

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51304; File No. S7-24-89)

March 2, 2005

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment No. 14 to the 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 Privileges Basis, Submitted by the Pacific Exchange, Inc., the National Association of Securities Dealers, Inc., the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

I. Introduction

Pursuant to Rule 11Aa3-2¹ and Rule 11Aa3-1² under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on February 17, 2005, the Pacific Exchange, Inc. ("PCX") on behalf of itself and the National Association of Securities Dealers, Inc. ("NASD"), the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"),³ and the Philadelphia Stock Exchange, Inc. ("Phlx") (hereinafter referred to collectively as "Participants"),⁴ as members of the operating committee ("Operating Committee" or "Committee") of the Plan submitted to the Securities and Exchange Commission ("Commission") a proposal to amend the Plan. The proposal

¹ 17 CFR 240.11Aa3-2.

² 17 CFR 240.11Aa3-1.

³ The Commission notes that the CSE changed its name to the National Stock Exchange, Inc. See Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003) (File No. SR-CSE-2003-12).

⁴ PCX and its subsidiary the Archipelago Exchange were elected co-chairs of the operating committee ("Operating Committee" or "Committee") for the 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 ("Nasdaq UTP Plan" or "Plan") by the Participants.

represents the fourteenth amendment ("Amendment No. 14") made to the Plan and reflects several changes unanimously adopted by the Committee. The Commission is publishing this notice of filing and immediate effectiveness to solicit comments from interested persons on Amendment No. 14.

II. Background

The Plan governs the collection, consolidation, and dissemination of quotation and transaction information for The Nasdaq Stock Market, Inc. ("Nasdaq") National Market ("NNM") and Nasdaq SmallCap securities listed on Nasdaq or traded on an exchange pursuant to unlisted trading privileges ("UTP").⁵ The Plan provides for the collection from Plan Participants and the consolidation and dissemination to vendors, subscribers, and others of quotation and transaction information in "eligible securities."⁶

The Commission originally approved the Plan on a pilot basis on June 26, 1990.⁷ The parties did not begin trading until July 12, 1993, accordingly, the pilot period commenced on July 12, 1993. The Plan was most recently extended on December 21,

⁵ Section 12 of the Act generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits UTP under certain circumstances. For example, Section 12(f) of the Act, among other things, permits exchanges to trade certain securities that are traded over-the-counter ("OTC/UTP"), but only pursuant to a Commission order or rule. For a more complete discussion of the Section 12(f) requirement, see Securities Exchange Act Release No. 36481 (November 13, 1995), 60 FR 58119 (November 24, 1995).

⁶ The Plan defines "Eligible Securities" as any Nasdaq National Market or Nasdaq SmallCap security, as defined in NASD Rule 4200, (i) as to which unlisted trading privileges have been granted to a national securities exchange pursuant to Section 12(f) of the Act or which become eligible for such trading pursuant to order of the Commission, or (ii) which is also listed on a national securities exchange.

⁷ See Securities Exchange Act Release No. 28146, 55 FR 27917 (July 6, 1990).

2004.⁸

III. Description and Purpose of the Amendment

The complete text of the Plan, as amended, is attached as Exhibit A. The following is a summary of the changes to the Plan prepared by the Participants.

- A. Section I.A. of the Plan provides for the list of Plan Participants. Amendment No. 14 adds the Chicago Board Options Exchange ("CBOE") and the New York Stock Exchange ("NYSE") as new Participants to the Plan. In addition, CSE's name is modified to reflect their new name, National Stock Exchange ("NSX"). Lastly, the PCX address has been updated.
- B. Amendment 14 corrects a cross-reference to Section XIV contained in Section I.B. by replacing it with a reference to Section XIII (relating to the development costs owed by new Participants).⁹
- C. Amendment 14 modifies Section III.Z. by removing the reference to Nasdaq Participant and moving it to new Section III.AA. as a separate definition.
- D. Amendment 14 modifies Section IV.C.4. to reflect previously approved language from Amendment 13A that was not incorporated into a recently published version of the Plan.¹⁰
- E. Section VIII.C. provides for the Participant market identifiers for quotation

⁸ See Securities Exchange Act Release No. 50855 (December 14, 2004), 69 FR 76499 (December 21, 2004).

⁹ Section XIII of the Plan specifies that a condition to becoming a Participant is to pay a proportionate share of \$439,530 which are the aggregate development costs previously paid by Plan Participants to the Processor.

¹⁰ See Securities Exchange Act Release No. 49711 (May 14, 2004), 69 FR 29339, (May 21, 2004) ("Amendment No. 13A Approval Order").

and transaction report information. Amendment No. 14 adds "W" as the identifier for the CBOE and "N" for NYSE. Further, the reference to the CSE has been changed to NSX.

F. Amendment 14 modifies Section XI. to reflect that the Processor will be available to accept and disseminate quotes and transaction reports as early as 4:00 a.m. Eastern Time. Currently the Plan states that quotations and transaction reports may be entered and disseminated as of 8:00 a.m. Eastern Time. Amendment No. 14 modifies the opening hours to 4:00 a.m.¹¹

G. Amendment 14 modifies Section 3.a.1. to Exhibit 1 to the Plan to reflect previously approved language from Amendment 13A that was not incorporated into the most recent version of the Plan.¹²

According the Participants, Nasdaq as Processor will implement the new Processor hours in its next release. CBOE and NYSE may commence quoting and trading in Nasdaq-listed securities with the effectiveness of Amendment No. 14, once they complete the necessary development and implementation work.

IV. Date of Effectiveness of the Amendment

The Commission has determined that the changes set forth in Amendment 14 are

¹¹ PCX/ArcaEx has submitted a proposal to the Commission to begin quoting and trading at 4:00 a.m. Eastern Time. See Securities Exchange Act Release No. 50756 (November 30, 2004), 69 FR 70489, (December 6, 2004) (approving File No. SR-PCX-2004-83). To disseminate quotes and trades as of 4:00 a.m., PCX/ArcaEx requested that the Operating Committee and Nasdaq, as Plan Processor, modify the operating hours of the Processor.

¹² See 13A Approval Order, supra note 10.

technical in nature, and thus have become effective upon filing with the Commission.¹³

At any time within 60 days of the filing of any such amendment, the Commission may summarily abrogate the amendment and require that such amendment be refiled in accordance with paragraph (b)(1) of Rule 11Aa3-2 under the Act¹⁴ and reviewed in accordance with paragraph (c)(2) of Rule 11Aa3-2 under the Act,¹⁵ if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.¹⁶

V. Solicitation of Comments

The Commission seeks general comments on Amendment No. 14. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Plan amendment is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form
[\(<http://www.sec.gov/rules/sro.shtml>\);](http://www.sec.gov/rules/sro.shtml) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-24-89 on the subject line.

¹³ 17 CFR 240.11Aa3-2(c)(3)(iii).

¹⁴ 17 CFR 240.11Aa3-2(b)(1).

¹⁵ 17 CFR 240.11Aa3-2(c)(2).

¹⁶ See 17 CFR 240.11Aa3-2(c)(3)(iii).

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All comment letters should refer to File No. S7-24-89. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the Plan amendment that are filed with the Commission, and all written communications relating to the Plan amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. The text of the Plan is being published as Exhibit A to this proposal. Copies of the proposal will also be available for inspection and copying at the office of the Secretary of the Committee, currently located at Pacific Exchange, Inc. and Archipelago Exchange L.L.C., 100 South Wacker Drive, Suite 2000, Chicago, IL 60606. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File No. S7-24-89 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland
Deputy Secretary

¹⁷

17 CFR 200.30-3(a)(27).

Exhibit A

AMENDMENT NO. 14

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

The undersigned registered national securities association and national securities exchanges (collectively referred to as the "Participants"), have jointly developed and hereby enter into this Nasdaq Unlisted Trading Privileges Plan ("Nasdaq UTP Plan" or "Plan").

I. Participants. The Participants include the following:

A. Participants

1. American Stock Exchange LLC
86 Trinity Place
New York, New York 10006
2. Boston Stock Exchange
100 Franklin Street
Boston, Massachusetts 02110
3. Chicago Stock Exchange
440 South LaSalle Street
Chicago, Illinois 60605
4. Chicago Board Options Exchange, Inc.
400 South LaSalle Street, 26th Floor
Chicago, Illinois 60605
5. National Association of Securities
Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006
6. National Stock Exchange
440 South LaSalle Street, 26th Floor
Chicago, Illinois 60605
7. New York Stock Exchange, Inc.
11 Wall Street
New York, New York 10005

8. Pacific Exchange, Inc.
115 Sansome Street
San Francisco, CA 94104
9. Philadelphia Stock Exchange
1900 Market Street
Philadelphia, Pennsylvania 19103

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 and pays its share of development costs as specified in Section XIII.

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.

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.

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 National Market or Nasdaq SmallCap security, as defined in NASD Rule 4200: (i) as to which unlisted trading privileges have been granted to a national securities exchange pursuant to Section 12(f) of the Exchange Act or which become eligible for such trading pursuant to order of the Securities and Exchange Commission; or (ii) which also is listed on a national securities exchange.

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

D. "Exchange Act" means the Securities Exchange Act of 1934.

E. "Market" shall mean (i) when used with respect to Quotation Information, the NASD in the case of a Nasdaq market maker or a Nasdaq-registered electronic communications network/alternative trading system (hereafter collectively referred to as

"Nasdaq market participants") acting in such capacity, 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 was reported, or the Participant to whose facilities the order was sent for execution.

F. "NASD" means the National Association of Securities Dealers Inc.

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

H. "NASD Transaction Reporting System" means the System provided for in the NASD's Transaction Reporting Plan filed with and approved by the Commission pursuant to SEC Rule 11Aa3-1, governing the reporting of transactions in Nasdaq securities.

I. "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.

J. "Nasdaq Level 2 Service" means the Nasdaq service that provides Subscribers with query capability with respect to quotations and sizes in securities included in the Nasdaq System, best bid and asked quotations, and Transaction Reports.

K. "Nasdaq Level 3 Service" means the Nasdaq service that provides Nasdaq market participants with input and query capability with respect to quotations and sizes in securities included in the Nasdaq System, best bid and asked quotations, and Transaction Reports.

L. "Nasdaq System" means the automated quotation system operated by Nasdaq.

M. "UTP Trade Data Feed" means the service that provides Vendors and Subscribers with Transaction Reports.

N. "Nasdaq Security" or "Nasdaq-listed Security" means any security listed on the Nasdaq National Market or Nasdaq SmallCap Market.

O. "News Service" means a person that receives Transaction Reports or Quotation Information provided by the Systems 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.

P. "OTC Montage Data Feed " means the data stream of information that provides Vendors and Subscribers with quotations and sizes from all Participants and Nasdaq market participants.

Q. "Participant" means a registered national securities exchange or national securities association that is a signatory to this Plan.

R. "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.

S. "Processor" means the entity selected by the Participants to perform the processing functions set forth in the Plan.

T. "Quotation Information" means all bids, offers, displayed quotation sizes, the market center identifiers and, in the case of NASD and Nasdaq, the NASD and Nasdaq market 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.

U. "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").

V. "Subscriber" means a person that 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.

W. "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.

X. "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.

Y. "Vendor" means a person that 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.

Z. "NQDS" means the data stream of information that provides Vendors and Subscribers with the best quotations and sizes from each Nasdaq Participant.

AA. "Nasdaq Participant" means an entity that is registered as a market maker or an electronic communications network in Nasdaq or otherwise utilizes the facilities of The Nasdaq Stock Market pursuant to applicable NASD rules but does not include an NASD Participant as defined in Section III.G. of this Plan.

IV. Administration of Plan

A. Operating Committee: Composition

The Plan shall be administered by the Participants through an operating committee ("Operating Committee"), which shall be composed of one representative designated by each Participant. Each Participant may designate an alternate representative or representatives who shall be authorized to act on behalf of the Participant in the absence of the designated representative. Within the areas of its responsibilities and authority, decisions made or actions taken by the Operating Committee, directly or by duly delegated individuals, committees as may be established from time to time, or others, shall be binding upon each Participant, without prejudice to the rights of any Participant to seek redress from the SEC pursuant to Rule 11Aa3-2 under the Exchange Act or in any other appropriate forum.

An Electronic Communications Network, Alternative Trading System, Broker-Dealer or other securities organization ("Organization") which is not a Participant, but has an actively pending Form 1 Application on file with the Commission to become a national securities exchange, will be permitted to appoint one representative and one alternate representative to attend regularly scheduled Operating Committee meetings in the capacity of an observer/advisor. If the Organization's Form 1 petition is withdrawn, returned, or is otherwise not actively pending with the Commission for any reason, then the Organization will no longer be eligible to be represented in the Operating Committee meetings. The Operating Committee shall have the discretion, in limited instances, to deviate from this policy if, as indicated by majority vote, the Operating Committee agrees that circumstances so warrant.

Nothing in this section or elsewhere within the Plan shall authorize any person or organization other than Participants and their representatives to participate on the Operating Committee in any manner other than as an advisor or observer, or in any Executive Session of the Operating Committee.

B. Operating Committee: Authority

The Operating Committee shall be responsible for:

1. Overseeing the consolidation of Quotation Information and Transaction Reports in Eligible Securities from the Participants for

- dissemination to Vendors, Subscribers, News Services and others in accordance with the provisions of the Plan;
2. Periodically evaluating the Processor;
 3. Setting the level of fees to be paid by Vendors, Subscribers, News Services or others for services relating to Quotation Information or Transaction Reports in Eligible Securities, and taking action in respect thereto in accordance with the provisions of the Plan;
 4. Determining matters involving the interpretation of the provisions of the Plan;
 5. Determining matters relating to the Plan's provisions for cost allocation and revenue-sharing; and
 6. Carrying out such other specific responsibilities as provided under the Plan.

C. Operating Committee: Voting

Each Participant shall have one vote on all matters considered by the Operating Committee.

1. The affirmative and unanimous vote of all Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to:
 - a. amendments to the Plan;
 - b. amendments to contracts between the Processor and Vendors, Subscribers, News Services and others receiving Quotation Information and Transaction Reports in Eligible Securities;
 - c. replacement of the Processor, except for termination for cause, which shall be governed by Section V(B) hereof;
 - d. reductions in existing fees relating to Quotation Information and Transaction Reports in Eligible Securities; and
 - e. except as provided under Section IV(C)(3) hereof, requests for system changes; and
 - f. all other matters not specifically addressed by the Plan.
2. With respect to the establishment of new fees or increases in existing fees relating to Quotation Information and Transaction Reports in Eligible Securities, the affirmative vote of two-thirds of the Participants entitled to vote shall be necessary to constitute the action of the Operating Committee.
3. The affirmative vote of a majority of the Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to:
 - a. requests for system changes reasonably related to the function of the Processor as defined under the Plan. All other requests for system changes shall be governed by Section IV(C)(1)(e) hereof.

- b. interpretive matters and decisions of the Operating Committee arising under, or specifically required to be taken by, the provisions of the Plan as written;
 - c. interpretive matters arising under Exchange Act Rules 11Aa3-1 and 11Acl-1; and
 - d. denials of access (other than for breach of contract, which shall be handled by the Processor),
4. It is expressly agreed and understood that neither this Plan nor the Operating Committee shall have authority in any respect over any Participant's proprietary systems. Nor shall the Plan or the Operating Committee have any authority over the collection and dissemination of quotation or transaction information in Eligible Securities in any Participant's marketplace, or, in the case of the NASD, from NASD Participants.

D. Operating Committee: Meetings

Regular meetings of the Operating Committee may be attended by each Participant's designated representative and/or its alternate representative(s), and may be attended by one or more other representatives of the parties. Meetings shall be held at such times and locations as shall from time to time be determined by the Operating Committee.

Quorum: Any action requiring a vote only can be taken at a meeting in which a quorum of all Participants is present. For actions requiring a simple majority vote of all Participants, a quorum of greater than 50% of all Participants entitled to vote must be present at the meeting before such a vote may be taken. For actions requiring a 2/3rd majority vote of all Participants, a quorum of at least 2/3rd of all Participants entitled to vote must be present at the meeting before such a vote may be taken. For actions requiring a unanimous vote of all Participants, a quorum of all Participants entitled to vote must be present at the meeting before such a vote may be taken.

A Participant is considered present at a meeting only if a Participant's designated representative or alternate representative(s) is either in physical attendance at the meeting or is participating by conference telephone, or other acceptable electronic means.

Any action sought to be resolved at a meeting must be sent to each Participant entitled to vote on such matter at least one week prior to the meeting via electronic mail, regular U.S. or private mail, or facsimile transmission, provided however that this requirement may be waived by the vote of the percentage of the Committee required to vote on any particular matter, under Section C above.

Any action may be taken without a meeting if a consent in writing, setting forth the action so taken, is sent to and signed by all Participant representatives entitled to vote with respect to the subject matter thereof. All the approvals evidencing the consent shall be delivered to the Chairman of the Operating Committee to be filed in the Operating

Committee records. The action taken shall be effective when the minimum number of Participants entitled to vote have approved the action, unless the consent specifies a different effective date.

The Chairman of the Operating Committee shall be elected annually by and from among the Participants by a majority vote of all Participants entitled to vote. The Chairman shall designate a person to act as Secretary to record the minutes of each meeting. The location of meetings shall be rotated among the locations of the principal offices of the Participants, or such other locations as may from time to time be determined by the Operating Committee. Meetings may be held by conference telephone and action may be taken without a meeting if the representatives of all Participants entitled to vote consent thereto in writing or other means the Operating Committee deems acceptable.

E. Advisory Committee

1. Composition

- a. Each Plan Participant may designate three representatives to participate in the Advisory Committee. The representatives shall each be an employee of a member of that Participant, a professor or other academic involved in the scholarly study of the securities industry, or an expert in one or more areas of the securities industry.
- b. Each representative shall serve a one-year term on the Advisory Committee.

2. Authority

The Advisory Committee shall have the opportunity to:

- a. Meet twice yearly, each meeting to occur one day prior to a meeting of the Operating Committee.
- b. Discuss any matter related to the operation of the Plan.
- c. Present written comments or inquiries to the Operating Committee regarding matters related to the operation of the Plan.
- d. Respond to written inquiries from the Operating Committee seeking comment from the Advisory Committee on matters related to the operation of the Plan.

V. Selection and Evaluation of the Processor

A. Generally

The Processor's performance of its functions under the Plan shall be subject to review by the Operating Committee at least every two years, or from time to time upon the request of any two Participants but not more frequently than once each year. Based on this review, the Operating Committee may choose to make a recommendation to the Participants with respect to the continuing operation of the Processor. The Operating Committee shall notify the SEC of any recommendations the Operating Committee shall make pursuant to the Operating Committee's review of the Processor and shall supply the Commission with a copy of any reports that may be prepared in connection therewith.

B. Termination of the Processor for Cause

If the Operating Committee determines that the Processor has failed to perform its functions in a reasonably acceptable manner in accordance with the provisions of the Plan or that its reimbursable expenses have become excessive and are not justified on a cost basis, the Processor may be terminated at such time as may be determined by a majority vote of the Operating Committee.

C. Factors To Be Considered in Termination for Cause

Among the factors to be considered in evaluating whether the Processor has performed its functions in a reasonably acceptable manner in accordance with the provisions of the Plan shall be the reasonableness of its response to requests from Participants for technological changes or enhancements pursuant to Section IV(C)(3) hereof. The reasonableness of the Processor's response to such requests shall be evaluated by the Operating Committee in terms of the cost to the Processor of purchasing the same service from a third party and integrating such service into the Processor's existing systems and operations as well as the extent to which the requested change would adversely impact the then current technical (as opposed to business or competitive) operations of the Processor.

D. Processor's Right to Appeal Termination for Cause

The Processor shall have the right to appeal to the SEC a determination of the Operating Committee terminating the Processor for cause and no action shall become final until the SEC has ruled on the matter and all legal appeals of right therefrom have been exhausted.

E. Process for Selecting New Processor

At any time following effectiveness of the Plan, but no later than upon the termination of the Processor, whether for cause pursuant to Section IV(C)(1)(c) or V(B) of the Plan or upon the Processor's resignation, the Operating Committee shall establish procedures for selecting a new Processor (the "Selection Procedures"). The Operating Committee, as part of the process of establishing Selection Procedures, may solicit and consider the timely comment of any entity affected by the operation of this Plan. The

Selection Procedures shall be established by a two-thirds majority vote of the Plan Participants, and shall set forth, at a minimum:

1. the entity that will:
 - a) draft the Operating Committee's request for proposal for bids on a new processor;
 - b) assist the Operating Committee in evaluating bids for the new processor; and
 - c) otherwise provide assistance and guidance to the Operating Committee in the selection process.
2. the minimum technical and operational requirements to be fulfilled by the Processor;
3. the criteria to be considered in selecting the Processor; and
4. the entities (other than Plan Participants) that are eligible to comment on the selection of the Processor.

Nothing in this provision shall be interpreted as limiting Participants' rights under Section IV or Section V of the Plan or other Commission order.

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. For so long as Nasdaq is not registered as a national securities exchange and for so long as Nasdaq is the Processor, the Processor shall also collect, consolidate, and disseminate the quotation information contained in NQDS. For so long as Nasdaq is not registered as a national securities exchange and after Nasdaq is no longer the Processor for other SIP datafeeds, either Nasdaq or a third party will act as the Processor to collect, consolidate, and disseminate the quotation information contained in NQDS.

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 Nasdaq market participants, 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 the NASD.

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. Eligible Securities

a. Number of Eligible Securities -- If the Commission by order expands the number of Eligible Securities beyond 1,000, the number of Eligible Securities that Participants may trade shall be phased in (added) according to the schedule set out below:

(i) at the end of the first calendar quarter following the Commission's order expanding the number of Eligible Securities beyond 1,000 but in no case before September 30, 2001, Participants may commence trading 500 additional securities;

(ii) at the end of each of the four calendar quarters following the date established under provision VI.C(2)(a)(i) of the Plan, Participants may commence trading an additional 500 securities, and at the end of the fifth calendar quarter following the date established under provision VI.C(2)(a)(i) of the Plan, Participants shall be permitted to trade all Eligible Securities.

(iii) in no case shall the number of Eligible Securities exceed the number of securities that the Commission deems are eligible for trading pursuant to this Plan.

(iv) after each of the aforementioned phase in periods (*i.e.*, calendar quarters), the Processor shall evaluate its performance to determine whether it is prudent, in light of system capacity and any other operational factors, to continue to add additional securities pursuant to the phase in schedule. If the Processor determines, in light of system capacity and any other operational factors, that it is not prudent to continue to expand the number of Eligible Securities, the Processor upon notice to the Participants immediately may suspend the phase-in schedule and delay the expansion of the number of Eligible Securities that may be traded under the Plan. The Processor shall commence adding securities pursuant to a revised phase-in schedule, when the Processor determines it is prudent to do so, in light of system capacity and any other operational factors.

(v) This provision shall not apply to The Nasdaq Stock Market, Inc., or Nasdaq market participants acting in such

capacity, nor shall it apply to any Participant that does not engage in auto-quoting, as described in paragraph VI.C.(2)(b) below.

b. Limitation on Auto-Quoting -- Except as provided in subparagraph VI.C(2)(c) of this Plan, Participants shall be prohibited from the practice of "auto-quoting." "Auto-quoting" means the practice of tracking, by automated means, the changes to the best bid or best ask quotation and responding by generating another quote change to keep that Participant away from the best bid or ask quotation, but for purposes of this Plan, shall not include:

- (i) An update that is in response to an execution in the security by that Participant;
- (ii) An update that requires a physical entry;
- (iii) An update that is to reflect the receipt, execution, or cancellation of a customer limit order; or
- (iv) The practice of automatically generating quote changes at a rate of less than 35% of all price changes to the national best bid or ask quotation. The Processor shall calculate this rate using quoting activity during the preceding calendar month.

c. Applicability of Auto-Quoting Limitation -- The Limitation on Auto-Quoting contained in subparagraph VI.C(2)(b) of this Plan shall only apply if the Processor deems it necessary to maintain adequate capacity for the normal and efficient operation of the Processor and the Processor provides at least 30 calendar days notice to the Participants and the basis thereof of such determination. The Processor shall lift the limitation on auto-quoting when the Processor determines it is prudent to do so, in light of system capacity and any other operational factors. Additionally, the Limitation on Auto-Quoting set forth in subparagraph VI.C(2)(b) of this Plan will not apply to a Participant whose aggregated quoting activity in eligible Nasdaq securities does not exceed 1% of the total quotation traffic across all Nasdaq securities by all Nasdaq market participants and Exchange Participants. The Processor shall calculate this rate using quoting activity during the preceding calendar month.

d. Obligations of Participants Regarding Capacity -- Each Participant shall exercise due diligence to promote quotation generation practices that mitigate quotation traffic so as to ensure prudential excess capacity within the Processor. The Operating Committee shall periodically review the performance of Participants and take such action as necessary to maintain prudential excess capacity.

e. Procedures for Ensuring Acceptable Quote Generation Practices
-- The following procedures shall apply if, in accordance with Section

VI.C.2(c) of the Plan, the Processor determines that a capacity concern exists.

- (i) On a monthly basis, each Participant shall provide the Processor with a good faith estimate of the Participant's previous month's daily average number of quote updates to permit the Processor to determine compliance with the auto-quoting limitation referenced in Section VI.C.2.(b) of the Plan.
- (ii) If the Processor determines, from the Participant's data or otherwise, that the Participant has not complied with the limitations of Section VI.C.2.(b), the Processor shall give the Participant written notice of such condition. The Participant shall have 30 calendar days after receipt of the written notice to remedy the condition.
- (iii) If, after the aforementioned 30-day period has expired, the condition has not been remedied to the reasonable satisfaction of the Processor, then the Processor shall submit to the Operating Committee a written request for relief together with supporting documentation evidencing the alleged condition (*i.e.*, failure to comply with the limitations of Section VI.C.2.(b)) and quantifying the impact of the violation on overall capacity of the Processor. The Processor's request for relief shall be limited to such remedial action (including but not limited to the termination of service to the subject Participant) as is necessary to modify the subject Participant's quote generation practices on a prospective basis, for such period as is necessary to resolve the condition that gave rise to the Processor's request for relief. The Participant shall have 15 calendar days to respond in writing to the Processor's request for relief.
- (iv) The Operating Committee, following written notice to the Participant and the Processor, shall conduct a hearing within five (5) business days after expiration of the 15-day response period to determine whether to grant or deny the Processor's claim for remedial action. At the hearing, the Operating Committee may consider, among other information, the request of the Processor, the response (if any) of the Participant and any other evidence (written or oral) that is presented at the hearing. At the conclusion of the hearing, the Operating Committee shall grant or deny the Processor's request. An affirmative vote of two-thirds of the Operating Committee members entitled to vote (excluding the subject Participant) shall be required for any decision of the Operating Committee. The decision of the Operating Committee shall be final and therefore reviewable by the Commission;

provided, however, that any decision of the Operating Committee shall not become effective until five business days after the date of the decision.

f. Limitation on Applicability of Rule – The phase-in schedule contained in of VI.C(2)(a) and the Limitation on Auto-Quoting contained in VI.C(2)(c) shall not apply :

- (i) to any Participant upon the designation and the operation of a new Processor; and
- (ii) to a Participant for the number of securities that the Participant quoted as of May 1, 2001; provided, however the exemption contained herein shall expire a year from the end-date of the phase-in schedule contained in VI.C(2)(a).

3. 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. Quotation Information from individual NASD Participants will not be disseminated on the UTP Quote Data Feed. The Processor shall separately distribute on the OTC Montage Data Feed the Quotation Information regarding Eligible Securities from all NASD Participants from which quotations emanate. The Processor shall separately distribute NQDS for so long as Nasdaq is not registered as a national securities exchange and for so long as Nasdaq is the Processor. For so long as Nasdaq is not registered as a national securities exchange and after Nasdaq is no longer the Processor for other SIP datafeeds, either Nasdaq or a third party will act as the Processor to collect, consolidate, and disseminate the quotation information contained in NQDS.

4. 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.

VII. Administrative Functions of the Processor

Subject to the general direction of the Operating Committee, the Processor shall be responsible for carrying out all administrative functions necessary to the operation and maintenance of the consolidated information collection and dissemination system provided for in this Plan, including, but not limited to, record keeping, billing, contract administration, and the preparation of financial reports.

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 Nasdaq market participant 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 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.

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
B	Boston Stock Exchange
W	Chicago Board Options Exchange, Inc.
C	Cincinnati Stock Exchange
M	Chicago Stock Exchange

D	NASD
Q	Nasdaq
C	National Stock Exchange
N	New York Stock Exchange, Inc.
P	Pacific Exchange
X	Philadelphia Stock Exchange

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.

IX. Market Access

A. Each Participant shall permit each Nasdaq market participant, acting in its capacity as such, direct telephone access to the specialist, trading post, and supervisory center in each Eligible Security in which such Nasdaq market participant is registered as a market maker or electronic communications network/alternative trading system with Nasdaq. Such access shall include appropriate procedures or requirements by each Participant or employee to assure the timely response to communications received through telephonic access. No Participant shall permit the imposition of any access or execution fee, or any other fee or charge, with respect to transactions in Eligible Securities effected with Nasdaq market participants which are communicated to the floor by telephone pursuant to the provisions of this Plan. A Participant shall be free to charge for other types of access to its floor or facilities.

B. The NASD shall assure that each Participant, and its members shall have direct telephone access to the trading desk of each Nasdaq market participant in each Eligible Security in which the Participant displays quotations, and to the Nasdaq Supervisory Center. Such access shall include appropriate procedures or requirements to assure the timely response of each Nasdaq market participant to communications received through telephone access. Neither the NASD nor any Nasdaq market participant shall impose any access or execution fee, or any other fee or charge, with respect to transactions in Eligible Securities effected with a member of a Participant which are communicated by telephone pursuant to the provisions of this Plan.

X. Regulatory Halts

A. For purposes of this Section X, "Participant" shall include the Nasdaq Stock Market. 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.T, 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 notification 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 notice of the lifting of a Regulatory Halt. The Processor, in turn, shall disseminate to Participants notice of the Regulatory Halt (as well as notice of the lifting of a regulatory halt) through the UTP Quote Data Feed. This notice shall serve as official notice of a regulatory 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 verbally 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-disclosed 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 verbally 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, verbally 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.

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 required to 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 and 6:30 p.m. ET, shall be designated as ".T" trades to denote their execution outside normal market hours;
- (ii) transactions in Eligible Securities executed after 6:30 p.m. and before 12:00 a.m. (midnight) shall be reported to the Processor between the hours of 4:00 a.m. and 6:30 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 6:30 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 Nasdaq market participant is open for trading, until 6:30 p.m. ET (the "Additional Period"); provided, however, that the best bid and offer quotation will not be disseminated before 4:00 a.m. or after 6:30 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.

XII. Undertaking by All Participants

The filing with and approval by the Commission of this Plan shall obligate each Participant to enforce compliance by its members with the provisions thereof. In all other respects not inconsistent herewith, the rules of each Participant shall apply to the actions of its members in effecting, reporting, honoring and settling transactions executed through its facilities, and the entry, maintenance and firmness of quotations to ensure that such occurs in a manner consistent with just and equitable principles of trade.

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 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

The provisions governing cost allocation and revenue sharing among the Participants are set forth in Exhibit 1 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.

XIV. Indemnification

Each Participant agrees, severally and not jointly, to indemnify and hold harmless each other Participant, Nasdaq, 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.

XV. Withdrawal

Any Participant may withdraw from the Plan at any time on not less than 30 days prior written notice to each of the other Participants. Any Participant withdrawing from the Plan shall remain liable for, and shall pay upon demand, any fees for equipment or services being provided to such Participant pursuant to the contract executed by it or an agreement or schedule of fees covering such then in effect.

A withdrawing Participant shall also remain liable for its proportionate share, without any right of recovery, of administrative and operating expenses, including start-up costs and other sums for which it may be responsible pursuant to Section XIV hereof. Except as aforesaid, a withdrawing Participant shall have no further obligation under the Plan or to any of the other Participants with respect to the period following the effectiveness of its withdrawal.

XVI. Modifications to Plan

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.

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 Act, as amended, and any rules and regulations promulgated thereunder.

XVIII. Operational Issues

A. Each Exchange Participant shall be responsible for collecting and validating quotes and last sale reports within their own system prior to transmitting this data to the Processor.

B. Each Exchange Participant may utilize a dedicated Participant line into the Processor to transmit trade and quote information in Eligible Securities to the Processor. The Processor shall accept from Exchange Participants input for only those issues that are deemed Eligible Securities.

C. The Processor shall consolidate trade and quote information from each Participant and disseminate this information on the Nasdaq existing vendor lines.

D. The Processor shall perform gross validation processing for quotes and last sale messages in addition to the collection and dissemination functions, as follows:

1. Basic Message Validation

- a) The Processor may validate format for each type of message, and reject non-conforming messages.
- b) Input must be for an Eligible Security.

2. Logging Function - The Processor shall return all Participant input messages that do not pass the validation checks (described above) to the inputting Participant, on the entering Participant line, with an appropriate reject notation. For all accepted Participant input messages (i.e., those that pass the validation check), the information shall be retained in the Processor system.

XIX. Headings

The section and other headings contained in this Plan are for reference purposes only and shall not be deemed to be a part of this Plan or to affect the meaning or interpretation of any provisions of this Plan.

XX. Counterparts

This Plan may be executed by the Participants in any number of counterparts, no one of which need contain the signature of all Participants. As many such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

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.

IN WITNESS WHEREOF, this Plan has been executed as of the ____ day of ___,
200___, by each of the Signatories hereto.

AMERICAN STOCK EXCHANGE LLC

BY: _____

BOSTON STOCK EXCHANGE, INC.

CHICAGO STOCK EXCHANGE, INC.

BY: _____ BY: _____

CHICAGO BOARD OPTIONS EXCHANGE, INC. NATIONAL ASSOCIATION OF
SECURITIES DEALERS, INC.

BY: _____ BY: _____

NATIONAL STOCK EXCHANGE

NEW YORK STOCK EXCHANGE, INC.

BY: _____ BY: _____

PACIFIC EXCHANGE, INC.

PHILADELPHIA STOCK
EXCHANGE, INC.

BY: _____ BY: _____

Exhibit 1

1. Each Participant eligible to receive revenue under the Plan will receive an annual payment for each calendar year to be determined by multiplying (i) that Participant's percentage of total volume in Nasdaq securities reported to the Processor and disseminated to Vendors for that calendar year by (ii) the total distributable net operating income (as defined below) for that calendar year provided, however, that for the implementation year (as defined in Paragraph 4 below), a Participant's payment shall be multiplied by the number of months during the implementation year the interface was in operation divided by twelve. In the event that total distributable net operating income is negative, each Participant eligible to receive revenue under the Plan will receive an annual bill for each calendar year to be determined according to the same formula (described in this paragraph) for determining annual payments to eligible Participants.
2. A Participant's percentage of total volume in Nasdaq securities will be calculated by taking the average of (i) the Participant's percentage of total trades in Nasdaq securities reported to the Processor and disseminated to Vendors for the year and (ii) the Participant's percentage of total share volume in Nasdaq securities reported to the Processor and disseminated to Vendors for the year (trade/volume average). For any given year, a Participant's percentage of total trades shall be calculated by dividing the total number of trades that that Participant reports to the Processor as the selling party for that year by the total number of trades in Nasdaq securities reported to the Processor and disseminated to Vendors for the year. A Participant's total share volume shall be calculated by multiplying the total number of trades in Nasdaq securities in that year that that Participant reports to the Processor as the selling party multiplied by the number of shares for each such trade. Unless otherwise stated in this agreement, a year shall run from January 1 to December 31.
3. 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, the OTC Montage Data Feed, and NQDS, including revenues from the dissemination of information among Eligible Securities to foreign marketplaces (collectively, "the Data Feeds"), and subtracting from such revenues the costs incurred by the Processor, set forth below, in collecting, consolidating, validating, generating, and disseminating the Data Feeds. These costs include, but are not limited to, the following:
 - a. The Processor costs directly attributable to creating OTC Montage Data Feed and NQDS, including:
 1. cost of collecting Participant quotes into the Processor's quote engine;

2. cost of processing quotes and creating OTC Montage Data Feed and NQDS messages within the Processor's quote engine;
 3. cost of the Processor's communication management subsystem that distributes OTC Montage Data Feed and NQDS to the market data vendor network for further distribution.
- b. The costs directly attributable to creating the UTP Quote Data Feed, including:
 1. cost of calculating the national best bid and offer price within the Processor's quote engine;
 2. cost of creating the UTP Quote Data Feed message within the Processor's quote engine;
 3. 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. cost of determining the appropriate last sale price and volume amount within the Processor's trade engine;
 2. cost of utilizing the Processor's trade engine to distribute the UTP Trade Data Feed for distribution to the market data vendors.
- 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.
- 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 UNISYS 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.
4. At the time a Participant implements a computer-to-computer-interface or other Processor-approved electronic interface with the Processor, the Participant will become eligible to receive revenue for the year in which the interface is implemented (implementation year).
5. From the date a Participant is eligible to receive revenue (implementation date) until December 31 of the implementation year, Nasdaq shall pay the Participant a pro rata amount of its payment or bill the Participant for a pro rata amount of its losses for the implementation year (as calculated in Paragraph 1 above). This calculation and resultant payment (or bill) will be made (or due) within ninety (90) days after the twelfth month following the implementation date.

For the calendar year subsequent to the implementation year, and continuing thereafter, the calculation of the Participant's annual payment or loss will be performed and the payment made or bill delivered by March 31 of the following year. Estimated quarterly payments or billings shall be made to each eligible Participant within 45 days following the end of each calendar quarter in which the Participant is eligible to receive revenue, provided that the total of such estimated payments or billings shall be reconciled at the end of each calendar year and, if necessary, adjusted by March 31st of the following year. Interest shall be included in quarterly payments and in adjusted payments made on March 31st of the following year. Such interest shall accrue monthly during the period in which revenue was earned and not yet paid and will be based on the 90-day Treasury bill rate in effect at the end of the quarter in which the payment is made. Interest shall not accrue during the period of up to 45 days between the end of each calendar quarter and the date on which an estimated quarterly payment or billing is made.

In conjunction with calculating estimated quarterly and reconciled annual payments under this Exhibit 1, the Processor shall submit to the Participants an itemized statement setting forth the basis upon which net operating income was calculated, including an itemized statement of the Processor costs set forth in Paragraph 3 of this Exhibit. Such Processor costs shall be reconciled annually based solely on the Processor's audited annual financial information. By majority vote of the Operating Committee, the Processor shall engage an independent auditor to audit the Processor's costs or other calculation(s), the cost of which audit shall be

shared equally by all Participants. The Processor agrees to cooperate fully in providing the information necessary to complete such audit.