

AMENDMENT NO. 21
JOINT SELF-REGULATORY ORGANIZATION PLAN GOVERNING THE
COLLECTION, CONSOLIDATION AND DISSEMINATION OF QUOTATION AND
TRANSACTION INFORMATION FOR NASDAQ-LISTED SECURITIES TRADED
ON EXCHANGES ON AN UNLISTED TRADING PRIVILEGE BASIS

AGREEMENT made as of the ___ day of _____, 2009, by the undersigned registered national securities association and national securities exchanges (collectively referred to as the “Participants”), that are parties to the plan (“UTP Plan” or “Plan”) submitted to the Securities and Exchange Commission (“Commission”).

The parties agree as follows:

1. Section I (Participants) shall be amended to read as follows (deletions are in brackets and additions are in bold and underlined):

I. Participants.

The Participants include the following:

A. Participants

- [1. American Stock Exchange LLC
86 Trinity Place
New York, New York 10006]
- 1[2]. BATS Exchange, Inc.**
8050 Marshall Drive
Lenexa, Kansas 66214
- [3. Boston Stock Exchange
100 Franklin Street
Boston, Massachusetts 02110]
- 2[4]. Chicago Board Options Exchange, Inc.**
400 South LaSalle Street, 26th Floor
Chicago, Illinois 60605
[Chicago Stock Exchange
440 South LaSalle Street
Chicago, Illinois 60605]
- 3[5]. Chicago Stock Exchange**
440 South LaSalle Street
Chicago, Illinois 60605
[Chicago Board Options Exchange, Inc.]

400 South LaSalle Street, 26th Floor
Chicago, Illinois 60605]

- 4[6]. Financial Industry Regulatory Authority, Inc.**
1735 K Street, N.W.
Washington, D.C. 20006
[International Securities Exchange, LLC
60 Broad Street
New York, New York 10004]
- 5[7]. International Securities Exchange, LLC**
60 Broad Street
New York, New York 10004
[Financial Industry Regulatory Authority, Inc.
1735 K Street, N.W.
Washington, D.C. 20006]
- 6. NASDAQ OMX BX, Inc.**
One Liberty Plaza
New York, New York 10006
- 7. NASDAQ OMX PHLX, Inc.**
1900 Market Street
Philadelphia, Pennsylvania 19103
8. National Stock Exchange, Inc.
101 Hudson, Suite 1200
Jersey City, NJ 07302
9. New York Stock Exchange LLC
11 Wall Street
New York, New York 10005
- 10. NYSE Amex LLC**
20 Broad Street
New York, New York 10005
- 11[10]. NYSE Arca, Inc.**
100 South Wacker Drive
Suite 1800
Chicago, IL 60606
- [11. NASDAQ OMX PHLX, Inc.
1900 Market Street
Philadelphia, Pennsylvania 19103]

12. The Nasdaq Stock Market LLC
1 Liberty Plaza
165 Broadway
New York, NY 10006

B. Additional Participants

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

* * *

2. Section II (Purpose of Plan) shall be amended to read as follows (deletions are in brackets and additions are in bold and underlined):

II. Purpose of Plan

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

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

* * *

3. Section III (Definitions) shall be amended to read as follows (deletions are in brackets and additions are in bold and underlined):

III. Definitions

A. "Current" means, with respect to Transaction Reports or Quotation Information, such Transaction Reports or Quotation Information during the fifteen (15) minute period immediately following the initial transmission thereof by the Processor.

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

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

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

D. “Exchange Act” means the Securities Exchange Act of 1934, **as amended.**

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

F. “FINRA” means the Financial Industry Regulatory Authority, Inc.

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

[H. “Transaction Reporting System” means the System provided for in the Transaction Reporting Plan filed with and approved by the Commission pursuant to SEC Rule 11Aa3-1, subsequently re-designated as Rule 601 of Regulation NMS, governing the reporting of transactions in Nasdaq securities.]

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

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

[K]~~J~~. “UTP Trade Data Feed” means the service that provides Vendors and

Subscribers with Transaction Reports.

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

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

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

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

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

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

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

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

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

[U]T. “Transaction Reports” means reports required to be collected and made available pursuant to this Plan containing the stock symbol, price, and size of the

transaction executed, the Market in which the transaction was executed, and related information, including a buy/sell/cross indicator and trade modifiers, reflecting completed transactions in Eligible Securities.

[V. “Upon Effectiveness of the Plan” means July 12, 1993, the date on which the Participants commenced publication of Quotation Information and Transaction Reports on Eligible Securities as contemplated by this Plan.]

[W]U. “Vendor” means a person [that] **who** receives Current Quotation Information or Transaction Reports provided by the Processor or provided by a Vendor, in connection with such person's business of distributing, publishing, or otherwise furnishing such information on a Current basis to Subscribers, News Services or other Vendors.

* * *

4. Section VI (Functions of the Processor) shall be amended to read as follows (deletions are in brackets and additions are in bold and underlined):

VI. Functions of the Processor

A. Generally

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

B. Collection and Consolidation of Information

For as long as Nasdaq is the Processor, the Processor shall be capable of receiving Quotation Information and Transaction Reports in Eligible Securities from Participants by the Plan-approved, Processor sponsored interface, and shall consolidate and disseminate such information via the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed to Vendors, Subscribers and News Services.

C. Dissemination of Information

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

(non-U.S.) marketplaces or in foreign countries.

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

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

1. Best Bid and Offer

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

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

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

2. Quotation Data Streams

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

3. Transaction Reports

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

D. Closing Reports

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

E. Statistics

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

F. Capacity Planning

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

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

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

* * *

5. Section VIII (Transmission of Information to Processor by Participants) shall be amended to read as follows (deletions are in brackets and additions are in bold and underlined):

VIII. Transmission of Information to Processor by Participants

A. Quotation Information

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

Quotation Information shall include:

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

B. Transaction Reports

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

Transaction Reports shall include:

1. identification of the Eligible Security, using the Nasdaq Symbol;
2. the number of shares in the transaction;
3. the price at which the shares were purchased or sold;
4. the buy/sell/cross indicator;

5. the Market of execution; and,
6. through appropriate codes and messages, late or out-of-sequence trades, corrections and similar matters.

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

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

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

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

The following symbols shall be used to denote the marketplaces:

CODE PARTICIPANT

A	[American Stock Exchange LLC] <u>NYSE Amex LLC</u>
Z	BATS Exchange, Inc.
B	[Boston Stock Exchange, Inc.] <u>NASDAQ OMX BX, Inc.</u>
W	Chicago Board Options Exchange, Inc.
M	Chicago Stock Exchange, Inc.
I	International Securities Exchange, LLC
D	Financial Industry Regulatory Authority, Inc.
Q	Nasdaq Stock Market LLC
C	National Stock Exchange, Inc.
N	New York Stock Exchange LLC

P NYSE Arca, Inc.
X Nasdaq OMX PHLX, Inc.

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

* * *

6. Section IX. (Market Access) shall be amended to read as follows (deletions are in brackets and additions are in bold and underlined):

IX. Market Access

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

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

quotations through a member of the Participant or a subscriber of a trading center.

[If quotations in an Eligible Security are displayed by a Participant that operates an SRO trading facility (or are displayed by a trading center that posts quotations through an SRO display-only quotation facility) that complies with the fair and efficient access requirements of Regulation NMS (an “NMS Compliant Facility”), including prior to the compliance date of such access requirements, that Participant (or trading center posting quotes through an SRO display-only quotation facility) shall no longer be required to permit each FINRA market participant to have direct telephone access to the specialist, trading post, market maker and supervisory center in such Eligible Security that trades on that NMS Compliant Facility. For quotations in Eligible Securities that are displayed by a Participant that operates an SRO trading facility that is not an NMS Compliant Facility, such telephone access requirement will continue to be applicable to the Participant.]

* * *

7. Section X (Regulatory Halts) shall be amended to read as follows (deletions are in brackets and additions are in bold and underlined):

X. Regulatory Halts

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

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

C. Except in the case of a Regulatory Halt, the Processor shall not cease the

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

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

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

1. The following procedures shall be followed when one or more Participants experiences extraordinary market activity in an Eligible Security that is believed to be caused by the misuse or malfunction of systems operated by or linked to one or more Participants.
 - a. The Participant(s) experiencing the extraordinary market activity or any Participant that becomes aware of extraordinary market activity will immediately use best efforts to notify all Participants of the extraordinary market activity utilizing the Hoot-n-Holler system.
 - b. The Listing Market will use best efforts to determine whether there is material news regarding the Eligible Security. If the Listing Market determines that there is [non-] undisclosed material news, it will immediately call a Regulatory Halt pursuant to Section X.E.2.
 - c. Each Participant(s) will use best efforts to determine whether one of its systems, or the system of a direct or indirect participant in its market, is responsible for the extraordinary market activity.
 - d. If a Participant determines the potential source of extraordinary market activity pursuant to Section X.1.c., the Participant will use best efforts to determine whether removing the quotations of one or more direct or indirect market participants or

barring one or more direct or indirect market participants from entering orders will resolve the extraordinary market activity. Accordingly, the Participant will prevent the quotations from one or more direct or indirect market participants in the affected Eligible Securities from being transmitted to the Processor.

e. If the procedures described in Section X.E.1.a.-d. do not rectify the situation, the Participant(s) experiencing extraordinary market activity will cease transmitting all quotations in the affected Eligible Securities to the Processor.

f. If the procedures described in Section X.E.1.a-e do not rectify the situation within five minutes of the first notification through the Hoot-n-Holler system, or if Participants agree to call a halt sooner through unanimous approval among those Participants actively trading impacted Eligible Securities, the Listing Market may determine based on the facts and circumstances, including available input from Participants, to declare an Extraordinary Market Regulatory Halt in the affected Eligible Securities. Simultaneously with the notification of the Processor to suspend the dissemination of quotations across all Participants, the Listing Market must notify all Participants of the trading halt utilizing the Hoot-n-Holler system.

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

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

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

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

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

3. After all Participants have met the requirements of Section X.F.1-2, the

Listing Market will notify the Participants utilizing the Hoot-n-Holler and the Processor when trading may resume. Upon receiving this information, Participants may commence trading pursuant to Section X.A.

* * *

8. Section XI (Hours of Operation) shall be amended to read as follows (deletions are in brackets and additions are in bold and underlined):

XI. Hours of Operation

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

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

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

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

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

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

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

D. The Processor shall collect, process and disseminate Quotation Information in Eligible Securities at other times between 4:00 a.m. and 9:30 a.m. ET, and after 4:00 p.m. ET, when any Participant or FINRA Participant is open for trading, until 8:00 p.m. ET

(the "Additional Period"); provided, however, that the national best bid and offer quotation will not be disseminated before 4:00 a.m. or after 8:00 p.m. ET. Participants that enter Quotation Information or submit Transaction Reports to the Processor during the Additional Period shall do so for all Eligible Securities in which they enter quotations.

* * *

9. Section XII (Financial Matters) shall be amended to read as follows (deletions are in brackets and additions are in bold and underlined):

XIII Financial Matters

A. Development Costs

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

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

B. Cost Allocation, [and] Revenue Sharing, and Fees

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

C. Maintenance of Financial Records

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

* * *

10. Section XIV (Indemnification) shall be amended to read as follows (deletions are in brackets and additions are in bold and underlined):

XIV. Indemnification

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

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

* * *

11. Section XVI (Modifications to Plan) shall be amended to read as follows (deletions are in brackets and additions are in bold and underlined):

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

* * *

12. Section XVII (Applicability of the Securities Exchange Act of 1934) shall be amended to delete such section in its entirety (deletions are in brackets):

XVII. Applicability of Securities Exchange Act of 1934

The rights and obligations of the Participants and of Vendors, News Services,

Subscribers and other persons contracting with Participant in respect of the matters covered by the Plan shall at all times be subject to any applicable provisions of the Exchange Act[, as amended,] and any rules and regulations promulgated thereunder.

* * *

13. Section XXI (Depth of Book Display) shall be amended to delete such section in its entirety (deletions are in brackets):

[XXI. Depth of Book Display

The Operating Committee has determined that the entity that succeeds Nasdaq as the Processor should have the ability to collect, consolidate, and disseminate quotations at multiple price levels beyond the best bid and best offer from any Participant that voluntarily chooses to submit such quotations while determining that no Participant shall be required to submit such information. The Operating Committee has further determined that the costs of developing, collecting, processing, and disseminating such depth of book data shall be borne exclusively by those Participants that choose to submit this information to the Processor, by whatever allocation those Participants may choose among themselves. The Operating Committee has determined further that the primary purpose of the Processor is the collection, processing and dissemination of best bid, best offer and last sale information ("core data"), and as such, the Participants will adopt procedures to ensure that such functionality in no way hinders the collecting, processing and dissemination of this core data.

Therefore, implementing the depth of book display functionality will require a plan amendment that addresses all pertinent issues, including:

- 1) Procedures for ensuring that the fully-loaded cost of the collection, processing, and dissemination of depth-of-book information will be tracked and invoiced directly to those Plan Participants that voluntarily choose to send that data, voluntarily, to the Processor allocating in whatever manner those Participants might agree; and
- 2) Necessary safeguards the Processor will take to ensure that its processing of depth-of-book data will not impede or hamper, in any way, its core Processor functionality of collecting, consolidating, and disseminating National Best Bid and Offer data, exchange best bid and offer data, and consolidated last sale data.

Upon approval of a Plan amendment implementing depth of book display, this article of the Plan shall be automatically deleted.]

* * *

14. Paragraph (5) of Exhibit 1 shall be amended to read as follows (additions are in bold and underlined):

Exhibit 1

* * *

(5) For purposes of this Exhibit 1, net distributable operating income for any particular calendar year shall be calculated by adding all revenues from the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed including revenues from the dissemination of information respecting Eligible Securities to foreign marketplaces, **and also including FINRA quotation data and last sale information for securities classified as OTC Equity Securities under FINRA's Rule 6400 Series (the "FINRA OTC Data")** (collectively, "the Data Feeds"), and subtracting from such revenues **6.25% to compensate FINRA for the FINRA OTC Data, after which are subtracted** the costs incurred by the Processor, set forth below, in collecting, consolidating, validating, generating, and disseminating the Data Feeds. These costs include¹, but are not limited to, the following:

- a. The Processor costs directly attributable to creating OTC Montage Data Feed, including:
 1. cost of collecting Participant quotes into the Processor's quote engine;
 2. cost of processing quotes and creating OTC Montage Data Feed messages within the Processor's quote engine;
 3. cost of the Processor's communication management subsystem that distributes OTC Montage Data Feed to the market data vendor network for further distribution.

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

- c. The costs directly attributable to creating the UTP Trade Data Feed, including:

¹ All costs associated with collecting, consolidating, validating, generating, and disseminating the FINRA OTC Data are borne directly by FINRA and not the Plan and the Participants. Such costs are established in and subject to a separate bilateral contractual agreement between FINRA and the Processor (acting as FINRA's vendor in this capacity). The Processor is responsible for insuring that no costs associated with the FINRA OTC Data are incorporated with the costs incurred by the Processor on behalf of the UTP Plan.

1. the costs of collecting each Participant's last sale and volume amount into the Processor's quote engine
 2. cost of determining the appropriate last sale price and volume amount within the Processor's trade engine;
 3. cost of utilizing the Processor's trade engine to distribute the UTP Trade Data Feed for distribution to the market data vendors.
 4. cost of the Processor's communication management subsystem that distributes the UTP Trade Data Feed to the marker data vendors' networks for further distribution.
- d. The additional costs that are shared across all Data Feeds, including:
1. telecommunication Operations costs of supporting the Participant lines into the Processor's facilities;
 2. Telecommunications Operations costs of supporting the external market data vendor network;
 3. Data Products account management and auditing function with the market data vendors;
 4. Market Operations costs to support symbol maintenance, and other data integrity issues;
 5. overhead costs, including management support of the Processor, Human Resources, Finance, Legal, and Administrative Services; and
 6. Costs of establishing and supporting the Security Income Allocation System.
- e. Processor costs excluded from the calculation of net distributable operating income include trade execution costs for transactions executed using a Nasdaq service and trade report collection costs reported through a Nasdaq service, as such services are market functions for which Participants electing to use such services pay market rate.
- f. For the purposes of this provision, the following definitions shall apply:
1. "quote engine" shall mean the Nasdaq's NT or Tandem system that is operated by Nasdaq to collect quotation information for Eligible Securities;
 2. "trade engine" shall mean the Nasdaq Tandem system that is operated by Nasdaq for the purpose of collecting last sale information in Eligible Securities.

* * *

15. Exhibit 2 shall be added to read as follows (additions are in bold and underlined):

Exhibit 2

Fees for UTP Services

(a) Level 1 Service.

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

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

UTP Level 1 Service also includes FINRA OTC Data.

(b) Non-Professional Services.

(1) The charge for distribution of UTP Level 1 Service to a non-professional subscriber shall be \$1.00 per interrogation device per month.

(2) A "non-professional" is a natural person who is neither:

- (A) registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association or any commodities or futures contract market or association;
- (B) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor
- (C) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

(c) Automated Voice Response Service Fee.

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

(d) Per Query Fee:

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

(e) Cable Television Ticker Fee.

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

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

(f) Annual Administrative Fees.

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

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

* * *

16. Exhibit 3 shall be added to read as follows (additions are in bold and underlined):

Exhibit 3

UTP CAPACITY PLANNING PROCESS

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

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

PROJECTED PROCESSOR CAPACITY REQUIREMENTS

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

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

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

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

Once each Participant receives the foregoing information, each such Participant shall submit to the Processor in writing, which may include email, its final Projected Processor Capacity Requirements. The Processor will then notify each Participant in writing, which may include email, of: a) the aggregate final Projected Processor Capacity Requirements; and b) the percentage of the aggregate final Projected Peak 5-second MPS that is attributable to such Participant.

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

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

PROCESSOR SYSTEM CAPACITY CHANGES

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

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

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

EMERGENCY CAPACITY PLANNING PROCESS

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

PAYMENT FOR SERVICES

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

PURCHASE OF CAPACITY

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

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

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

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

REDUCTION OF BASE CAPACITY

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

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

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

ATTACHMENT 1

Processor Capacity Planning Process Calendar
(Approximately 3.5 Calendar Months)

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

	<u>meeting) if it accepts the Processor's proposal for System Capacity Changes.</u>	
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ATTACHMENT 2

UTP Capacity Process - Penalties for Exceeding Proportionate Share

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

Notes:

1. The Processor reports containing daily/monthly/quarterly activity by Participant will be used to determine if any of the above penalty criteria have been met.
2. The Processor will notify a Participant in the event it has been assessed a penalty.
3. Participant penalties will be distributed to the other Participants based on each Participant's Proportionate Share.
4. Reports provided by the Processor to the Participants will include the total monthly costs, that Participant's Proportionate Share, any penalties to be paid by that Participant, any redistribution of penalties paid by other Participant(s) and the number of Participants who paid penalties broken down by Quote and Trade separately.
 - Participant's Monthly Costs are Total Monthly Costs multiplied by Participant's Proportionate Share.

UTP Capacity Planning
Participant Projected Processor Capacity Requirements - Input Document

Participant Name: _____

Initial Projected Requirements:

<u>Period Beginning:</u>	<u>Projected Peak 5 second MPS</u>		<u>Projected Peak Total Daily Transactions</u>	
	<u>UTP Quote</u>	<u>UTP Trade</u>	<u>UTP Quote</u>	<u>UTP Trade</u>

Approved By: _____ **Date**
Submitted: _____

Final Projected Requirements:

<u>Period Beginning:</u>	<u>Projected Peak 5 second MPS</u>		<u>Projected Peak Total Daily Transactions</u>	
	<u>UTP Quote</u>	<u>UTP Trade</u>	<u>UTP Quote</u>	<u>UTP Trade</u>

Approved By: _____ **Date**
Submitted: _____

* * *

This amendment to the UTP Plan will be effective upon approval by the Commission.

The parties may execute this Agreement in counterparts, no one of which need contain all signatures of all executing parties. As many of the counterparts as shall together contain all such signatures will constitute one and the same instrument.

Except for the amendment contained herein, the UTP Plan is unchanged and remains in full force and effect.

IN WITNESS WHEREOF, this Plan has been executed as of the __ day of _____, 2009, by each of the Signatories hereto.

NYSE AMEX LLC

BATS EXCHANGE, INC.

BY: _____

BY: _____

NASDAQ OMX BX, INC.

CHICAGO STOCK EXCHANGE, INC.

BY: _____

BY: _____

CHICAGO BOARD OPTIONS
EXCHANGE, INC.

FINRA

BY: _____

BY: _____

INTERNATIONAL SECURITIES
EXCHANGE, LLC

NATIONAL STOCK EXCHANGE, INC.

BY: _____

BY: _____

NEW YORK STOCK EXCHANGE LLC

NYSE ARCA, INC.

BY: _____

BY: _____

NASDAQ OMX PHLX, INC.

THE NASDAQ STOCK MARKET LLC

BY: _____

BY: _____