

Proposed Rule Change by Chicago Stock Exchange  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input type="checkbox"/>	Amendment <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>		Date Expires <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters).

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	<input type="text" value="Kathleen M."/>	Last Name	<input type="text" value="Boege"/>
Title	<input type="text" value="Vice President &amp; Associate General Counsel"/>		
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**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date

By  Vice President & Associate General Counsel  
(Name) (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

### Partial Amendment

Through this amendment to this submission, the Chicago Stock Exchange Inc. (the “Exchange” or the “CHX”) seeks to incorporate changes to the proposed rule text; provide additional narrative information about the proposal; and describe the Exchange’s plans for phasing in the new trading model.

**A. Proposed implementation of the new model.** The Exchange currently plans to phase-in the operation of the new trading model as follows:

Week of October 2, 2006: The Exchange will begin to transition Nasdaq-listed securities to the Matching System.

Week of October 16, 2006: The Exchange will begin to transition all other securities (that are not currently traded by specialists) to the Matching System.

Early November 2006: The Exchange will begin to transition securities that are currently traded by the Exchange’s specialists.

The exact dates for the transition of specific securities to the Matching System will be announced to Exchange participants over the next several weeks.

### B Additional information about the proposal.

**1. Benchmark Orders.** The Exchange has proposed that “benchmark” orders can be submitted to the Matching System only by institutional brokers; the Exchange is not certain that other participants would want the ability to submit those orders to the Matching System and, by limiting the order type to CHX institutional brokers, the CHX will be in a better position to confirm that these orders meet applicable requirements for this order type. Other participants that seek to execute these orders may do so through an institutional brokers.

**2. Section 11(a), Rule 11a-1 and Rule 11a2-2(T).** As described in detail in the Exchange’s Form 19b-4 with respect to this submission, the Exchange proposes to implement a new trading model that provides the opportunity for entirely automated executions to occur within a central Matching System accessible by all Exchange participants. The Matching System is designed to be a fully-automated facility for the display and execution of orders in all securities traded on the Exchange. All orders executed on the Exchange would be executed either in the Matching System or in a manner consistent with orders residing in the Matching System.<sup>1</sup> The Exchange would

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<sup>1</sup> As described in Article 17 of its proposed rules, the Exchange’s Brokerplex system incorporates a functionality that is designed to permit institutional brokers to execute orders outside of the Matching System, but in a manner that is consistent with the orders in the Matching System and with the NBBO.

no longer operate a physical trading floor for the trading of any security.<sup>2</sup> The CHX believes that this proposed Matching System meets the parameters of Rule 11a2-2(T) and that its proposal does not raise any of the policy concerns that Congress sought to address in Section 11(a) of the Securities and Exchange Act (“Act”)<sup>3</sup> – including, specifically, the time and place advantages that members on exchange floors might have over non-members off the floor and the general public.<sup>4</sup>

Rule 11a2-2(T) provides exchange members with an exception to the trading prohibition. Known as the “effect versus execute” rule, Rule 11a2-2(T) permits an exchange member, subject to certain conditions, to effect a transaction for a covered account by arranging for an unaffiliated member to execute the transactions on the exchange floor. To comply with the rule’s conditions, a member must (1) transmit the order from off the exchange floor, (2) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution, (3) may not be affiliated with the executing member and (4) with respect to an account over which the member has investment discretion, neither the member nor his associated person may retain any compensation in connection with effecting the transaction without express written consent from the person authorized to transact business for the account in accordance with the rule. The requirements of Rule 11a2-2(T) are “designed to put members and non-members on the same footing, to the extent practicable, in light of the purposes of Section 11(a).”<sup>5</sup>

The Exchange believes that the Matching System meets the requirements for off-floor transmission because all orders executed within the Matching System will be transmitted from a remote location, by electronic means.<sup>6</sup> Similarly, the Exchange

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This functionality currently is scheduled to be implemented on November 1.

<sup>2</sup> As described in its proposal, the Exchange would not operate a physical trading floor in the new trading model. Instead, it would allow participants to remain in their current locations within the trading floor space, through the end of the year at which time the trading floor space would be more formally subleased to interested parties (including participants) for use as office or trading space.

<sup>3</sup> 15 U.S.C. 78k(a). Section 11(a) of the Exchange Act prohibits a member of a national securities exchange from effecting transactions on that exchange for his own account, the account of an associated person, or an account over which he or his associated person exercises investment discretion (collectively, the “covered accounts”) unless an exception applies. Congress intended Section 11(a) to address concerns about special time and place advantages that floor-based members of an exchange might have over persons who were not on the floor – such as the ability to “execute decisions faster than public investors.”

<sup>4</sup> See Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542, 11543 (March 17, 1978)(“1978 Release I”); Securities Exchange Act Release No. 14713 (April 27, 1978), 43 FR FR 18557, 18588 (May 1, 1978)(“1978 Release II”); Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084, 6092 (January 31, 1979)(“1979 Release”). The 1978 and 1979 Releases cite the House Report at 54-57.

<sup>5</sup> See 1978 Release II at 18560.

<sup>6</sup> The Commission has considered this requirement in connection with a number of automated systems and

believes that the Matching System meets the requirements for non-participation in the execution of order because, once an order is transmitted to the Matching System, the participant submitting the order relinquishes its ability to influence or guide the execution of the order within that system.<sup>7</sup> Although Rule 11a2-2(T) also requires that an order in a covered account be executed by a member not affiliated with the member initiating the order, the Commission has recognized that this requirement may be satisfied where an order is executed in an automated exchange system, such as the proposed Matching System.<sup>8</sup> As a final matter, Rule 11a2-2(T) places restrictions on a member's ability to retain compensation for effecting a transaction in an account for which the initiating member exercises investment discretion.<sup>9</sup> As a prerequisite for use of the Matching System, if a CHX participant is to rely on Rule 11a2-2(T) for a managed account transaction, the participant must comply with the limitations set forth in the Rule.

**C. Written Comments Received With Respect to Proposed Rule Changes.** On August 25, 2006, Order Execution Services Holdings, Inc. ("OES") filed a comment letter (the "OES Comment Letter") with the Commission. The OES Comment Letter was the only written comment submitted regarding the published proposal. In its comment letter, OES contends that certain order routing services, pursuant to which a third-party broker-dealer will agree to provide CHX participants with access to other markets and serve as a "give-up" for CHX participants in those markets, must be required to be a facility of the Exchange. In support of its argument, OES cites to a previous approval order issued by the Commission, whereby the order-routing functionality provided by Wave, a broker-dealer affiliate of ArcaEx and the Pacific Stock Exchange, was deemed

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has consistently found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means. *See* Letter from Paula R. Jenson, Deputy Chief Counsel, Division of Market Regulation, SEC, to Kathryn L. Beck, Senior Vice President, Special Counsel and Antitrust Compliance Officer, Pacific Exchange, dated October 25, 2001 (regarding ArcaEx (the "ArcaEx Letter")); Letter from Paula R. Jenson, Deputy Chief Counsel, Division of Market Regulation, SEC, to Angelo Evangelou, Senior Attorney, Chicago Board Options Exchange, dated March 31, 2003 (regarding CBOEdirect (the "CBOEdirect Letter")); Letter from Brandon Becker, Director, Division of Market Regulation, SEC, to George T. Simon, Foley & Lardner (on behalf of the Chicago Stock Exchange), dated November 30, 1994 (regarding Chicago Match (the "Chicago Match Letter")); Letter from Paula R. Jenson, Deputy Chief Counsel, Division of Market Regulation, SEC to Jeffrey P. Burns, Assistant General Counsel, American Stock Exchange, dated July 9, 2002 (regarding Amex's Auto-Ex system for options); and Letter from Paula R. Jenson, Deputy Chief Counsel, Division of Market Regulation, SEC to Richard S. Rudolph, Counsel, Philadelphia Stock Exchange (regarding PHLX's AUTOM System and its automatic execution feature AUTO-X).

<sup>7</sup>*See, e.g.,* the ArcaEx Letter; the CBOEdirect Letter; the Chicago Match Letter.

<sup>8</sup>Because the Exchange's proposed Matching System is a fully automated system of the Exchange, which will not provide any participant with special or unique trading advantages over another participant, the Exchange believes that this requirement is satisfied. *See* ArcaEx Letter; Chicago Match Letter.

<sup>9</sup> Specifically, the Rule requires that, with respect to an account over which the member has investment discretion, neither the member nor his associated person may retain any compensation in connection with effecting the transaction without express written consent from the person authorized to transact business for the account in accordance with the rule.

to constitute a facility of the Exchange.

OES's argument does not recognize fundamental distinctions between the Wave arrangement and the order routing services that the CHX proposes to provide. In the Wave arrangement, an affiliated broker-dealer made the routing decisions on behalf of that exchange's participants, and then the exchange's order-routing functionality routed the orders in accordance with the broker-dealer's routing decisions. Accordingly, the CHX believes that the OES Comment Letter raises erroneous considerations, and need not be further addressed.

**D. Proposed changes to rule text.** The proposed changes to the rule text that are set out below fall into three general categories: (a) they make non-substantive, conforming changes that result from approval of other, unrelated rule filings; (b) they make minor modifications to the proposed operation of the Matching System and the proposed legal requirements that must be satisfied by Exchange market makers; (c) they incorporate an exemption from Rule 611 of Regulation NMS that recently was issued by the Commission; and (d) they clarify the meaning of several proposed provisions. Each of these types of changes is addressed below.

**1. Changes to the rule text that arise from other filings.** In recent days, Commission staff have approved two filings – which made a series of changes to the Exchange's disciplinary rules (CHX-2005-06) and modified the Exchange's rules to confirm that each participant firm would need only one trading permit to conduct business on the Exchange (CHX-2006-23) – that need to be reflected in a number of different provisions in the new model filing.<sup>10</sup> This amendment simply incorporates these changes, making non-substantive conforming changes to the initially-proposed rule text.

**2. Changes that make minor modifications to the operation of the Matching System and to the legal requirements that CHX market makers must satisfy.** These proposed changes include a change to the definition of a “cross with size;”<sup>11</sup> confirmation that the Matching System will evaluate most cross orders to see if

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<sup>10</sup> Affected provisions include Article 1, Rule 1(p)(deleting the definition of “nominee,” which was deleted as part of CHX-2006-23); Article 1, Rule 1(t) (adding the definition of “person,” which was added by CHX-2005-06); Articles 3 and 4 (combining these two articles and making other changes as part of CHX-2006-23); Article 6, Rules 2(b)(7), Rule 3 and Rule 6 (incorporating changes from CHX-2006-23); Article 7, Rule 12 (incorporating changes from CHX-2006-23 and CHX-2005-06); Article 8, Rules 4, 5 and 14 (incorporating text from CHX-2006-23); Article 12, Rules 2, 4 and 8 (incorporating changes from CHX-2005-06 and 2006-23); Article 13, Rules 2 and 5 (incorporating changes from both filings); and Article 14, Rule 1 (incorporating changes from CHX-2006-23).

<sup>11</sup> See Article 20, Rule 4(b)(6)(requiring a cross with size to size out all of the displayed interest at a price, but providing that, once the CHX is disseminating a book feed, a cross with size would only be required to size out the largest displayed order).

they meet the “cross with size” definition and, if so, will execute them as crosses with size;<sup>12</sup> and noting that, when the Matching System lacks sufficient information to determine the appropriate price at which a sell short order could be displayed or executed, the Matching System will automatically cancel the order.<sup>13</sup> Other proposed changes confirm that cross orders can be submitted as intermarket sweep orders;<sup>14</sup> remove references to functionality that is not being built; and confirm that a participant cannot change a “display” instruction for an order, but must submit a new order with a new display instruction.<sup>15</sup> Finally with respect to the Matching System, proposed changes confirm the circumstances, once Reg NMS is implemented, when the Matching System would lock or cross the protected quotes of other markets;<sup>16</sup> and make clear that the Matching System will trade in increments supported by the Intermarket Trading System or Reg NMS linkage plan.<sup>17</sup>

Additional changes regarding market maker obligations clarify that an individual cannot register as both an MMT and as an institutional broker representative.<sup>18</sup> Finally, the changes codify the requirement that an Exchange-registered market maker, who also receives customer orders outside the facilities of the Exchange, must establish sufficient information barriers procedures.

**3. Changes that incorporate the “qualified contingent trade” exemption.** These changes incorporate the exemption recently issued by the Commission<sup>19</sup> exempting contingent, multi-component trades, generally involving a security and a related derivative, from Rule 611(a) of Regulation NMS. The Exchange believes that such exemptive relief will be of significant value to certain customers of CHX institutional brokers.

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<sup>12</sup> See Article 20, Rule 4(b)(6).

<sup>13</sup> See Article 20, Rule 8(e)(5).

<sup>14</sup> See Article 20, Rule 4(b)(14).

<sup>15</sup> See Article 20, Rule 4(a)(7)(b)(removing a reference to an order that executes at the midpoint of the NBBO, because this functionality is not being built at this time); and Article 20, Rule 8(b)(5)(confirming the need to submit a new order with a new display instruction).

<sup>16</sup> See Article 20, Rule 6(d).

<sup>17</sup> See Article 20, Rule 4(a)(7)(d). A similar provision incorporates current rule text to confirm that securities that customarily trade at a per share price of \$100,000 or more must be submitted in minimum increments of \$.10. See Article 20, Rule 4(a)(7)(e).

<sup>18</sup> See Article 16, Rule 1, Interpretation and Policy .01.

<sup>19</sup> See SEC Release No. 34-54389 (August 31, 2006).

**4. Changes that clarify the meaning of proposed rules.** These changes include a change in the definition of NBBO to confirm that this term relates only to protected bids and offers;<sup>20</sup> the addition of language that confirms that non-regular way crosses can execute within a penny of other orders in the Matching System;<sup>21</sup> and a change that notes that, in the last “refresh” of a reserve size order, the number of shares may be less than the original number of displayed shares because that is all that is left.<sup>22</sup> Other similar changes clarify the execution of benchmark orders; confirm the handling of BBO ISO orders; and note that provisions that take effect with the implementation of Rule 611 of Reg NMS will take effect on the Trading Phase Date of February 5, 2007.<sup>23</sup> A few final changes renumber sections to correct numbering mistakes in the original text and correct a reference to an “opening cross” order that was mistakenly identified as a “preopening cross” order.<sup>24</sup>

These changes are set out below. Additions to the original text of the filing are shown in ***bold italics***; deletions are shown with a ~~double strike-through~~.

## **ARTICLE 1[I]**

### **Definitions and General Information**

#### **Definitions**

RULE 1. Whenever and wherever used in these Rules, unless the context requires otherwise, the following terms shall have the respective meanings ascribed to them below:

\* \* \*

o. “NBBO” means, for securities listed on the NYSE, Amex or any other exchange except Nasdaq, the size and price associated with the best bid and offer among the markets participating in the ITS Plan. ~~(and, when Reg NMS is implemented for particular issues, “NBBO” shall~~ ***mean the size and price associated with the best***

<sup>20</sup> See Article 1, Rule 1(o).

<sup>21</sup> See Article 20, Rule 4(a)(7)(b) (recognizing, as already expressed in the definition of this type of order, that non-regular way cross orders execute without regard to orders in the Matching System, because all orders in the Matching System are for regular-way settlement).

<sup>22</sup> See Article 20, Rule 4(b)(20).

<sup>23</sup> See Article 20, Rule 4(b)(2)(confirming that benchmark orders must be executed in increments permitted by Article 20, Rule 4(a)(7)(b); Article 20, Rule 4(b)(1)(reiterating that BBO ISO orders will be displayed in the circumstances set out in the rule because the participant routing the order to the Matching System has already satisfied the quotations of other markets as required by Article 20, Rule 6(c)(3)); and Article 1, Rule 1(v)(defining Trading Phase Date as February 5, 2007).

<sup>24</sup> See Article 6, Rules 7-11 and Article 7, Rules 11-13 (correcting numbering mistakes); and Article 20, Rule 8(f)(correcting the mistaken reference to a preopening cross order).

~~*protected bid and best protected offer that are calculated and disseminated in an NMS security. have the meaning set out in Rule 600(a)(42) of Reg NMS. For Nasdaq-listed securities, "NBBO" shall have the meaning set out in Rule 600(b)(42) of Reg NMS.*~~

~~p. [j.]~~ No change to text.

~~q.~~ "Nasdaq" means the Nasdaq Stock Exchange, Inc.

~~r.~~ "NYSE" means the New York Stock Exchange.

~~s. [j.]~~ No change to text.

~~t. [k.]~~ No change to text.

**t. "Person" means an individual person or a corporation, partnership, limited liability entity or any other type of business organization.**

**u. "Primary market" means, unless otherwise designated by the Exchange, the initial listing market for a security.**

**v. "Reg NMS" means Regulation NMS (17 CFR 242.600, et seq.), as amended, and any exemptive, no-action or other relief granted from the requirements of these provisions from time to time. The "Trading Phase Date" for Rule 611 of Reg NMS means February 5, 2007.**

~~w. ¶~~ No change to text.

~~x. ¶~~ No change to text.

~~y. ¶~~ No change to text.

~~z. ¶~~ No change to text.

~~aa. ¶~~ No change to text.

### **Order Types and Conditions**

**RULE 2. Unless otherwise specifically defined elsewhere in the CHX Rules, the following terms shall have the respective meanings ascribed to them, for purposes of all CHX Rules. Additional information about order types and conditions can be found in Article 20.**

**a. "BBO intermarket sweep" or "BBO ISO": an order marked as required by**

SEC Rule 600(b)(30) that is to be executed against any orders at the Exchange's BBO (including any reserve size or other undisplayed orders at or better than that price) as soon as the order is received by the Matching System, with any unexecuted balance of the order to be immediately cancelled (if the order is marked "immediate or cancel") or placed in the Matching System. The Matching System, in executing the ISO as soon as the order is received by the Matching System, shall not take any of the actions described in Article 20, Rule 5 to prevent an improper trade-through or any of the actions described in Article 20, Rule 6 to prevent a locked or crossed market; provided, however, that, in executing any initially unexecuted balance of the ISO that is placed in the Matching System, the requirements of Rule 5 will be followed. These orders shall be executed on the assumption that the Participant routing the order to the Matching System has already satisfied the quotations of other markets as required by Rule 600(b)(30) and shall be displayed ~~because on the assumption that~~ the Participant routing the order to the Matching System has already satisfied the quotations of other markets as required by Article 20, Rule 6(c)(3). (This provision shall become effective **on the Trading Phase Date** ~~with the implementation~~ of Rule 611 of Reg NMS).

b. "Benchmark": an order, submitted by an institutional broker, to buy and sell the same security at a specific price, which meets the requirements of Rule 611(b)(7). A benchmark order may execute at any price, without regard to the protected NBBO and may represent interest of one or more Participants of the Exchange. **A benchmark order may only be executed in an increment permitted by Article 20, Rule 4(a)(7)(b).** (This provision shall become effective **on the Trading Phase Date** ~~with the implementation~~ of Rule 611 of Reg NMS).

\* \* \*

g. "Cross with size": an order to buy and sell at least 5,000 shares of the same security with a total value of at least \$100,000 (A) at a price equal to or better than the best bid or offer displayed in the Matching System and, for securities listed on the NYSE, Amex or any other exchange except Nasdaq (and, for Nasdaq-listed securities, when Reg NMS is implemented in those issues), equal to or better than the NBBO; and (B) where the size of the order is **one round lot** larger than the **aggregate size of all interest** ~~largest order~~ displayed in the Matching System at that price; **provided, however, that once the Exchange disseminates a feed of all displayable orders in the Matching System, the size of the order must only be larger than the largest order displayed in the Matching System at that price. The Matching System will execute any type of cross order (except a cross with yield, a non-regular way cross or an ISO cross) as a cross with size if the order meets the requirements for a cross with size.** A cross with size may represent interest of one or more Participants of the Exchange. A cross with size order may only be executed in an increment permitted by Article 20, Rule 4(a)(7)(b).

\* \* \*

(o) “ISO cross”: any type of cross order marked as required by SEC Rule 600(b)(30) that is to be executed without taking any of the actions described in Rule 5 to prevent an improper trade-through. These orders shall be executed because the Participant routing the order to the Matching System has already satisfied the quotations of other markets as required by Rule 600(b)(30). (This provision shall become effective on the Trading Phase Date of Rule 611 of Reg NMS).

~~p.~~ No change to text in published proposal.

~~q.~~ No change to text in published proposal.

q. “Midpoint cross”: a cross order with an instruction to execute it at the midpoint between the NBBO. If the NBBO is locked at the time a midpoint cross is received, the midpoint cross will execute at the locked NBBO. If the NBBO is crossed at the time a midpoint cross is received, the midpoint cross will be automatically cancelled. A midpoint cross order may only be executed in an increment permitted by Article 20, Rule 4(a)(7)(b).

~~r.~~ No change to text in published proposal.

~~s.~~ No change to text in published proposal.

~~t.~~ No change to text in published proposal.

~~u.~~ No change to text in published proposal.

~~v.~~ No change to text in published proposal.

~~w.~~ No change to text in published proposal.

~~x.~~ No change to text in published proposal.

~~y.~~ No change to text in published proposal.

z. “Outbound ISO”: an order marked as required by SEC Rule 600(b)(30)(i) that is to be executed at or better than its limit price as soon as the order is received by the Matching System, with any unexecuted balance of the order to be immediately cancelled, coupled with one or more ISO orders designed to execute against any protected bids or offers at other market centers as required by Rule 600(b)(30)(ii). Orders marked outbound ISO shall be executed against any eligible orders in the Matching System (including any reserve size or other undisplayed orders). Other than the routing of ISOs to other market centers, no action shall be taken to prevent an improper trade-through. (This provision shall become effective on the Trading Phase Date with the implementation of Rule 611 of Reg NMS).

~~aa.~~ “Price-penetrating ISO”: an order marked as required by SEC Rule 600(b)(30) that is to be executed at or better than its limit price as soon as the order is received by the Matching System, with any unexecuted balance of the order to be immediately cancelled. Orders marked as price-penetrating ISO shall be executed against any eligible orders in the Matching System (including any reserve size or other undisplayed orders, through multiple price points). The Matching System, in executing these orders, shall not take any of the actions described in Rule 5 to prevent an improper trade-through. (This provision shall become effective on the Trading Phase Date ~~with~~ the implementation of Rule 611 of Reg NMS)

bb. “Qualified contingent trade”: a transaction consisting of two or more component orders, executed as agent or principal, where:

- (1) at least one component order is in an NMS stock;
- (2) all components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent;
- (3) the execution of one component is contingent upon the execution of all other components at or near the same time;
- (4) the specific relationship between the component orders (e.g., the spread between the prices of the component orders) is determined at the time the contingent order is placed;
- (5) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since cancelled;
- (6) the Exempted NMS Stock Transaction is fully hedged (without regard to any prior existing position) as a result of the other component of the contingent trade; and
- (7) the Exempted NMS Stock Transaction that is part of a contingent trade involves at least 10,000 shares or has a market value of at least \$200,000.

For purposes of this definition, (i) “NMS stock” means any security or class of securities, other than an option, for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan; and (ii) “Exempted NMS Stock Transaction” means any trade-through caused by the execution of an order involving one or more NMS stocks that are components of a qualified contingent trade. (This provision shall become effective with the implementation of Rule 611 of Reg NMS).

~~ccaa.~~ No change to text in published proposal.

~~dd~~. “Reserve size”: an order that identifies a portion of the order that should be displayed and a portion of the order that should not be displayed, along with an instruction that the displayed portion should be refreshed to the original display quantity *(or the remaining number of shares, if less)* whenever the displayed share size falls below a specified threshold.

~~dee~~. No change to text in published proposal.

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\* \* \*

## ARTICLE ~~3~~[II]

### Participants and Participant Firms

#### Qualifications

RULE 1. ~~Each Participant Firm must hold a valid Trading Permit to~~ *Each Participant Firm must hold a valid Trading Permit to* ~~transact business on the Exchange unless they hold a valid Trading Permit.~~ *transact business on the Exchange unless they hold a valid Trading Permit.* An applicant for a Trading Permit shall meet, and a Participant *Firm* shall continue to meet, the following basic qualifications:

#### ~~Citizenship, Age and Form of Organization~~

- (a) No change to text.

\* \* \*

#### *Rights and Privileges of Participants*

RULE 2. (a) A Trading Permit confers on a Participant *Firm* the revocable license to execute approved securities transactions [on the Exchange's Floor or ]through the Exchange's trading facilities or to have those transactions executed on its behalf. *A person associated with a Participant Firm who is registered with the Exchange under Article [VI]6 as an Institutional Broker Representative or a Market Maker Trader [floor broker, co-specialist or market maker] has the right to execute approved securities transactions on the Exchange[']s Floor] or through the Exchange's Trading Facilities.* ~~An individual Participant may function either (i) as an Institutional Broker Representative or a Market Maker Trader [as a co-specialist, floor broker or registered market maker;] or (ii) as a partner or officer of a Participant Firm.~~

*No rights shall be conferred by the issuance of a Trading Permit or by registration with the Exchange under Article [VI]6 except those set forth in the Rules of the Exchange.*

\* \* \*

#### ~~Registration of Participant Firms~~

~~RULE 4[5] No change to text.~~

#### *Filing Requirements/Parties Bound by Rules of Exchange*

*RULE 4[5] All partnership articles, articles of incorporation, bylaws and all amendments thereto of a Participant Firm for which this Exchange is the Designated Examining Authority ("DEA") or of a Participant Firm subject to examination by another self-regulatory organization not having a comparable rule shall be submitted*

*to and be acceptable to the Exchange. A Participant Firm, for which the Exchange is the DEA, that is a corporation shall also file with the Exchange a current list and descriptive identification of all officers and directors, as well as evidence, satisfactory to the Exchange, that the officers of the Participant Firm are duly authorized to act for the Participant Firm[ in entering into contracts on the floor of the Exchange].*

*General partners or officers of a Participant Firm shall be bound by the bylaws and Rules of the Exchange.*

*Exchange Not Bound by Partnership Agreement or Corporate Documents*

*RULE 5[6]. No change to text.*

*Subordination of Claims*

*RULE 6[7]. No change to text.*

*Conducting Business as Partnership*

*RULE 7[8]. No change to text.*

*Limitation on Interests in Other Organizations*

*RULE 8[9]. No change to text.*

*Notice of Death or Retirement of Partner*

*RULE 9[10]. No change to text.*

*Affiliation with Suspended Participants*

*RULE 10[11]. No change to text.*

*Transfer of Equity Securities of a Participant Firm*

*RULE 11[12]. No change to text.*

*• • • Interpretations and Policies*

\* \* \*

**[.04 Floor Traders and Floor Brokers]**

*[The Exchange will not consent to a sale to persons other than officers, directors or principal stockholders of the equity securities of a Participant Firm whose principal purpose and activity are to operate as a floor broker and/or registered floor trader.]*

**Reporting of Loans**

**RULE 12[13]**      *No change to text.*

**Designation of E-Mail Addresses**

**RULE 13[14].**      *No change to text.*

**"Voting Designee" of Participant Firm**

**RULE 14[15].**

**Designation**

(a)      *No change to text.*

**Voting Designees**

(b)      *A Voting Designee of a Participant Firm shall represent and act for the Participant Firm with respect to any matter upon which its vote, consent or similar formal expression is required or permitted and in connection with all meetings of Participants and the obtaining of any such consent or similar formal expression. A Voting Designee of a Participant Firm shall be one of its general partners, the chairman of its board or one of its officers[, its president or one of its vice presidents].*

**Alternate Voting Designees**

(c)      *No change to text.*

**Substitutes**

(d)      *No change to text.*

\*      \*      \*

### Transfers of Trading Permits

RULE ~~15~~16~~5~~6 No change to text.

### Termination of Trading Permit by Participant

RULE ~~16~~17~~6~~7 ~~No change to text.~~ *A Participant Firm that has been issued a Trading Permit may request that the Exchange terminate the Trading Permit by providing written notice to the Exchange in a manner approved by the Exchange. [Subject to Article XIV, Rule 10, t]Termination of the Trading Permit at the Participant Firm's request does not discharge the Participant Firm from any financial or other obligations to the Exchange that accrued prior to termination of the Trading Permit.*

### Limitations on Exchange Personnel

*RULE 17*8. *No change to text.*

### Suits Against Officers, Directors and Staff

RULE ~~18~~19~~7~~8 No change to text.

### Limitation of Liability

RULE ~~19~~20~~8~~9 No change to text of published proposal.

**ARTICLE ~~4~~****Reserved for Future Use****Participant Firms**

~~\* \* \*~~

**Filing Requirements****Parties Bound by Rules of Exchange**

~~RULE 4. All partnership articles, articles of incorporation, bylaws and all amendments thereto of a Participant Firm for which this Exchange is the Designated Examining Authority ("DEA") or of a Participant Firm subject to examination by another self-regulatory organization not having a comparable rule shall be submitted to and be acceptable to the Exchange. A Participant Firm, for which the Exchange is the DEA, that is a corporation shall also file with the Exchange a current list and descriptive identification of all officers and directors, as well as evidence, satisfactory to the Exchange, that the officers of the Participant Firm are duly authorized to act for the Participant Firm [in entering into contracts on the floor of the Exchange].~~

~~General partners or officers of a Participant Firm who are not themselves Participants, shall be bound by the bylaws and Rules of the Exchange.~~

~~\* \* \*~~

**"Nominee" and "Voting Designee" of Participant Firm**

~~RULE 13.~~

**Designation**

~~(a) A Participant Firm [which is such because of the direct ownership of a Trading Permit] shall designate in writing filed with the Exchange a Nominee and a Voting Designee, for each Trading Permit that it holds. The Nominee and Voting Designee [(who) may be the same or different persons()]. A Participant Firm holding[owning] more than one Trading Permit may make the same or different designations for its several Trading Permits. Designations of Nominees shall be subject to approval by the Exchange in accordance with the procedures set forth in Rules 2 and 3 of Article II. The Exchange and all other persons shall be entitled to rely upon such designations until a substitute Nominee or Voting Designee has been designated as provided by paragraph (c) of this Rule or until a new Nominee or Voting Designee has been approved by the Exchange.~~

**Nominees**

~~(b) — A Nominee of a Participant Firm shall have, subject to the provisions of the Constitution and Rules, all the privileges of an individual Participant and full authority to represent and act for the Participant Firm in all Exchange matters (except those matters upon which the vote, consent or similar formal expression of the Participant Firm is required or permitted or in connection with meetings of Participants or the obtaining of any such consent or similar formal expression). A Participant Firm shall identify each person acting as an Institutional Broker Representative or a Market Maker Trader on behalf of the firm as the Nominee on a Trading Permit. [Only such Nominee may act as a broker for the Participant Firm if it desires to effect transactions on the Floor without the services of another broker. The Nominee of a Participant Firm shall be one of its general partners or, with the approval of the Board of Directors, another person affiliated with such Participant Firm.] Except as otherwise specifically provided, the word "Participant" whenever used in the Rules shall include and also mean the Nominee of a Participant Firm organization but shall not include the voting designee if a different person.~~

#### ~~Voting Designees~~

~~(c) — A Voting Designee of a Participant Firm shall represent and act for the Participant Firm with respect to any matter upon which its vote, consent or similar formal expression is required or permitted and in connection with all meetings of Participants and the obtaining of any such consent or similar formal expression. A Voting Designee of a Participant Firm shall be one of its general partners, the chairman of its board, or one of its officers [its president or one of its vice presidents].~~

~~\* \* \*~~

#### ~~Transfer of Equity Securities of a Participant Firm~~

~~RULE 15. — No Participant Firm for which this Exchange is the Designated Examining Authority and no officer, director or principal stockholder of such a Participant Firm shall, without the prior consent of the Exchange, sell, assign, transfer, pledge or hypothecate equity securities of the Participant Firm except to an officer, director or principal stockholder thereof; provided, however that such consent need not be obtained for any such transaction by an officer, director or principal stockholder involving less than 1% of a class of equity securities of the Participant Firm but a report shall be filed if and when two or more such transactions by any one officer, director or principal stockholder have aggregated 1% or more of a class of equity securities. No Participant Firm shall redeem or purchase its own shares, or in any other manner effect a reduction in its capital stock, without the prior consent of the Exchange.~~

~~\* \* \*~~

~~••• *Interpretations and Policies*~~

~~\* \* \*~~

~~[.04 **Floor Traders and Floor Brokers**]~~

~~[The Exchange will not consent to a sale to persons other than officers, directors or principal stockholders of the equity securities of a Participant Firm whose principal purpose and activity are to operate as a floor broker and/or registered floor trader.]~~

~~\* \* \*~~

**ARTICLE 6[VI]**

**[Restrictions and Requirements]  
Registration, Supervision and Training**

\* \* \*

**Registration and Approval of Participant Personnel**

RULE 2. Registration.

(a) All registered persons (as defined in subsection (b) below) shall be registered with the Exchange; provided that the Exchange may waive this requirement or may permit a short-form registration or notification in the case of an individual who is properly registered with another self-regulatory organization having registration and examination procedures acceptable to the Exchange. Every other employee and person associated with a Participant must also be acceptable to the Exchange.

(b) Registered persons are Participants and persons associated with a Participant who are engaged or will be engaged in the securities business of a Participant, or the management of such securities business, including the functions of supervision, solicitation, conduct of business or the training of persons associated with a Participant for any of these functions. Such registered persons shall include without limitation:

\* \* \*

(7) Persons acting as Institutional Broker Representatives and Market Maker Traders~~[Any person acting as a floor broker, co-specialist or market maker on the Exchange's Floor~~Nominees];

\* \* \*

**Training and Examination of Registrants**

RULE 3. The Exchange may require the successful completion of a training course or an examination, or both, in connection with the registration of Participants and persons associated with a Participant, and may charge fees for such registration and examination. [This provision shall apply to all Participants, including Participants which are to be solely on the Floor of the Exchange.]

**• • • Interpretations and Policies:**

**.01** [Floor Participants]Persons Registered in Special Capacities

(a) [Floor Exam]Institutional Broker Exam

All ~~applicants~~ *[persons acting as a floor broker, co-specialist or market maker on the Exchange's Trading Floor]* seeking to register as Institutional Broker Representatives must successfully complete the Institutional Broker [Floor ]Exam.

\* \* \*

### **Employment of Clerks[ on the Floor]**

RULE 6. No Participant shall employ a *[person who is registered with the Exchange as a floor broker, co-specialist or market maker]* Participant as a clerk [on the Floor of the Exchange, except ]for [a period of not ]more than six months after he or she is registered as an Institutional Broker Representative or a Market Maker Trader[from his *registration in that role* ~~receipt of a Trading Permit~~].

\* \* \*

### **[Review Procedure]**

[RULE 8.]

### **[Exchange Review]**

[(a) Any person or organization adversely affected by a determination made under this Article ~~or under Rule 6 or Rule 7 of Article III~~ may obtain a review request thereof before the Executive Committee by filing a written request for review with the Secretary of the Exchange within fifteen days after such determination is made known. A party seeking review shall be given adequate notice of the time and place of a hearing before the Executive Committee. He may examine all witnesses and documents presented at the hearing and present such testimony, documents and arguments as he sees fit. Formal rules of evidence shall not apply and the Executive Committee may consider any matter it believes will aid it in reaching a reasonable and just decision on the questions presented in the hearing. A transcript of the hearing shall be made and a decision shall be made by a majority vote of the members of the Executive Committee, present at the hearing. The Executive Committee may affirm, modify or set aside the determination reviewed. Copies of the decision shall be delivered to the Secretary of the Exchange and to the person or organization who requested review. In the event the Executive Committee affirms the initial determination, the adversely affected party may petition the Board of Governors for review thereof. In the event that the Board of Governors reviews a determination pursuant to this Rule, the Board of Governors shall not overturn the determination of the finder of law and fact if the factual conclusions in such determination are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion.]

\* \* \*

**Disciplinary Actions by Other Organizations**

RULE 78. No change to text in published proposal

**Provision of Information to the Exchange**

RULE 89. No change to text in published proposal.

**Fingerprinting**

RULE 940. No change to text in published proposal.

**Continuing Education for Registered Persons**

RULE [9]~~1044~~. No change to text.

**Anti-Money Laundering Compliance Program**

RULE [10]~~1142~~. No change to text.

**ARTICLE 7[XI]****Financial Responsibility and Reporting**

\* \* \*

**Fixing and Paying Fees and Charges**

RULE 1142. No change to text of published proposal.

**Failure to Pay Debts**

RULE 1243. Any Participant or Participant Firm that shall fail to pay any debt for Trading Permit fees, fines, transaction fees, or other sums owing the Exchange or its subsidiaries within 60 days after the same shall become payable shall, after due notice, be suspended from trading on the Exchange until payment is made. If payment is not made within six months after such suspension, the Participant's *status as a Participant* ~~or Participant Firm's Trading Permit~~ may be terminated *by the Chief Executive Officer* on at least 10 days' written notice mailed to the Participant or Participant Firm at the address last registered with the Exchange. *The failure to pay any debt owing the Exchange within the timeframes noted herein shall also constitute grounds for initiating disciplinary proceedings pursuant to Article 12 against any Participant, associated person or other person or entity subject to the jurisdiction of the Exchange. In any such action, the Exchange shall, if it prevails, be entitled to any sanction that it could obtain in a disciplinary proceeding under Article 12, plus interest on the amount owed at the Internal Revenue Service rate for prejudgment interest calculated from the date when the debt was first due and payable.*

**Fees and Charges of Participants in Military Service**

RULE 1344. No change to text of published proposal.

## ARTICLE 8

### Business Conduct

\* \* \*

#### Prohibition of Misstatements

RULE 4. No Participant, or partner, officer, director, principal shareholder or registered employee of a Participant Firm shall make a misstatement upon a material point to the Board of Directors, or to a committee, officer or employee of the Exchange. This prohibition shall also apply to applications made prior to acquisition of a Trading Permit and registration as a Participant under Article 6/Firm, admission to partnership and election as an officer or director of a Participant Firm].

#### Attempt to Hide Prior Misdealings

RULE 5. No applicant for a Trading Permit or registration under Article 6 as a Participant Firm nor any person about to become a partner, officer, director or registered employee of a Participant Firm shall fail to disclose to the Exchange the facts and circumstances of every fraudulent and dishonest act of which he or it has been guilty prior to such application.

\* \* \*

#### Proxies

RULE 14. This rule sets out the proxy requirements that apply to Participant Firms and their associated persons, their nominees and employees with respect to securities listed exclusively on the Exchange.

\* \* \*

**ARTICLE 12[XII]  
Disciplinary Matters and Trial Proceedings**

\* \* \*

**Admission of Charges by *Respondent* ~~Accused~~**

RULE 3[4]. No change to text.

***Hearing* ~~Trial~~ Procedure**

RULE 4[5]. No change to text.

\* \* \*

**Minor Rule Violations**

RULE 8[9]. (a) No change to text

\* \* \*

(h) Exchange Rules and Policies subject to the Minor Rule Violation Plan:

(i) Reporting and Record Retention Violations

- ~~(1)~~ ~~Acquisition of Trading Permit by general or limited partner or officer (Article 4[II], Rule 1)~~
- ~~(2)~~ ~~General partners bound by rules of Exchange (Article 4[II], Rule 4)~~
- ~~(13)~~ Notice of death or retirement of partner (Article 4[II], Rule 9)
- ~~(24)~~ Filing and approval of articles of incorporation (Article 4[III], Rule 4)
- ~~(5)~~ ~~[Authorization of officers to act (Article III, Rule 5)]~~  
~~Reserved.~~
- ~~(36)~~ Officers, directors and principal stockholders (Article [III]4, Rules 3 and 4 [6])
- ~~(7)~~ ~~[Death or retirement of registrant member (Article III, Rule 11)]~~  
~~Reserved.~~
- ~~(8)~~ ~~Reserved.~~
- ~~(49)~~ [Records of orders transmitted (Article IX, Rule 7)]  
~~Reserved.~~
- ~~(540)~~ Dealing in stocks on put, call, straddle or option (Article 9[IX], Rule 22[15])

- (~~611~~) Record of margin calls and receipt of margin (Article 10[X], Rule 2)
- (~~712~~) Record of orders (Article 11[XX], Rule 4[24])
- (~~13~~) ~~Reserved.~~
- (~~814~~) [Written reports of transactions (Article XXX, Rule 5)]  
Reserved.
- (~~915~~) [Record of orders (Article XXX, Rule 11)]  
Reserved.
- (~~1016~~) Financial Operational Reports (Article 7[XI], Rule 4)
- (~~1117~~) Notification of change in bond coverage (Article 7[XI], Rule 6)
- (~~1218~~) Filing Requirements on Change of Examining Authority (Article 7[XI], Rule 7)
- (~~19~~) ~~Reserved.~~
- (~~1320~~) Submission of Evaluation of Co-Specialists Survey (Article VIII, Rule 11)]

\* \* \*

## ARTICLE 13[VII]

### Suspension—Reinstatement

\* \* \*

#### Emergency Suspension

RULE 2. (a) Whenever it shall appear to the Chief **Regulatory Executive** Officer (after such verification and with such opportunity for comment by the Participant as the circumstances reasonably permit) that a Participant, ***or, with respect to paragraph (ii) below, any associated person thereof*** (i) has failed to perform his or its contracts or is insolvent or is in such financial or operational condition or otherwise conducting his or its business in such a manner that he or it cannot be permitted to continue in business with safety to his or its customers or creditors or to the Exchange, including but not limited to, the reasonable belief that the Participant is violating and will continue to violate any ~~material~~ provision of the Rules of the Exchange, ~~or~~ the federal securities laws (or rules promulgated thereunder) ***or any condition or restriction imposed pursuant to the provisions of Article ~~XI~~ 7, Rule 3(d) or Article ~~XI~~ 7, Rule 8(a);*** or (ii) has failed to perform or is failing to perform any material responsibility imposed on the Participant as a result of its registration as an Institutional Broker or Market Maker and, as a result, cannot be permitted to continue in business with safety to its customers or creditors or to the Exchange; or (iii)[(ii)] has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization, the Chief **Regulatory Executive** Officer may suspend such Participant ***Firm's*** Trading Permit ***or such Participant's registration under Article 6*** or limit or prohibit such Participant, ***Participant Firm's or associated person with respect to*** access to services offered by the Exchange, or limit or revoke such Participant's registration as Institutional Broker or Market Maker and if so suspended, revoked, [or] limited or prohibited, prompt notice of action [such suspension, limitation or prohibition ]shall be given to all Participants ***and the written statement described below shall be provided to the person affected by the suspension, limitation or prohibition.*** Unless the Chief **Regulatory Executive** Officer shall determine after further inquiry that lifting the suspension, revocation, limitation or prohibition without further proceedings is appropriate, such suspension, limitation, revocation or prohibition shall continue until the Participant ***Firm's*** Trading Permit, [or] ***such Participant's registration or the access of the associated person*** is reinstated or terminated pursuant to the provisions of Rule 3 of this Article or unless otherwise determined pursuant to Rule 2(b) of this Article.

\* \* \*

(b) In the event that the Chief **Regulatory Executive** Officer takes any action pursuant to paragraph (a) above, any person ***named in*** ~~affected by~~ such action shall have the right to appeal. Appeals pursuant to this paragraph shall be made by filing a written notice of appeal with the secretary of the Exchange within five days after notification of

the action. The notice shall state with particularity the action complained of, the appellant's reasons for taking exception to the decision and the relief sought. Appeals filed under this paragraph shall be considered and decided by a panel appointed by the Board, composed of three members of the Board. ***At least two of the three members of the panel shall be public members of the Board.*** No member of such panel shall have any direct or indirect interest in the matter presented before them which might preclude such member from rendering an objective and impartial determination. All appeals heard pursuant to this paragraph shall be expedited to the maximum extent possible and, in any event, shall be heard within ten days. Appellants shall be notified of the composition of the panel and the time, place and date when the panel will meet. Written materials in support of the appeal or requests to make an oral presentation shall be filed with the panel prior to the date when the panel will meet. The panel will grant requests for oral presentation. After consideration of the appeal, the panel shall, by vote of a majority of its members, affirm, reverse, or modify the action upon which the appeal was made. All decisions of the panel shall be final.

\* \* \*

### **Termination of Rights by Suspension**

RULE 5. A Participant suspended under the provisions of this Article shall be deemed not in Good Standing and shall be deprived during the term of his or its suspension of all rights and privileges of a Participant, as provided in Rule 2(b) of Article II/3. A Participant's suspension shall create a vacancy in any office or position held by him.

**ARTICLE 14****Arbitration****Arbitration of Participant Controversies**

RULE 1. (a) Any controversy between parties who are Participants ~~or their nominees~~ or associated persons which arises out of the Exchange business of such parties shall be submitted to arbitration, through the Director of Arbitration, to an Arbitration Panel composed of members of the Committee on Exchange Procedure in accordance with Rule 1(b), unless non-Participants are also parties to the controversy. To the extent that any such claim alleges employment discrimination, including any sexual harassment claim, in violation of a statute, such claim shall be eligible for arbitration only where the parties have agreed to arbitrate the claim after it has arisen. If such non-Participants are also parties to such controversies, the arbitrators shall be appointed in accordance with Section 8 of Rule 2 under this Article unless such non-Participants consent to arbitration before an Arbitration Panel selected by parties as provided in this Rule 1. However, controversies shall be resolved by the Committee on Exchange Procedure, if the parties to such controversy agree to be bound by the decision of that Committee or if Exchange rules otherwise require resolution by the Committee on Exchange Procedure. The rules and procedures applicable to arbitrations which are set forth in Rule 2 do not apply to controversies which are to be resolved by the Committee on Exchange Procedure.

● \* \*

## ARTICLE 16

### Market Makers

#### Registration and Appointment

RULE 1. No change to text in published proposal.

• • • Interpretations and Policies:

.01 A Participant Firm may seek registration as a market maker in an issue. Each individual trader authorized to enter bids and offers and execute transactions on behalf of a market maker is a market maker trader (“MMT”) and must be registered with the Exchange as provided in Article 6. ***A individual cannot be registered both as an MMT and as an institutional broker representative pursuant to Article 17.***

.02 ~~An Exchange-registered market maker that is a Participant in the Exchange, but is not a member of any other self-regulatory organization,~~ may trade only on a proprietary basis and may not handle any agency orders on the Exchange. ***To the extent that a Participant firm wants to act as an Exchange-registered market maker and also handle orders from customers outside the facilities of the Exchange, it must create and strictly enforce information barrier procedures as described more fully in Rule 9 of this Article. Since Exchange-registered market makers are not permitted to handle agency orders, the Matching Engine will reject any cross order instructions entered by a market maker in its market maker trading account.***

\* \* \*

#### Limitation on Dealings

RULE 9. a. Basic requirement. No change to text in published proposal.

b. Documenting and reporting of information barrier procedures. No change to text in published proposal.

c. Approval of information barrier procedures. The written statement required by paragraph (b) ~~(e)~~ of this rule must detail the internal controls that the Participant will implement to satisfy each of the conditions stated in the rule, and the compliance and audit procedures proposed to implement and ensure that the controls are maintained. If the Exchange determines that the organizational structure and the compliance and audit procedures proposed by the Participant are acceptable under this

rule, the Exchange shall so inform the Participant, in writing. Unless the Exchange finds that a Participant's information barrier procedures are acceptable, a market maker may not conduct other business activities.

d. Clearing arrangements. No change to text in published proposal.

**• • • Interpretations and Policies:**

**.01** No change to text in published proposal.

**.02** For purposes of this rule, an "information barrier" is an organizational structure in which:

a. No change to text in published proposal.

b. There are procedures implemented to prevent the use of material non-public corporate or market information in the possession of persons on one side of the barrier from influencing the conduct of persons on the other side of the barrier. These procedures, at a minimum, must provide that:

(1) the MMT performing the function of a market maker does not take advantage of knowledge of pending transactions, ~~order flow information,~~ corporate information or recommendations arising from the other business activities;

(2) *the MMT does not have access to information regarding the customer order flow (if any) handled by the firm;* and

(3)~~(2)~~ all information pertaining to the market maker's positions and trading activities is kept confidential and not made available to persons on the other side of the information barrier.

\* \* \*

## ARTICLE 20

### Operation of the CHX Matching System

#### Trading Sessions

RULE 1. a. *Business days.* Unless otherwise determined by the Board of Directors, the Exchange shall be open for trading daily, except on Saturdays and Sundays. The Board of Directors shall determine the hours during which the Exchange is open for the transaction of business.

\* \* \*

c. *Limitations on trading.* Trading on the Exchange shall be limited to the days and hours during which the Exchange is open for the transaction of business. No Participant shall make any bid, offer or transaction on the Exchange, issue a commitment to trade through ITS or any other linkage plan using the facilities of the Exchange, or send an order in a Nasdaq-listed security for execution through the telephonic process set out in the OTC/UTP Plan to a Nasdaq system market maker before or after these hours, except that a **Participant** ~~registered market maker~~ may issue and receive pre-opening notifications ~~and pre-opening responses,~~ pursuant to the provisions of the ITS Plan relating to the Pre-Opening Application of the System or any similar provisions of any other linkage plan, before the official opening of the Exchange and loans of money or securities may be made outside of those hours.

\* \* \*

#### Eligible Orders

RULE 4. a. *Basic requirements.* Except as provided in subparagraph (7), below, all orders sent to the Matching System during the regular trading session must meet the following requirements and shall be automatically rejected if they do not meet these requirements:

\* \* \*

(7) *Exceptions.*

(a) A non-regular way cross order may be submitted for non-regular way settlement.

(b) Any type of cross or cross with size order in any security, whether the order is priced less than or at or above \$1.00, may be submitted in an increment as small as \$0.000001, provided however, that the Matching System shall not allow any type of cross ~~or cross with size order~~ (except a midpoint cross, **a non-regular way cross** ~~cross that~~

executes at the midpoint of the NBBO or a cross with size) priced (i) at or above \$1.00, to execute at a price less than \$.01 better than any order on the same side of the Matching System or (ii) under \$1.00, to execute at a price less than \$.0001 better than any order on the same side of the Matching System. (This provision shall take effect upon the granting of exemptive relief by the Commission).

(c) IOC market orders may be submitted.

**(d) Orders in securities listed on the NYSE, Amex and any exchange other than Nasdaq shall not be accepted in increments smaller than \$.01 until the Reg NMS Linkage Plan has been enabled to permit the routing of subpenny orders.**

**(e) Orders in securities that customarily trade at a per share price of \$100,000 or greater must be submitted in minimum increments of \$.10.**

b. Order types and indications. The Matching System shall only accept the following order types or orders with the following indications:

(1) “BBO Intermarket sweep” or “BBO ISO”: an order marked as required by SEC Rule 600(b)(30) that is to be executed against any orders at the Exchange’s BBO (including any reserve size or other undisplayed orders at or better than that price) as soon as the order is received by the Matching System, with any unexecuted balance of the order to be immediately cancelled (if the order is marked “immediate or cancel”) or placed in the Matching System. The Matching System, in executing the ISO as soon as the order is received by the Matching System, shall not take any of the actions described in Rule 5 to prevent an improper trade-through or any of the actions described in Rule 6 to prevent a locked or crossed market; provided, however, that, in executing any initially unexecuted balance of the ISO that is placed in the Matching System, the requirements of Rule 5 will be followed. These orders shall be executed on the assumption that the Participant routing the order to the Matching System has already satisfied the quotations of other markets as required by Rule 600(b)(30) and shall be displayed ~~because on the assumption that~~ the Participant routing the order to the Matching System has already satisfied the quotations of other markets as required by Article 20, Rule 6(c)(3). (This provision shall become effective on the Trading Phase Date with the implementation of Rule 611 of Reg NMS).

(2) “Benchmark”: an order, submitted by an institutional broker, to buy and sell the same security at a specific price, which meets the requirements of Reg NMS Rule 611(b)(7). A benchmark order may execute at any price, without regard to the protected NBBO, and may represent interest of one or more Participants of the Exchange. A benchmark order may only be executed in an

*increment permitted by Article 20, Rule 4(a)(7)(b). (This provision shall become effective on the Trading Phase Date with the implementation of Rule 611 of Reg NMS).*

\* \* \*

(6) *“Cross with size”: an order to buy and sell at least 5,000 shares of the same security with a total value of at least \$100,000 (A) at a price equal to or better than the best bid or offer displayed in the Matching System and, for securities listed on the NYSE, Amex or any other exchange except Nasdaq (and, for Nasdaq-listed securities, when Reg NMS is implemented in those issues), equal to or better than the NBBO; and (B) where the size of the order is **one round lot** larger than the **aggregate size of all interest** ~~largest order~~ displayed in the Matching System at that price; **provided, however, that once the Exchange disseminates a feed of all displayable orders in the Matching System, the size of the order must only be larger than the largest order displayed in the Matching System at that price. The Matching System will execute any type of cross order (except a cross with yield, a non-regular way cross or an ISO cross) as a cross with size if the order meets the requirements for a cross with size.** A cross with size may represent interest of one or more Participants of the Exchange. A cross with size order may only be executed in an increment permitted by Article 20, Rule 4(a)(7)(b).*

\* \* \*

*(14) “ISO cross”: any type of cross order marked as required by SEC Rule 600(b)(30) that is to be executed without taking any of the actions described in Rule 5 to prevent an improper trade-through. These orders shall be executed because the Participant routing the order to the Matching System has already satisfied the quotations of other markets as required by Rule 600(b)(30). (This provision shall become effective on the Trading Phase Date of Rule 611 of Reg NMS).*

*(1514)* No change to text of published proposal.

*(1615)* No change to text of published proposal.

*(1716)* No change to text of published proposal.

*(1817) “Outbound ISO”: an order marked as required by SEC Rule 600(b)(30)(i) that is to be executed at or better than its limit price as soon as the order is received by the Matching System, with any unexecuted balance of the order to be immediately cancelled, coupled with one or more ISO orders designed to execute against any protected bids or offers at other market centers as required by Rule 600(b)(30)(ii). Orders marked outbound ISO shall be executed against*

any eligible orders in the Matching System (including any reserve size or other undisplayed orders). Other than the routing of ISOs to other market centers, no action shall be taken to prevent an improper trade-through. (This provision shall become effective on the Trading Phase Date ~~with the implementation~~ of Rule 611 of Reg NMS).

(~~1918~~) “Price-penetrating ISO”: an order marked as required by SEC Rule 600(b)(30) that is to be executed at or better than its limit price as soon as the order is received by the Matching System, with any unexecuted balance of the order to be immediately cancelled. Orders marked as price-penetrating ISO shall be executed against any eligible orders in the Matching System (including any reserve size or other undisplayed orders, through multiple price points). The Matching System, in executing these orders, shall not take any of the actions described in Rule 5 to prevent an improper trade-through. (This provision shall become effective on the Trading Phase Date ~~with the implementation~~ of Rule 611 of Reg NMS)

(~~2049~~) “Reserve size”: an order that identifies a portion of the order that should be displayed and a portion of the order that should not be displayed, along with an instruction that the displayed portion should be refreshed to the original display quantity (or the remaining number of shares, if less) whenever the displayed share size falls below a specified threshold.

(~~2120~~) No change to text of published proposal.

(~~2224~~) No change to text of published proposal.

(~~2322~~) No change to text of published proposal.

### **Prevention of Trade-throughs**

RULE 5. a. An inbound order for at least a round lot is not eligible for execution on the Exchange if its execution would cause an improper trade-through of another ITS market or, when Reg NMS is implemented for a security, if its execution would be improper under Rule 611 (but not including the exception set out in Rule 611(b)(8)) (together an “improper trade-through”). As described in Interpretation and Policy .03, if the execution of all or part of an inbound order for a least a round lot on the Exchange would cause an improper trade-through, that order (or the portion of that order that would cause a trade-through) shall be routed to another appropriate market or, if designated as “do not route,” automatically cancelled; provided, however, that if an undisplayed order is resting in the Matching System and the execution of an inbound round lot order (that is not an IOC or FOK order) against the undisplayed resting order

would cause an improper trade-through, the resting order shall be cancelled to the extent necessary to allow the inbound order to be executed or quoted.

b. Inbound odd lot orders and odd lot crosses shall be eligible for execution on the Exchange even if the execution would trade through another market's bid or offer.

**• • • Interpretations and Policies:**

**.01 Trade-through policies and procedures.** In determining whether a trade on the Exchange would create an improper trade-through, the Exchange will adhere to the terms of the ITS Plan (so long as it is in effect and is applicable to the Exchange) and the applicable provisions of Reg NMS (when it takes effect), as well as to the following policies and procedures:

\* \* \*

b. Manual quotations of other markets. The Matching System shall disregard another market's bid or offer if it is identified by the other market as a manual quotation. (This provision shall become effective **on the Trading Phase Date** ~~with the implementation~~ of Rule 611 of Reg NMS).

\* \* \*

e. Crossed market exception. Trades shall continue to be executed in the Matching System when the NBBO is crossed; provided however, that (i) if the ITS Plan requires that the ~~Matching System route the~~ inbound order **be routed** to another market for execution, the Matching System will **route the order to the destination selected by the Participant** ~~do so~~ or, if the order is marked "do not route," the Matching System will automatically cancel the order; and (ii) once Reg NMS is implemented in a security, the Matching System shall only execute orders in that security up to (but not beyond) the first uncrossed NBBO. If a trade is executed in the Matching System while the NBBO is crossed, the Matching System will automatically attach an appropriate modifier to the trade before it is publicly reported.

\* \* \*

h. ~~Identifying Other~~ exceptions. The Exchange shall identify trades executed pursuant to an exemption from, or exception to, Rule 611 in accordance with specifications approved by the operating committee of the relevant national market system plan for an NMS stock. **If a trade is executed pursuant to both the intermarket sweep order exception of Rule 611(b)(5) or (6) and the self-help exception of Rule 611(b)(1), such trade shall be identified as executed pursuant to the intermarket sweep order exception.**

*i. Qualified Contingent Trades. In determining whether a contingent trade would create an improper trade-through or qualifies for an exemption from Rule 611 of Reg NMS, the Exchange shall use the criteria set forth in Article 1, Rule 1(bb).*

.02 Confirming that the Exchange's quotes qualify as "automated quotations." The Exchange's Matching System is designed, under the rules set out in this Article, to display bids and offers that qualify as automated quotations under the definition set out in Rule 600(b)(3). The Exchange shall use the following procedures for determining whether the quotes should be identified as "manual":

a. *Periodic testing.* No change to published text.

b. *Adding the "manual" identifier.* The Exchange shall automatically and immediately append a "manual" identifier to the bids and offers it makes publicly available when it has reason to believe that it is not capable of displaying automated quotations. ~~In the event that the Exchange's systems do not permit the Exchange to disseminate a "manual" identifier, the Exchange shall announce that its quotes are manual over an appropriate functionality available for communications with other market centers.~~

.03 *Routing to other markets when execution in Matching System would cause a trade-through.* If a Participant has submitted a cross with satisfy or an outbound ISO and its execution would cause an improper trade-through, the Matching System shall execute that order and simultaneously route orders or commitments necessary to satisfy the bids or offers of other markets (the "Routing Services").

a. The Exchange will provide its Routing Services pursuant to the terms of three separate agreements, to the extent that they are applicable to a specific routing decision: (1) an agreement between the Exchange and each Participant on whose behalf orders will be routed ("Participant-Exchange Agreement"); (2) an agreement between each Participant and a specified third-party broker-dealer that will use its routing connectivity to other markets and serve as a "give-up" in those markets ("Give-Up Agreement"); and (3) an agreement between the Exchange and the specified third-party broker-dealer ("Routing Connectivity Agreement") pursuant to which the third-party broker-dealer agrees to provide routing connectivity to other markets and serve as a "give-up" for the Exchange's Participants in other markets.

b. The Exchange will provide Routing Services in compliance with these rules and with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements of Sections 6(b)(4) and (5) of the Act that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities,

and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

c. In providing the Routing Services, the Exchange will use its own systems to determine when, how and where orders (or commitments) are routed away to other markets.

d. The Routing Connectivity Agreement will include terms and conditions that enable the Exchange to comply with this Interpretation and Policy .03.

*e. The Exchange will establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange (including its facilities) and the third-party broker-dealer, and, to the extent the third-party broker-dealer reasonably receives confidential and proprietary information, that adequately restrict the use of such information by the third party broker-dealer to legitimate business purposes necessary to provide routing connectivity and to serve as a “give-up.”*

*(In addition to these Routing Services, the Exchange is developing a functionality that would, in all other situations where the execution of all or a part of an inbound order for at least a round lot would cause a trade-through, and the Participant has not identified the order as “do not route,” route all or a part of the order to another destination, according to each Participant’s instructions. This functionality will only be implemented if these rules are amended to define the functionality in more detail).*

### Locked and Crossed Markets

#### RULE 6.

\* \* \*

d. Matching System operation. *Except as permitted in paragraph (c) above, a* An order is not eligible for display on the Exchange if its display would improperly lock or cross the ITS best bid or offer or, when Reg NMS is implemented for a security, if its display would ***lock or cross a protected*** ~~constitute a locking or crossing~~ quotation. These orders shall be routed to another appropriate market or, if designated as “do not route,” automatically cancelled.

\* \* \*

### Operation of the Matching System

RULE 8. The Exchange's Matching System shall operate in the following manner:

\* \* \*

b. *Ranking and display of orders.* All orders sent to the Matching System shall be ranked according to their price and time of receipt, as follows:

\* \* \*

4. *Refreshed portions of reserve-size orders.* When the displayed portion of a reserve size order reaches a threshold set by the Participant submitting the order (the "submitting Participant"), the displayed portion of the order shall be refreshed **to the original displayed quantity (or with the remaining number of shares, if less)** ~~with the number of shares identified by the submitting Participant~~ and the undisplayed portion of the order shall be decremented by that number of shares. The refreshed displayed portion of the order shall continue to be ranked at the specified limit price, but shall receive a new ranking based on the time at which it was refreshed. Any remaining undisplayed portion of the order shall continue to be ranked at the price and time at which it was originally received.

5. *Other changes in order size or price.* When a Participant reduces the number of shares in an order, the order will continue to be ranked at the price and time at which it was originally received. When a Participant increases the number of shares in an order, the order will be ranked at the original limit price, but shall receive a new ranking based on the time at which shares were added to the order. Any change in the price of an order shall result in a new ranking for the order based on the new limit price and the time at which the price change was received. Any change to the display instruction associated with an order (including, but not limited to, a change that identifies an order as a reserve size order or an undisplayed order) **must be submitted as a new order and shall be ranked** ~~shall result in a new ranking for the order~~ based on the time at which the new **order** ~~display instruction~~ was received.

\* \* \*

e. *Execution of certain orders and order types.* The following orders shall be executed within the Matching System as set out below:

\* \* \*

5. *Sell short orders.* Sell short orders (including odd lot orders) shall be displayed and executed only when permissible under the provisions of Rule 10a-1 and Regulation SHO. When a sell short order cannot be executed or displayed at its limit price under the provisions of the Short Sale Rule and Regulation SHO, the order shall be automatically repriced (without violating its limit price) to the next available price at which it can be executed or displayed, ***to the extent that the Matching System has sufficient data to determine an appropriate price. If the Matching System cannot determine an appropriate price at which to display or execute the order, the order shall be automatically cancelled.***

\* \* \*

f. *Cancellation of orders.* Orders shall be immediately and automatically cancelled upon receipt of a cancellation instruction; provided, however, that cross orders (other than preopening cross orders) cannot be cancelled or changed because they are either immediately executed or, if they cannot be immediately executed, are automatically cancelled.

\* \* \*

• • • *Interpretations and Policies*

\* \* \*

.02 The benefit of the satisfaction portion of a cross with satisfy order, when the Participant is satisfying the bids and offers of other markets, must be given by the Participant that entered the order in the Matching System to its customer, unless ***the order meets the requirements set out in Rule 4(b)(5) and*** that customer specifically declines the better price. A Participant must make and keep a record of every instance in which its customer has declined such better prices.