an ITS/CAES Market Maker, as to which he acts as agent for another person), each such order or portion thereof that was executed in the transaction that constituted the trade-through (whether such order or portion thereof was executed by the member who initiated the trade-through or by the member (or the broker-dealer within another ITS participating market center) on the contra side of the transaction) shall receive the price that caused the trade-through, or the price at which the bid or offer traded-through was satisfied, if it was satisfied, pursuant to clause (a) of paragraph (b)(2)(A)(i), or the adjusted price, if there was an adjustment, pursuant to clause (b) of paragraph (b)(2)(A)(i), whichever price is most beneficial to the order or portion. Resulting money differences shall be the liability of the member who initiated the trade-through.

(3) Paragraph (b)(2) above shall not apply under the following conditions:

(A) the size of the bid or offer traded-through was for 100 shares;

(B) the member who initiated the trade-through made every reasonable effort to avoid the trade-through, but was unable to because of a systems/equipment failure or malfunction;

(C) the transaction which constituted the trade-through was not a "regular way" contract;

(D) the trade-through was an Exchange trade-through and occurred during a period when, with respect to the ITS Security which was the subject of the trade-through, members on the Exchange were relieved of their obligations under paragraph (c)(2) of Rule 11Ac1-1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1-1; provided, however, that, unless one of the conditions of paragraph (b)(3) of this Rule (other than that of this subparagraph (D)) applies, during any such period members shall make every reasonable effort to avoid trading-through any bid or offer displayed on the Exchange from another ITS participating market center whose members are not so relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1-1;

(E) the bid or offer traded-through was being displayed from another ITS participating market center whose members were relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1-1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1-1;

(F) the bid or offer traded-through had caused a locked market in the ITS Security which was the subject of such bid or offer; or

(G) in the case of an Exchange trade-through, a complaint with respect to the trade-through was not received by the Exchange through the System from the aggrieved party promptly following the trade-through and, in any event,

(i) 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, or

(ii) in the case of a third participating market center trade-through, within ten (10) minutes from the time the aggrieved party sent a complaint through the System to the ITS participating market center 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.

(H) in the case of a third participating market-center-trade-through, either:

(i) the member who initiated the trade-through

(a) had sent a commitment to trade promptly following the trade-through that satisfies the bid or offer traded-through and **(b)** preceded the commitment with an administrative message stating that the commitment was in satisfaction of a third participating market center trade-through, or

(ii) a complaint with respect to the trade-through was not received by the Exchange 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 ITS participating market center 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.

(c) Responsibilities and Rights following Trade-Through Complaints

(1) When a trade-through complaint is received by the Exchange, the member who initiated the trade-through shall respond as promptly as practicable to the aggrieved party such a response shall notify the aggrieved party. Such a response shall notify the aggrieved party either,

(A) that one of the conditions specified in paragraph (b)(3) of this Rule is applicable (specifying the particular condition), or

(B) that the complaint is valid and appropriate corrective action is being taken pursuant to paragraph (b)(2) of this Rule.

(2) If it is ultimately determined that there was a trade-through, that the corrective action required by either paragraph (b)(2)(A)(i) or (b)(2)(A)(ii) above was not taken, and that none of the conditions of paragraph (b)(3) above was applicable, the member who initiated the trade-through shall be liable to the aggrieved party for the lesser of:

(A) the amount of 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 that would have been suffered by the aggrieved party had he purchased or sold the security subject to the trade-through so as to mitigate his loss and had such purchase or sale been effected at the "loss basis price".

For purposes of this paragraph (c)(2), 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 by the Exchange (or, if the complaint is so received within the last hour of trading on the Exchange on any day, then the price of the opening transaction in that security on the Exchange on the next day on which the Exchange trades that security).

(3) Any member who is an aggrieved party under the trade-through rule of another ITS participating market center may at any time at his discretion take steps to establish and mitigate any loss he might incur as a result of the trade-through of his bid or offer. If so, he shall give prompt notice to such other market center of any such action.

(4) If a complaint of a purported trade-through is received by the Exchange and the complained-of transaction resulted from a member's execution on the Exchange of a commitment to trade received from another ITS participating market center, the member 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 on the Exchange and **(B)** of the identity of the ITS participating market center that originated the commitment. Neither compliance nor non-compliance with the preceding sentence shall be the basis for any liability of the member for any loss associated with the complained-of transaction.

(5) If a transaction that resulted from a member's execution on the Exchange of a commitment to trade constitutes a trade-through under the rules of the originating ITS participating market center, then:

(A) if the broker-dealer on such market center who initiated the transaction requests that the Exchange member correct the price of such transaction in accordance with the counterpart in such market center's trade-through rule to paragraph (b)(2)(A)(i)(b) of this Rule, the Exchange member may, but need not, acquiesce and so correct the price; and

(B) paragraph (b)(2)(C) of this Rule shall apply as if the Exchange member were a contra party within the meaning of that paragraph.

(d) Locked Markets

(1)

(A) Except as provided in paragraphs (d)(1)(B) and (d)(2) below, if a locked market occurs and the Exchange receives a complaint through the System from the party whose bid (offer) was locked (the "aggrieved party"), the member responsible for the locking offer (bid) (the "locking member") shall, as specified in the complaint, either promptly "ship" (i.e., satisfy through the System the locked bid (offer) up to the size of his locking offer (bid)) or "unlock" (i.e., adjust his locking offer (bid) so as not to cause a locked market). If the complaint specifies "unlock", he may nevertheless ship instead.

(B) If there is an error in a locking bid or offer that relieves the locking member from his obligations under paragraph (c)(2) of Rule 11Ac1-1 and if the Exchange receives a "ship" complaint through the System from the aggrieved party, the locking member shall promptly cause the quotation to be corrected and, except as provided in paragraph (d)(2) below, he shall notify the aggrieved party through the System of the error within two minutes of receipt of the complaint on the Floor. If the locking member fails to so notify the aggrieved party, he shall promptly ship.

(2) Paragraph (d)(1) above shall not apply under the following conditions:

(A) the locked bid or offer was for 100 shares;

(B) the locking bid or offer no longer prevails on the Floor at the time the complaint is received on the Floor;

(C) the rules of the Exchange would prohibit the issuance of a commitment to trade to satisfy the locked bid or offer;

(D) the locking member makes every reasonable effort to comply with paragraph (d)(1) above, but is unable to comply because of a systems/equipment failure or malfunction;

(E) the locking bid or offer was not for a "regular way" contract; or

(F) the locked market occurred at a time when, with respect to the affected ITS Security, members either on the Exchange or in the ITS participating market center in which the aggrieved member is located were relieved of their obligations under paragraph (c)(2) of Rule 11Ac1-1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1-1.

(e) Opening and Block Trades.—This Rule shall not apply to (1) purchases and sales effected by members participating in an opening (or re-opening) transaction on the Exchange in an ITS Security or (2) any "block trade" as defined in the Exchange's ITS Block Trade Policy.

••• *Supplementary Material:* -----

.10 Nothing in paragraph (d)(2)(B) above is intended to discourage a locking member from electing to ship if the complaint requests him to do so.

.20 The fact that a transaction may be cancelled or the price thereof may be adjusted pursuant to the provisions of paragraph (b)(2) of this Rule 15A, shall not have any effect, under the rules, on other transactions or the execution of orders not involved in the original transaction.

.30 The provisions of this Rule 15A shall supersede the provisions of any other Exchange Rule which might be construed as being inconsistent with Rule 15A.

.40 For the purposes of this Rule:

(i) the terms "Exchange 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 participating market, sends contemporaneously through ITS to such ITS participating 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); and

(ii) 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.

.50] Where any better-priced protected bid or offer as defined in SEC Rule 242.600(b)(57) is published by another market center, and the price associated with such published better bid or offer has not been systemically matched on the Exchange, the Exchange will automatically route to such other market center an order priced at such published bid or offer, unless the trade-through that would occur if the Exchange did not route to the other market center falls within an exception set forth in SEC Rule 242.611(b) or within an exemption granted by the Securities and Exchange Commission pursuant to SEC Rule 242.611(d). If such order is not filled or not filled in its entirety, the balance will be returned to the Exchange and handled consistent with the order's instructions, which includes automatic execution, if available. The order entry time associated with the returned portion of the order will be the time of its return, not the time the order was first entered with the Exchange.

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ITS BLOCK TRADE POLICY

(a) Definitions

(1) A "block trade", as that term is used in this Rule, means a trade on the Exchange that

(A) 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");

(B) is effected at a price outside the bid or offer displayed from another ITS participating market center; and

(C) involves either

(i) 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

(ii) any other transaction of block size (i.e., in which the member 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 on the Exchange.

Contemporaneous transactions at the same price filling an order or orders then or theretofore represented on the Exchange by a member (including transactions resulting from commitments to trade sent by the member pursuant to paragraph (b) below) shall be deemed to constitute a single transaction for the purpose of this definition.

(2) A "current bid or offer on the Exchange", as that term is used in paragraph (a)(1)(C)(ii) above, means the price of the current quotation on the floor of the Exchange established independently of the order to buy or sell that is represented by the member.

(3) A "bid or offer displayed from another ITS participating market center" (or any derivative phrase), as that term is used in this Rule, means the current quotation from another ITS participating market center displayed on the floor of the Exchange 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 participating market center.

(b) Obligation to Send Commitments.—Unless one or more of the conditions described in paragraph (c) below exist, the member representing the block-size order(s) shall at the time of execution of a block trade send, or cause to be sent, through ITS to each other ITS participating market center displaying a bid (offer) superior to the execution price a commitment to trade at the execution price and for the number of shares displayed with that market center's better-priced bid (offer).

(c) Inapplicability.—Paragraph (b) above shall not apply under the following conditions:

(1) the size of the better-priced bid or offer displayed by another ITS participating market center was for 100 shares;

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

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

(4) the block trade was executed during a period when, with respect to the ITS Security that was the subject of the block trade, members on the Exchange were relieved of their obligations under paragraph (c)(2) of Rule 11Ac1-1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1-1; provided however, that, unless one of the conditions of this paragraph (c) other than that of this subparagraph (4) applies, members shall nevertheless make every reasonable effort during any such period to satisfy through ITS any better-priced bid or offer displayed on the Exchange from another ITS participating market center whose members are not so relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1-1;

(5) 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 paragraph (c)(2) of Rule 11Ac1-1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1-1; or

(6) the better-priced bid or offer had caused a "locked market", as that term is defined in Exchange Rule 15A, in the ITS Security that was the subject of the block trade.

••• *Supplementary Material:* -----

.10 A transaction not subject to this Policy may be subject to the trade-through provisions of Exchange Rule 15A. A member who makes a bid or offer on the Exchange otherwise than in connection with a block trade may be subject to the locked markets provisions of Exchange Rule 15A.

.20 This Policy shall supersede the provisions of any Exchange Rule which might be construed as being inconsistent with this Policy.]

Rule 36. Communications Between Exchange and Members' Offices

••• *Supplementary Material:* -----

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(a) With the approval of the Exchange, a Floor broker may maintain a telephone line or use an Exchange authorized and provided portable telephone which permits a non-member off the Floor to communicate with a member or member organization on the Floor. In addition, any Floor broker receiving orders from the public over portable phones must be properly qualified under Exchange rules to conduct such public business (See, for e.g., Rules 342 and 345.) Subject to the exception contained in .23 of this Rule, the use of a portable telephone on the Floor other than one authorized and issued by the Exchange is prohibited.

[In the case of Floor brokers acting solely in connection with transactions in "baskets" (as Rule 800 (Basket Trading: Applicability and Definitions) defines that term), the Exchange may approve the maintenance of such telephone lines at the basket trading location. In all other instances, the Exchange will approve the maintenance of such telephone lines only at the booth location of a member or member organization.]

Rule 96. Limitation on Members' Trading Because of Options

No member while on the Floor shall initiate the purchase or sale on the Exchange for his own account or for any account in which he, his member organization, or any member, principal executive, or approved person of such member organization is directly or indirectly interested, of any stock in which he holds or has granted any put, call, straddle or other option, or in which he has knowledge that his member organization or any of the above mentioned accounts holds or has granted any put, call, straddle or other option, except that the provisions of this rule shall not apply in the case of any such options that are listed or traded on a national securities exchange. The Exchange may at any time, and from time to time, require reports relating to transactions in options effected by a member or member organization.

[••• *Supplementary Material:* -----]

.10 A member who issues a commitment or obligation to trade from the Exchange through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or a sale of a security on the Exchange as referred to in this Rule.

.20 See paragraph (c)(iii) of Rule 800 (Basket Trading: Applicability and Definitions) in respect of the ability to initiate basket transactions notwithstanding the limitations of this Rule.]

Rule 104T. Dealings by DMMs

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

(a) -- (k) No Change

••• *Supplementary Material:* -----

Functions of DMMs

.10 - .11 No Change

[.11A Tier 1 and Tier 2 component stock quotations]The function of a member acting as a regular DMM on the Floor of the Exchange includes the establishment of quotations for the "ESP Service" (as Rule 800 (Basket Trading: Applicability and Definitions) defines that term). In respect of a registered security that is a component stock of a "basket" (as Rule 800 defines that term), the DMM shall, whenever all of the basket's component stocks listed on the Exchange are open for trading:

(a) establish, maintain and communicate a "Tier 1 component stock" bid and offer and a "Tier 2 component stock" bid and offer (as Rule 800 defines those terms) for the stock in accordance with such parameters, and in such manner, as the Exchange may from time to time prescribe; and

(b) upon receiving a "basket execution notice" (as Rule 800 defines that term), assign, take or supply the component stock at the execution price as follows:

(i) if the execution price reflected in the basket execution notice is the same as the quotation prevailing at the time of his receipt of the notice, he shall apply the rules of priority and precedence set forth in Rule 72 (Priority and Precedence of Bids and Offers);

(ii) if the execution price reflected in the basket execution notice is inferior to the quotation prevailing at the time of his receipt of the notice (as, for instance, where the prevailing quotation improves from the time the DMM communicated his Tier 1 component stock quotation), he shall apply the rules of priority and precedence set forth in Rule 71 (Precedence of Highest Bid and Lower Offer) and Rule 72 as if the execution price equalled the prevailing quotation, although the assigned price shall nevertheless be the price indicated in the execution notice;

(iii) if the execution price reflected in the basket execution notice is superior to the quotation prevailing at the time of his receipt of the notice, or if the DMM's market in the component stock is halted, he shall take or supply the necessary shares at the execution price indicated in the basket execution notice; and

(iv) if the DMM's market in the component stock is not firm, he shall, if practicable, assign the execution at the execution price indicated in the basket execution notice by

applying the rules of priority and precedence set forth in Rule 71 and Rule 72; otherwise he shall take or supply the necessary shares at that price.

For the purposes of clauses (i) and (ii), if the size of the quotation(s) on the book or in the trading crowd that are better than or at the execution price indicated in the basket execution notice is not sufficient to take or supply the requisite number of shares, the DMM shall take or supply the remaining number of shares at that price. In accordance with paragraph (a) of Rule 800, the rules pertaining to ITS and trading through ITS shall not apply to the assignment, taking or supplying of stock under this paragraph (b).

The DMM's obligation to assign, take or supply stock under clause (b) above is limited to:

(a) if the basket order is executed at the aggregate Tier 1 quotation, the share representation of the stock in one basket; and

(b) if the basket order is executed at the aggregate Tier 2 bid or offer, the share representation of the stock in up to three baskets.

The DMM must take or supply stock as necessary to meet these obligations notwithstanding other trading restrictions of this Rule and Rule 440B (Short Sales). In doing so, the DMM is exempt from the trading restrictions of this Rule.

An execution through the ESP Service against an "aggregate Tier 1" bid (offer) or an "aggregate Tier 2" bid (offer) (as Rule 800 defines those terms) (a) shall suspend the DMM's obligation to make and communicate such tier's component stock bid (offer) for 30 seconds or for such other period as the Exchange shall from time to time prescribe and (b) shall not cause any order entrusted to the DMM to be elected. The inability of the Exchange to disseminate quotations in one or more component stocks as a result of systems problems shall also suspend the DMM's obligation to make and communicate Tier 1 and Tier 2 component stock quotations.

The DMM shall report for dissemination such transaction-related information relating to Tier 1 and Tier 2 component executions as the Exchange may from time to time prescribe.

.11B See paragraph (c)(v) of Rule 800 in respect of the impact of this Rule on the ability of a DMM to initiate basket transactions and paragraph (c)(vi) of Rule 800 in respect of the impact of basket transactions on the calculation of stock positions.]

.11C – .24 No Change

Rule 111. Reports of Executions

Reports by Non-Competitive Traders.

Form 82-B-Report filed monthly. Any transactions initiated on the Floor by a member for any account in which he has an interest:

(1) for bona fide arbitrage; (2) when a Floor Official expressly invites a member or members to participate in a difficult market situation; or (3) when such transactions are effected in a security which is the subject of rights in which the member is registered as a DMM and they are made for the purpose of acquiring or liquidating a bona fide hedge position against the rights.

Form 82-B in duplicate is to be sent to the Market Surveillance Division, 11 Wall Street, 10th Floor, by the opening of business on the second business day following the end of the calendar month.

[(c) See paragraph (c)(vi) of Rule 800 (Basket Trading: Applicability and Definitions) in respect of the impact of basket transactions on the calculation of stock positions.]

[(d)c] See paragraph (d)(iv) of Rule 900 (Off-Hours Trading: Applicability and Definitions) in respect of (a) the impact of transactions effected through the "Off-Hours Trading Facility" (as Rule 900 defines that term) on the calculation of stock positions and (b) the inapplicability of tick tests to such transactions.

Rule 123D. Openings and Halts in Trading

(1) Delayed Openings/Halts in Trading.—It is the responsibility of each DMM to ensure that registered stocks open as close to the opening bell as possible, while at the same time not unduly hasty, particularly when at a price disparity from the prior close. DMMs may open a registered stock on a trade or on a quote. A DMM may open a registered stock on a quote when there is no opening trade. Openings may be effectuated manually or electronically (see Rule 104(b)(ii)). Openings and reopenings should be timely, as well as fair and orderly, reflecting a professional assessment of market conditions at the time, and appropriate consideration of the balance of supply and demand as reflected by orders represented in the market. DMMs should, to the best of their ability, provide timely and impartial information at all phases of the opening process. DMMs should ensure adequate personnel are assigned and call upon additional clerical and relief DMM resources to assist in order management and Crowd communication, when appropriate. It is also incumbent upon DMMs to seek the advice of Floor Officials when openings are delayed or when a halt in trading may be appropriate due to unusual market conditions.

Brokers should recognize the difficulty in providing accurate information in a constantly changing situation, and that significant changes are often occasioned by single orders or substantial interests delivered via Exchange systems. Brokers should make every effort to

ascertain the client's interest as early as possible and to inform the DMM so that such interest can be factored into the opening process. Brokers should communicate to clients the problems caused by delaying their interest until the last minute. Brokers should expect to have time to communicate the essential facts to their clients and to react to the changing picture. They should not expect, however, to be able to delay the opening for every last fragment of this change, and should recognize their obligation to a timely opening. Once a relatively narrow range of opening possibilities is given, the broker and his or her client should have sufficient information to enter a final order. In this regard, brokers should advise their clients against limits which are not firm, or are based solely on where the opening looked at the time the information was given. Brokers should not expect to be given endless opportunities to adjust those limits. Whenever possible the broker should have discretion within a range of the client's interest, and have the power to react to last minute changes without having to go back to the phone. This is particularly true for orders in amounts that represent a small fraction of the total opening volume, but applies to all orders. Brokers must recognize that orders or cancellations merely dropped on the counter can be lost or misplaced, and should hand the order directly to the DMM or his or her assistant and orally state the terms. Failure to do so could result in a monetary error to the broker as well as the DMM.

Floor Officials participate in the regulatory process by providing an impartial professional assessment of unusual situations, as well as advice with respect to pricing when a significant disparity in supply and demand exists. The DMM, however, has ultimate responsibility in this regard, and while a Floor Official's approval may be a mitigating factor, it will not exonerate a DMM when performance has been deemed not satisfactory.

A DMM should consider the following areas of DMM performance when involved in an unusual market situation:

- an opening price change that is not in proportion to the size of an imbalance;
- absence of an indication before a large opening price change;
- inadequate support after a large opening price change, i.e., lack of sufficient continuity and depth in the aftermarket;
- absence of trading without good cause or Floor Official approval (or an unjustified or unreasonably delayed opening or halt in trading);
- not obtaining appropriate Floor Official approvals for opening delays, trading halts, and wide price variations.

In addition, a Floor Official should be consulted as soon as it becomes apparent that an unusual situation exists, and a Floor Governor should be consulted if it is anticipated that the opening price may be at a significant disparity from the prior close. If an unusual situation exists, such as a large order imbalance, tape indications should be disseminated,

including multiple indications if appropriate with the supervision of a Floor Official. A second Floor Official's opinion in a delayed opening is required if there is difficulty in arriving at a decision; if the size of the price change from the previous NYSE close is three points or more or represents a 10% change in price; or if the stock has not opened within 50 minutes after the opening of business or 20 minutes after an extended delayed opening time frame. All tape indications require Floor Official approval.

Exchange policy requires the dissemination of an indication in connection with any delayed opening — involving any stock which has not opened (or been quoted) by 10:00 a.m. In addition, the dissemination of an indication is mandatory for an opening which will result in a significant price change from the previous close:

Previous NYSE Closing Price *	Price Change (equal or greater than)
Under \$10	1 point
\$10-\$99.99	the lesser of 10% or 3 points
\$100 and Over	5 points

*The above guidelines are applicable to Initial Public Offerings based on the offering price.

All indications require the supervision and approval of a Floor Official. If it involves a bank or brokerage stock, the approval of an Executive Floor Governor is required. If an Executive Floor Governor is unavailable, a Floor Governor's or Senior Floor Official's approval must be obtained. In addition to the mandatory criteria, DMMs should use their judgment as to when it is appropriate to seek Floor Official approval for disseminating a price indication.

Mandatory indication policy applies to a foreign-listed security only if the opening price will be at a significant price change (see chart above) from its closing price in the foreign market or the current price in the foreign market.

Mandatory indications for convertible preferred stocks are only required if an indication was disseminated in the underlying common stock.

In this regard the following procedures should be followed for delayed opening and trading halt indications:

- The length of time for the dissemination of indications should be in proportion to the anticipated disparity of the opening or reopening price from the prior sale.
- The number of indications should increase in proportion to the anticipated disparity in the opening or reopening price, with increasingly definitive, "telescoped" indications when an initial narrow indication spread is impractical.

- An indication should be published immediately when trading is halted for a non-regulatory order imbalance. Such indications should be broad enough to allow flexibility, but narrow enough to convey as accurate a picture of supply and demand as possible at the time. In most cases, a final indication with a one point spread would be appropriate. Further telescoping to one-half point could result in unnecessary delay due to a change in the terms of a pivotal order. Even if an indication is not disseminated, DMMs should endeavor to provide brokers with an approximate range within which they believe a stock will open.
- Tape indications before the opening should be disseminated at 9:15 a.m., if possible, but any tape indications disseminated prior to 9:30 a.m. require the approval of an Executive Floor Governor or Floor Governor, or the approval of a Floor Official if it relates to a spin-off or if trading had been halted and not resumed the prior day.
- Tape indications and halts in trading in NYSE Bonds SM are set forth in Rule 86.

[ITS Pre-Opening Applications must be followed when necessary based upon the anticipated opening price. For example, a Pre-Opening Notification must be issued if a stock is going to open more than .10 of a point from a composite last sale under \$15 or more than .25 of a point from a composite last sale of \$15 or higher. The spread in the Pre-Opening Application may not exceed .50 of a point if the consolidated close is under \$50 or one point if the consolidated close is \$50 or higher with limited exception. If a Pre-Opening Application is required on an opening or any reopening and a tape indication is also issued, the indication satisfies the Pre-Opening Application requirement if it is also sent to the ITS participants by the DMM in the form of Pre-Opening Notification. In that case, the maximum ITS spread would not apply. Three minutes must elapse from the time a Pre-Opening Application is issued, and an additional one minute if subsequent notifications are required, before a stock should open.]

As with other openings, tape indications are discretionary for IPO's with the approval of an Executive Floor Governor or Floor Governor except that it is mandatory if the opening price change as measured from the offering price meets the requirements for a mandatory indication.

If an indication is disseminated after the opening bell, it must be considered a delayed opening. In addition, any stock that is not opened with a trade or reasonable quotation within 30 minutes after the opening of business must be considered a delayed opening (except for IPO's) and requires Floor Official supervision, as well as an indication. That 30-minute time frame may only be extended by an Executive Floor Governor on a Floor-wide basis.

More than one indication should be disseminated if an opening will be outside the first indication or if the first indication had a wide spread, especially if the time frame for delayed openings has been extended by the Executive Floor Governor. A reduction in time between indications can be used when multiple indications are disseminated. Generally, a minimum of three minutes must elapse between the first indication and a

stock's opening as measured by the time the indication appears on the PDU. However, when more than one indication is disseminated, a stock may open one minute after the last indication provided that at least three minutes must have elapsed from the dissemination of the first indication.

With respect to a post-opening trading halt, a minimum of three minutes must elapse between the first indication and a stock's reopening. However, where more than one indication is disseminated, a stock may re-open one minute after the last indication, provided that at least three minutes must have elapsed from the dissemination of the first indication.

Tape indications must be disseminated with the approval of a Floor Official prior to the opening or reopening in a stock subject to a regulatory or nonregulatory halt in trading or a delayed opening. A Floor Governor should be consulted if a significant price change is anticipated.

An Executive Floor Governor or Floor Governor should be consulted in any case where there is not complete agreement among the Floor Officials participating in the discussion.

Floor Governors should keep apprised of developments when consulted, and should seek the assistance of Executive Floor Governors, when appropriate, as soon as possible.

Floor Governors should be prepared to balance the opportunity for brokers to participate in the opening with the need for timeliness, and should assist in identifying opportunities for opening the security, based upon the shifting supply and demand in conjunction with appropriate DMM participation.

DMMs should make every effort to balance timeliness with the opportunity for customer reaction and participation. Although the correct price based on information available at the time is always the goal, DMMs and supervising Floor Governors should recognize customers' desires for a timely opening. When the DMM and Floor Governor agree that all participants have had a reasonable opportunity to participate, the DMM should open the stock.

Once trading has commenced, trading may only be halted with the approval of a Floor Governor or two Floor Officials. An Executive Floor Governor, or in their absence a Senior Floor Governor, should be consulted if it is felt that trading should be halted in a bank or brokerage stock due to a potential misperception regarding the company's financial viability.

Sometimes the Exchange is notified by a listed company in advance of publication concerning news which might have a substantial market impact. The designated Exchange staff will advise an Executive Floor Governor or Floor Governor, or in their absence a Floor Official.

If the Exchange staff makes a recommendation that trading should be halted in a stock pending a public announcement by the company and the Executive Floor Governor or Floor Governor disagrees, he or she should seek the opinion of another Executive Floor Governor or Floor Governor. If the Executive Floor Governors or Floor Governors are in agreement that trading should not be halted, trading should continue. If one of the two is in agreement with the recommendation to halt trading, then trading should be halted. While the time period may vary from case-to-case as a result of the particular circumstances involved, normally if the announcement is not made within approximately 30 minutes after the delay or halt is implemented, the Exchange may commence the opening or reopening of trading in the stock. Special care is taken to ensure that material non-public information is not disclosed, even inadvertently, as a result of someone overhearing details relating to trading halts or delayed opening situations.

It is important that all appropriate Floor Official forms are completed.

(2) – (4) No Change

Rule 345. Employees—Registration, Approval, Records

(a) No Change

••• *Supplementary Material:* -----

Registration of Employees

.10 Employees required to be registered or approved.—See definitions of "branch office manager", "registered representative" and "registered options representative" contained in Rules 9 and 10 [and Rule 700(b)(49)] and Rule 342 for qualification requirements for supervisors.

A "securities lending representative" is defined as any person who has discretion to commit his member or member organization employer to any contract or agreement (written or oral) involving securities lending or borrowing activities with any other person.

Rule 476A. Imposition of Fines for Minor Violation(s) of Rules

••• *Supplementary Material:* -----

List of Exchange Rule Violations and Fines

Applicable Thereto Pursuant to Rule 476A

- Rule 15 ([ITS and Pre-Opening Applications]Pre-Opening Indications) and Rule 15A ([ITS "Trade-Throughs" and "Locked-Markets" and ITS Block Trade Policy] Order Protection Rule)

[• Rules 704 and 705 options position limits and exercise limits

- Failure of a member organization to have individuals responsible and qualified for the positions of Registered Options Principal, Senior Registered Options Principal and Compliance Registered Options Principal (Rules 720 and 722(b))
- Rule 726 options disclosure document and prospectus delivery requirement violations
- Rule 750(e)(i) requirement for options specialists to establish bid/ask spreads no greater than the maximum permitted Competitive Options Traders, based on the price of the option or the bid/ask differential of the underlying security
- Rule 758(b)(i)(C)(1) requirement for Competitive Options Traders to establish bid/ask spreads no greater than the maximum permitted, based on the price of the option or the bid/ask differential of the underlying security
- Rule 758(b)(ii)(A) limitations on principal/agency trading of a Competitive Options Trader
- Rule 762 requirements to file option trade information
- Rule 780(b)(i) requirement for members and member organizations to indicate final decisions of holders of equity options either to exercise or not to exercise expiring equity options by a specific time
- Rule 780(f) requirement for members and member organizations to make, keep and file with the Exchange records concerning final exercise decisions made with respect to options in certain circumstances.
- Rule 780.10(b) requirement to deliver "exercise advice"
- Rule 781 allocation of exercise assignment notice violations]

[Option Rules (Rules 700—794)]

Rule 700. Applicability, Definitions and References]

Text deleted in its entirety

[Rule 701. Option Contracts to Be Traded]

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[Rule 702. Rights and Obligations of Holders and Writers]

Text deleted in its entirety

[Rule 703. Series of Options Open for Trading]

Text deleted in its entirety

[Rule 704. Position Limits]

Text deleted in its entirety

[Rule 705. Exercise Limits]

Text deleted in its entirety

[Rule 706. Reporting of Options Positions]

Text deleted in its entirety

[Rule 707. Liquidation of Positions]

Text deleted in its entirety

[Rule 708. Limit on Uncovered Short Positions]

Text deleted in its entirety

[Rule 709. Other Restrictions on Exchange Option Transactions and Exercises]

Text deleted in its entirety

[Rule 715. Approval of Underlying Stocks and Groups]

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[Rule 716. Withdrawal of Approval of Underlying Stocks and Groups]

Text deleted in its entirety

[Rule 717. Trading Rotations, Halts and Suspensions]

Text deleted in its entirety

[Rule 720. Registration of Options Principals]

Text deleted in its entirety

[Rule 721. Opening of Accounts]

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[Rule 722. Supervision of Accounts]

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[Rule 723. Suitability]

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[Rule 724. Discretionary Accounts]

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[Rule 725. Confirmations]

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[Rule 726. Delivery of Options Disclosure Document and Prospectus]

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[Rule 727. Transactions with Issuers]

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[Rule 728. Restricted Stock]

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[Rule 730. Statement of Accounts]

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[Rule 732. Customer Complaints]

Text deleted in its entirety

[Rule 750. Rules of General Applicability]

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[Rule 750A. Option Specialist Reallocation]

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[Rule 751. Premium Bids and Offers]

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[Rule 752. Minimum Fractional Changes]

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[Rule 753. Acceptance, Priority and Precedence of Options Bids and Offers]

Text deleted in its entirety

[Rule 754. Units of Trading]

Text deleted in its entirety

[Rule 755. Floor Reports of Exchange Option Transactions]

[Rule 756. Transactions off the Exchange]

Text deleted in its entirety

[Rule 757. Securities Accounts and Orders of Competitive Options Traders and Specialists]

Text deleted in its entirety

[Rule 758. Competitive Options Traders]

Text deleted in its entirety

[Rule 758A. Specialist Options Transactions]

Text deleted in its entirety

[Rule 758B. Extraordinary Market Conditions]

Text deleted in its entirety

[Rule 759. Accommodation Transactions]

Text deleted in its entirety

[Rule 759A. Reporting Requirements Applicable to Short Sales in NASDAQ NMS Securities]

[Rule 760. Overnight Comparison of Exchange Options Transactions]

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[Rule 761. Omnibus Comparison and Clearance Rule]

Text deleted in its entirety

Rule 762. Filing of Trade Information

Text deleted in its entirety

[Rule 763. Contract Lists and Uncompared Trade List]

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[Rule 764. Verification of Contract Lists and Reconciliation of Uncompared Trades]

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[Rule 765. Unreconciled Trade Reports]

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[Rule 766. Reporting of Compared Trades to Options Clearing Corporation]

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[Rule 767. Maintaining Office and Filing Signatures]

Text deleted in its entirety

[Rule 770. Resolution of Uncompared Trade]

(Text deleted in its entirety)

[Rule 771. Failure To Pay Premium]

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[Rule 772. Option Contracts of Suspended Members]

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[Rule 780. Exercise of Option Contracts]

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[Rule 781. Allocation of Exercise Assignment Notices]

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[Rule 782. Delivery and Payment]

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[Rule 790. Stock Transfer Tax]

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[Rule 791. Communications to Customers]

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[Rule 792. Days and Hours for Options Trading]

(Text deleted in its entirety)

[Rule 793. Furnishing of Books, Records and Other Information]

Text deleted in its entirety

[Rule 794. [Telephone Communication]]

Text deleted in its entirety

[Rule 795. Transfer or Lease of Options Trading Right]

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[Exchange Stock Portfolio Rules (Rules 800—817)]

Rule 800. Basket Trading: Applicability and Definitions]

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[Rule 801. Baskets To Be Traded]

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[Rule 802. Basket Units of Trading; Basket Bids and Offers]

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[Rule 803. Basket Quotation Dissemination Requirements]

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[Rule 804. Delivery of a Basket's Component Stocks]

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[Rule 805. Priority of Basket Bids and Offers]

Text deleted in its entirety

[Rule 806. Taking or Supplying Baskets Named in Order]

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[Rule 807. Competitive Basket Market-Makers]

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[Rule 808. Basket Book Dealers]

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[Rule 809. Proprietary Basket Trades]

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[Rule 810. Basket Orders Initiated Off the Floor]

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[Rule 811. Competitive Basket Market-Makers' Public Customers]

Text deleted in its entirety

[Rule 812. "Stop" Constitutes Basket Guarantee]

Text deleted in its entirety

[Rule 813. Limitation of Liability]

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[Rule 814. Basket Accounts, Reports and Recordkeeping]

Text deleted in its entirety

[Rule 815. Basket Openings and Reopenings]

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[Rule 816. Discontinuous Auction Markets; Basket Trading Halts]

(Text deleted in its entirety)

[Rule 817. Publications of Basket Transactions; Comparison]

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Rule 9217. Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d-1(c)(2)

Any member organization or covered person may be subject to a fine under Rule 9216(b) with respect to any rules listed below.

- [• Rules 704 and 705 options position limits and exercise limits.
- Failure of a member organization to have individuals responsible and qualified for the positions of Registered Options Principal, Senior Registered Options Principal and Compliance Registered Options Principal (Rules 720 and 722(b)).
- Rule 726 options disclosure document and prospectus delivery requirement violations.
- Rule 750(e)(i) requirement for options specialists to establish bid/ask spreads no greater than the maximum permitted Competitive Options Traders, based on the price of the option or the bid/ask differential of the underlying security.
- Rule 758(b)(i)(C)(1) requirement for Competitive Options Traders to establish bid/ask spreads no greater than the maximum permitted, based on the price of the option or the bid/ask differential of the underlying security.
- Rule 758(b)(ii)(A) limitations on principal/agency trading of a Competitive Options Trader.
- Rule 762 requirements to file option trade information.
- Rule 780(b)(i) requirement for members and member organizations to indicate final decisions of holders of equity options either to exercise or not to exercise expiring equity options by a specific time.
- Rule 780(f) requirement for members and member organizations to make, keep and file with the Exchange records concerning final exercise decisions made with respect to options in certain circumstances.

- Rule 780.10(b) requirement to deliver "exercise advice."
- Rule 781 allocation of exercise assignment notice violations.]
