

Proposed Rule Change by NASDAQ OMX PHLX, Inc.
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input 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"/>
			Rule		
Pilot <input type="checkbox"/>	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).

A proposed rule change to establish NASDAQ OMX PSX, a new electronic platform for trading NMS stocks.

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="John"/>	Last Name	<input type="text" value="Yetter"/>
Title	<input type="text" value="Vice President and Deputy General Counsel"/>		
E-mail	<input type="text" value="john.yetter@nasdaqomx.com"/>		
Telephone	<input type="text" value="(301) 978-8497"/>	Fax	<input type="text" value="(301) 978-8472"/>

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 officer.

Date	<input type="text" value="06/08/2010"/>	
By	<input type="text" value="Edward S. Knight"/>	<input type="text" value="Executive Vice President and 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.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² NASDAQ OMX PHLX, Inc. (“PHLX” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to establish NASDAQ OMX PSX, a new electronic platform for trading NMS stocks.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and the text of the proposed rule change is attached hereto as Exhibit 5.

(b) and (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Governors of the Exchange on March 11, 2010. No other action by the Exchange is necessary for the filing of the proposed rule change. PHLX will implement the proposed rule change as soon as practicable following approval by the Commission.

Questions regarding this rule filing may be directed to John M. Yetter, Vice President and Deputy General Counsel, The NASDAQ OMX Group, at (301) 978-8497 (telephone) or (301) 978-8472 (fax).

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

I. Introduction and Background

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

PHLX proposes to introduce NASDAQ OMX PSX (“PSX” or the “System”), a new fully integrated order display and execution system for all NMS stocks (as defined in SEC Rule 600(b)(47) under Regulation NMS).³ Like the NASDAQ Market Center and the NASDAQ OMX BX Equities System, PSX will be an open-access, fully electronic system that accommodates diverse business models and trading preferences, using technology to aggregate and display liquidity and make it available for execution. PSX will not list stocks, but rather will trade only stocks listed on other exchanges.

PSX will allow PSX Participants to enter unlimited orders at multiple price levels. Orders of all PSX Participants will be integrated and displayed via data feeds to Participants and other data subscribers. PSX Participants will be able to access the aggregated trading interest of all other PSX Participants in accordance with non-discretionary order execution algorithms. In contrast with most markets, which use a price-time algorithm, however, PSX will use a price-display-pro rata size algorithm. Incoming orders will be allocated first to resting orders with the best price. As among orders with the same price, incoming orders will be allocated first to resting Displayed Orders and then to resting Non-Displayed Orders. As among Displayed Orders at the same price or Non-Displayed Orders at the same price, incoming orders will be allocated among resting orders pro rata based on the size of the resting orders.⁴

Existing PHLX rules that apply to members and member organizations with respect to their activities on PSX are listed in Rule 3202. In addition, two existing PHLX

³ 17 C.F.R. 242.600(b)(47).

⁴ The allocation methodology for odd-lot orders is discussed in greater detail below.

rules, Rule 160 and Rule 188, are being deleted and their content moved into the new 3300 series.⁵

II. System Access

PSX will be open to all member organizations of PHLX that comply with the rules governing PSX.⁶ There will not be separate classes of membership. Specifically, unlike the NASDAQ Market Center, PSX will not have a separate class of market makers. Accordingly, PHLX expects that all PSX Participants will participate on consistent terms by entering orders into PSX for the purpose of posting available liquidity and accessing that liquidity.

As provided in proposed Rule 3223, however, PSX will make its facilities available to any electronic communications network (“ECN”) or alternative trading system (“ATS”) that (i) wishes to use PSX as a means to display the best prices and sizes of orders entered into the ECN or ATS by subscribers of the ECN or ATS, if the ECN or ATS so chooses or is required by SEC Rule 301(b)(3) to display a subscriber's order, and (ii) allow any PHLX member organization the electronic ability to effect a transaction with such priced orders that is equivalent to the ability to effect a transaction with other

⁵ Proposed Rules 3301(a), 3305(a)(1), 3309

⁶ Through a separate filing, PHLX will amend Rule 604 to require all member organizations trading on PSX to register representatives and principals in accordance with rules similar to those governing registration of associated persons of members of the NASDAQ Stock Market. PHLX will, at a later date, amend its rules governing registration of associated persons of member organizations that trade options but not cash equities through PHLX, to reflect consistent registration standards being developed by various self-regulatory organizations in consultation with the Commission.

orders displayed by PSX. Any such ECN or ATS would be required to comply with the terms and conditions of PSX Rule 3223.⁷

Participants will gain access to PSX via direct or indirect electronic linkages utilizing the Financial Information Exchange, or FIX, protocol, as well as proprietary RASH and OUCH protocols. Each protocol is already used and widely accepted by market participants in the NASDAQ Market Center and the NASDAQ OMX BX Equities System, and may be used by Participants for order entry, modification and cancellation, and message transmittal for all securities traded through PSX. Participants will have the ability to establish connectivity to PSX directly or through third-party connectivity providers, including a range of extranets and service bureaus. All of the communications protocols will be publicly available to allow Participants and services bureaus to develop their own front-end software.

As provided in proposed Rule 3211, Participants must execute all applicable agreements with PHLX (including the NASDAQ OMX U.S. Services Agreement⁸); maintain membership in, or access arrangements with a participant of, a clearing agency registered with the Commission that maintains facilities through which PSX compared trades may be settled; comply with all applicable rules and operating procedures of PHLX and the Commission in the use of the System; maintain the physical security of the equipment located on the Participant's premises to prevent the improper use or access to

⁷ Specifically, the ATS or ECN must be a PHLX member organization, enter into and comply with applicable agreements, agree that PHLX may disseminate the ECN's or ATS's best priced orders, demonstrate that it is compliance with applicable regulatory requirements, and accept automated executions against orders that it enters into the System.

⁸ http://www.nasdaqtrader.com/content/AdministrationSupport/AgreementsTrading/nasdaq_access_agreement.pdf.

PHLX systems, including unauthorized entry of information into PSX; accept and settle each PSX trade that PSX identifies as having been effected by such Participant, or if settlement is to be made through another clearing member, guarantee the acceptance and settlement of such identified PSX trade by the clearing member on the regularly scheduled settlement date; and input accurate information into the System, including, but not limited to, whether the member organization acted in a principal, agent, or riskless principal capacity. Each PSX Participant will be under a continuing obligation to inform PHLX of noncompliance with any of its registration requirements, and must make such reports to PHLX as it may require.⁹ In addition, each Participant must provide such information relating to a specific PHLX rule, SEC rule, or term of a joint industry plan as PHLX regulatory staff may request.¹⁰ PHLX may impose on Participants such temporary restrictions on order entry as PHLX may determine to be necessary to protect the integrity of PSX or other PHLX systems.¹¹ In addition to proposed rules specific to the operation of PSX, member organizations must comply with existing PHLX rules governing member conduct, to the extent that they are relevant to trading on PSX. PHLX rules applicable to activities of member organizations on PSX are listed in proposed rule 3202.

Failure by a PSX Participant to comply with any of the rules or registration requirements applicable to PSX shall subject such Participant to censure, fine, suspension or revocation of its registration as a PSX Participant, or any other fitting penalty under

⁹ Proposed Rules 3211(b), 3216.

¹⁰ Proposed Rule 3225.

¹¹ Proposed Rule 3211(c).

the rules of the Exchange.¹² In accordance with the procedures of PHLX's Disciplinary Rules (Rules 960.1 through 960.12), PHLX may suspend, condition, limit, prohibit or terminate the authority of a Participant to enter orders in one more securities for violations of applicable requirements or prohibitions, or may terminate access to the System if a Participant fails to meet standards of eligibility or to pay for services rendered.¹³

PHLX disclaims liability for any losses, damages or other claims arising from the use of PSX; however, it may compensate users for losses directly resulting from PSX's actual failure to correctly process an order, message, or other data, in an amount not to exceed the larger of \$500,000 per month or the amount of recovery obtained by PHLX under any applicable insurance policy.¹⁴

When it commences operation, PSX will allow sponsored access in accordance with rules identical to those currently in effect at the NASDAQ Stock Market ("NASDAQ"), which are reflected in proposed Rule 3211(d). When NASDAQ implements recently approved rules governing sponsored access,¹⁵ PSX will adopt and implement identical rules to govern sponsored access. Under the current rules, a

¹² Proposed Rule 3228(a).

¹³ Proposed Rules 3221, 3222.

¹⁴ Proposed Rule 3226. Accordingly, existing PHLX Rule 652(a) is not applicable to activity on PSX.

¹⁵ Securities Exchange Act Release No. 61345 (January 13, 2010), 75 FR 32631 (January 20, 2010) (SR-NASDAQ-2008-104). If NASDAQ's rules are superseded by rules adopted by the Commission, then both NASDAQ and PSX will operate in accordance with such rules.

Sponsored Participant may obtain authorized access to PSX only if such access is authorized in advance by one or more member organizations as follows:

- Sponsored Participants must enter into and maintain customer agreements with one or more Sponsoring Member Organizations, establishing proper relationship(s) and account(s) through which the Sponsored Participant may trade on PSX. Such customer agreement(s) must incorporate the following Sponsorship Provisions:
 - The Sponsoring Member Organization must acknowledge and agree that:
 - All orders entered by a Sponsored Participant and any person acting on behalf of or in the name of such Sponsored Participant and any executions occurring as a result of such orders are binding in all respects on the Sponsoring Member Organization; and
 - The Sponsoring Member Organization is responsible for any and all actions taken by a Sponsored Participant and any person acting on behalf of or in the name of such Sponsored Participant.
 - A Sponsoring Member Organization must comply with the PHLX Certificate of Incorporation, Bylaws, Rules and procedures with regard to PSX, and a Sponsored Participant must comply with the PHLX Certificate of Incorporation, Bylaws, Rules and procedures with regard to PSX, as if the Sponsored Participant were a PHLX Member Organization.
 - A Sponsored Participant must maintain, keep current and provide to the Sponsoring Member Organization a list of individuals authorized to obtain access to PSX on behalf of the Sponsored Participant.

- A Sponsored Participant must familiarize its authorized individuals with all of the Sponsored Participant's obligations and assure that they receive appropriate training prior to any use or access to PSX.
- A Sponsored Participant may not permit anyone other than authorized individuals to use or obtain access to PSX.
- A Sponsored Participant must take reasonable security precautions to prevent unauthorized use or access to PSX, including unauthorized entry of information into PSX, or the information and data made available therein. A Sponsored Participant must understand and agree that it is responsible for any and all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of authorized individuals, and for the trading and other consequences thereof.
- A Sponsored Participant must acknowledge its responsibility to establish adequate procedures and controls that permit it to effectively monitor its employees', agents', and customers' use and access to PSX for compliance with the terms of the Sponsorship Provisions.
- A Sponsored Participant must pay when due all amounts, if any, payable to the Sponsoring Member Organization, PSX, or any other third parties that arise from the Sponsored Participant's access to and use of PSX. Such amounts include, but are not limited to applicable exchange and regulatory fees.
- The Sponsoring Member Organization must provide PHLX with a Notice of Consent acknowledging its responsibility for the orders, executions and actions of its Sponsored Participants.

- The Sponsored Participant and its Sponsoring Member Organization must have entered into and maintained a User Agreement with PHLX. The Sponsoring Member Organization must designate the Sponsored Participant by name in its User Agreement as such.

III. Trading of Securities Pursuant to Unlisted Trading Privileges

With the launch of PSX, PHLX will not resume its listings business. PSX will, however, trade all NMS stocks on an unlisted trading privileges (“UTP”) basis; accordingly, all securities that it trades will be registered under Section 12(a) of the Act unless they are subject to an exemption by the Commission that allows them to be listed on a national securities exchange in the absence of such registration. As provided by SEC Rule 12f-5,¹⁶ PHLX may extend unlisted trading privileges to any security for which PHLX has in effect rules providing for transactions in such class or type of security.¹⁷ Accordingly, to support UTP trading of all NMS stocks, existing PHLX Rule 803 is being amended in several respects. First, Rule 803(o) will clearly state that PHLX

¹⁶ 17 C.F.R. 240.12f-5.

¹⁷ Notably, with respect to new derivative securities products (as defined in SEC Rule 19b-4(e), 17 C.F.R. 240.19b-4(e)) trading on the Exchange, Rule 803(o) requires the distribution of an information circular that includes information on the (1) the special risks of trading the new derivative securities product (“NDSP”); (2) the Exchange's rules that will apply to the NDSP, including the suitability rule (proposed Rule 763); (3) information about the dissemination of value of the underlying assets or indexes; and (4) the risk of trading during the period from 9:00 a.m. to 9:30 a.m. and from 4:00 p.m. to 5:00 p.m. due to the lack of calculation or dissemination of the underlying index value, the Intraday Indicative Value, the Indicative Optimized Portfolio Value or other comparable estimate of the value of a share of the NDSP. Rule 803(o) also requires that members and member organizations adhere to applicable prospectus delivery requirements of the Securities Act of 1933, and requires that the Exchange enter into comprehensive surveillance sharing agreements with markets trading components of the index or portfolio on which the NDSP is based to the same extent as the listing market of the NDSP.

will not list any securities, and that provisions of Rules 800 through 868 that permit listings will not be effective until PHLX files a proposed rule change under Section 19(b)(2) of the Act to amend its rules to make any changes needed to comply with SEC Rule 10A-3¹⁸ and to incorporate additional qualitative listing standards, and such proposed rule change is approved by the Commission. Second, PHLX is adopting new standards for securities linked to the performance of indexes and commodities (including currencies) and managed fund shares, to reflect the fact that PHLX may engage in UTP trading of these securities,¹⁹ and is modifying Rule 803(f) (Other Securities) to adopt continued listing standards that would be applicable to securities listed under that provision if PHLX resumed its listing business and that contain provisions that are complementary to the new standards for securities linked to commodities. Third, PHLX is deleting current Rules 803(m) and (n), which contain standards for index-linked exchangeable notes and index-linked securities; these security types are covered more comprehensively by the adoption of a standard for securities linked to the performance of indexes and commodities (including currencies). Fourth, PHLX is deleting certain restrictions in Rule 803(o) on the activities of market makers, since PSX's market structure will not allow for a class of market makers.

PHLX is also adopting Rule 3230 to establish additional rules to govern UTP trading of Commodity-Related Securities on PSX. The term "Commodity-Related Security" includes any security that is issued by a trust, partnership, commodity pool or

¹⁸ 17 C.F.R. 240.10A-3.

¹⁹ Rule 803(m) and (n) (as proposed to be amended). As with other standards, however, PHLX will not list these securities until the filing and approval of a proposed rule change to authorize such listing.

similar entity that invests, directly or through another entity, in any combination of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, or the value of which is determined by the value of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives. The term “commodity” has the meaning given to it under the Commodity Exchange Act. The rule provides that members and member organizations must provide all purchasers of a newly issued Commodity-Related Security a prospectus for such Commodity-Related Security.²⁰ The rule further provides that unless otherwise noted, a Commodity-Related Security is eligible for trading during all PSX market sessions (i.e. from 9:00 a.m. through 5:00 p.m.) if member organizations comply with Rule 3231 when accepting Commodity-Related Security orders for execution in the pre-market session (9:00 a.m. through 9:30 a.m.) or post-market session (4:00 p.m. through 5:00 p.m.).

Rule 3231 provides that no member organization may accept an order from a customer for execution in the pre-market session or post-market session without disclosing to such customer that extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk. The absence of an updated underlying index value or intraday indicative value is an additional trading risk in extended hours for Derivative Securities Products (as defined in Rule 3100). With these changes, as well as the adoption of the other rules

²⁰ Provisions from the corresponding NASDAQ rule, Rule 4630, that govern the conduct of market makers in Commodity-Related Securities have been omitted because PSX will not have market makers.

contained in this filing, PHLX believes that it will have rules in place to allow the UTP trading of all NMS stocks.

IV. Entry and Processing of Orders

Only orders for NMS stocks may be entered and executed through PSX.²¹ PSX is the only venue on the Exchange for the entry and execution of orders in NMS stocks.²² Participants may submit multiple orders at multiple price levels, which PSX will manage and display, consistent with the parameters of each order.²³ PSX will time-stamp each order upon receipt, although as discussed below, the time stamp does not determine the order's ranking for execution purposes.²⁴ The System does not allow Participants to display orders on an attributable basis.²⁵ However, orders may be entered either as Displayed Orders, in which case they will be displayed as individual orders, each with an identical anonymous identifier, in market data disseminated by PSX concerning resting orders, or may be entered as Non-Displayed Orders, in which case they will not be displayed but nevertheless remain available for potential execution against incoming orders.²⁶

Displayed Orders will be displayed to Participants through a system book feed. In addition, the aggregate size of all orders at the best price to buy and sell resident in the

²¹ Proposed Rule 3305(a)(1).

²² Id.

²³ Proposed Rule 3306.

²⁴ Id.

²⁵ Proposed Rule 3301(a).

²⁶ Proposed Rule 3301(e).

System will be transmitted for display to the appropriate network processor unless the aggregate size is less than one round lot.²⁷ However, Non-Displayed Orders and reserve size will not be displayed.²⁸

Marketable orders are directed to resting orders for execution. Non-marketable orders are made available for execution by incoming orders, and either displayed or not displayed, as directed by the entering party. Upon entry of a marketable order, PSX will identify the order(s) against which the incoming order will be executed, based on the algorithm described below. The System will automatically execute against such orders and send the relevant Participant(s) an execution report.

V. *Order Types and Time-in-Force Designations*

An order may be of a size up to 999,999 shares²⁹ and must indicate whether it is a buy, long sale, or short sale.³⁰ The minimum increment for orders priced at \$1.00 or above will be \$0.01.³¹ The minimum increment for orders priced below \$1.00 will be \$0.0001.³² All orders are firm and automatically executable for their displayed and non-displayed size in the System.³³ The System will operate from 9:00 a.m. through 5:00 p.m. Eastern Time, and except as noted below, all orders types and times-in-force may be

²⁷ Proposed Rule 3306(c)(1) and (2).

²⁸ Proposed Rule 3306(c)(3).

²⁹ Proposed Rule 3301(g).

³⁰ Proposed Rule 3305.

³¹ Proposed Rule 3213(a).

³² Id.

³³ Proposed Rule 3213(b).

entered during that period.³⁴ PSX will not have any specialized opening or closing processes. Rather, the System will be open for order entry at 9:00 a.m., and will immediately start processing orders as they are entered.³⁵

The following order types will be available in PSX:³⁶

- "Limit Orders" are orders to buy or sell a stock at a specified price or better.
- "Pegged Orders" are orders that, after entry, have their price automatically adjusted by the System in response to changes in either the PSX inside bid or offer or the best bid or offer in the national market system, as appropriate. A Pegged Order can specify that its price will equal the inside quote on the same side of the market ("Primary Peg"), the opposite side of the market ("Market Peg"), or the midpoint of the national best bid and offer ("Midpoint Peg"). A Pegged Order may have a limit price beyond which the order shall not be executed. In addition, the Primary Peg and Market Peg Orders may also establish their pricing relative to the appropriate bids or offers by the selection of one or more offset amounts that will adjust the price of the order by the offset amount selected. A Midpoint Peg Order is priced based upon the national best bid and offer, excluding the effect that the Midpoint Peg Order itself has on the inside bid or inside offer. Midpoint Peg Orders will never be displayed. A Midpoint Peg

³⁴ Proposed Rules 3217 and 3306(a)(3).

³⁵ Proposed Rule 3302.

³⁶ Proposed Rule 3301(e) and (f).

Order may be executed in sub-pennies if necessary to obtain a midpoint price. A Pegged Order may be entered only between 9:30 a.m. and 4:00 p.m.³⁷

- "Minimum Quantity Orders" are orders that require that a specified minimum quantity of shares be obtained, or the order is cancelled. Minimum Quantity Orders may only be entered with a time-in-force designation of System Hours Immediate or Cancel.
- "Intermarket Sweep Orders" or "ISOs" are limit orders that are executed by the System at multiple price levels, without consideration of protected quotations of other market centers within the meaning of Rule 600(b) of Regulation NMS under the Act.³⁸ Simultaneously with the routing of an ISO to the System, one or more additional limit orders, as necessary, must be routed by the entering party to execute against the full displayed size of any protected bid or protected offer (as defined in Rule 600(b) of Regulation NMS under the Act) in the case of a limit order to sell or buy with a price that is superior to the limit price of the limit order identified as an ISO. These additional routed orders must also be identified as ISOs.
- "Price to Comply Orders" are orders that if, at the time of entry, would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) and displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers). The displayed and undisplayed prices of a Price to Comply order

³⁷ Proposed Rule 3305(a)(1)(C).

³⁸ 17 C.F.R. 242.600(b).

may be adjusted once or multiple times depending upon the method of order entry and changes to the prevailing national best bid or offer.

- "Post-Only Orders" are orders that if, at the time of entry, would lock an order on the System, the order will be re-priced and displayed by the System to one minimum price increment (i.e., \$0.01 or \$0.0001) below the current low offer (for bids) or above the current best bid (for offers).
- "Non-Displayed Orders" are limit orders that are not displayed in the System, but nevertheless remain available for potential execution against all incoming orders until executed in full or cancelled. All orders that are not designated as Non-Displayed Orders will be displayed, but without attribution to the entering Participant.
- In addition to the any of the foregoing designations, an order may also be designated as a "Reserve Order." Reserve Orders have both a round-lot displayed size and an additional non-displayed share amount. Both the displayed and non-displayed portions of the Reserve Order are available for potential execution against incoming orders. If the round-lot displayed portion of a Reserve Order is reduced to less than a normal unit of trading, the System will replenish the display portion from reserve up to at least a single round-lot amount.

The following times-in-force will be available in PSX.³⁹ Except as noted above in connection with Minimum Quantity Orders, any time-in-force may be combined with any order type.

³⁹ Proposed Rule 3301(h).

- "System Hours Immediate or Cancel" or "SIOC" means that if, after entry into the System, an order (or a portion thereof) is not marketable, the order (or unexecuted portion thereof) will be canceled and returned to the entering Participant.
- "System Hours Day" or "SDAY" means that if, after entry into the System, an order is not fully executed, the order (or the unexecuted portion thereof) will remain available for potential display and/or execution from 9:00 a.m. until 5:00 p.m. Eastern Time on the day it was submitted unless cancelled by the entering party.
- "System Hours Expire Time" or "SHEX" means that if, after entry into the System, an order is not fully executed, the order (or the unexecuted portion thereof) will remain available for potential display and/or execution for the amount of time specified by the entering Participant (up until 5:00 p.m. on the day entered) unless canceled by the entering Participant.
- "Good-til-market close" or "GTMC" means that if, after entry into the System, an order is not fully executed, the order (or unexecuted portion thereof) will remain available for potential display and/or execution until cancelled by the entering party, or until 4:00 p.m., after which it shall be returned to the entering party. GTMC orders entered after 4:00 p.m. will be treated as SIOC orders.

VI. *Execution of Transactions*

Incoming orders that are not marketable against posted interest in the System book will be cancelled or posted to the book, depending on the time-in-force for the order.⁴⁰ Incoming marketable orders are executed against orders on the book, and the

⁴⁰ Proposed Rule 3301(h).

posted orders are decremented accordingly.⁴¹ To determine the allocation of incoming marketable orders against orders on the book, the System uses a price/display/pro-rata allocation to size that is designed to encourage Participants to display large orders in transparent markets, thereby enhancing the quality of price discovery processes.⁴² The algorithm executes trading interest in the System in the following order:

- Price—Better priced trading interest will be executed ahead of inferior-priced trading interest.
- Display—Displayed Orders at a particular price with a size of at least one round lot will be executed ahead of Non-Displayed Orders, the reserve portion of Reserve Orders, and odd-lot orders at the same price. Thus, an order receives priority to the extent of the Participant's willingness to display liquidity: undisplayed liquidity receives lower priority.
- Pro-Rata Allocation to Size Among Displayed Orders With a Size of One Round Lot or More—As among equally priced Displayed Orders with a size of at least one round lot, the System will allocate round lot portions of incoming executable orders to displayed trading interest within the System pro rata based on the size of the Displayed Orders. Portions of an order that would be executed in a size other than a round lot if they were allocated on a pro rata basis will be allocated for execution against available displayed trading interest on the basis of a random function that assigns probability of execution based on the size of displayed interest. For example, if Displayed Orders to buy at 10 reside on the PSX book

⁴¹ Proposed Rule 3307(a)(2).

⁴² Proposed Rule 3307(a)(1).

- with sizes of 6,000 (Participant A) and 4,000 (Participant B), and an incoming order to sell 1,100 at 10 comes into the System, the System will allocate 600 shares of the incoming order to Participant A and 400 shares of the incoming order to Participant B. The remaining 100 shares of the incoming order will be allocated on the basis of a random function that assigns a 60% probability of executing the 100 shares to Participant A and a 40% probability to Participant B.
- **Displayed Odd-Lot Orders**—As among equally priced Displayed Orders with a size of less than one round lot, the System will allocate incoming orders based on the size of the Displayed Orders, but not in pro rata fashion. Thus, a resting order with a size of 90 shares would get filled in full before an order with size of 50 shares. If there are two or more odd lot orders of equal size, the System will determine the order of execution on the basis of a random function that assigns each order an equal probability of execution.
 - **Pro-Rata Allocation to Size Among Non-Displayed Interest With a Size of One Round Lot or More**—As among equally priced Non-Displayed Orders and the reserve portion of Reserve Orders (collectively, “non-displayed interest”) with a size of at least one round lot, the System will allocate round lot portions of incoming executable orders to non-displayed interest within the System pro rata based on the size of non-displayed interest. Portions of an order that would be executed in a size other than a round lot if they were allocated on a pro rata basis will be allocated for execution against available non-displayed interest on the basis of a random function that assigns probability of execution based on the size of non-displayed interest.

- Non-Displayed Odd-Lot Orders—As among equally priced Non-Displayed Interest with a size of less than one round lot, the System will allocate incoming orders based on the size of the Non-Displayed Interest, but not in pro rata fashion. Thus, a larger odd-lot order would be filled before a smaller odd-lot order. If there are two or more odd lot orders of equal size, the System will determine the order of execution on the basis of a random function that assigns each order an equal probability of execution.

An incoming order with a price that crosses the price of a posted order will execute at the price of the posted order. Accordingly, any potential price improvement resulting from an execution in the System will accrue to taker of liquidity.⁴³ For example, if a buy order resides on the PSX book at 10 and an incoming sell order priced at 9 comes into the System, the orders will execute at 10, with the seller getting \$1.00 price improvement.

VII. Reporting, Clearance and Settlement; Anonymity

As provided by Rule 3309, executions occurring as a result of orders matched on PSX shall be reported by PHLX to an appropriate consolidated transaction reporting system. The System will identify trades executed pursuant to an exception to or exemption from Rule 611 of Regulation NMS 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 ISO exception of Rule 611(b)(5) or (6) of Regulation NMS and the self-help exception of Rule 611(b)(1) of Regulation NMS, such trade shall be identified as executed pursuant to the ISO exception. PHLX will

⁴³ Proposed Rule 3307(a)(3).

promptly notify PSX Participants of all executions of their orders as soon as the Exchange is notified that such executions have taken place.

For each execution, PSX will submit a transaction report using PHLX's existing "X" market identifier. The transaction reports produced by the System will indicate the price and size of the transaction, but will not reveal contra party identities.⁴⁴ PHLX will reveal a Participant's identity in the following circumstances: (i) when National Securities Clearing Corporation ("NSCC") ceases to act for a Participant, or the Participant's clearing firm, and NSCC determines not to guarantee the settlement of the Participant's trades; (ii) for regulatory purposes or to comply with an order of an arbitrator or court; (iii) if both Participants to the transaction consent; or (iv) unless otherwise instructed by a member organization, PHLX will reveal to a member organization, no later than the end of the day on the date an anonymous trade was executed, when the member organization's order has been decremented by another order submitted by that same member organization.

Transactions will be cleared and settled through NSCC and Depository Trust Corporation ("DTC"), using an exchange omnibus account established at NSCC.⁴⁵ All Participants must be members of NSCC, or clear their trades through a clearing firm that is both a member organization of PHLX and a member of NSCC. Member organizations failing to maintain the required clearing arrangements may be removed from access to

⁴⁴ Proposed Rule 3310.

⁴⁵ Proposed Rule 3218. In the event that a registered clearing agency other than NSCC began offering continuous net settlement services, participants would also be permitted to use that clearing agency rather than NSCC.

PSX until such time as a clearing arrangement is reestablished.⁴⁶ If a Participant, or a clearing member acting on a Participant's behalf, is reported as constituting a side of a System trade, the Participant or the clearing member must honor the trade on the scheduled settlement date.⁴⁷

VIII. Trading Halts and Clearly Erroneous Transactions

PSX's provisions on trading halts will mirror those of the NASDAQ Market Center, but will include only those provisions pertinent to securities traded on an unlisted trading privileges basis.

- PSX may halt trading on PSX of a security listed on another exchange: (i) during a trading halt imposed by such exchange to permit the dissemination of material news; or (ii) when such exchange imposes a trading halt in that security because of an order imbalance or influx ("operational trading halt").⁴⁸
- PSX may halt trading in an index warrant whenever regulatory staff concludes that such action is appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that may be considered are the following: (i) trading has been halted or suspended in underlying stocks whose weighted value represents 20% or more of the index value; (ii) the current calculation of the index derived from the current market prices of the stocks is not available; or (iii) other

⁴⁶ Proposed Rule 3228.

⁴⁷ Proposed Rule 3227.

⁴⁸ Proposed Rule 3100(a)(1).

- unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.⁴⁹
- In the case of trust shares, index fund shares, managed fund shares or trust issued receipts, a series of commodity-related securities, securities representing interests in unit investment trusts or investment companies, or any other derivative security (collectively, “Derivatives Security Products”) for which an underlying index, indicative optimized portfolio value, intraday indicative value, net asset value, disclosed portfolio, or other comparable estimate of the value of a share is disseminated, PSX will halt trading if there is a temporary interruption in the calculation or wide dissemination of the value. PSX will maintain the trading halt until such time as trading resumes in the listing market.⁵⁰ Trading may continue in the case of interruptions that occur outside of regular market hours. However, if an interruption occurs or continues during regular market hours and a halt is called by the listing market, or if a halt occurs after the close of regular market hours and continues the following day, the affected security will be halted and remain halted until the listing market resumes trading.⁵¹
 - PSX will halt trading in a Derivative Security Product for which a net asset value or disclosed portfolio is disseminated if staff becomes aware that the net asset value or disclosed portfolio is not being disseminated to all market participants at

⁴⁹ Proposed Rule 3100(a)(2).

⁵⁰ Proposed Rule 3100(a)(3).

⁵¹ Proposed Rule 3100(b).

the same time. The halt will remain in effect until the listing market resumes trading.⁵²

- Following the initiation of an operational trading halt, PSX Participants may immediately resume order entry and trading.⁵³ In other cases, Participants must wait until PSX releases the security for resumed trading, at a time announced by PSX through websites and wire services.⁵⁴
- During a pilot period ending on December 10, 2010, if a primary listing market issues an individual stock trading pause in any of the securities covered by the pilot, the Exchange will pause trading in that security until trading has resumed on the primary listing market. If, however, trading has not resumed on the primary listing market and ten minutes have passed since the individual stock trading pause message has been received from the responsible single plan processor, the Exchange may resume trading in such stock. The securities covered by the pilot are those stocks included in the S&P 500[®] Index.
- PSX will also halt trading upon SEC request, including in accordance with standing requests for “circuit breaker” market-wide halts in the event of a major market break.⁵⁵

⁵² Proposed Rule 3100(a)(3).

⁵³ Proposed Rule 3100(a)(1).

⁵⁴ Proposed Rule 3100(c)(2).

⁵⁵ PLHX Rule 133. As a result of precipitous declines in the prices of certain securities on May 6, 2010, the Commission and the national securities exchanges are currently evaluating the advisability of modifying marketwide rules on trading halts due to extraordinary market volatility, such as those reflected in PHLX Rule 133. PHLX will modify Rule 133 to maintain consistency with corresponding

PHLX will adopt a rule to govern breaking of clearly erroneous transactions.⁵⁶ As was true for XLE, PHLX's former cash equity trading platform, appeals from determination regarding trades made by PHLX staff will be made to the Options Trade Review Committee ("OTRC"), a committee of industry and non-industry experts established under the PHLX By-Laws. As reflected in Section 10-10 of the By-Laws, 20% of the members of the OTRC must represent PHLX member organizations, but no more than 50% of the committee's members may be employed by firms that are market makers or that derive more than 10% of their revenues from market making. This is identical to the compositional requirements of NASDAQ's Market Operations Review Committee, which performs a comparable function under NASDAQ rules.⁵⁷

IX. Regulation NMS Compliance

As provided in Rules 3301(a) and 3306(c)(4), with respect to the operation of PSX, PHLX will implement such systems, procedures, and rules as are necessary to render it capable of meeting the requirements for automated quotations,⁵⁸ and

rules of other exchanges as soon as consensus is reached concerning the appropriate marketwide standard.

⁵⁶ Proposed Rule 3312. The proposed PSX rule is identical to the rules recently adopted by NASDAQ and other exchanges to provide a consistent and comprehensive framework for reviewing and breaking trades. As a result of precipitous declines in the prices of certain securities on May 6, 2010, however, the Commission and the national securities exchanges are currently evaluating the advisability of further changes to clearly erroneous rules. PHLX will modify its clearly erroneous rule to maintain consistency with the corresponding NASDAQ Stock Market rule as soon as consensus is reached concerning the appropriate marketwide standard.

⁵⁷ By-Laws of The NASDAQ Stock Market LLC, Article III, Section 6.

⁵⁸ As defined in Rule 600(b) of Regulation NMS under the Act, 17 C.F.R. 242.600(b), the term "quotation" includes the "bid price or the offer price communicated by a member of a national securities exchange ... to any broker or

immediately to identify its quotations as manual whenever it has reason to believe it is not capable of displaying automated quotations. PHLX will adopt policies and procedures for notifying member organizations and other trading centers that it has reason to believe it is not capable of displaying automated quotations or, once manual, that it has restored the ability to display automated quotations and is preparing to identify its quotation as automated. In addition, PHLX will adopt policies and procedures for responding to notices that it receives from other trading centers indicating that they have elected to use the "self-help" exception of Rule 611(b)(1) of Regulation NMS under the Act.⁵⁹

PSX will not route orders to other market centers. Rather, to ensure compliance with Regulation NMS, PSX Rule 3305 provides that in addition to such other designations as may be chosen by a Participant, all orders that are not entered with a time in force of "System Hours Immediate or Cancel"⁶⁰ must be designated as an Intermarket Sweep Order, a Pegged Order, a Price to Comply Order, or a Post-Only Order, and all

dealer, or to any customer, at which it is willing to buy or sell one or more round lots of an NMS security, either as principal or agent." Thus, the term "quotation" includes orders entered into the System by PSX Participants, notwithstanding the fact that PSX will not have market makers with obligations to maintain continuous two-sided quotations. Under Rule 602 of Regulation NMS, brokers and dealers are required to communicate to a national securities exchange or national securities association their best bids, best offers, and quotation sizes. By displaying orders communicated to it by its members and complying with the requirements for automation described in Rule 600(b)(3), PSX will display "automated quotations" within the meaning of that rule, and therefore its best bid and best offer will constitute "protected quotations" entitled to trade-through protection under Regulation NMS.

⁵⁹ 17 C.F.R. 242.611(b)(1).

⁶⁰ A "System Hours Immediate or Cancel" order is an immediate or cancel order that may be entered between 9:00 a.m. and 5:00 p.m. Eastern Time, PSX's hours of operation. If a System Hours Immediate or Cancel order (or a portion thereof) is not marketable, the order (or unexecuted portion thereof) is canceled and returned to the entering Participant.

orders will be processed in a manner that avoids trading through protected quotations and avoids locked and crossed markets. Specifically, any orders that are entered into the System that would lock or cross another order in the System will be executed to avoid a lock or cross.⁶¹

- A System Hours Immediate or Cancel Order is compliant with Regulation NMS because it will not, by its terms, execute or post at a price that would result in a trade-through of a protected quotation or lock or cross another market.
- A Pegged Order is compliant with Regulation NMS because it is continually re-priced to avoid locking or crossing.
- In entering an Intermarket Sweep Order, the Participant represents that it is simultaneously routing one or more additional limit orders, as necessary, to execute against the full displayed size of any protected bid or offer (as defined in Rule 600(b) of Regulation NMS) in the case of a limit order to sell or buy with a price that is superior to the limit price of the order identified as an Intermarket Sweep Order.⁶² These additional routed orders must also be identified as Intermarket Sweep Orders. As provided by Regulation NMS, PSX will automatically execute orders identified as Intermarket Sweep Orders. Member organizations will be responsible for ensuring that their use of Intermarket Sweep Orders complies with Regulation NMS, and PHLX's T+1 surveillance program, administered by the Financial Industry Regulatory Authority ("FINRA") under a

⁶¹ Proposed Rule 3213(c). In addition, as discussed below, members may enter orders that are re-priced if they would lock or cross so as to avoid executing.

⁶² Proposed Rule 3301(f)(6).

regulatory services agreement (the “FINRA RSA”) will monitor member organizations’ use of Intermarket Sweep Orders.

- If, at the time of entry, a Price to Comply Order would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) but displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers). Thus, an incoming order priced to execute against the displayed price will receive the superior undisplayed price.⁶³ The displayed and undisplayed prices of a Price to Comply order may be adjusted once or multiple times depending upon the method of order entry and changes to the prevailing national best bid/best offer.⁶⁴
- If, at the time of entry, a Post-Only Order would lock an order on the System, the order will be re-priced and displayed by the System to one minimum price increment (i.e., \$0.01 or \$0.0001) below the current low offer (for bids) or above the current best bid (for offers).⁶⁵

By requiring all orders to be entered with one of these designations, PSX will ensure that all orders will either be priced or cancelled in a manner consistent with avoidance of trade-throughs and locked and crossed markets, or will execute as

⁶³ For example, if the national best bid and best offer is \$9.97 x \$10.00, and a participant enters a price to comply order to buy 10,000 shares at \$10.01, the order will display at \$9.99, but will reside on the System book at \$10.00. If a seller then enters an order at \$9.99, it will execute at \$10.00, up to the full 10,000 shares of the order. Proposed Rule 3301(f)(8).

⁶⁴ Proposed Rule 3301(f)(8).

⁶⁵ For example, if the System best bid and best offer is \$9.97 x \$10.00, and a participant enters a Post-Only Order to buy at \$10.01, the order will be repriced and displayed at \$9.99. If a seller enters an order at \$9.96, the order will be repriced and displayed at \$9.98. Proposed Rule 3301(f)(10).

Intermarket Sweep Orders along with other Intermarket Sweep Orders sent to protected quotes. Because PSX will not route to other market centers,⁶⁶ its policies and procedures under Rule 611(a) under Regulation NMS⁶⁷ will contemplate reliance on information provided by the NASDAQ Market Center for purposes of determining whether another trading center is experiencing a failure, material delay, or malfunction of its systems or equipment within the meaning of Rule 611(b)(1).⁶⁸

Rule 3213(c)(2) contains PSX's rules adopted pursuant to SEC Rule 610(d) under Regulation NMS⁶⁹ with respect to inter-market locks and crosses. Although the System-enforced requirements with respect to order entry and execution generally prevent locked and crossed markets, adoption of the rule is needed to comply with the requirements of Rule 610(d) and to provide a clear rule barring conduct that could evade the System-enforced requirements, such as entry of an incorrectly marked Intermarket Sweep Order. Terms used in the rule have the meanings assigned to them by Rule 600 under Regulation NMS.⁷⁰ Subject to certain exceptions, the Rule 3213(c) provides that member organizations shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying any quotations⁷¹ that lock or cross a protected quotation, and any manual quotations that lock or cross a quotation previously disseminated pursuant to an

⁶⁶ Proposed Rule 3305(b).

⁶⁷ 17 C.F.R. 242.611(a).

⁶⁸ 17 C.F.R. 242.611(b)(1).

⁶⁹ 17 C.F.R. 242.610(d).

⁷⁰ 17 C.F.R. 242.600.

⁷¹ As defined in SEC Rule 600, the term "quotation" includes an order.

effective national market system plan. Exceptions exist for instances where (i) the locking or crossing quotation was displayed at a time when the trading center displaying the locked or crossed quotation was experiencing a failure, material delay, or malfunction of its systems or equipment; (ii) the locking or crossing quotation was displayed at a time when a protected bid was higher than a protected offer in the NMS stock; (iii) the locking or crossing quotation was an automated quotation, and the Exchange member organization displaying such automated quotation simultaneously routed an Intermarket Sweep Order to execute against the full displayed size of any locked or crossed protected quotation; and (iv) the locking or crossing quotation was a manual quotation that locked or crossed another manual quotation, and the Exchange member organization displaying the locking or crossing manual quotation simultaneously routed an Intermarket Sweep Order to execute against the full displayed size of the locked or crossed manual quotation. If a member organization displays a manual quotation that locks or crosses a quotation previously disseminated pursuant to an effective national market system plan, such member organization shall promptly either withdraw the manual quotation or route an Intermarket Sweep Order to execute against the full displayed size of the locked or crossed quotation.

X. Regulatory Framework

Under the FINRA RSA, FINRA will provide a range of regulatory services, including T+1 surveillance, investigation, and enforcement with respect to PHLX rules, arbitration services, and membership services. PHLX will perform other regulatory services, such as real-time market surveillance, using personnel employed by NASDAQ OMX or one of its subsidiaries, including PHLX. NASDAQ OMX, PHLX, NASDAQ,

and NASDAQ OMX BX (PHLX, NASDAQ, and NASDAQ OMX BX collectively, the “SRO Subsidiaries”) are parties to a regulatory services agreement (the “Intercompany RSA”) pursuant to which employees and contractors of each party (“Personnel”) may perform regulatory services for each of the SRO Subsidiaries. All regulatory services performed for PHLX under the Intercompany RSA are subject to the direction, authority, and oversight of PHLX’s chief regulatory officer (“CRO”) and the regulatory oversight committee (“ROC”) of its Board of Governors. All Personnel are subject to the jurisdiction, authority and oversight of the CRO and ROC of PHLX to the extent of the services that they provide to PHLX. Notwithstanding the FINRA RSA and the Intercompany RSA, PHLX retains ultimate legal responsibility for, and control of, functions performed for PHLX under such agreements.

Under the FINRA RSA, FINRA will conduct T+1 market surveillance and examine member organizations to monitor compliance with applicable PHLX and SEC rules. Moreover, many aspects of compliance with PSX rules, such as avoidance of locked and crossed markets and trade throughs, will be enforced by the System itself. PHLX will periodically test operations of PSX to determine that the System is operating in accordance with applicable rules.

PSX will operate out of the same New York metropolitan data center as the NASDAQ Market Center and the NASDAQ OMX BX Equities System, but will use equipment that is separate from the equipment used by those exchanges. In addition, PSX will have a backup data center in the Washington, D.C. metropolitan area. To ensure sufficient capacity with respect to the System, PHLX developed a baseline forecast of volume of usage, which will be updated regularly based on actual volumes.

The System will use NASDAQ OMX's flexible INET technology, which is easily scalable to higher volumes through the addition of more equipment in the data center.

The System will be protected from unauthorized access through the same robust firewall protections already in use at NASDAQ OMX's data centers.

As provided in proposed Rules 3401-3407, PSX will adopt rules implementing a version of the Order Audit Trail System ("OATS"). PHLX believes that as an affiliate of NASDAQ, it should ensure that its regulatory requirements are generally consistent with those of NASDAQ. Accordingly, PHLX member organizations that are also FINRA members must comply with the FINRA OATS rules requiring daily reporting of audit trail information for transactions in securities listed on NASDAQ. In addition, as provided in NASDAQ rules, PHLX member organizations that are not FINRA members must compile and maintain audit trail information for securities listed on NASDAQ, but are required to transmit this information to FINRA only if requested.⁷² Similarly, if PHLX resumes operations as a listing market in the future, the rule will require all member organizations to maintain audit trail information for securities listed on PHLX, and to transmit the information to FINRA upon request, but would not require daily OATS reporting for such securities. As is true with respect to NASDAQ, OATS data will be used by PHLX for regulatory purposes only.⁷³

Finally, PHLX is adopting rules addressing recommendations to customers (also known as suitability) and best execution and interpositioning, based on NASD Rules

⁷² Proposed Rule 3405.

⁷³ See Securities Exchange Act Release No. 53128 (January 13, 2006); 71 FR 3350 (January 23, 2006) (File No. 10-131).

2310 and 2320.⁷⁴ Member organizations would become subject to these rules by virtue of having public customers, and brokers with public customers are required to be members of FINRA; accordingly, adoption of these rules by PHLX could be seen as unnecessary. However, PHLX believes that the requirements of these rules are sufficiently important that they should be reinforced through explicit inclusion in the PHLX rulebook.

XI. Affiliation with NASDAQ Execution Services, LLC

Although PSX will not route to other market centers, it will receive orders routed to it by other market centers, including NASDAQ. Nasdaq Execution Services, LLC (“NES”) is the approved outbound routing facility of NASDAQ for cash equities. Rules 4751 and 4758 of NASDAQ establish the conditions under which NASDAQ is permitted to own and operate NES in its capacity as a facility of NASDAQ that routes orders from NASDAQ to other market centers. These conditions include requirements that: (1) NES is operated and regulated as a facility of NASDAQ; (2) NES will not engage in any business other than as an outbound router for NASDAQ and any other activities as approved by the Commission;⁷⁵ (3) the primary regulatory responsibility for NES lies with an unaffiliated self-regulatory organization; (4) use of NES for outbound routing is optional for other NASDAQ members; and (5) NASDAQ will not route orders to an affiliated exchange, such as PHLX, unless they check the NASDAQ book prior to routing.

⁷⁴ Proposed Rules 763 and 764.

⁷⁵ Because only NASDAQ members may enter orders into NASDAQ, it also follows that routing by NES is conducted only with respect to orders of NASDAQ members.

In connection with PHLX's resumption of equity trading pursuant to this filing, NASDAQ will file a proposed rule change to modify the last of these conditions to allow it to route all forms of orders, including Directed Orders, to PSX during a twelve-month pilot period. Directed Orders are orders that route directly to other exchanges on an immediate-or-cancel basis without first checking the NASDAQ book for available liquidity. In order to appropriately address concerns previously raised by the Commission regarding the potential for conflicts of interest and informational advantages that may arise from the use of affiliated members to route orders between exchanges owned by a common parent, PHLX is proposing certain restrictions and undertakings.

In order to manage the concerns raised by the Commission regarding conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, PHLX notes that, with respect to orders routed to PHLX by NES in its capacity as a facility of NASDAQ, NES is subject to independent oversight and enforcement by FINRA, an unaffiliated SRO that is NES's designated examining authority. In this capacity, FINRA is responsible for examining NES with respect to its books and records and capital obligations and also has the responsibility for reviewing NES's compliance with intermarket trading rules such as SEC Regulation NMS. In addition, under the FINRA RSA, FINRA staff will review NES's compliance with PHLX's rules through FINRA's examination program. FINRA and PHLX⁷⁶ will also monitor NES for compliance with PHLX's trading rules, subject, of course, to SEC

⁷⁶ Personnel performing real-time oversight of equity trading on NASDAQ will also perform similar functions with respect to PSX. Such work is performed pursuant to the Intercompany RSA under the direction, authority, and oversight of PHLX's CRO and the ROC of its Board of Governors.

oversight of the regulatory program of PHLX and FINRA. PHLX will, however, retain ultimate responsibility for enforcing its rules with respect to NES.

Furthermore, in order to minimize the potential for conflicts of interest, PHLX and FINRA will collect and maintain all alerts, complaints, investigations and enforcement actions in which NES (in its capacity as a facility of NASDAQ, routing orders to PSX) is identified as a participant that has potentially violated applicable SEC or PHLX rules. PHLX and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the SEC's Office of Compliance Inspections and Examinations. FINRA will then provide a report to the PHLX's CRO, on at least a quarterly basis, which (i) quantifies all alerts (of which PHLX and FINRA become aware) that identify NES as a participant that has potentially violated PHLX or SEC rules and (ii) quantifies the number of all investigations that identify NES as a participant that has potentially violated PHLX or SEC rules.⁷⁷

In order to address the Commission's concerns about potential for information advantages that could place an affiliated member of an exchange at a competitive advantage vis-à-vis other non-affiliated members, PHLX is proposing Rule 985(c)(2). Rule 985(c)(2) will require the implementation of policies and procedures that are reasonably designed to prevent NES from acting on non-public information regarding PHLX systems prior to the time that such information is made available generally to all members of such entity performing inbound routing functions. These policies and procedures would include systems development protocols to facilitate an audit of the efficacy of these policies and procedures.

⁷⁷ PHLX, FINRA, and SEC staff may agree going forward to reduce the number of applicable or relevant surveillances that form the scope of the agreed upon report.

Specifically, new Rule 985(c)(2) shall provide as follows:

The NASDAQ OMX Group, Inc., which owns NASDAQ Execution Services, LLC and the Exchange, shall establish and maintain procedures and internal controls reasonably designed to ensure that NASDAQ Execution Services, LLC does not develop or implement changes to its system on the basis of non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated members and member organizations of the Exchange in connection with the provision of inbound routing to the Exchange.

In addition, NASDAQ Rule 4758 provides that NES will establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between NASDAQ and its facilities (including the NES), and any other entity (including PHLX). The Exchange believes these measures will effectively address the concerns identified by the Commission regarding the potential for informational advantages favoring NES vis-à-vis other non-affiliated PHLX members.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷⁸ in general, and with Section 6(b)(1) and (b)(5) of the Act,⁷⁹ in particular, in that the proposal enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members, member organizations, and persons associated with members and member organizations with provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to

⁷⁸ 15 U.S.C. 78f.

⁷⁹ 15 U.S.C. 78f(b)(1), (5).

foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. PSX will operate in accordance with the high standards that PHLX believes to be in evidence at all of NASDAQ OMX's exchanges, providing its Participants with opportunities to trade NMS stocks through a fair, open, and well-regulated market. Furthermore, PHLX believes that PSX's price-size allocation methodology will promote further development of the national market system by encouraging Participants to display liquidity, thereby contributing more fully to price discovery and providing a counterbalance to increased use of dark trading venues.

4. Self-Regulatory Organization's Statement on Burden on Competition

PHLX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As a new entrant into the market for executions of NMS stocks, PSX will further enhance competition in this space.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

PHLX does not consent to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Notice of proposed rule for publication in the Federal Register.

5. Proposed Rule Text.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-Phlx-2010-79)

June ____, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX; Notice of Filing of Proposed Rule Change Relating to the Establishment of NASDAQ OMX PSX as a Platform for Trading NMS Stocks

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 8, 2010, NASDAQ OMX PHLX, Inc. (the “Exchange” or “PHLX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

PHLX is filing a proposed rule change to establish NASDAQ OMX PSX, a new electronic platform for trading NMS stocks. The text of the proposed rule change is available at <http://nasdaqomxphlx.cchwallstreet.com>, at the Exchange’s principal office, and at the Commission’s Public Reference Room. PHLX will implement the proposed rule change as soon as practicable following approval by the Commission.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

I. Introduction and Background

PHLX proposes to introduce NASDAQ OMX PSX ("PSX" or the "System"), a new fully integrated order display and execution system for all NMS stocks (as defined in SEC Rule 600(b)(47) under Regulation NMS).³ Like the NASDAQ Market Center and the NASDAQ OMX BX Equities System, PSX will be an open-access, fully electronic system that accommodates diverse business models and trading preferences, using technology to aggregate and display liquidity and make it available for execution. PSX will not list stocks, but rather will trade only stocks listed on other exchanges.

PSX will allow PSX Participants to enter unlimited orders at multiple price levels. Orders of all PSX Participants will be integrated and displayed via data feeds to Participants and other data subscribers. PSX Participants will be able to access the aggregated trading interest of all other PSX Participants in accordance with non-discretionary order execution algorithms. In contrast with most markets, which use a price-time algorithm, however, PSX will use a price-display-pro rata size algorithm. Incoming orders will be allocated first to resting orders with the best price. As among orders with the same price, incoming orders will be allocated first to resting Displayed Orders and then to resting Non-Displayed Orders. As among Displayed Orders at the

³ 17 C.F.R. 242.600(b)(47).

same price or Non-Displayed Orders at the same price, incoming orders will be allocated among resting orders pro rata based on the size of the resting orders.⁴

Existing PHLX rules that apply to members and member organizations with respect to their activities on PSX are listed in Rule 3202. In addition, two existing PHLX rules, Rule 160 and Rule 188, are being deleted and their content moved into the new 3300 series.⁵

II. System Access

PSX will be open to all member organizations of PHLX that comply with the rules governing PSX.⁶ There will not be separate classes of membership. Specifically, unlike the NASDAQ Market Center, PSX will not have a separate class of market makers. Accordingly, PHLX expects that all PSX Participants will participate on consistent terms by entering orders into PSX for the purpose of posting available liquidity and accessing that liquidity.

As provided in proposed Rule 3223, however, PSX will make its facilities available to any electronic communications network (“ECN”) or alternative trading system (“ATS”) that (i) wishes to use PSX as a means to display the best prices and sizes

⁴ The allocation methodology for odd-lot orders is discussed in greater detail below.

⁵ Proposed Rules 3301(a), 3305(a)(1), 3309

⁶ Through a separate filing, PHLX will amend Rule 604 to require all member organizations trading on PSX to register representatives and principals in accordance with rules similar to those governing registration of associated persons of members of the NASDAQ Stock Market. PHLX will, at a later date, amend its rules governing registration of associated persons of member organizations that trade options but not cash equities through PHLX, to reflect consistent registration standards being developed by various self-regulatory organizations in consultation with the Commission.

of orders entered into the ECN or ATS by subscribers of the ECN or ATS, if the ECN or ATS so chooses or is required by SEC Rule 301(b)(3) to display a subscriber's order, and (ii) allow any PHLX member organization the electronic ability to effect a transaction with such priced orders that is equivalent to the ability to effect a transaction with other orders displayed by PSX. Any such ECN or ATS would be required to comply with the terms and conditions of PSX Rule 3223.⁷

Participants will gain access to PSX via direct or indirect electronic linkages utilizing the Financial Information Exchange, or FIX, protocol, as well as proprietary RASH and OUCH protocols. Each protocol is already used and widely accepted by market participants in the NASDAQ Market Center and the NASDAQ OMX BX Equities System, and may be used by Participants for order entry, modification and cancellation, and message transmittal for all securities traded through PSX. Participants will have the ability to establish connectivity to PSX directly or through third-party connectivity providers, including a range of extranets and service bureaus. All of the communications protocols will be publicly available to allow Participants and services bureaus to develop their own front-end software.

As provided in proposed Rule 3211, Participants must execute all applicable agreements with PHLX (including the NASDAQ OMX U.S. Services Agreement⁸); maintain membership in, or access arrangements with a participant of, a clearing agency

⁷ Specifically, the ATS or ECN must be a PHLX member organization, enter into and comply with applicable agreements, agree that PHLX may disseminate the ECN's or ATS's best priced orders, demonstrate that it is compliance with applicable regulatory requirements, and accept automated executions against orders that it enters into the System.

⁸ http://www.nasdaqtrader.com/content/AdministrationSupport/AgreementsTrading/nasdaq_access_agreement.pdf.

registered with the Commission that maintains facilities through which PSX compared trades may be settled; comply with all applicable rules and operating procedures of PHLX and the Commission in the use of the System; maintain the physical security of the equipment located on the Participant's premises to prevent the improper use or access to PHLX systems, including unauthorized entry of information into PSX; accept and settle each PSX trade that PSX identifies as having been effected by such Participant, or if settlement is to be made through another clearing member, guarantee the acceptance and settlement of such identified PSX trade by the clearing member on the regularly scheduled settlement date; and input accurate information into the System, including, but not limited to, whether the member organization acted in a principal, agent, or riskless principal capacity. Each PSX Participant will be under a continuing obligation to inform PHLX of noncompliance with any of its registration requirements, and must make such reports to PHLX as it may require.⁹ In addition, each Participant must provide such information relating to a specific PHLX rule, SEC rule, or term of a joint industry plan as PHLX regulatory staff may request.¹⁰ PHLX may impose on Participants such temporary restrictions on order entry as PHLX may determine to be necessary to protect the integrity of PSX or other PHLX systems.¹¹ In addition to proposed rules specific to the operation of PSX, member organizations must comply with existing PHLX rules governing member conduct, to the extent that they are relevant to trading on PSX. PHLX

⁹ Proposed Rules 3211(b), 3216.

¹⁰ Proposed Rule 3225.

¹¹ Proposed Rule 3211(c).

rules applicable to activities of member organizations on PSX are listed in proposed rule 3202.

Failure by a PSX Participant to comply with any of the rules or registration requirements applicable to PSX shall subject such Participant to censure, fine, suspension or revocation of its registration as a PSX Participant, or any other fitting penalty under the rules of the Exchange.¹² In accordance with the procedures of PHLX's Disciplinary Rules (Rules 960.1 through 960.12), PHLX may suspend, condition, limit, prohibit or terminate the authority of a Participant to enter orders in one more securities for violations of applicable requirements or prohibitions, or may terminate access to the System if a Participant fails to meet standards of eligibility or to pay for services rendered.¹³

PHLX disclaims liability for any losses, damages or other claims arising from the use of PSX; however, it may compensate users for losses directly resulting from PSX's actual failure to correctly process an order, message, or other data, in an amount not to exceed the larger of \$500,000 per month or the amount of recovery obtained by PHLX under any applicable insurance policy.¹⁴

When it commences operation, PSX will allow sponsored access in accordance with rules identical to those currently in effect at the NASDAQ Stock Market ("NASDAQ"), which are reflected in proposed Rule 3211(d). When NASDAQ

¹² Proposed Rule 3228(a).

¹³ Proposed Rules 3221, 3222.

¹⁴ Proposed Rule 3226. Accordingly, existing PHLX Rule 652(a) is not applicable to activity on PSX.

implements recently approved rules governing sponsored access,¹⁵ PSX will adopt and implement identical rules to govern sponsored access. Under the current rules, a Sponsored Participant may obtain authorized access to PSX only if such access is authorized in advance by one or more member organizations as follows:

- Sponsored Participants must enter into and maintain customer agreements with one or more Sponsoring Member Organizations, establishing proper relationship(s) and account(s) through which the Sponsored Participant may trade on PSX. Such customer agreement(s) must incorporate the following Sponsorship Provisions:
 - The Sponsoring Member Organization must acknowledge and agree that:
 - All orders entered by a Sponsored Participant and any person acting on behalf of or in the name of such Sponsored Participant and any executions occurring as a result of such orders are binding in all respects on the Sponsoring Member Organization; and
 - The Sponsoring Member Organization is responsible for any and all actions taken by a Sponsored Participant and any person acting on behalf of or in the name of such Sponsored Participant.
 - A Sponsoring Member Organization must comply with the PHLX Certificate of Incorporation, Bylaws, Rules and procedures with regard to PSX, and a Sponsored Participant must comply with the PHLX Certificate of Incorporation,

¹⁵ Securities Exchange Act Release No. 61345 (January 13, 2010), 75 FR 32631 (January 20, 2010) (SR-NASDAQ-2008-104). If NASDAQ's rules are superseded by rules adopted by the Commission, then both NASDAQ and PSX will operate in accordance with such rules.

Bylaws, Rules and procedures with regard to PSX, as if the Sponsored Participant were a PHLX Member Organization.

- A Sponsored Participant must maintain, keep current and provide to the Sponsoring Member Organization a list of individuals authorized to obtain access to PSX on behalf of the Sponsored Participant.
- A Sponsored Participant must familiarize its authorized individuals with all of the Sponsored Participant's obligations and assure that they receive appropriate training prior to any use or access to PSX.
- A Sponsored Participant may not permit anyone other than authorized individuals to use or obtain access to PSX.
- A Sponsored Participant must take reasonable security precautions to prevent unauthorized use or access to PSX, including unauthorized entry of information into PSX, or the information and data made available therein. A Sponsored Participant must understand and agree that it is responsible for any and all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of authorized individuals, and for the trading and other consequences thereof.
- A Sponsored Participant must acknowledge its responsibility to establish adequate procedures and controls that permit it to effectively monitor its employees', agents', and customers' use and access to PSX for compliance with the terms of the Sponsorship Provisions.
- A Sponsored Participant must pay when due all amounts, if any, payable to the Sponsoring Member Organization, PSX, or any other third parties that arise from

the Sponsored Participant's access to and use of PSX. Such amounts include, but are not limited to applicable exchange and regulatory fees.

- The Sponsoring Member Organization must provide PHLX with a Notice of Consent acknowledging its responsibility for the orders, executions and actions of its Sponsored Participants.
- The Sponsored Participant and its Sponsoring Member Organization must have entered into and maintained a User Agreement with PHLX. The Sponsoring Member Organization must designate the Sponsored Participant by name in its User Agreement as such.

III. Trading of Securities Pursuant to Unlisted Trading Privileges

With the launch of PSX, PHLX will not resume its listings business. PSX will, however, trade all NMS stocks on an unlisted trading privileges (“UTP”) basis; accordingly, all securities that it trades will be registered under Section 12(a) of the Act unless they are subject to an exemption by the Commission that allows them to be listed on a national securities exchange in the absence of such registration. As provided by SEC Rule 12f-5,¹⁶ PHLX may extend unlisted trading privileges to any security for which PHLX has in effect rules providing for transactions in such class or type of security.¹⁷ Accordingly, to support UTP trading of all NMS stocks, existing PHLX Rule

¹⁶ 17 C.F.R. 240.12f-5.

¹⁷ Notably, with respect to new derivative securities products (as defined in SEC Rule 19b-4(e), 17 C.F.R. 240.19b-4(e)) trading on the Exchange, Rule 803(o) requires the distribution of an information circular that includes information on the (1) the special risks of trading the new derivative securities product (“NDSP”); (2) the Exchange's rules that will apply to the NDSP, including the suitability rule (proposed Rule 763); (3) information about the dissemination of value of the underlying assets or indexes; and (4) the risk of trading during the

803 is being amended in several respects. First, Rule 803(o) will clearly state that PHLX will not list any securities, and that provisions of Rules 800 through 868 that permit listings will not be effective until PHLX files a proposed rule change under Section 19(b)(2) of the Act to amend its rules to make any changes needed to comply with SEC Rule 10A-3¹⁸ and to incorporate additional qualitative listing standards, and such proposed rule change is approved by the Commission. Second, PHLX is adopting new standards for securities linked to the performance of indexes and commodities (including currencies) and managed fund shares, to reflect the fact that PHLX may engage in UTP trading of these securities,¹⁹ and is modifying Rule 803(f) (Other Securities) to adopt continued listing standards that would be applicable to securities listed under that provision if PHLX resumed its listing business and that contain provisions that are complementary to the new standards for securities linked to commodities. Third, PHLX is deleting current Rules 803(m) and (n), which contain standards for index-linked exchangeable notes and index-linked securities; these security types are covered more comprehensively by the adoption of a standard for securities linked to the performance of

period from 9:00 a.m. to 9:30 a.m. and from 4:00 p.m. to 5:00 p.m. due to the lack of calculation or dissemination of the underlying index value, the Intraday Indicative Value, the Indicative Optimized Portfolio Value or other comparable estimate of the value of a share of the NDSP. Rule 803(o) also requires that members and member organizations adhere to applicable prospectus delivery requirements of the Securities Act of 1933, and requires that the Exchange enter into comprehensive surveillance sharing agreements with markets trading components of the index or portfolio on which the NDSP is based to the same extent as the listing market of the NDSP.

¹⁸ 17 C.F.R. 240.10A-3.

¹⁹ Rule 803(m) and (n) (as proposed to be amended). As with other standards, however, PHLX will not list these securities until the filing and approval of a proposed rule change to authorize such listing.

indexes and commodities (including currencies). Fourth, PHLX is deleting certain restrictions in Rule 803(o) on the activities of market makers, since PSX's market structure will not allow for a class of market makers.

PHLX is also adopting Rule 3230 to establish additional rules to govern UTP trading of Commodity-Related Securities on PSX. The term "Commodity-Related Security" includes any security that is issued by a trust, partnership, commodity pool or similar entity that invests, directly or through another entity, in any combination of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, or the value of which is determined by the value of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives. The term "commodity" has the meaning given to it under the Commodity Exchange Act. The rule provides that members and member organizations must provide all purchasers of a newly issued Commodity-Related Security a prospectus for such Commodity-Related Security.²⁰ The rule further provides that unless otherwise noted, a Commodity-Related Security is eligible for trading during all PSX market sessions (i.e. from 9:00 a.m. through 5:00 p.m.) if member organizations comply with Rule 3231 when accepting Commodity-Related Security orders for execution in the pre-market session (9:00 a.m. through 9:30 a.m.) or post-market session (4:00 p.m. through 5:00 p.m.).

Rule 3231 provides that no member organization may accept an order from a customer for execution in the pre-market session or post-market session without

²⁰ Provisions from the corresponding NASDAQ rule, Rule 4630, that govern the conduct of market makers in Commodity-Related Securities have been omitted because PSX will not have market makers.

disclosing to such customer that extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk. The absence of an updated underlying index value or intraday indicative value is an additional trading risk in extended hours for Derivative Securities Products (as defined in Rule 3100). With these changes, as well as the adoption of the other rules contained in this filing, PHLX believes that it will have rules in place to allow the UTP trading of all NMS stocks.

IV. Entry and Processing of Orders

Only orders for NMS stocks may be entered and executed through PSX.²¹ PSX is the only venue on the Exchange for the entry and execution of orders in NMS stocks.²² Participants may submit multiple orders at multiple price levels, which PSX will manage and display, consistent with the parameters of each order.²³ PSX will time-stamp each order upon receipt, although as discussed below, the time stamp does not determine the order's ranking for execution purposes.²⁴ The System does not allow Participants to display orders on an attributable basis.²⁵ However, orders may be entered either as Displayed Orders, in which case they will be displayed as individual orders, each with an identical anonymous identifier, in market data disseminated by PSX concerning resting

²¹ Proposed Rule 3305(a)(1).

²² Id.

²³ Proposed Rule 3306.

²⁴ Id.

²⁵ Proposed Rule 3301(a).

orders, or may be entered as Non-Displayed Orders, in which case they will not be displayed but nevertheless remain available for potential execution against incoming orders.²⁶

Displayed Orders will be displayed to Participants through a system book feed. In addition, the aggregate size of all orders at the best price to buy and sell resident in the System will be transmitted for display to the appropriate network processor unless the aggregate size is less than one round lot.²⁷ However, Non-Displayed Orders and reserve size will not be displayed.²⁸

Marketable orders are directed to resting orders for execution. Non-marketable orders are made available for execution by incoming orders, and either displayed or not displayed, as directed by the entering party. Upon entry of a marketable order, PSX will identify the order(s) against which the incoming order will be executed, based on the algorithm described below. The System will automatically execute against such orders and send the relevant Participant(s) an execution report.

V. Order Types and Time-in-Force Designations

An order may be of a size up to 999,999 shares²⁹ and must indicate whether it is a buy, long sale, or short sale.³⁰ The minimum increment for orders priced at \$1.00 or

²⁶ Proposed Rule 3301(e).

²⁷ Proposed Rule 3306(c)(1) and (2).

²⁸ Proposed Rule 3306(c)(3).

²⁹ Proposed Rule 3301(g).

³⁰ Proposed Rule 3305.

above will be \$0.01.³¹ The minimum increment for orders priced below \$1.00 will be \$0.0001.³² All orders are firm and automatically executable for their displayed and non-displayed size in the System.³³ The System will operate from 9:00 a.m. through 5:00 p.m. Eastern Time, and except as noted below, all orders types and times-in-force may be entered during that period.³⁴ PSX will not have any specialized opening or closing processes. Rather, the System will be open for order entry at 9:00 a.m., and will immediately start processing orders as they are entered.³⁵

The following order types will be available in PSX:³⁶

- "Limit Orders" are orders to buy or sell a stock at a specified price or better.
- "Pegged Orders" are orders that, after entry, have their price automatically adjusted by the System in response to changes in either the PSX inside bid or offer or the best bid or offer in the national market system, as appropriate. A Pegged Order can specify that its price will equal the inside quote on the same side of the market ("Primary Peg"), the opposite side of the market ("Market Peg"), or the midpoint of the national best bid and offer ("Midpoint Peg"). A Pegged Order may have a limit price beyond which the order shall not be executed. In addition, the Primary Peg and Market Peg Orders may also establish

³¹ Proposed Rule 3213(a).

³² Id.

³³ Proposed Rule 3213(b).

³⁴ Proposed Rules 3217 and 3306(a)(3).

³⁵ Proposed Rule 3302.

³⁶ Proposed Rule 3301(e) and (f).

- their pricing relative to the appropriate bids or offers by the selection of one or more offset amounts that will adjust the price of the order by the offset amount selected. A Midpoint Peg Order is priced based upon the national best bid and offer, excluding the effect that the Midpoint Peg Order itself has on the inside bid or inside offer. Midpoint Peg Orders will never be displayed. A Midpoint Peg Order may be executed in sub-pennies if necessary to obtain a midpoint price. A Pegged Order may be entered only between 9:30 a.m. and 4:00 p.m.³⁷
- "Minimum Quantity Orders" are orders that require that a specified minimum quantity of shares be obtained, or the order is cancelled. Minimum Quantity Orders may only be entered with a time-in-force designation of System Hours Immediate or Cancel.
 - "Intermarket Sweep Orders" or "ISOs" are limit orders that are executed by the System at multiple price levels, without consideration of protected quotations of other market centers within the meaning of Rule 600(b) of Regulation NMS under the Act.³⁸ Simultaneously with the routing of an ISO to the System, one or more additional limit orders, as necessary, must be routed by the entering party to execute against the full displayed size of any protected bid or protected offer (as defined in Rule 600(b) of Regulation NMS under the Act) in the case of a limit order to sell or buy with a price that is superior to the limit price of the limit order identified as an ISO. These additional routed orders must also be identified as ISOs.

³⁷ Proposed Rule 3305(a)(1)(C).

³⁸ 17 C.F.R. 242.600(b).

- "Price to Comply Orders" are orders that if, at the time of entry, would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) and displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers). The displayed and undisplayed prices of a Price to Comply order may be adjusted once or multiple times depending upon the method of order entry and changes to the prevailing national best bid or offer.
- "Post-Only Orders" are orders that if, at the time of entry, would lock an order on the System, the order will be re-priced and displayed by the System to one minimum price increment (i.e., \$0.01 or \$0.0001) below the current low offer (for bids) or above the current best bid (for offers).
- "Non-Displayed Orders" are limit orders that are not displayed in the System, but nevertheless remain available for potential execution against all incoming orders until executed in full or cancelled. All orders that are not designated as Non-Displayed Orders will be displayed, but without attribution to the entering Participant.
- In addition to the any of the foregoing designations, an order may also be designated as a "Reserve Order." Reserve Orders have both a round-lot displayed size and an additional non-displayed share amount. Both the displayed and non-displayed portions of the Reserve Order are available for potential execution against incoming orders. If the round-lot displayed portion of a Reserve Order is reduced to less than a normal unit of trading, the System will replenish the display portion from reserve up to at least a single round-lot amount.

The following times-in-force will be available in PSX.³⁹ Except as noted above in connection with Minimum Quantity Orders, any time-in-force may be combined with any order type.

- "System Hours Immediate or Cancel" or "SIOC" means that if, after entry into the System, an order (or a portion thereof) is not marketable, the order (or unexecuted portion thereof) will be canceled and returned to the entering Participant.
- "System Hours Day" or "SDAY" means that if, after entry into the System, an order is not fully executed, the order (or the unexecuted portion thereof) will remain available for potential display and/or execution from 9:00 a.m. until 5:00 p.m. Eastern Time on the day it was submitted unless cancelled by the entering party.
- "System Hours Expire Time" or "SHEX" means that if, after entry into the System, an order is not fully executed, the order (or the unexecuted portion thereof) will remain available for potential display and/or execution for the amount of time specified by the entering Participant (up until 5:00 p.m. on the day entered) unless canceled by the entering Participant.
- "Good-til-market close" or "GTMC" means that if, after entry into the System, an order is not fully executed, the order (or unexecuted portion thereof) will remain available for potential display and/or execution until cancelled by the entering party, or until 4:00 p.m., after which it shall be returned to the entering party. GTMC orders entered after 4:00 p.m. will be treated as SIOC orders.

VI. *Execution of Transactions*

³⁹ Proposed Rule 3301(h).

Incoming orders that are not marketable against posted interest in the System book will be cancelled or posted to the book, depending on the time-in-force for the order.⁴⁰ Incoming marketable orders are executed against orders on the book, and the posted orders are decremented accordingly.⁴¹ To determine the allocation of incoming marketable orders against orders on the book, the System uses a price/display/pro-rata allocation to size that is designed to encourage Participants to display large orders in transparent markets, thereby enhancing the quality of price discovery processes.⁴² The algorithm executes trading interest in the System in the following order:

- Price—Better priced trading interest will be executed ahead of inferior-priced trading interest.
- Display—Displayed Orders at a particular price with a size of at least one round lot will be executed ahead of Non-Displayed Orders, the reserve portion of Reserve Orders, and odd-lot orders at the same price. Thus, an order receives priority to the extent of the Participant's willingness to display liquidity: undisplayed liquidity receives lower priority.
- Pro-Rata Allocation to Size Among Displayed Orders With a Size of One Round Lot or More—As among equally priced Displayed Orders with a size of at least one round lot, the System will allocate round lot portions of incoming executable orders to displayed trading interest within the System pro rata based on the size of the Displayed Orders. Portions of an order that would be executed in a size other than a

⁴⁰ Proposed Rule 3301(h).

⁴¹ Proposed Rule 3307(a)(2).

⁴² Proposed Rule 3307(a)(1).

round lot if they were allocated on a pro rata basis will be allocated for execution against available displayed trading interest on the basis of a random function that assigns probability of execution based on the size of displayed interest. For example, if Displayed Orders to buy at 10 reside on the PSX book with sizes of 6,000 (Participant A) and 4,000 (Participant B), and an incoming order to sell 1,100 at 10 comes into the System, the System will allocate 600 shares of the incoming order to Participant A and 400 shares of the incoming order to Participant B. The remaining 100 shares of the incoming order will be allocated on the basis of a random function that assigns a 60% probability of executing the 100 shares to Participant A and a 40% probability to Participant B.

- **Displayed Odd-Lot Orders**—As among equally priced Displayed Orders with a size of less than one round lot, the System will allocate incoming orders based on the size of the Displayed Orders, but not in pro rata fashion. Thus, a resting order with a size of 90 shares would get filled in full before an order with size of 50 shares. If there are two or more odd lot orders of equal size, the System will determine the order of execution on the basis of a random function that assigns each order an equal probability of execution.
- **Pro-Rata Allocation to Size Among Non-Displayed Interest With a Size of One Round Lot or More**—As among equally priced Non-Displayed Orders and the reserve portion of Reserve Orders (collectively, “non-displayed interest”) with a size of at least one round lot, the System will allocate round lot portions of incoming executable orders to non-displayed interest within the System pro rata based on the size of non-displayed interest. Portions of an order that would be executed in a size

other than a round lot if they were allocated on a pro rata basis will be allocated for execution against available non-displayed interest on the basis of a random function that assigns probability of execution based on the size of non-displayed interest.

- Non-Displayed Odd-Lot Orders—As among equally priced Non-Displayed Interest with a size of less than one round lot, the System will allocate incoming orders based on the size of the Non-Displayed Interest, but not in pro rata fashion. Thus, a larger odd-lot order would be filled before a smaller odd-lot order. If there are two or more odd lot orders of equal size, the System will determine the order of execution on the basis of a random function that assigns each order an equal probability of execution.

An incoming order with a price that crosses the price of a posted order will execute at the price of the posted order. Accordingly, any potential price improvement resulting from an execution in the System will accrue to taker of liquidity.⁴³ For example, if a buy order resides on the PSX book at 10 and an incoming sell order priced at 9 comes into the System, the orders will execute at 10, with the seller getting \$1.00 price improvement.

VII. Reporting, Clearance and Settlement; Anonymity

As provided by Rule 3309, executions occurring as a result of orders matched on PSX shall be reported by PHLX to an appropriate consolidated transaction reporting system. The System will identify trades executed pursuant to an exception to or exemption from Rule 611 of Regulation NMS 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 ISO exception of Rule 611(b)(5) or (6)

⁴³ Proposed Rule 3307(a)(3).

of Regulation NMS and the self-help exception of Rule 611(b)(1) of Regulation NMS, such trade shall be identified as executed pursuant to the ISO exception. PHLX will promptly notify PSX Participants of all executions of their orders as soon as the Exchange is notified that such executions have taken place.

For each execution, PSX will submit a transaction report using PHLX's existing "X" market identifier. The transaction reports produced by the System will indicate the price and size of the transaction, but will not reveal contra party identities.⁴⁴ PHLX will reveal a Participant's identity in the following circumstances: (i) when National Securities Clearing Corporation ("NSCC") ceases to act for a Participant, or the Participant's clearing firm, and NSCC determines not to guarantee the settlement of the Participant's trades; (ii) for regulatory purposes or to comply with an order of an arbitrator or court; (iii) if both Participants to the transaction consent; or (iv) unless otherwise instructed by a member organization, PHLX will reveal to a member organization, no later than the end of the day on the date an anonymous trade was executed, when the member organization's order has been decremented by another order submitted by that same member organization.

Transactions will be cleared and settled through NSCC and Depository Trust Corporation ("DTC"), using an exchange omnibus account established at NSCC.⁴⁵ All Participants must be members of NSCC, or clear their trades through a clearing firm that is both a member organization of PHLX and a member of NSCC. Member organizations

⁴⁴ Proposed Rule 3310.

⁴⁵ Proposed Rule 3218. In the event that a registered clearing agency other than NSCC began offering continuous net settlement services, participants would also be permitted to use that clearing agency rather than NSCC.

failing to maintain the required clearing arrangements may be removed from access to PSX until such time as a clearing arrangement is reestablished.⁴⁶ If a Participant, or a clearing member acting on a Participant's behalf, is reported as constituting a side of a System trade, the Participant or the clearing member must honor the trade on the scheduled settlement date.⁴⁷

VIII. Trading Halts and Clearly Erroneous Transactions

PSX's provisions on trading halts will mirror those of the NASDAQ Market Center, but will include only those provisions pertinent to securities traded on an unlisted trading privileges basis.

- PSX may halt trading on PSX of a security listed on another exchange: (i) during a trading halt imposed by such exchange to permit the dissemination of material news; or (ii) when such exchange imposes a trading halt in that security because of an order imbalance or influx ("operational trading halt").⁴⁸
- PSX may halt trading in an index warrant whenever regulatory staff concludes that such action is appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that may be considered are the following: (i) trading has been halted or suspended in underlying stocks whose weighted value represents 20% or more of the index value; (ii) the current calculation of the index derived from the current market prices of the stocks is not available; or (iii) other

⁴⁶ Proposed Rule 3228.

⁴⁷ Proposed Rule 3227.

⁴⁸ Proposed Rule 3100(a)(1).

- unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.⁴⁹
- In the case of trust shares, index fund shares, managed fund shares or trust issued receipts, a series of commodity-related securities, securities representing interests in unit investment trusts or investment companies, or any other derivative security (collectively, “Derivatives Security Products”) for which an underlying index, indicative optimized portfolio value, intraday indicative value, net asset value, disclosed portfolio, or other comparable estimate of the value of a share is disseminated, PSX will halt trading if there is a temporary interruption in the calculation or wide dissemination of the value. PSX will maintain the trading halt until such time as trading resumes in the listing market.⁵⁰ Trading may continue in the case of interruptions that occur outside of regular market hours. However, if an interruption occurs or continues during regular market hours and a halt is called by the listing market, or if a halt occurs after the close of regular market hours and continues the following day, the affected security will be halted and remain halted until the listing market resumes trading.⁵¹
 - PSX will halt trading in a Derivative Security Product for which a net asset value or disclosed portfolio is disseminated if staff becomes aware that the net asset value or disclosed portfolio is not being disseminated to all market participants at

⁴⁹ Proposed Rule 3100(a)(2).

⁵⁰ Proposed Rule 3100(a)(3).

⁵¹ Proposed Rule 3100(b).

the same time. The halt will remain in effect until the listing market resumes trading.⁵²

- Following the initiation of an operational trading halt, PSX Participants may immediately resume order entry and trading.⁵³ In other cases, Participants must wait until PSX releases the security for resumed trading, at a time announced by PSX through websites and wire services.⁵⁴
- During a pilot period ending on December 10, 2010, if a primary listing market issues an individual stock trading pause in any of the securities covered by the pilot, the Exchange will pause trading in that security until trading has resumed on the primary listing market. If, however, trading has not resumed on the primary listing market and ten minutes have passed since the individual stock trading pause message has been received from the responsible single plan processor, the Exchange may resume trading in such stock. The securities covered by the pilot are those stocks included in the S&P 500[®] Index.
- PSX will also halt trading upon SEC request, including in accordance with standing requests for “circuit breaker” market-wide halts in the event of a major market break.⁵⁵

⁵² Proposed Rule 3100(a)(3).

⁵³ Proposed Rule 3100(a)(1).

⁵⁴ Proposed Rule 3100(c)(2).

⁵⁵ PLHX Rule 133. As a result of precipitous declines in the prices of certain securities on May 6, 2010, the Commission and the national securities exchanges are currently evaluating the advisability of modifying marketwide rules on trading halts due to extraordinary market volatility, such as those reflected in PHLX Rule 133. PHLX will modify Rule 133 to maintain consistency with corresponding

PHLX will adopt a rule to govern breaking of clearly erroneous transactions.⁵⁶ As was true for XLE, PHLX's former cash equity trading platform, appeals from determination regarding trades made by PHLX staff will be made to the Options Trade Review Committee ("OTRC"), a committee of industry and non-industry experts established under the PHLX By-Laws. As reflected in Section 10-10 of the By-Laws, 20% of the members of the OTRC must represent PHLX member organizations, but no more than 50% of the committee's members may be employed by firms that are market makers or that derive more than 10% of their revenues from market making. This is identical to the compositional requirements of NASDAQ's Market Operations Review Committee, which performs a comparable function under NASDAQ rules.⁵⁷

IX. Regulation NMS Compliance

As provided in Rules 3301(a) and 3306(c)(4), with respect to the operation of PSX, PHLX will implement such systems, procedures, and rules as are necessary to render it capable of meeting the requirements for automated quotations,⁵⁸ and

rules of other exchanges as soon as consensus is reached concerning the appropriate marketwide standard.

⁵⁶ Proposed Rule 3312. The proposed PSX rule is identical to the rules recently adopted by NASDAQ and other exchanges to provide a consistent and comprehensive framework for reviewing and breaking trades. As a result of precipitous declines in the prices of certain securities on May 6, 2010, however, the Commission and the national securities exchanges are currently evaluating the advisability of further changes to clearly erroneous rules. PHLX will modify its clearly erroneous rule to maintain consistency with the corresponding NASDAQ Stock Market rule as soon as consensus is reached concerning the appropriate marketwide standard.

⁵⁷ By-Laws of The NASDAQ Stock Market LLC, Article III, Section 6.

⁵⁸ As defined in Rule 600(b) of Regulation NMS under the Act, 17 C.F.R. 242.600(b), the term "quotation" includes the "bid price or the offer price communicated by a member of a national securities exchange ... to any broker or

immediately to identify its quotations as manual whenever it has reason to believe it is not capable of displaying automated quotations. PHLX will adopt policies and procedures for notifying member organizations and other trading centers that it has reason to believe it is not capable of displaying automated quotations or, once manual, that it has restored the ability to display automated quotations and is preparing to identify its quotation as automated. In addition, PHLX will adopt policies and procedures for responding to notices that it receives from other trading centers indicating that they have elected to use the "self-help" exception of Rule 611(b)(1) of Regulation NMS under the Act.⁵⁹

PSX will not route orders to other market centers. Rather, to ensure compliance with Regulation NMS, PSX Rule 3305 provides that in addition to such other designations as may be chosen by a Participant, all orders that are not entered with a time in force of "System Hours Immediate or Cancel"⁶⁰ must be designated as an Intermarket Sweep Order, a Pegged Order, a Price to Comply Order, or a Post-Only Order, and all

dealer, or to any customer, at which it is willing to buy or sell one or more round lots of an NMS security, either as principal or agent." Thus, the term "quotation" includes orders entered into the System by PSX Participants, notwithstanding the fact that PSX will not have market makers with obligations to maintain continuous two-sided quotations. Under Rule 602 of Regulation NMS, brokers and dealers are required to communicate to a national securities exchange or national securities association their best bids, best offers, and quotation sizes. By displaying orders communicated to it by its members and complying with the requirements for automation described in Rule 600(b)(3), PSX will display "automated quotations" within the meaning of that rule, and therefore its best bid and best offer will constitute "protected quotations" entitled to trade-through protection under Regulation NMS.

⁵⁹ 17 C.F.R. 242.611(b)(1).

⁶⁰ A "System Hours Immediate or Cancel" order is an immediate or cancel order that may be entered between 9:00 a.m. and 5:00 p.m. Eastern Time, PSX's hours of operation. If a System Hours Immediate or Cancel order (or a portion thereof) is not marketable, the order (or unexecuted portion thereof) is canceled and returned to the entering Participant.

orders will be processed in a manner that avoids trading through protected quotations and avoids locked and crossed markets. Specifically, any orders that are entered into the System that would lock or cross another order in the System will be executed to avoid a lock or cross.⁶¹

- A System Hours Immediate or Cancel Order is compliant with Regulation NMS because it will not, by its terms, execute or post at a price that would result in a trade-through of a protected quotation or lock or cross another market.
- A Pegged Order is compliant with Regulation NMS because it is continually re-priced to avoid locking or crossing.
- In entering an Intermarket Sweep Order, the Participant represents that it is simultaneously routing one or more additional limit orders, as necessary, to execute against the full displayed size of any protected bid or offer (as defined in Rule 600(b) of Regulation NMS) in the case of a limit order to sell or buy with a price that is superior to the limit price of the order identified as an Intermarket Sweep Order.⁶² These additional routed orders must also be identified as Intermarket Sweep Orders. As provided by Regulation NMS, PSX will automatically execute orders identified as Intermarket Sweep Orders. Member organizations will be responsible for ensuring that their use of Intermarket Sweep Orders complies with Regulation NMS, and PHLX's T+1 surveillance program, administered by the Financial Industry Regulatory Authority ("FINRA") under a

⁶¹ Proposed Rule 3213(c). In addition, as discussed below, members may enter orders that are re-priced if they would lock or cross so as to avoid executing.

⁶² Proposed Rule 3301(f)(6).

regulatory services agreement (the “FINRA RSA”) will monitor member organizations’ use of Intermarket Sweep Orders.

- If, at the time of entry, a Price to Comply Order would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) but displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers). Thus, an incoming order priced to execute against the displayed price will receive the superior undisplayed price.⁶³ The displayed and undisplayed prices of a Price to Comply order may be adjusted once or multiple times depending upon the method of order entry and changes to the prevailing national best bid/best offer.⁶⁴
- If, at the time of entry, a Post-Only Order would lock an order on the System, the order will be re-priced and displayed by the System to one minimum price increment (i.e., \$0.01 or \$0.0001) below the current low offer (for bids) or above the current best bid (for offers).⁶⁵

By requiring all orders to be entered with one of these designations, PSX will ensure that all orders will either be priced or cancelled in a manner consistent with avoidance of trade-throughs and locked and crossed markets, or will execute as

⁶³ For example, if the national best bid and best offer is \$9.97 x \$10.00, and a participant enters a price to comply order to buy 10,000 shares at \$10.01, the order will display at \$9.99, but will reside on the System book at \$10.00. If a seller then enters an order at \$9.99, it will execute at \$10.00, up to the full 10,000 shares of the order. Proposed Rule 3301(f)(8).

⁶⁴ Proposed Rule 3301(f)(8).

⁶⁵ For example, if the System best bid and best offer is \$9.97 x \$10.00, and a participant enters a Post-Only Order to buy at \$10.01, the order will be repriced and displayed at \$9.99. If a seller enters an order at \$9.96, the order will be repriced and displayed at \$9.98. Proposed Rule 3301(f)(10).

Intermarket Sweep Orders along with other Intermarket Sweep Orders sent to protected quotes. Because PSX will not route to other market centers,⁶⁶ its policies and procedures under Rule 611(a) under Regulation NMS⁶⁷ will contemplate reliance on information provided by the NASDAQ Market Center for purposes of determining whether another trading center is experiencing a failure, material delay, or malfunction of its systems or equipment within the meaning of Rule 611(b)(1).⁶⁸

Rule 3213(c)(2) contains PSX's rules adopted pursuant to SEC Rule 610(d) under Regulation NMS⁶⁹ with respect to inter-market locks and crosses. Although the System-enforced requirements with respect to order entry and execution generally prevent locked and crossed markets, adoption of the rule is needed to comply with the requirements of Rule 610(d) and to provide a clear rule barring conduct that could evade the System-enforced requirements, such as entry of an incorrectly marked Intermarket Sweep Order. Terms used in the rule have the meanings assigned to them by Rule 600 under Regulation NMS.⁷⁰ Subject to certain exceptions, the Rule 3213(c) provides that member organizations shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying any quotations⁷¹ that lock or cross a protected quotation, and any manual quotations that lock or cross a quotation previously disseminated pursuant to an

⁶⁶ Proposed Rule 3305(b).

⁶⁷ 17 C.F.R. 242.611(a).

⁶⁸ 17 C.F.R. 242.611(b)(1).

⁶⁹ 17 C.F.R. 242.610(d).

⁷⁰ 17 C.F.R. 242.600.

⁷¹ As defined in SEC Rule 600, the term "quotation" includes an order.

effective national market system plan. Exceptions exist for instances where (i) the locking or crossing quotation was displayed at a time when the trading center displaying the locked or crossed quotation was experiencing a failure, material delay, or malfunction of its systems or equipment; (ii) the locking or crossing quotation was displayed at a time when a protected bid was higher than a protected offer in the NMS stock; (iii) the locking or crossing quotation was an automated quotation, and the Exchange member organization displaying such automated quotation simultaneously routed an Intermarket Sweep Order to execute against the full displayed size of any locked or crossed protected quotation; and (iv) the locking or crossing quotation was a manual quotation that locked or crossed another manual quotation, and the Exchange member organization displaying the locking or crossing manual quotation simultaneously routed an Intermarket Sweep Order to execute against the full displayed size of the locked or crossed manual quotation. If a member organization displays a manual quotation that locks or crosses a quotation previously disseminated pursuant to an effective national market system plan, such member organization shall promptly either withdraw the manual quotation or route an Intermarket Sweep Order to execute against the full displayed size of the locked or crossed quotation.

X. Regulatory Framework

Under the FINRA RSA, FINRA will provide a range of regulatory services, including T+1 surveillance, investigation, and enforcement with respect to PHLX rules, arbitration services, and membership services. PHLX will perform other regulatory services, such as real-time market surveillance, using personnel employed by NASDAQ OMX or one of its subsidiaries, including PHLX. NASDAQ OMX, PHLX, NASDAQ,

and NASDAQ OMX BX (PHLX, NASDAQ, and NASDAQ OMX BX collectively, the “SRO Subsidiaries”) are parties to a regulatory services agreement (the “Intercompany RSA”) pursuant to which employees and contractors of each party (“Personnel”) may perform regulatory services for each of the SRO Subsidiaries. All regulatory services performed for PHLX under the Intercompany RSA are subject to the direction, authority, and oversight of PHLX’s chief regulatory officer (“CRO”) and the regulatory oversight committee (“ROC”) of its Board of Governors. All Personnel are subject to the jurisdiction, authority and oversight of the CRO and ROC of PHLX to the extent of the services that they provide to PHLX. Notwithstanding the FINRA RSA and the Intercompany RSA, PHLX retains ultimate legal responsibility for, and control of, functions performed for PHLX under such agreements.

Under the FINRA RSA, FINRA will conduct T+1 market surveillance and examine member organizations to monitor compliance with applicable PHLX and SEC rules. Moreover, many aspects of compliance with PSX rules, such as avoidance of locked and crossed markets and trade throughs, will be enforced by the System itself. PHLX will periodically test operations of PSX to determine that the System is operating in accordance with applicable rules.

PSX will operate out of the same New York metropolitan data center as the NASDAQ Market Center and the NASDAQ OMX BX Equities System, but will use equipment that is separate from the equipment used by those exchanges. In addition, PSX will have a backup data center in the Washington, D.C. metropolitan area. To ensure sufficient capacity with respect to the System, PHLX developed a baseline forecast of volume of usage, which will be updated regularly based on actual volumes.

The System will use NASDAQ OMX's flexible INET technology, which is easily scalable to higher volumes through the addition of more equipment in the data center.

The System will be protected from unauthorized access through the same robust firewall protections already in use at NASDAQ OMX's data centers.

As provided in proposed Rules 3401-3407, PSX will adopt rules implementing a version of the Order Audit Trail System ("OATS"). PHLX believes that as an affiliate of NASDAQ, it should ensure that its regulatory requirements are generally consistent with those of NASDAQ. Accordingly, PHLX member organizations that are also FINRA members must comply with the FINRA OATS rules requiring daily reporting of audit trail information for transactions in securities listed on NASDAQ. In addition, as provided in NASDAQ rules, PHLX member organizations that are not FINRA members must compile and maintain audit trail information for securities listed on NASDAQ, but are required to transmit this information to FINRA only if requested.⁷² Similarly, if PHLX resumes operations as a listing market in the future, the rule will require all member organizations to maintain audit trail information for securities listed on PHLX, and to transmit the information to FINRA upon request, but would not require daily OATS reporting for such securities. As is true with respect to NASDAQ, OATS data will be used by PHLX for regulatory purposes only.⁷³

Finally, PHLX is adopting rules addressing recommendations to customers (also known as suitability) and best execution and interpositioning, based on NASD Rules

⁷² Proposed Rule 3405.

⁷³ See Securities Exchange Act Release No. 53128 (January 13, 2006); 71 FR 3350 (January 23, 2006) (File No. 10-131).

2310 and 2320.⁷⁴ Member organizations would become subject to these rules by virtue of having public customers, and brokers with public customers are required to be members of FINRA; accordingly, adoption of these rules by PHLX could be seen as unnecessary. However, PHLX believes that the requirements of these rules are sufficiently important that they should be reinforced through explicit inclusion in the PHLX rulebook.

XI. Affiliation with NASDAQ Execution Services, LLC

Although PSX will not route to other market centers, it will receive orders routed to it by other market centers, including NASDAQ. Nasdaq Execution Services, LLC (“NES”) is the approved outbound routing facility of NASDAQ for cash equities. Rules 4751 and 4758 of NASDAQ establish the conditions under which NASDAQ is permitted to own and operate NES in its capacity as a facility of NASDAQ that routes orders from NASDAQ to other market centers. These conditions include requirements that: (1) NES is operated and regulated as a facility of NASDAQ; (2) NES will not engage in any business other than as an outbound router for NASDAQ and any other activities as approved by the Commission;⁷⁵ (3) the primary regulatory responsibility for NES lies with an unaffiliated self-regulatory organization; (4) use of NES for outbound routing is optional for other NASDAQ members; and (5) NASDAQ will not route orders to an affiliated exchange, such as PHLX, unless they check the NASDAQ book prior to routing.

⁷⁴ Proposed Rules 763 and 764.

⁷⁵ Because only NASDAQ members may enter orders into NASDAQ, it also follows that routing by NES is conducted only with respect to orders of NASDAQ members.

In connection with PHLX's resumption of equity trading pursuant to this filing, NASDAQ will file a proposed rule change to modify the last of these conditions to allow it to route all forms of orders, including Directed Orders, to PSX during a twelve-month pilot period. Directed Orders are orders that route directly to other exchanges on an immediate-or-cancel basis without first checking the NASDAQ book for available liquidity. In order to appropriately address concerns previously raised by the Commission regarding the potential for conflicts of interest and informational advantages that may arise from the use of affiliated members to route orders between exchanges owned by a common parent, PHLX is proposing certain restrictions and undertakings.

In order to manage the concerns raised by the Commission regarding conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, PHLX notes that, with respect to orders routed to PHLX by NES in its capacity as a facility of NASDAQ, NES is subject to independent oversight and enforcement by FINRA, an unaffiliated SRO that is NES's designated examining authority. In this capacity, FINRA is responsible for examining NES with respect to its books and records and capital obligations and also has the responsibility for reviewing NES's compliance with intermarket trading rules such as SEC Regulation NMS. In addition, under the FINRA RSA, FINRA staff will review NES's compliance with PHLX's rules through FINRA's examination program. FINRA and PHLX⁷⁶ will also monitor NES for compliance with PHLX's trading rules, subject, of course, to SEC

⁷⁶ Personnel performing real-time oversight of equity trading on NASDAQ will also perform similar functions with respect to PSX. Such work is performed pursuant to the Intercompany RSA under the direction, authority, and oversight of PHLX's CRO and the ROC of its Board of Governors.

oversight of the regulatory program of PHLX and FINRA. PHLX will, however, retain ultimate responsibility for enforcing its rules with respect to NES.

Furthermore, in order to minimize the potential for conflicts of interest, PHLX and FINRA will collect and maintain all alerts, complaints, investigations and enforcement actions in which NES (in its capacity as a facility of NASDAQ, routing orders to PSX) is identified as a participant that has potentially violated applicable SEC or PHLX rules. PHLX and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the SEC's Office of Compliance Inspections and Examinations. FINRA will then provide a report to the PHLX's CRO, on at least a quarterly basis, which (i) quantifies all alerts (of which PHLX and FINRA become aware) that identify NES as a participant that has potentially violated PHLX or SEC rules and (ii) quantifies the number of all investigations that identify NES as a participant that has potentially violated PHLX or SEC rules.⁷⁷

In order to address the Commission's concerns about potential for information advantages that could place an affiliated member of an exchange at a competitive advantage vis-à-vis other non-affiliated members, PHLX is proposing Rule 985(c)(2). Rule 985(c)(2) will require the implementation of policies and procedures that are reasonably designed to prevent NES from acting on non-public information regarding PHLX systems prior to the time that such information is made available generally to all members of such entity performing inbound routing functions. These policies and procedures would include systems development protocols to facilitate an audit of the efficacy of these policies and procedures.

⁷⁷ PHLX, FINRA, and SEC staff may agree going forward to reduce the number of applicable or relevant surveillances that form the scope of the agreed upon report.

Specifically, new Rule 985(c)(2) shall provide as follows:

The NASDAQ OMX Group, Inc., which owns NASDAQ Execution Services, LLC and the Exchange, shall establish and maintain procedures and internal controls reasonably designed to ensure that NASDAQ Execution Services, LLC does not develop or implement changes to its system on the basis of non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated members and member organizations of the Exchange in connection with the provision of inbound routing to the Exchange.

In addition, NASDAQ Rule 4758 provides that NES will establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between NASDAQ and its facilities (including the NES), and any other entity (including PHLX). The Exchange believes these measures will effectively address the concerns identified by the Commission regarding the potential for informational advantages favoring NES vis-à-vis other non-affiliated PHLX members.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷⁸ in general, and with Section 6(b)(1) and (b)(5) of the Act,⁷⁹ in particular, in that the proposal enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members, member organizations, and persons associated with members and member organizations with provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to

⁷⁸ 15 U.S.C. 78f.

⁷⁹ 15 U.S.C. 78f(b)(1), (5).

foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. PSX will operate in accordance with the high standards that PHLX believes to be in evidence at all of NASDAQ OMX's exchanges, providing its Participants with opportunities to trade NMS stocks through a fair, open, and well-regulated market. Furthermore, PHLX believes that PSX's price-size allocation methodology will promote further development of the national market system by encouraging Participants to display liquidity, thereby contributing more fully to price discovery and providing a counterbalance to increased use of dark trading venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHLX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As a new entrant into the market for executions of NMS stocks, PSX will further enhance competition in this space.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2010-79 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2010-79. 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 proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. 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 Number SR-Phlx-2010-79, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸⁰

Florence E. Harmon
Deputy Secretary

⁸⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

Rule 160. [NMS Stock Execution on the Exchange] Reserved

[Only orders for NMS stocks may be entered and executed on XLE. XLE is the only venue on the Exchange for the entry and execution of orders in NMS stocks. Nothing in this rule is intended to limit a XLE Participant's activities otherwise than on an exchange or on another exchange.]

The Exchange intends to operate XLE as an automated trading center for purposes of Rule 600(b)(4) of Regulation NMS.]

* * * * *

Rule 188. [Trade Execution and Reporting] Reserved

[Executions occurring as a result of orders matched on XLE shall be reported by the Exchange to an appropriate consolidated transaction reporting system. XLE will identify trades executed pursuant to an exception to or exemption from Rule 611 of Regulation NMS 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) of Regulation NMS and the self-help exception of Rule 611(b)(1) of Regulation NMS, such trade shall be identified as executed pursuant to the intermarket sweep order exception. Executions occurring as a result of orders routed away from the Exchange shall be reported to an appropriate consolidated transaction reporting system by the relevant self-regulatory organization. The Exchange shall promptly notify XLE Participants of all executions of their orders as soon as the Exchange is notified that such executions have taken place.]

* * * * *

763. Recommendations to Customers (Suitability)

(a) In recommending to a customer the purchase, sale or exchange of any security, member organizations shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

(b) Prior to the execution of a transaction recommended to a non-institutional customer, other than transactions with customers where investments are limited to money market mutual funds, member organizations shall make reasonable efforts to obtain information concerning:

(1) the customer's financial status;

(2) the customer's tax status;

(3) the customer's investment objectives; and

(4) such other information used or considered to be reasonable by such member organization or its registered representative in making recommendations to the customer.

(c) For purposes of this Rule, the term "non-institutional customer" shall mean a customer that is not (1) a bank, savings and loan association, insurance company, or registered investment company; (2) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (3) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least \$50 million.

... Commentary:-----

.01 Implicit in all member organization and registered representative relationships with customers and others is the fundamental responsibility for fair dealing. Sales efforts must therefore be undertaken only on a basis that can be judged as being within the ethical standards of the Exchange's Rules, with particular emphasis on the requirement to deal fairly with the public.

.02 This does not mean that legitimate sales efforts in the securities business are to be discouraged by requirements which do not take into account the variety of circumstances which can enter into the member organization/customer relationship. It does mean, however, that sales efforts must be judged on the basis of whether they can be reasonably said to represent fair treatment for the persons to whom the sales efforts are directed, rather than on the argument that they result in profits to customers.

.03 Some practices that clearly violate a member organization's responsibility for fair dealing are set forth below, as a guide to member organizations:

(1) Recommending Speculative Low-Priced Securities. Recommending speculative low-priced securities to customers without knowledge of or attempt to obtain information concerning the customers' other securities holdings, their financial situation and other necessary data. The principle here is that this practice, by its very nature, involves a high probability that the recommendation will not be suitable for at least some of the persons solicited. This has particular application to high pressure telephone sales campaigns.

(2) Excessive Trading Activity. Excessive activity in a customer's account, often referred to as "churning" or "overtrading." There are no specific standards to measure excessiveness of activity in customer accounts because this must be related to the objectives and financial situation of the customer involved.

(3) Trading in Mutual Fund Shares. Trading in mutual fund shares, particularly on a short-term basis. It is clear that normally these securities are not proper trading vehicles and such activity on its face may raise the question of Rule violation.

(4) Fraudulent Activity

(A) Numerous instances of fraudulent conduct may result in penalties against member organizations. Among some of these activities are:

(i) Fictitious Accounts. Establishment of fictitious accounts in order to execute transactions which otherwise would be prohibited, such as the purchase of hot issues, or to disguise transactions which are against firm policy.

(ii) Discretionary Accounts. Transactions in discretionary accounts in excess of or without actual authority from customers.

(iii) Unauthorized Transactions. Causing the execution of transactions which are unauthorized by customers or the sending of confirmations in order to cause customers to accept transactions not actually agreed upon.

(iv) Misuse of Customers' Funds or Securities. Unauthorized use or borrowing of customers' funds or securities.

(B) In addition, other fraudulent activities, such as forgery, non-disclosure or misstatement of material facts, manipulations and various deceptions, may be found to be in violation of Exchange Rules. These same activities are also subject to the civil and criminal laws and sanctions of federal and state governments.

(5) Recommending Purchases Beyond Customer Capability. Recommending the purchase of securities or the continuing purchase of securities in amounts which are inconsistent with the reasonable expectation that the customer has the financial ability to meet such a commitment.

.04 While most member organizations are fully aware of the fairness required in dealing with customers, it is anticipated that the practices enumerated in paragraph .03, which are not all inclusive, will be of future assistance in the training and education of new personnel.

.05 The Commission has also recognized that brokers and dealers have an obligation of fair dealing in actions under the general anti-fraud provisions of the federal securities laws. The Commission bases this obligation on the principle that when a securities dealer opens his business he is, in effect, representing that he will deal fairly with the public. Certain of the Commission's cases on fair dealing involve practices not covered in the foregoing illustrations. Usually, any breach of the obligation of fair dealing as determined by the Commission under the anti-fraud provisions of the securities laws could be considered a violation of the Exchange's Rules.

.05 Fair Dealing with Customers with Regard to Derivative Products or New Financial Products. The Exchange emphasizes member organizations' obligations for fair dealing with customers when making recommendations or accepting orders for new financial products. As new products are introduced from time to time, it is important that member organizations make every effort to familiarize themselves with each customer's financial situation, trading experience, and ability to meet the risks involved with such products and to make every effort to make customers aware of the pertinent information regarding the products. Member organizations must follow specific guidelines, set forth below, for qualifying the accounts to trade the products and for supervising the accounts thereafter.

.06 Suitability Obligations to Institutional Customers. The Exchange's suitability rule is fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct. Member organizations' responsibilities include having a reasonable basis for recommending a particular security or strategy, as well as having reasonable grounds for believing the recommendation is suitable for the customer to whom it is made. Member organizations are expected to meet the same high standards of competence, professionalism, and good faith regardless of the financial circumstances of the customer.

Rule 763(a) requires that, in recommending to a customer the purchase, sale or exchange of any security, a member organization shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. This interpretation concerns only the manner in which a member organization determines that a recommendation is suitable for a particular institutional customer. The manner in which a member organization fulfills this suitability obligation will vary depending on the nature of the customer and the specific transaction. Accordingly, this interpretation deals only with guidance regarding how a member organization may fulfill such "customer-specific suitability obligations" under Rule 763(a).

While it is difficult to define in advance the scope of a member organization's suitability obligation with respect to a specific institutional customer transaction recommended by a member organization, the Exchange has identified certain factors which may be relevant when considering compliance with Rule 763(a). These factors are not intended to be requirements or the only factors to be considered but are offered merely as guidance in determining the scope of a member organization's suitability obligations.

The two most important considerations in determining the scope of a member organization's suitability obligations in making recommendations to an institutional customer are the customer's capability to evaluate investment risk independently and the extent to which the customer is exercising independent judgment in evaluating a member organization's recommendation. A member organization must determine, based on the information available to it, the customer's capability to evaluate investment risk. In some cases, the member organization may conclude that the customer is not capable of making independent investment decisions in general. In other cases, the institutional customer may have general capability, but may not be able to understand a particular type of instrument or its risk. This is more likely to arise with relatively new types of instruments, or those with significantly different risk or volatility characteristics than other

investments generally made by the institution. If a customer is either generally not capable of evaluating investment risk or lacks sufficient capability to evaluate the particular product, the scope of a member organization's customer-specific obligations under the suitability rule would not be diminished by the fact that the member organization was dealing with an institutional customer. On the other hand, the fact that a customer initially needed help understanding a potential investment need not necessarily imply that the customer did not ultimately develop an understanding and make an independent investment decision.

A member organization may conclude that a customer is exercising independent judgment if the customer's investment decision will be based on its own independent assessment of the opportunities and risks presented by a potential investment, market factors and other investment considerations. Where the broker-dealer has reasonable grounds for concluding that the institutional customer is making independent investment decisions and is capable of independently evaluating investment risk, then a member organization's obligation to determine that a recommendation is suitable for a particular customer is fulfilled. Where a customer has delegated decision-making authority to an agent, such as an investment advisor or a bank trust department, this interpretation shall be applied to the agent.

A determination of capability to evaluate investment risk independently will depend on an examination of the customer's capability to make its own investment decisions, including the resources available to the customer to make informed decisions. Relevant considerations could include:

- the use of one or more consultants, investment advisers or bank trust departments;
- the general level of experience of the institutional customer in financial markets and specific experience with the type of instruments under consideration;
- the customer's ability to understand the economic features of the security involved;
- the customer's ability to independently evaluate how market developments would affect the security; and
- the complexity of the security or securities involved.

A determination that a customer is making independent investment decisions will depend on the nature of the relationship that exists between the member organization and the customer. Relevant considerations could include:

- any written or oral understanding that exists between the member organization and the customer regarding the nature of the relationship between the member organization and the customer and the services to be rendered by the member organization;
- the presence or absence of a pattern of acceptance of the member organization's recommendations;

- the use by the customer of ideas, suggestions, market views and information obtained from other member organizations or market professionals, particularly those relating to the same type of securities; and
- the extent to which the member organization has received from the customer current comprehensive portfolio information in connection with discussing recommended transactions or has not been provided important information regarding its portfolio or investment objectives.

Member organizations are reminded that these factors are merely guidelines which will be utilized to determine whether a member organization has fulfilled its suitability obligations with respect to a specific institutional customer transaction and that the inclusion or absence of any of these factors is not dispositive of the determination of suitability. Such a determination can only be made on a case-by-case basis taking into consideration all the facts and circumstances of a particular member organization/customer relationship, assessed in the context of a particular transaction.

For purposes of this interpretation, an institutional customer shall be any entity other than a natural person. In determining the applicability of this interpretation to an institutional customer, the Exchange will consider the dollar value of the securities that the institutional customer has in its portfolio and/or under management. While this interpretation is potentially applicable to any institutional customer, the guidance contained herein is more appropriately applied to an institutional customer with at least \$10 million invested in securities in the aggregate in its portfolio and/or under management.

764. Best Execution and Interpositioning

(a) (1) In any transaction for or with a customer or a customer of another broker-dealer, a member organization and persons associated with a member organization shall use reasonable diligence to ascertain the best market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. Among the factors that will be considered in determining whether a member organization has used "reasonable diligence" are:

(A) the character of the market for the security, e.g., price, volatility, relative liquidity, and pressure on available communications;

(B) the size and type of transaction;

(C) the number of markets checked;

(D) accessibility of the quotation; and

(E) the terms and conditions of the order which result in the transaction, as communicated to the member organization and persons associated with the member organization.

(2) In any transaction for or with a customer or a customer of another broker-dealer, no member organization or person associated with a member organization shall interject a third party between the member organization and the best market for the subject security in a manner inconsistent with paragraph (a)(1) of this Rule.

(b) When a member organization cannot execute directly with a market maker but must employ a broker's broker or some other means in order to insure an execution advantageous to the customer, the burden of showing the acceptable circumstances for doing so is on the retail firm. Examples of acceptable circumstances are where a customer's order is "crossed" with another retail firm which has a corresponding order on the other side, or where the identity of the retail firm, if known, would likely cause undue price movements adversely affecting the cost or proceeds to the customer.

(c) Failure to maintain or adequately staff a department assigned to execute customers' orders cannot be considered justification for executing away from the best available market; nor can channeling orders through a third party as described above as reciprocation for service or business operate to relieve a member organization of its obligations. However, the channeling of customers' orders through a broker's broker or third party pursuant to established correspondent relationships under which executions are confirmed directly to the member organization acting as agent for the customer, such as where the third party gives up the name of the retail firm, are not prohibited if the cost of such service is not borne by the customer.

(d) A member organization through whom a retail order is channeled, as described above, and who knowingly is a party to an arrangement whereby the initiating member organization has not fulfilled his obligations under this Rule, will also be deemed to have violated this Rule.

(e) The obligations described in paragraphs (a) through (d) above exist not only where the member organization acts as agent for the account of his customer but also where retail transactions are executed as principal and contemporaneously offset.

... Commentary:-----

.01 Rule 764(a) requires, among other things, that a member organization or person associated with a member organization comply with Rule 764(a) when customer orders are routed to it from another broker/dealer for execution. This Commentary addresses certain interpretive questions concerning the applicability of the best execution rule.

For the purposes of Rule 764, the term "market" or "markets" is to be construed broadly, and it encompasses a variety of different venues, including, but not limited to, market centers that are trading a particular security. This expansive interpretation is meant to both inform broker/dealers as to the breadth of the scope of venues that must be considered in the furtherance of their best execution obligations and to promote fair competition among broker/dealers, exchange markets, and markets other than exchange markets, as well as any other venue that may emerge, by not

mandating that certain trading venues have less relevance than others in the course of determining a firm's best execution obligations.

A member organization's duty to provide best execution in any transaction “for or with a customer of another broker/dealer” does not apply in instances when another broker/dealer is simply executing a customer order against the member organization's quote. Stated in another manner, the duty to provide best execution to customer orders received from other broker/dealers arises only when an order is routed from the broker/dealer to the member organization for the purpose of order handling and execution. This clarification is intended to draw a distinction between those situations in which the member organization is acting solely as the buyer or seller in connection with orders presented by a broker/dealer against the member organization's quote, as opposed to those circumstances in which the member organization is accepting order flow from another broker/dealer for the purpose of facilitating the handling and execution of such orders.

* * * * *

Rule 803. Criteria for Listing—Tier I

(a) – (e) No change.

(f) In the case of Other Securities, the Exchange will consider listing any security not otherwise covered by the criteria set forth in this rule, provided the issue is otherwise suited for [auction market] trading on the Exchange. Such issues will be evaluated for listing against the following criteria:

Initial Listing Requirements

1. Assets/Equity—The issuer shall have total assets in excess of \$100 million and shareholders' equity of at least \$10 million.

2. Earnings—The issuer shall have pre-tax income of at least \$750,000 in its last fiscal year or in two of its last three fiscal years. In the case where the issuer is unable to satisfy this earnings criteria, the Exchange generally will require the issuer to have the following: (i) assets in the excess of \$200 million and shareholders' equity of at least \$10 million; or (ii) assets in excess of \$100 million and shareholders' equity of at least \$20 million.

3. Distribution—Minimum public distribution of 1 million trading units including a minimum of 400 public holders.

4. Aggregate Market Value/Principal Amount—Not less [that] than \$4 million.

Prior to commencement of trading of securities admitted to listing under this paragraph, the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the members and member organizations providing guidance

regarding member firm compliance responsibilities when handling transactions in such securities.

Continued Listing Requirements

1. The aggregate market value or principal amount of publicly-held units (except index-linked securities that were listed pursuant to Rule 803(m)) must be at least \$1 million.

2. Delisting or removal proceedings will be commenced (unless the Commission has approved the continued trading) with respect to any index-linked security that was listed pursuant to Rule 803(m)(7)(B) if any of the standards set forth in such rule are not continuously maintained, except that:

(i) the criteria that no single component represent more than 25% of the weight of the index and the five highest weighted components in the index may not represent more than 50% (or 60% for indexes with less than 25 components) of the weight of the Index, need only be satisfied for capitalization weighted and price weighted indexes as of the first day of January and July in each year;

(ii) the total number of components in the index may not increase or decrease by more than 33-1/3% from the number of components in the index at the time of its initial listing, and in no event may be less than ten (10) components;

(iii) the trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; and

(iv) in a capitalization-weighted or modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have had an average monthly trading volume of at least 1,000,000 shares over the previous six months.

3. With respect to an index-linked security that was listed pursuant to Rule 803(m)(7)(A), delisting or removal proceedings will be commenced (unless the Commission has approved the continued trading of the subject index-linked security) if an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or indexes as set forth by the Commission in its order under Section 19(b)(2) of the Act approving the index or indexes for the trading of options or other derivatives.

4. With respect to a Commodity-Linked Security that was listed pursuant to Rule 803(m), delisting or removal proceedings will be commenced (unless the Commission has approved the continued trading of the subject security) if any of the listing

requirements set forth in Rule 803(m) that were applicable at the time of the initial listing of the security are no longer being met. Notwithstanding the foregoing, a security will not be delisted due to lack of comprehensive surveillance sharing agreements if the Reference Asset has at least 10 components and the Exchange has comprehensive surveillance sharing agreements with respect to at least 90% of the dollar weight of the Reference Asset for which such agreements are otherwise required.

5. Delisting or removal proceedings will also be commenced with respect to any Linked Security listed pursuant to Rule 803(m) (unless the Commission has approved the continued trading of the subject security), under any of the following circumstances:

(i) if the aggregate market value or the principal amount of the Linked Security issue publicly held is less than \$400,000;

(ii) if the value of the index, composite value of the indexes or the value of the Reference Asset (as applicable) is no longer calculated or widely disseminated as required by Rule 803(m)(9);

(iii) with respect to a Commodity-Linked Security, if the value of the Reference Asset is no longer calculated or available and a new Reference Asset is substituted, unless the new Reference Asset meets the requirements of this Rule and Rule 803(m); or

(iv) if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

(g) – (l) No change.

[(m) Index-Linked Exchangeable Notes

Index-Linked exchangeable notes which are exchangeable debt securities that are exchangeable at the option of the holder (subject to the requirement that the holder in most circumstances exchange a specified minimum amount of notes), on call by the issuer or at maturity for a cash amount (the "Cash Value Amount") based on the reported market prices of the Underlying Stocks of an Underlying Index will be considered for listing and trading on the Exchange pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, provided:

(1) Both the issue and the issuer of such security meet the criteria set forth in Rule 803(f) 1-4, except that the minimum public distribution shall be 150,000 notes with a minimum of 400 public note-holders, except, if traded in thousand dollar denominations, then no minimum number of holders.

(2) The issue has a minimum term of one year.

(3) The issuer will be expected to have a minimum tangible net worth in excess of \$250,000,000, and to otherwise substantially exceed the earning requirements set forth in Rule 803(f). In the alternative, the issuer will be expected:

(i) to have a minimum tangible net worth of \$150,000,000 and to otherwise substantially exceed the earnings requirements set forth in Rule 803(f); and

(ii) not to have issued index-linked exchangeable notes where the original issue price of all the issuer's other index-linked exchangeable note offerings (combined with other index-linked exchangeable note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

(4) The Index to which an exchangeable-note is linked shall either be (i) indices that have been created by a third party and been reviewed and have been approved for the trading of options or other derivative securities (each, a "Third-Party Index") either by the Securities and Exchange Commission under Section 19(b) (2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and rules thereunder, by the Exchange under rules adopted pursuant to Rule 19b-4(e), or meet the procedures and criteria set forth in Rule 1009A(b)-(c), in addition, the Third-Party Index's underlying securities shall meet Rule 803 (h) (3) (B) and the Third-Party Index shall comply with Rule 1009A(b) (12); or (ii) indices which the issuer has created and for which an Exchange will have obtained approval from either the Securities and Exchange Commission pursuant to Section 19(b) (2) and rules thereunder, or from the Exchange under rules adopted pursuant to Rule 19(b)-4(e) or meet the procedures and criteria set forth in Rule 1009A(b)-(c) (each, and "Issuer Index"). The Issuer Indices and their underlying securities must meet one of the following:

(i) the procedures and criteria set forth in Rule 1009A(b)-(c); or

(ii) the criteria set forth in Rule 803(h)(3)(A) (i)-(iii), (h)(3) (B)-(D), (h)(4) and Rule 1009A(b)(12) and the index concentration limits set forth in Rule 1009A(b)(6) and in Rule 1009A(c)(1) insofar as it relates to Rule 1009A(b)(6).

(5) Index-Linking Exchangeable Notes will be treated as equity instruments.

(6) Beginning twelve months after the initial issuance of a series of index-linked exchangeable notes, the Exchange will consider the suspension of trading in or removal from listing of that series of index-linked exchangeable noted under any of the following circumstances:

(i) if the series has fewer that 50,000 notes issued and outstanding:

(ii) if the market value of all index-linked exchangeable notes of that series issued and outstanding is less than \$1,000,000; or

(iii) if such other event shall occur or such other condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.]

[(n) Index-Linked Securities

Index-linked securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes. Such securities may or may not provide for the repayment of the original principal investment amount. The Exchange may submit a rule filing pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 to permit the listing and trading of index-linked securities that do not otherwise meet the standards set forth below in paragraphs (1) through (11). The Exchange will consider for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, index-linked securities provided

(1) Both the issue and the issuer of such security meet the criteria set forth in (f). The minimum public distribution and minimum public shareholders requirement will not be applicable to an issue traded in thousand dollar denominations. In addition, the minimum public shareholders requirement and the minimum public distribution requirement will not apply if the securities are redeemable at the option of the holders thereof on at least a weekly basis.

(2) The issue has a minimum term of one (1) year but not greater than thirty (30) years.

(3) The issue must be the non-convertible debt of the issuer.

(4) The payment at maturity may or may not provide for a multiple of the positive performance of an underlying index or indexes; however, in no event will payment at maturity be based on a multiple of the negative performance of an underlying index or indexes.

(5) The issuer will be expected to have a minimum tangible net worth in excess of \$250,000,000, and to otherwise substantially exceed the earnings requirements set forth in Rule 803(a)(2). In the alternative, the issuer will be expected: (A) to have a minimum tangible net worth of \$150,000,000 and to otherwise substantially exceed the earnings requirement set forth in Rule 803(a)(2), and (B) not to have issued securities where the original issue price of all the issuer's other index-linked note offerings (combined with index-linked note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

(6) The issuer is in compliance with Rule 10A-3 under the Securities Exchange Act of 1934.

(7) Initial Listing Criteria-Each underlying index is required to have at least ten (10) component securities. In addition, the index or indexes to which the security is linked shall either (1) have been reviewed and approved for the trading of options or other derivatives by the Commission under Section 19(b)(2) of the 1934 Act and rules thereunder and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing

agreements for non-U.S. stocks, continue to be satisfied, or (2) the index or indexes meet the following criteria:

(A) Each component security has a minimum market value of at least \$75 million, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market value can be at least \$50 million;

(B) Each component security shall have trading volume in each of the last six months of not less than 1,000,000 shares, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume shall be at least 500,000 shares in each of the last six months;

(C) In the case of a capitalization weighted index or modified capitalization weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months;

(D) No underlying component security will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index do not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 component securities);

(E) 90% of the index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Rule 1009;

(F) All component securities shall be either (A) securities (other than foreign country securities and American Depositary Receipts ("ADRs")) that are (i) issued by a Securities Exchange Act of 1934 reporting company which is listed on a national securities exchange and an NMS Stock or (B) be foreign country securities or ADRs, provided that foreign country securities or foreign country securities underlying ADRs having their primary trading market outside the United States on foreign trading markets that are not members of the Intermarket Surveillance Group or parties to comprehensive surveillance sharing agreements with the Exchange will not in the aggregate represent more than 20% of the dollar weight of the index.

(8) Continued Listing Criteria—

(A) The Exchange will commence delisting or removal proceedings, if any of the standards set forth above in paragraph (7) are not continuously maintained, except that:

(i) the criteria that no single component represent more than 25% of the weight of the index and the five highest weighted components in the index can not

represent more than 50% (or 60% for indexes with less than 25 components) of the weight of the Index, need only be satisfied for capitalization weighted, modified capitalization weighted and price weighted indexes as of the first day of January and July in each year;

(ii) the total number of components in the index may not increase or decrease by more than 33-1/3% from the number of components in the index at the time of its initial listing, and in no event may be less than ten (10) components;

(iii) the trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; and

(iv) in a capitalization-weighted index or modified capitalization weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have had an average monthly trading volume of at least 1,000,000 shares over the previous six months.

(B) In connection with an index-linked security that is listed pursuant to paragraph (7)(1) above, the Exchange will commence delisting or removal proceedings if an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or indexes as set forth by the Commission in its order under Section 19(b)(2) of the 1934 Act approving the index or indexes for the trading of options or other derivatives.

(C) The Exchange will also commence delisting or removal proceedings, under any of the following circumstances:

(i) if the aggregate market value or the principal amount of the securities publicly held is less than \$400,000;

(ii) if the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis during the time the security is traded on the Exchange; or

(iii) if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

(9) Index Methodology and Calculation—

(A) There must be disseminated for each series of Index-linked security an estimate, updated at least every 15 seconds, of the value of a unit of each series (the "Intraday Indicative Value").

(B) Indexes based upon the equal-dollar or modified equal-dollar weighting method will be rebalanced at least quarterly.

(C) If the index is maintained by a broker-dealer, the broker-dealer shall erect a "firewall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer.

(D) The current value of an index will be widely disseminated at least every 15 seconds by one or more major market data vendors or over the consolidated tape.

(E) If the value of an index-linked security is based on more than one (1) index, then the composite value of such indexes must be widely disseminated at least every 15 seconds.

(F) Any advisory committee, supervisory board, or similar entity that advises an Index Licensor or Administrator or a major market data vendor or that makes decisions on the index or portfolio composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index. An Index Licensor or Administrator includes any person who licenses to the Exchange the right to use an index or portfolio that is the basis for determining the inclusion and relative representation of an index-linked securities' component stocks, or any trademark or service mark associated with such an index or portfolio; collects, calculates, compiles, reports and/or maintains such an index or portfolio, or index and index-linked securities information relating to such an index; provides facilities for the dissemination of index and index-linked securities information; and/or is responsible for any of the activities described above.

(10) Surveillance Procedures. The Exchange will implement written surveillance procedures for index-linked securities, including adequate comprehensive surveillance sharing agreements for non-U.S. securities, as applicable.

(11) Index-linked securities will be treated as equity instruments.]

(m) Securities Linked to the Performance of Indexes and Commodities (Including Currencies)

The Exchange will consider for listing and trading equity index-linked securities ("Equity Index-Linked Securities) and commodity-linked securities ("Commodity-Linked Securities" and, together with Equity Index-Linked Securities, "Linked Securities") that in each case meet the applicable criteria of this Rule. Equity Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying equity index or

indexes. The payment at maturity with respect to Commodity-Linked Securities is based on one or more physical Commodities or Commodity futures, options or other Commodity derivatives, Commodity-Related Securities, or a basket or index of any of the foregoing (any such basis for payment is referred to below as the "Reference Asset"). The terms "Commodity" and "Commodity-Related Security" are defined in Rule 3230.

Linked Securities may or may not provide for the repayment of the original principal investment amount. The Exchange may submit a rule filing pursuant to Section 19(b)(2) of the Act to permit the listing and trading of Linked Securities that do not otherwise meet the standards set forth below in paragraphs (1) through (12). The Exchange will consider Linked Securities for listing and trading pursuant to Rule 19b-4(e) under the Act, provided:

(1) Both the issue and the issuer of such security meet the criteria for other securities set forth in Rule 803(f), except that if the security is traded in \$1,000 denominations or is redeemable at the option of holders thereof on at least a weekly basis, then no minimum number of holders and no minimum public distribution of trading units shall be required.

(2) The issue has a term of not less than one (1) year and not greater than thirty (30) years.

(3) The issue must be the non-convertible debt of the Company.

(4) The payment at maturity may or may not provide for a multiple of the direct or inverse performance of an underlying index, indexes or Reference Asset; however, in no event will a loss (negative payment) at maturity be accelerated by a multiple that exceeds twice the performance of an underlying index, indexes or Reference Asset.

(5) The Company will be expected to have a minimum tangible net worth in excess of \$250,000,000 and to exceed by at least 20% the earnings requirements set forth in paragraph (a)(1) of this Rule. In the alternative, the Company will be expected: (i) to have a minimum tangible net worth of \$150,000,000 and to exceed by at least 20% the earnings requirement set forth in paragraph (a)(1) of this Rule, and (ii) not to have issued securities where the original issue price of all the Company's other index-linked note offerings (combined with index-linked note offerings of the Company's affiliates) listed on a national securities exchange exceeds 25% of the Company's net worth.

(6) The Company is in compliance with Rule 10A-3 under the Act.

(7) Equity Index Criteria—In the case of an Equity Index-Linked Security, each underlying index is required to have at least ten (10) component securities. In addition, the index or indexes to which the security is linked shall either:

(A) have been reviewed and approved for the trading of options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order,

including comprehensive surveillance sharing agreements for non-U.S. stocks, continue to be satisfied, or

(B) the index or indexes meet the following criteria:

(I) Each component security has a minimum market value of at least \$75 million, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market value can be at least \$50 million;

(II) Each component security shall have trading volume in each of the last six months of not less than 1,000,000 shares, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume shall be at least 500,000 shares in each of the last six months;

(III) Indexes based upon the equal-dollar or modified equal-dollar weighting method will be rebalanced at least semiannually;

(IV) In the case of a capitalization-weighted or modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months;

(V) No underlying component security will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index do not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 component securities);

(VI) 90% of the index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading on a national securities exchange or a national securities association, provided, however, that an index will not be subject to this requirement if (a) no underlying component security represents more than 10% of the dollar weight of the index and (b) the index has a minimum of 20 components;

(VII) All component securities shall be either (a) securities (other than securities of a foreign issuer and American Depositary Receipts ("ADRs")) that are (i) issued by a 1934 Act reporting company or by an investment company registered under the Investment Company Act of

1940 that, in each case, has securities listed on a national securities exchange and (ii) an "NMS stock" (as defined in Rule 600 of Regulation NMS under the Act) or (b) securities of a foreign issuer or ADRs, provided that securities of a foreign issuer (including when they underlie ADRs) whose primary trading market outside the United States is not a member of the Intermarket Surveillance Group ("ISG") or a party to a comprehensive surveillance sharing agreement with the Exchange will not in the aggregate represent more than 20% of the dollar weight of the index.

(8) Reference Asset Criteria—In the case of a Commodity-Linked Security, the Reference Asset shall meet the criteria in either subparagraph (A) or subparagraph (B) below:

(A) The Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Commodity-Related Securities or options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied.

(B) The pricing information for each component of a Reference Asset other than a Currency must be derived from a market which is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement. Notwithstanding the previous sentence, pricing information for gold and silver may be derived from the London Bullion Market Association. The pricing information for each component of a Reference Asset that is a Currency must be either: (i) the generally accepted spot price for the currency exchange rate in question; or (ii) derived from a market of which (x) is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement and (y) is the pricing source for a currency component of a Reference Asset that has previously been approved by the Commission. A Reference Asset may include components representing not more than 10% of the dollar weight of such Reference Asset for which the pricing information is derived from markets that do not meet the requirements of this subparagraph (B), provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Reference Asset. The term "Currency," as used in this subparagraph, shall mean one or more currencies, or currency options, futures, or other currency derivatives, Commodity-Related Securities if their underlying Commodities are currencies or currency derivatives, or a basket or index of any of the foregoing.

(9) Maintenance and Dissemination—(A) If the index is maintained by a broker-dealer, the broker-dealer shall erect a "firewall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer. (B) Unless the Commission order applicable under clause 7(A) or 8(A) hereof provides otherwise, the current value of the index or the Reference Asset (as applicable) will be widely disseminated at least every 15

seconds during the Exchange's regular market session, except as provided in the next clause (C). (C) The values of the following indexes need not be calculated and widely disseminated at least every 15 seconds if, after the close of trading, the indicative value of the Equity Index-Linked Security based on one or more of such indexes is calculated and disseminated to provide an updated value: CBOE S&P 500 BuyWrite Index(sm), CBOE DJIA Buy Write Index(sm), CBOE Nasdaq-100 BuyWrite Index(sm). (D) If the value of a Linked Security is based on more than one index, then the dissemination requirement of this paragraph (9) applies to the composite value of such indexes. (E) In the case of a Commodity-Linked Security that is periodically redeemable, the indicative value of the subject Commodity-Linked Security must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Exchange's regular market session.

(10) Trading Halts. In the case of Commodity-Linked Securities, if the indicative value (if required to be disseminated) or the Reference Asset value is not being disseminated as required, or, in the case of Equity Index-Linked Securities, if the value of the index is not being disseminated as required, the Exchange may halt trading during the day on which such interruption occurs. The Exchange will halt trading no later than the beginning of trading following the trading day when the interruption commenced if such interruption persists at this time.

(11) Surveillance Procedures. FINRA will implement on behalf of the Exchange written surveillance procedures for Linked Securities. The Exchange will enter into adequate comprehensive surveillance sharing agreements for non-U.S. securities, as applicable.

(12) Linked Securities will be treated as equity instruments. Furthermore, for the purpose of fee determination, Linked Securities shall be deemed and treated as Other Securities.

(n) Managed Fund Shares

(1) The Exchange will consider listing Managed Fund Shares that meet the criteria of Rule 803(n).

(2) Applicability. Rule 803(n) is applicable only to Managed Fund Shares. Except to the extent inconsistent with Rule 803(n), or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Managed Fund Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

(A) The Exchange will file separate proposals under Section 19(b) of the Act before the listing of Managed Fund Shares.

(B) Transactions in Managed Fund Shares will occur throughout the Exchange's trading hours.

(C) Minimum Price Variance. The minimum price variation for quoting and entry of orders in Managed Fund Shares is \$0.01.

(D) Surveillance Procedures. The Exchange will implement written surveillance procedures for Managed Fund Shares.

(E) Creation and Redemption. For Managed Fund Shares based on an international or global portfolio, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the series of Managed Fund Shares must state that such series must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

(3) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(A) Managed Fund Share. The term "Managed Fund Share" means a security that (a) represents an interest in a registered investment company ("Investment Company") organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value.

(B) Disclosed Portfolio. The term "Disclosed Portfolio" means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day.

(C) Intraday Indicative Value. The term "Intraday Indicative Value" is the estimated indicative value of a Managed Fund Share based on current information regarding the value of the securities and other assets in the Disclosed Portfolio.

(D) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Managed Fund Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Managed Fund Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the

Intraday Indicative Value; the Disclosed Portfolio; the amount of any cash distribution to holders of Managed Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Managed Fund Shares. A series of Managed Fund Shares may have more than one Reporting Authority, each having different functions.

(4) Initial and Continued Listing — Managed Fund Shares will be listed and traded on the Exchange subject to application of the following criteria:

(A) Initial Listing — Each series of Managed Fund Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria:

(I) For each series, the Exchange will establish a minimum number of Managed Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.

(II) The Exchange will obtain a representation from the issuer of each series of Managed Fund Shares that the net asset value per share for the series will be calculated daily and that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

(B) Continued Listing — Each series of Managed Fund Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria:

(I) Intraday Indicative Value. The Intraday Indicative Value for Managed Fund Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Fund Shares trade on the Exchange.

(II) Disclosed Portfolio.

a. The Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

b. The Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.

(C) Suspension of trading or removal. The Exchange will consider the suspension of trading in or removal from listing of a series of Managed Fund Shares under any of the following circumstances:

(I) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Fund Shares, there are fewer than 50 beneficial holders of the series of Managed Fund Shares for 30 or more consecutive trading days;

(II) if the value of the Intraday Indicative Value is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time;

(III) if the Investment Company issuing the Managed Fund Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to the Investment Company with respect to the series of Managed Fund Shares; or

(IV) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(D) Trading Halt. If the Intraday Indicative Value of a series of Managed Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value occurs. If the interruption to the dissemination of the Intraday Indicative Value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the net asset value or the Disclosed Portfolio with respect to a series of Managed Fund Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value or the Disclosed Portfolio is available to all market participants.

(E) Termination. Upon termination of an Investment Company, the Exchange requires that Managed Fund Shares issued in connection with such entity be removed from listing on the Exchange.

(F) Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus.

(5) Limitation of Liability. Neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any

current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Managed Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Managed Fund Shares; net asset value; or other information relating to the purchase, redemption, or trading of Managed Fund Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

(6) Disclosures. The provisions of this subparagraph apply only to series of Managed Fund Shares that are the subject of an order by the Securities and Exchange Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its members and member organizations regarding application of these provisions of this subparagraph to a particular series of Managed Fund Shares by means of an information circular prior to commencement of trading in such series.

The Exchange requires that members and member organizations provide to all purchasers of a series of Managed Fund Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series of Managed Fund Shares that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of Managed Fund Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of (the series of Managed Fund Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Fund Shares)."

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Managed Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule.

Upon request of a customer, a member organization shall also provide a prospectus for the particular series of Managed Fund Shares.

(7) If the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. Personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio.

(o) Unlisted Trading Privileges

(1) Applicability. The Exchange may determine to extend unlisted trading privileges ("UTP") to a NMS Stock that is listed on another national securities exchange. Any such security will be subject to all Exchange trading rules applicable to NMS Stocks, unless otherwise noted, including the Exchange's Rule 3000 Series. The Exchange will not list any securities. Therefore, the provisions of Rules 800 through 868 that permit the listing of securities will not be effective until the Exchange files a proposed rule change under Section 19(b)(2) under the Exchange Act to amend its rules to make any changes needed to comply with Rule 10A-3 under the Exchange Act and to incorporate additional qualitative listing criteria, and such proposed rule change is approved by the Commission. For purposes of this rule, the term NMS Stock shall have the meaning given such term by Rule 600 under Regulation NMS, and may include, but is not limited to, common stock, preferred stock and similar issues, shares or certificates of beneficial interest of trusts, notes, limited partnership interests, warrants, certificates of deposit for common stock, convertible debt securities, American Depositary Receipts (ADRs), contingent value rights ("CVRs"), Trust Shares, Trust Issued Receipts, Index Fund Shares, Equity Index-Linked Securities, Commodity-Linked Securities, Equity-Linked Notes, and Managed Fund Shares.

(2) Prior to the commencement of trading of CVRs on the Exchange, the Exchange will distribute a circular to its member organizations providing guidance regarding member organization compliance responsibilities (including suitability recommendations and account approval) when handling transactions in CVRs.

(3) The Exchange shall file with the Commission a Form 19b-4(e) with respect to any such security that is a "new derivative securities product" ("NDSP") as defined in Rule 19b-4(e) under the Exchange Act.

[2)] (4) Any NDSP traded on the Exchange pursuant to UTP shall be subject to the additional following rules:

(A) Information Circular. The Exchange shall distribute an information circular prior to the commencement of trading in such NDSP that generally includes the same information as the information circular provided by the listing exchange, including: (1) the special risks of trading the NDSP; (2) the Exchange's

rules that will apply to the [NSDP] NDSP, including the suitability rule; (3) information about the dissemination of value of the underlying assets or indexes; and (4) the risk of trading during the period from 9:00 a.m. to 9:30 a.m. and from 4:00 p.m. to 5:00 p.m. [information about trading and trading halts during the Pre Market and Post Market Sessions] due to the lack of calculation or dissemination of the underlying index value, the Intraday Indicative Value, the Indicative Optimized Portfolio Value or other comparable estimate of the value of a share of the [NSDP] NDSP.

(B) Prospectus Delivery/Product Description. Members and member organizations are subject to the prospectus delivery requirements under the Securities Act of 1933, unless the NDSP is the subject of an order by the Securities and Exchange Commission exempting the product from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and the product is not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange shall inform its members and member organizations regarding the application of the provisions of this subparagraph to such NDSPs by means of an information circular.

The Exchange requires that members and member organizations provide to all purchasers of such NDSPs a written description of the terms and characteristics of those securities, in a form approved by the Exchange or prepared by the open-ended management company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, the members and member organizations shall include a written description with any sales material relating to such NDSPs that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to such NDSPs as an investment vehicle must include a statement substantially in the following form: "A circular describing the terms and characteristics of {such NDSPs} has been prepared by the {open-ended management investment company name} and is available from your broker. It is recommended that you obtain and review such circular before purchasing {such NDSPs}."

A member or member organization carrying an omnibus account for a non-member is required to inform such non-member that execution of an order to purchase such NDSPs for such omnibus account will be deemed to constitute an agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to [the] members and member organizations under this rule.

Upon request of a customer, a member or member organization shall also provide a prospectus for such NDSPs.

[(C) Market Maker Restrictions. The following restrictions shall apply to each XLE Participant registered as a Market Maker ("Restricted Market Maker")

in an NDSP that derives its value from one or more currencies, commodities, or derivatives based on one or more currencies or commodities, or is based on a basket or index comprised of currencies or commodities (collectively, "Reference Assets"):

(i) A Restricted Market Maker in an NDSP is prohibited from acting or registering as a market maker in any Reference Asset of that NDSP or any derivative instrument based on a Reference Asset of that NDSP (collectively, with Reference Assets, "Related Instruments").

(ii) A Restricted Market Maker shall, in a manner prescribed by Phlx, file with Phlx and keep current a list identifying any accounts ("Related Instrument Trading Accounts") for which Related Instruments are traded:

- (a) in which the Restricted Market Maker holds an interest;
- (b) over which it has investment discretion; or
- (c) in which it shares in the profits and/or losses.

A Restricted Market Maker may not have an interest in, exercise investment discretion over, or share in the profits and/or losses of a Related Instrument Trading Account which has not been reported to Phlx as required by this Rule.

(iii) In addition to the existing obligations under Phlx rules regarding the production of books and records, a Restricted Market Maker shall, upon request by Phlx, make available to Phlx any books, records, or other information pertaining to any Related Instrument Trading Account or to the account of any registered or non-registered employee affiliated with the Restricted Market Maker for which Related Instruments are traded.

(iv) A Restricted Market Maker shall not use any material nonpublic information in connection with trading a Related Instrument.]

[(D)] (C) Comprehensive Surveillance Sharing Agreements. [Phlx] The Exchange shall enter into a comprehensive surveillance sharing agreement ("CSSA") with markets trading components of the index or portfolio on which the NDSP is based to the same extent as the listing exchange's rules require the listing exchange to enter into a CSSA with such markets.

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Rule 985. Affiliation and Ownership Restrictions

(a) – (b) No change.

(c) (1) The NASDAQ OMX Group, Inc., which owns NASDAQ Options Services, LLC and the Exchange, shall establish and maintain procedures and internal controls reasonably designed to ensure that NASDAQ Options Services, LLC does not develop or implement changes to its system on the basis of non-public information regarding planned changes to the Exchange's systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members and member organizations in connection with the provision of inbound routing to the Exchange.

(2) The NASDAQ OMX Group, Inc., which owns Nasdaq Execution Services, LLC and the Exchange, shall establish and maintain procedures and internal controls reasonably designed to ensure that Nasdaq Execution Services, LLC does not develop or implement changes to its system on the basis of non-public information regarding planned changes to the Exchange's systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members and member organizations in connection with the provision of inbound routing to the Exchange.

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3000. NASDAQ OMX PSX

3100. Trading Halts on PSX

(a) Authority to Initiate Trading Halts or Pauses

In circumstances in which the Exchange deems it necessary to protect investors and the public interest, and pursuant to the procedures set forth in paragraph (c):

(1) The Exchange may halt trading on PSX of a security listed on another national securities exchange: (A) during a trading halt imposed by such exchange to permit the dissemination of material news; or (B) when such exchange imposes a trading halt in that security because of an order imbalance or influx ("operational trading halt"). In the event that the Exchange initiates a trading halt based on another exchange's operational trading halt, PSX Participants may commence order entry and trading at any time following initiation of the halt, without regard to procedures for resuming trading set forth in paragraph (c);

(2) The Exchange may halt trading in an index warrant on PSX whenever Exchange staff shall conclude that such action is appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that may be considered are the following:

(A) trading has been halted or suspended in underlying stocks whose weighted value represents 20% or more of the index value;

(B) the current calculation of the index derived from the current market prices of the stocks is not available;

(C) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; or

(3) The Exchange shall halt trading in Derivative Securities Products (as defined in Rule 3100(b)(4)(A)) for which a net asset value ("NAV") (and in the case of Managed Fund Shares or actively managed exchange-traded funds, a Disclosed Portfolio, as defined in Rule 803(n)) is disseminated if the Exchange becomes aware that the NAV (or, if applicable, the Disclosed Portfolio) is not being disseminated to all market participants at the same time. The Exchange will maintain the trading halt until such time as trading resumes in the listing market.

(4) If a primary listing market issues an individual stock trading pause in any of the Circuit Breaker Securities, as defined herein, the Exchange will pause trading in that security until trading has resumed on the primary listing market. If, however, trading has not resumed on the primary listing market and ten minutes have passed since the individual stock trading pause message has been received from the responsible single plan processor, the Exchange may resume trading in such stock. The provisions of this paragraph (a)(4) shall be in effect during a pilot set to end on December 10, 2010. During the pilot, the term "Circuit Breaker Securities" shall mean the securities included in the S&P 500[®] Index.

(b) Trading Halts for Trading of Certain Derivative Securities Products on PSX Pursuant to Unlisted Trading Privileges

(1) During Pre-Market Session. If a Derivative Securities Product begins trading on PSX in the Pre-Market Session and subsequently a temporary interruption occurs in the calculation or wide dissemination of an applicable Required Value, PSX may continue to trade the Derivative Securities Product for the remainder of the Pre-Market Session.

(2) During Regular Market Session. During the Regular Market Session, if a temporary interruption occurs in the calculation or wide dissemination of an applicable Required Value, and the listing market halts trading in the Derivative Securities Product, the Exchange, upon notification by the listing market of a halt due to such temporary interruption, also shall immediately halt trading in the Derivative Securities Product on PSX.

(3) Post-Market Session and Next Trading Day.

(A) If an applicable Required Value continues not to be calculated or widely disseminated after the close of the Regular Market Session, PSX may trade the Derivative Securities Product in the Post-Market Session only if the listing market traded the Derivative Securities Product until the close of its regular trading session without a halt.

(B) If an applicable Required Value continues not to be calculated or widely disseminated as of the beginning of the Pre-Market Session on the next trading day, PSX shall not commence trading of the Derivative Securities Product in the Pre-Market Session that day. If an interruption in the calculation or wide dissemination of an applicable Required Value continues, PSX may resume trading in the Derivative Securities Product only if calculation and wide dissemination of the applicable Required Value resumes or trading in the Derivative Securities Product resumes in the listing market.

(4) Definitions. For purposes of this Rule:

(A) "Derivative Securities Product" means a series of Trust Shares, Index Fund Shares, Managed Fund Shares or Trust Issued Receipts (as defined in Rule 803), a series of Commodity-Related Securities (as defined in Rule 3230), securities representing interests in unit investment trusts or investment companies, or any other derivative security traded on PSX.

(B) "Pre-Market Session" means the trading session that begins at 9:00 a.m. and continues until 9:30 a.m.

(C) "Post-Market Session" means the trading session that begins at 4:00 p.m. or 4:15 p.m., and that continues until 5:00 p.m.

(D) "Regular Market Session" means the trading session from 9:30 a.m. until 4:00 p.m. or 4:15 p.m.

(E) "Required Value" shall mean (i) the value of any index or any commodity-related value underlying a Derivative Securities Product, (ii) the indicative optimized portfolio value, intraday indicative value, or other comparable estimate of the value of a share of a Derivative Securities Product updated regularly during the trading day, (iii) a net asset value in the case of a Derivative Securities Product for which a net asset value is disseminated, and (iv) a "disclosed portfolio" in the case of a Derivative Securities Product that is a series of managed fund shares or actively managed exchange-traded funds for which a disclosed portfolio is disseminated.

(c) Procedure for Initiating a Trading Halt

(1) Should the Exchange determine that a basis exists under Rule 3100 for initiating a trading halt, the commencement of the trading halt will be effective at the time specified by the Exchange in a notice posted on a publicly available Exchange website. In addition, the Exchange shall disseminate notice of the commencement of a trading halt through major wire services.

(2) Trading in a halted security shall resume at the time specified by the Exchange in a notice posted on a publicly available Exchange website. In addition, the Exchange shall disseminate notice of the resumption of trading through major wire services.

(3) A trading halt initiated under Rule 3100(a)(3) or Rule 3100 shall be terminated when the Exchange releases the security for trading, at a time announced to market participants in advance by the Exchange.

3200. Requirements for PSX Participants

3201. Scope

Unless otherwise specified, the rules set forth in this 3200 Series apply only to the trading of System Securities via PSX.

3202. Application of Other Rules of the Exchange

The following Rules of the Exchange shall be applicable to market participants trading on PSX. In applying such rules to PSX, any references to XLE shall be construed as references to PSX.

The Certificate of Incorporation of the Exchange

The By-Laws of the Exchange

Rule 1. Definitions

Rule 50. Failure to Pay Dues, Fees and Other Charges

Rule 98. Emergency Committee

Rule 103. Dealings on the Exchange – Securities

Rule 112. Bids and Offers – “When Issued”

Rule 128. Price and Execution Binding

Rule 133. Trading Halts Due to Extraordinary Market Volatility

Rule 274. Payment on Delivery – Collect on Delivery

Rule 279. Book-Entry Settlement

Rule 431. Ex-dividend, Ex-rights

Rule 432. Ex-warrants

Rule 433. Buyer Entitled to Dividend, etc.

Rule 434. Claims for Dividend, etc.

Rule 451. Taking or Supplying Securities Named in Order

Rule 452. Limitations on Members’ Trading Because of Customers’ Orders

Rule 453. Successive Transactions by Members

Rule 455. Short Sales

Rule 600. Registration

Rule 601. Office, Other Than Main Offices

Rule 602. Status Verification

Rule 603. Control of Offices

Rule 604. Registration and Termination of Registered Persons

Rule 605. Advertisements, Market Letters, Research Reports and Sales Literature

- Rule 607. Covered Sales Fee (paragraph 1 only)
- Rule 610. Notification of Changes in Business Operations
- Rule 623. Fingerprinting
- Rule 625. Training
- Rule 640. Continuing Education for Registered Persons
- Rule 651. Exchange's Costs of Defending Legal Proceedings
- Rule 652. Limitation of Exchange Liability and Reimbursement of Certain Expenses (paragraphs (b), (c), (d), and (e) only)
- Rule 703. Financial Responsibility and Reporting
- Rule 704. Assignment of Interest of Partner
- Rule 705. Members Must Carry
- Rule 707. Conduct Inconsistent with Just and Equitable Principles of Trade
- Rule 708. Acts Detrimental to the Interest or Welfare of the Exchange
- Rule 712. Independent Audit
- Rule 721. Proper and Adequate Margin
- Rule 722. Miscellaneous Securities Margin Accounts
- Rule 723. Prohibition on Free-Riding in Cash Accounts
- Rule 741. Customers' Securities
- Rule 742. Restrictions on Pledge of Customers' Securities
- Rule 745. Partial Payments
- Rule 746. Diligence as to Accounts
- Rule 747. Approval of Accounts
- Rule 748. Supervision
- Rule 749. Transactions for Employees of Exchange, etc.
- Rule 750. Speculative Transactions for Employees of Certain Employers
- Rule 751. Accounts of Employees of Member or Participant Organizations
- Rule 752. Statements to Be Sent to Customers
- Rule 753. Notwithstanding Power of Attorney
- Rule 754. Employees' Discretion as to Customers' Accounts
- Rule 756. Accounts of General Partners
- Rule 757. Anti-Money Laundering Compliance Program
- Rule 760. Maintenance, Retention and Furnishing of Books, Records and Other Information
- Rule 761. Supervisory Procedures Relating to ITSFEA and to Prevention of Misuse of Material Nonpublic Information
- Rule 762. Telemarketing
- Rule 763. Recommendations to Customers (Suitability)
- Rule 764. Best Execution and Interpositioning
- Rule 771. Excessive Trading of Members
- Rule 772. Trading for Joint Account
- Rule 773. Participation in Joint Accounts
- Rule 777. Guarantees Not Permitted
- Rule 782. Manipulative Operations
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- Rule 784. Report of Options
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Rule 792.	<u>Control of Voting Stock</u>
Rule 793.	<u>Affiliations – Dual or Multiple</u>
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Rule 796.	<u>Underwriting of Securities by Member Organizations</u>
Rule 797.	<u>Loans to Officers and Directors</u>
Rule 900.1.	<u>General Powers and Duties of Membership Department</u>
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3210. Registration and Other Requirements

3211. PSX Participant Registration

(a) Participation in PSX requires current registration with the Exchange. Such registration shall be conditioned upon the PSX Participant's initial and continuing compliance with the following requirements:

- (1) execution of applicable agreements with the Exchange;

(2) membership in, or access arrangement with a participant of, a clearing agency registered with the Commission which maintains facilities through which PSX compared trades may be settled;

(3) compliance with all applicable rules and operating procedures of the Exchange and the Commission in the use of the System;

(4) maintenance of the physical security of the equipment located on the premises of the PSX Participant to prevent the improper use or access to Exchange systems, including unauthorized entry of information into PSX;

(5) acceptance and settlement of each PSX trade that PSX identifies as having been effected by such PSX Participant, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified PSX trade by the clearing member on the regularly scheduled settlement date; and

(6) input of accurate information into the System, including, but not limited to, whether the member organization acted in a principal, agent, or riskless principal capacity.

A member organization's registration shall become effective upon receipt by the member organization of notice of an approval of registration by the Exchange. The registration required hereunder will apply solely to the qualification of a Participant to participate in the System. Registration will qualify a Participant to trade all System Securities.

(b) Each PSX Participant shall be under a continuing obligation to inform the Exchange of noncompliance with any of the registration requirements set forth above.

(c) The Exchange may impose upon any PSX Participant such temporary restrictions upon the automated entry or updating of orders as the Exchange may determine to be necessary to protect the integrity of the Exchange's systems. For example, such temporary restrictions may be necessary to address a system problem at a particular PSX Participant or at the Exchange, or an unexpected period of extremely high message traffic. The scope of any such restrictions shall be communicated to the affected PSX Participant in writing.

(d) Sponsored Participants. A Sponsored Participant may obtain authorized access to PSX only if such access is authorized in advance by one or more member organizations as follows:

(1) Sponsored Participants must enter into and maintain customer agreements with one or more Sponsoring Member Organizations establishing proper relationship(s) and account(s) through which the Sponsored Participant may trade on PSX. Such customer agreement(s) must incorporate the Sponsorship Provisions set forth in paragraph (2) below.

(2) For a Sponsored Participant to obtain and maintain authorized access to PSX, a Sponsored Participant and its Sponsoring Member Organization must agree in writing to the following Sponsorship Provisions:

(A) Sponsored Participant and its Sponsoring Member Organization must have entered into and maintained a User Agreement with the Exchange. The Sponsoring Member Organization must designate the Sponsored Participant by name in its User Agreement as such.

(B) Sponsoring Member Organization acknowledges and agrees that:

(i) All orders entered by the Sponsored Participants and any person acting on behalf of or in the name of such Sponsored Participant and any executions occurring as a result of such orders are binding in all respects on the Sponsoring Member Organization; and

(ii) Sponsoring Member Organization is responsible for any and all actions taken by such Sponsored Participant and any person acting on behalf of or in the name of such Sponsored Participant.

(C) Sponsoring Member Organization shall comply with the Exchange's Certificate of Incorporation, Bylaws, Rules and procedures with regard to PSX, and Sponsored Participant shall comply with the Exchange's Certificate of Incorporation, Bylaws, Rules and procedures with regard to PSX, as if Sponsored Participant were a member organization.

(D) Sponsored Participant shall maintain, keep current and provide to the Sponsoring Member Organization a list of individuals authorized to obtain access to PSX on behalf of the Sponsored Participant.

(E) Sponsored Participant shall familiarize its authorized individuals with all of the Sponsored Participant's obligations under this Rule and will assure that they receive appropriate training prior to any use or access to PSX.

(F) Sponsored Participant may not permit anyone other than authorized individuals to use or obtain access to PSX.

(G) Sponsored Participant shall take reasonable security precautions to prevent unauthorized use or access to PSX, including unauthorized entry of information into PSX, or the information and data made available therein. Sponsored Participant understands and agrees that Sponsored Participant is responsible for any and all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of authorized individuals, and for the trading and other consequences thereof.

(H) Sponsored Participant acknowledges its responsibility to establish adequate procedures and controls that permit it to effectively monitor its employees', agents', and customers' use and access to PSX for compliance with the terms of this agreement.

(I) Sponsored Participant shall pay when due all amounts, if any, payable to Sponsoring Member Organization, PSX, or any other third parties that arise from the Sponsored Participant's access to and use of PSX. Such amounts include, but are not limited to applicable exchange and regulatory fees.

(3) The Sponsoring Member Organization must provide the Exchange with a Notice of Consent acknowledging its responsibility for the orders, executions and actions of its Sponsored Participant at issue.

3212. Reserved

3213. Orders and Locked and Crossed Markets

(a) The minimum increment for orders of \$1.00 or above in all System Securities shall be \$0.01. The minimum increment for orders in System Securities priced below \$1.00 shall be \$0.0001.

(b) Firm Orders. All orders to buy and sell entered into the System by PSX Participants are firm and automatically executable for their displayed and non-displayed size in the System.

(c) Locked and Crossed Markets.

(1) Locked and Cross Markets within the System. Any orders that are entered into the System that would lock or cross another order in the System will be executed by the System. This processing, set forth in Rule 3307, ensures that no locked or crossed markets can exist within the System and that price improvement is allocated fairly.

(2) Inter-market Locked and Crossed Markets. The provisions of this subsection (c)(2) apply to the trading of securities governed by Regulation NMS.

(A) Definitions. For purposes of this Rule, the following definitions shall apply:

(i) The terms automated quotation, effective national market system plan, intermarket sweep order, manual quotation, NMS stock, protected quotation, regular trading hours, and trading center shall have the meanings set forth in Rule 600(b) of Regulation NMS under the Securities Exchange Act of 1934.

(ii) The term crossing quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that is higher than

the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that is lower than the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

(iii) The term locking quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that equals the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that equals the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

(B) Prohibition. Except for quotations that fall within the provisions of paragraph (D) of this Rule, Exchange member organizations shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying any quotations that lock or cross a protected quotation, and any manual quotations that lock or cross a quotation previously disseminated pursuant to an effective national market system plan.

(C) Manual quotations. If an Exchange member organization displays a manual quotation that locks or crosses a quotation previously disseminated pursuant to an effective national market system plan, such member organization shall promptly either withdraw the manual quotation or route an intermarket sweep order to execute against the full displayed size of the locked or crossed quotation.

(D) Exceptions.

(i) The locking or crossing quotation was displayed at a time when the trading center displaying the locked or crossed quotation was experiencing a failure, material delay, or malfunction of its systems or equipment.

(ii) The locking or crossing quotation was displayed at a time when a protected bid was higher than a protected offer in the NMS stock.

(iii) The locking or crossing quotation was an automated quotation, and the Exchange member organization displaying such automated quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of any locked or crossed protected quotation.

(iv) The locking or crossing quotation was a manual quotation that locked or crossed another manual quotation, and the Exchange member organization displaying the locking or crossing manual quotation

simultaneously routed an intermarket sweep order to execute against the full displayed size of the locked or crossed manual quotation.

3214. Reserved

3215. Reserved

3216. Reports

A PSX Participant shall make such reports to the Exchange as may be prescribed from time to time by the Exchange.

3217. Normal Business Hours

The System operates from 9:00 a.m. to 5:00 p.m. Eastern Time on each business day, unless modified by the Exchange.

3218. Clearance and Settlement

(a) All transactions through the facilities of PSX shall be cleared and settled through a registered clearing agency using a continuous net settlement system. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another member organization that clears trades through such an agency.

(b) Notwithstanding paragraph (a), transactions may be settled "ex-clearing" provided that both parties to the transaction agree.

3219. Reserved

3220. Reserved

3221. Suspension and Termination of Order Entry

The Exchange may, pursuant to the procedures set forth in Disciplinary Rules of the Exchange (Rules 960.1 through 960.12), suspend, condition, limit, prohibit or terminate the authority of an PSX Participant to enter orders in one or more authorized securities for violations of applicable requirements or prohibitions.

3222. Termination of PSX Service

The Exchange may, upon notice, terminate PSX service in the event that a PSX Participant fails to qualify under specified standards of eligibility or fails to pay promptly for services rendered by PSX.

3223. Alternative Trading Systems

(a) The Exchange may provide a means to permit alternative trading systems ("ATs"), as such term is defined in Regulation ATS, and electronic communications networks ("ECNs"), as such term is defined in SEC Rule 600,

(1) to comply with SEC Rule 301(b)(3);

(2) to comply with the terms of the ECN display alternatives provided for in SEC Rule 602(b)(5)(ii)(A) and (B) ("ECN display alternatives"); or

(3) to provide orders to PSX voluntarily.

In providing any such means, the Exchange shall establish a mechanism that permits the ATS or ECN to display the best prices and sizes of orders entered into the ATS or ECN by subscribers of the ATS or ECN, if the ECN or ATS so chooses or is required by SEC Rule 301(b)(3) to display a subscriber's order in PSX, and allows any Exchange member organization the electronic ability to effect a transaction with such priced orders that is equivalent to the ability to effect a transaction with other orders displayed by PSX. Orders displayed by ECNs or ATs shall be displayed without attribution.

(b) An ATS or ECN that seeks to utilize PSX to comply with SEC Rule 301(b)(3) or the ECN display alternatives, or to provide orders to the Exchange voluntarily shall:

(1) demonstrate to the Exchange that it is in compliance with Regulation ATS or that it qualifies as an ECN meeting the definition in the SEC Rule 600;

(2) be registered as a member organization;

(3) enter into and comply with the terms of applicable agreements with the Exchange;

(4) agree to provide for the Exchange's dissemination in the data made available to vendors the prices and sizes of subscriber orders of the ATS or ECN, if the ATS or ECN so chooses or is required by SEC Rule 301(b)(3) to display a subscriber's order in PSX, at the highest buy price and the lowest sell price for each security entered in and widely disseminated by the ATS or ECN; and prior to entering such prices and sizes, register with the Exchange as an ATS or ECN; and

(5) provide an automatic execution of any quote or order entered into the System by the ATS or ECN.

3224. Reserved

3225. Obligation to Provide Information

(a) An Exchange member organization operating in or participating in PSX shall provide information orally, in writing, or electronically (if such information is, or is required to be, maintained in electronic form) to Exchange staff when staff makes an oral, written, or electronically communicated request for information relating to a specific Exchange rule, SEC rule, or provision of a joint industry plan (e.g., UTP, CTA, and CQA) (as promulgated and amended from time-to-time) that the Exchange is responsible for administering or to other duties and/or obligations imposed on the Exchange; this shall include, but not be limited to, information relating to:

(A) a locked or crossed market; or

(B) trading activity, rumors, or information that a member or member organization may possess that may assist in determining whether there is a basis to initiate a trading halt, pursuant to Rule 3100; or

(C) a clearly erroneous transaction, pursuant to Rule 3312; or

(D) trade-throughs; or

(E) information relating to an equipment failure.

(b) A failure to comply in a timely, truthful, and/or complete manner with a request for information made pursuant to this rule may be deemed conduct inconsistent with just and equitable principles of trade.

3226. Limitation of Liability

(a) Except as provided for in paragraph (b) below, the Exchange and its affiliates shall not be liable for any losses, damages, or other claims arising out of PSX or its use. Any losses, damages, or other claims, related to a failure of PSX to deliver, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, message, or other data entered into, or created by, PSX shall be absorbed by the member organization, or the member organization sponsoring the customer, that entered the order, message, or other data into PSX.

(b) The Exchange, subject to the express limits set forth below, may compensate users of PSX for losses directly resulting from the System's actual failure to correctly process an order, message, or other data, provided PSX has acknowledged receipt of the order, message, or data.

(1) For the aggregate of all claims made by all market participants related to the use of PSX during a single calendar month, the Exchange's liability shall not exceed the larger of \$500,000, or the amount of the recovery obtained by the Exchange under any applicable insurance policy.

(2) In the event all of the claims arising out of the use of PSX cannot be fully satisfied because in the aggregate they exceed the maximum amount of liability provided

for in this Rule, then the maximum amount will be proportionally allocated among all such claims arising during a single calendar month.

(3) All claims for compensation pursuant to this Rule shall be in writing and must be submitted no later than 12:00 p.m. ET on the next business day following the day on which the use of PSX gave rise to such claims. Nothing in this rule shall obligate the Exchange to seek recovery under any applicable insurance policy.

3227. Obligation to Honor System Trades

(a) If a PSX Participant, or clearing member acting on a Participant's behalf, is reported by PSX, or shown by the activity reports generated by PSX, as constituting a side of a System trade, such Participant, or clearing member acting on its behalf, shall honor such trade on the scheduled settlement date.

(b) The Exchange shall have no liability if a Participant, or a clearing member acting on the Participant's behalf, fails to satisfy the obligations in paragraph (a).

3228. Compliance with Rules and Registration Requirements

(a) Failure by a PSX Participant to comply with any of the rules or registration requirements applicable to PSX identified herein shall subject such Participant to censure, fine, suspension or revocation of its registration as a PSX Participant or any other fitting penalty under the Rules of the Exchange.

(b) (1) If a Participant fails to maintain a clearing relationship as required under paragraphs (a)(2) of Rule 3211, it shall be removed from PSX until such time as a clearing arrangement is reestablished.

(2) A Participant that is not in compliance with its obligations under paragraphs (a)(2) of Rule 3211 shall be notified when the Exchange exercises its authority under paragraph (b)(1) above.

(3) The authority and procedures contained in this paragraph (b) do not otherwise limit the Exchange's authority, contained in other provisions of the Rules of the Exchange, to enforce its rules or impose any fitting sanction.

3230. Trading in Commodity-Related Securities

(a) The Exchange will consider for trading pursuant to unlisted trading privileges on PSX a Commodity-Related Security that meets the criteria of this Rule. Unless otherwise noted, a Commodity-Related Security approved for trading under this rule is eligible for trading during all PSX market sessions if member organizations comply with Rule 3231 when accepting Commodity-Related Security orders for execution in the pre-market session or post-market session.

(b) Applicability. This Rule is applicable only to Commodity-Related Securities. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of all other Rules of the Exchange shall be applicable to the trading on PSX of such securities. Commodity-Related Securities are included within the definition of "security" or "securities" as such terms are used in Rules of the Exchange.

(c) Definitions. The following terms shall, unless the context otherwise requires, have the meaning herein specified:

(1) Commodity-Related Security. The term "Commodity-Related Security" means a security that is issued by a trust, partnership, commodity pool or similar entity that invests, directly or through another entity, in any combination of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, or the value of which is determined by the value of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives.

(2) Commodity. The term "commodity" is defined in Section 1(a)(4) of the Commodity Exchange Act.

(d) The Exchange requires that members and member organizations provide all purchasers of a newly issued Commodity-Related Security a prospectus for such Commodity-Related Security.

3231. Customer Disclosures

No member organization may accept an order from a customer for execution in the Pre-Market Session or Post-Market Session without disclosing to such customer that extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk. The absence of an updated underlying index value or intraday indicative value is an additional trading risk in extended hours for Derivative Securities Products.

The disclosures required pursuant to this rule may take the following form or such other form as provides substantially similar information:

(1) Risk of Lower Liquidity. Liquidity refers to the ability of market participants to buy and sell securities. Generally, the more orders that are available in a market, the greater the liquidity. Liquidity is important because with greater liquidity it is easier for investors to buy or sell securities, and as a result, investors are more likely to pay or receive a competitive price for securities purchased or sold. There may be lower liquidity in extended hours trading as compared to regular market hours. As a result, your order may only be partially executed, or not at all.

(2) Risk of Higher Volatility. Volatility refers to the changes in price that securities undergo when trading. Generally, the higher the volatility of a security, the greater its price swings. There may be greater volatility in extended hours trading than in regular market hours. As a result, your order may only be partially executed, or not at all, or you may receive an inferior price in extended hours trading than you would during regular market hours.

(3) Risk of Changing Prices. The prices of securities traded in extended hours trading may not reflect the prices either at the end of regular market hours, or upon the opening of the next morning. As a result, you may receive an inferior price in extended hours trading than you would during regular market hours.

(4) Risk of Unlinked Markets. Depending on the extended hours trading system or the time of day, the prices displayed on a particular extended hours system may not reflect the prices in other concurrently operating extended hours trading systems dealing in the same securities. Accordingly, you may receive an inferior price in one extended hours trading system than you would in another extended hours trading system.

(5) Risk of News Announcements. Normally, issuers make news announcements that may affect the price of their securities after regular market hours. Similarly, important financial information is frequently announced outside of regular market hours. In extended hours trading, these announcements may occur during trading, and if combined with lower liquidity and higher volatility, may cause an exaggerated and unsustainable effect on the price of a security.

(6) Risk of Wider Spreads. The spread refers to the difference in price between what you can buy a security for and what you can sell it for. Lower liquidity and higher volatility in extended hours trading may result in wider than normal spreads for a particular security.

(7) Risk of Lack of Calculation or Dissemination of Underlying Index Value or Intraday Indicative Value ("IIV"). For certain Derivative Securities Products, an updated underlying index value or IIV may not be calculated or publicly disseminated in extended trading hours. Since the underlying index value and IIV are not calculated or widely disseminated during the pre-market and post-market sessions an investor who is unable to calculate implied values for certain Derivative Securities Products in those sessions may be at a disadvantage to market professionals.

3300. Execution Services

3301. Definitions

The following definitions apply to the Rule 3200 and 3300 Series for the trading of securities on PSX.

(a) The term "PSX," or "System" shall mean the automated system for order execution and trade reporting owned and operated by the Exchange. The Exchange will operate PSX as an automated trading center for purposes of Rule 600(b)(4) of Regulation NMS. PSX comprises:

(1) an order execution service that enables Participants to automatically execute transactions in System Securities; and provides Participants with sufficient monitoring and updating capability to participate in an automated execution environment;

(2) a trade reporting service that submits "locked-in" trades for clearing to a registered clearing agency for clearance and settlement; transmits last-sale reports of transactions automatically to the National Trade Reporting System, if required, for dissemination to the public and industry; and provides participants with monitoring and risk management capabilities to facilitate participation in a "locked-in" trading environment; and

(3) a data feed(s) that can be used to display without attribution to PSX Participants all displayed Orders on both the bid and offer side of the market for all price levels then within the PSX Market.

(b) The term "System Securities" shall mean any NMS stock, as defined in SEC Rule 600.

(c) The term "PSX Participant" or "Participant" shall mean an entity that fulfills the obligations contained in Rule 3211 regarding participation in the System, and shall include:

(1) "Equities ECNs," which are member organizations that meet all of the requirements of Rule 3223, and that participate in the System with respect to one or more System Securities; and

(2) "Order Entry Firms," which are member organizations that are registered for the purposes of entering orders in System Securities into the System. This term shall also include any Electronic Communications Network or Alternative Trading System that fails to meet all of the requirements of Rule 3223.

(d) Reserved.

(e) The term "Order" shall mean a single order or multiple orders at the same price submitted to the System by a Participant that is eligible to submit such orders and shall include:

(1) "Displayed Orders," which are orders that are entered by a Participant that are designated for display (price and size) on an anonymous basis in the order display service of the System; and

(2) "Non-Displayed Orders," which are limit orders that are not displayed in the System, but nevertheless remain available for potential execution against all incoming orders until executed in full or cancelled.

(f) The term "Order Type" shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1) Reserved

(2) "Reserve Orders" are limit orders that have both a round-lot displayed size as well as an additional non-displayed share amount. Both the displayed and non-displayed portions of the Reserve Order are available for potential execution against incoming orders. If the round-lot displayed portion of a Reserve Order is reduced to less than a normal unit of trading, the System will replenish the display portion from reserve up to at least a single round-lot amount.

(3) "Limit Orders" are orders to buy or sell a stock at a specified price or better. A limit order is marketable when, for a limit order to buy, at the time it is entered into the System, the order is priced at the current inside offer or higher, or for a limit order to sell, at the time it is entered into the System, the order is priced at the inside bid or lower.

(4) "Pegged Orders" are orders that, after entry, have their price automatically adjusted by the System in response to changes in either the PSX inside bid or offer or bids or offers in the national market system, as appropriate. A Pegged Order can specify that its price will equal the inside quote on the same side of the market ("Primary Peg"), the opposite side of the market ("Market Peg"), or the midpoint of the national best bid and offer ("Midpoint Peg"). A Pegged Order may have a limit price beyond which the order shall not be executed. In addition, the Primary Peg and Market Peg Orders may also establish their pricing relative to the appropriate bids or offers by the selection of one or more offset amounts that will adjust the price of the order by the offset amount selected. A Midpoint Peg Order is priced based upon the national best bid and offer, excluding the effect that the Midpoint Peg Order itself has on the inside bid or inside offer. Midpoint Peg Orders will never be displayed. A Midpoint Peg Order may be executed in sub-pennies if necessary to obtain a midpoint price.

(5) "Minimum Quantity Orders" are orders that require that a specified minimum quantity of shares be obtained, or the order is cancelled. Minimum Quantity Orders may only be entered with a time-in-force designation of System Hours Immediate or Cancel.

(6) "Intermarket Sweep Orders" or "ISOs" are limit orders that are designated as ISOs in the manner prescribed by the Exchange and are executed within the System by Participants at multiple price levels without respect to Protected Quotations of other market centers within the meaning of Rule 600(b) of Regulation NMS under the Act. ISOs are immediately executable within the System pursuant to Rule 3307.

Simultaneously with the routing of an ISO to the System, one or more additional limit orders, as necessary, are routed by the entering party to execute against the full displayed size of any protected bid or offer (as defined in Rule 600(b) of Regulation NMS under the Act) in the case of a limit order to sell or buy with a price that is superior to the limit price of the limit order identified as an intermarket sweep order (as defined in Rule 600(b)

of Regulation NMS under the Act). These additional routed orders must be identified as intermarket sweep orders.

(8) "Price to Comply Orders" are orders that, if, at the time of entry, a Price to Comply Order would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) and displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers). The displayed and undisplayed prices of a Price to Comply order may be adjusted once or multiple times depending upon the method of order entry and changes to the prevailing NBBO.

(9) Reserved

(10) "Post-Only Orders" are orders that if, at the time of entry, would lock an order on the System, the order will be re-priced and displayed by the System to one minimum price increment (i.e., \$0.01 or \$0.0001) below the current low offer (for bids) or above the current best bid (for offers).

(g) The term "Order Size" shall mean the number of shares up to 999,999 shares associated with an Order and shall include:

(1) "normal unit of trading": the round lot size for the security.

(2) "mixed lot": an order that is for more than a normal unit of trading but not a multiple thereof.

(3) "odd-lot": an order that is for less than a normal unit of trading.

(h) The term "Time in Force" shall mean the period of time that the System will hold an order for potential execution, and shall include:

(1) "System Hours Immediate or Cancel" or "SIOC" shall mean, for orders so designated, that if after entry into the System the order (or a portion thereof) is not marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering Participant. SIOC Orders shall be available for entry and execution from 9:00 a.m. until 5:00 p.m. Eastern Time.

(2) "System Hours Day" or "SDAY" shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or the unexecuted portion thereof) shall remain available for potential display and/or execution from 9:00 a.m. until 5:00 p.m. Eastern Time on the day it was submitted unless cancelled by the entering party.

(3) Reserved

(4) "System Hours Expire Time" or "SHEX" shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or the unexecuted portion thereof) shall remain available for potential display and/or execution for the amount of time specified by the entering Participant (up to 5:00 p.m. on the day entered) unless canceled by the entering Participant. SHEX Orders shall be available for entry and execution from 9:00 a.m. until 5:00 p.m. Eastern Time.

(5) Reserved

(6) Reserved

(7) Reserved

(8) "Good-til-market close" or "GTMC" shall mean for orders so designated, that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until cancelled by the entering party, or until 4:00 p.m., after which it shall be returned to the entering party. GTMC orders shall be available for entry and potential execution from 9:00 a.m. and 4:00 p.m. Eastern Time. GTMC orders entered after 4:00 p.m. will be treated as SIOC orders.

(i) The term "System Book Feed" shall mean a data feed for System eligible securities.

3302. Opening Process

The System will be opened for order entry at 9:00 a.m. and will begin to process each order in accordance with its characteristics immediately. All trades executed prior to 9:30 a.m. shall be automatically appended with the ".T" modifier.

3303. Reserved

3304. Reserved

3305. Order Entry Parameters

(a) System Orders

(1) General— Only orders for NMS stocks may be entered and executed through PSX. PSX is the only venue on the Exchange for the entry and execution of orders in NMS stocks. A System order is an order that is entered into the System for display and/or execution as appropriate. Such orders are executable against marketable contra-side orders in the System.

(A) All System Orders shall indicate limit price and whether they are a buy, short sale, or long sale. System Orders can be designated as System Hours

Expire Time ("SHEX"), System Hours Day ("SDAY"), System Hours Immediate or Cancel ("SIOC"), or Good-til-Market Close ("GTMC").

(B) A System order may also be designated with one or more of the following designations: a Limit Order, a Reserve Order, a Pegged Order, a Displayed Order, a Non-Displayed Order, a Minimum Quantity Order, an Intermarket Sweep Order, a Price to Comply Order, or a Post-Only Order. In addition to such other designations as may be chosen by a Participant, all System orders must be entered with a Time-in-Force of System Hours Immediate or Cancel or designated as a Pegged Order, an Intermarket Sweep Order, a Price to Comply Order, or a Post-Only Order.

(C) Pegged Orders may be entered only between 9:30 a.m. and 4:00 p.m. Eastern Time.

(b) Regulation NMS—In connection with the trading of securities governed by Regulation NMS, Intermarket Sweep Orders shall be executed exclusively within the System and the entering Participants shall be responsible for compliance with the Regulation NMS Order Protection Rule and Locked and Crossed market rule with respect to such orders. All other orders must be entered with a Time in Force of System Hours Immediate or Cancel or designated as either a Pegged Order, a Price to Comply order or a Post-Only Order. Orders shall be processed in compliance with Regulation NMS by being priced by the System in a manner that avoids trading through protected quotations and avoids locked and crossed markets. The System will not route orders to other market centers.

3306. Entry and Display of Orders

(a) Entry of Orders—Participants can enter orders into the System, subject to the following requirements and conditions:

(1) Participants shall be permitted to transmit to the System multiple orders at a single as well as multiple price levels. Each order that is designated as a Reserve Order shall indicate the amount of Reserve Size.

(2) The System shall time-stamp an order, but the timestamp will not be used for purposes of determining the priority of the order in the System's order processing algorithm.

(3) Orders can be entered into the System (or previously entered orders cancelled) from 9:00 a.m. until 5:00 p.m. Eastern Time.

(b) Reserved

(c) Display of Orders—The System will display orders submitted to the System as follows:

(1) System Book Feed—orders resident in the System available for execution will be displayed via the System Book Feed.

(2) Best Priced Order Display—For each System Security, the aggregate size of all Orders at the best price to buy and sell resident in the System will be transmitted for display to the appropriate network processor, unless the aggregate size is less than one round lot in which case the aggregate size will be displayed in the System Book Feed but not be transmitted to a network processor.

(3) Exceptions—The following exceptions shall apply to the display parameters set forth in paragraphs (1) and (2) above:

(A) Reserve Size—Reserve Size shall not be displayed in the System, but shall be accessible as described in Rule 3307.

(B) Reserved

(C) Non-Displayed Orders—Non-Displayed Orders are not displayed in the System, and have lower priority within the System than an equally priced Displayed Order, regardless of size, and shall be executed pursuant to Rule 3307.

(4) In connection with the trading of securities governed by Regulation NMS, pursuant to Rule 600(b)(4) of Regulation NMS under the Act, the Exchange has implemented such systems, procedures, and rules as are necessary to render it capable of meeting the requirements for automated quotations, as defined in Rule 600(b)(3) of Regulation NMS under the Act; and immediately to identify its quotations as manual whenever it has reason to believe it is not capable of displaying automated quotations. The Exchange has adopted policies and procedures for notifying member organizations and other trading centers that it has reason to believe it is not capable of displaying automated quotations or, once manual, that it has restored the ability to display automated quotations and is preparing to identify its quotation as automated. In addition, the Exchange has adopted policies and procedures for responding to notices that it receives from other trading centers indicating that they have elected to use the "self-help" exception of Rule 611(b)(1) of Regulation NMS under the Act.

3307. Book Processing

(a) System orders shall be executed through the PSX Book Process set forth below:

(1) Execution Algorithm – Price/Display/Pro-Rata Allocation to Size—The System shall execute trading interest within the System in the following order:

(A) Price—Better priced trading interest will be executed ahead of inferior-priced trading interest;

(B) Display—Displayed Orders at a particular price with a size of at least one round lot will be executed ahead of Non-Displayed Orders, the reserve portion of Reserve Orders, and odd-lot orders at the same price;

(C) Pro-Rata Allocation to Size Among Displayed Orders with a Size of One Round Lot or More—As among equally priced Displayed Orders with a size of at least one round lot, the System will allocate round lot portions of incoming executable orders to displayed trading interest within the System pro rata based on the size of the Displayed Orders. Portions of an order that would be executed in a size other than a round lot if they were allocated on a pro rata basis will be allocated for execution against available displayed trading interest on the basis of a random function that assigns probability of execution based on the size of displayed interest.

Example:

Displayed orders to buy at 10 reside on the PSX book with sizes of 6,000 (Participant A) and 4,000 (Participant B).

Incoming order to sell 1,100 at 10 comes into the System.

The System allocates 600 shares of the incoming order to Participant A and 400 shares of the incoming order to Participant B.

The remaining 100 shares of the incoming order are allocated on the basis of a random function that assigns a 60% probability of executing the 100 shares to Participant A and a 40% probability to Participant B.

(D) Displayed Odd-Lot Orders—As among equally priced Displayed Orders with a size of less than one round lot, the System will allocate incoming orders based on the size of the Displayed Orders, but not in pro rata fashion. Thus, a larger odd-lot order would be filled before a smaller odd-lot order. If there are two or more odd lot orders of equal size, the System will determine the order of execution on the basis of a random function that assigns each order an equal probability of execution.

(E) Pro-Rata Allocation to Size Among Non-Displayed Interest with a Size of One Round Lot or More—As among equally priced Non-Displayed Orders and the reserve portion of Reserve Orders (collectively, “Non-Displayed Interest”) with a size of at least one round lot, the System will allocate round lot portions of incoming executable orders to Non-Displayed Interest within the System pro rata based on the size of Non-Displayed Interest. Portions of an order that would be executed in a size other than a round lot if they were allocated on a pro rata basis will be allocated for execution against available Non-Displayed Interest on the basis of a random function that assigns probability of execution based on the size of Non-Displayed Interest.

(F) Non-Displayed Odd-Lot Orders—As among equally priced Non-Displayed Interest with a size of less than one round lot, the System will allocate incoming orders based on the size of the Non-Displayed Interest, but not in pro

rata fashion. Thus, a larger odd-lot order would be filled before a smaller odd-lot order. If there are two or more odd lot orders of equal size, the System will determine the order of execution on the basis of a random function that assigns each order an equal probability of execution.

(2) Decrementation—Upon execution, an order shall be reduced by an amount equal to the size of that execution.

(3) Price Improvement—Any potential price improvement resulting from an execution in the System shall accrue to the taker of liquidity.

Example:

Buy order resides on book at 10.

Incoming order to sell priced at 9 comes into the System

Order executes at 10 (seller get \$1 price improvement)

3308. Reserved

3309. Trade Reporting.

Executions occurring as a result of orders matched on PSX shall be reported by the Exchange to an appropriate consolidated transaction reporting system. The System will identify trades executed pursuant to an exception to or exemption from Rule 611 of Regulation NMS 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) of Regulation NMS and the self-help exception of Rule 611(b)(1) of Regulation NMS, such trade shall be identified as executed pursuant to the intermarket sweep order exception. The Exchange shall promptly notify PSX Participants of all executions of their orders as soon as the Exchange is notified that such executions have taken place.

3310. Anonymity

(a) Transactions executed in the System shall be cleared and settled anonymously. The transaction reports produced by the System will indicate the details of the transactions, and shall not reveal contra party identities.

(b) The Exchange shall reveal a Participant's identity in the following circumstances:

(1) when a registered clearing agency ceases to act for a Participant, or the Participant's clearing firm, and the registered clearing agency determines not to guarantee the settlement of the Participant's trades;

(2) for regulatory purposes or to comply with an order of an arbitrator or court;

(3) if both Participants to the transaction consent;

(4) Unless otherwise instructed by a member organization, the Exchange will reveal to a member organization, no later than the end of the day on the date an anonymous trade was executed, when the member organization's order has been decremented by another order submitted by that same member organization.

3311. Reserved

3312. Clearly Erroneous Transactions

(a) Authority to Review Transactions Pursuant to Complaint of Market Participant

(1) Definition. For purposes of this rule, the terms of a transaction executed on PSX are "clearly erroneous" when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security. A transaction made in clearly erroneous error and cancelled by both parties or determined by the Exchange to be clearly erroneous will be removed from the consolidated tape.

(2) Requests and Timing of Review. A member organization that receives an execution on an order that was submitted erroneously to PSX for its own or customer account may request that the Exchange review the transaction under this rule. An official of the Exchange shall review the transaction under dispute and determine whether it is clearly erroneous, with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Such requests for review shall be made in writing via electronic complaint or other means specified from time to time by the Exchange as announced in an Equity Trader Alert. A request for review shall include information concerning the time of the transaction(s), security symbol(s), number of shares, price(s), side (bought or sold), and factual basis for believing that the trade is clearly erroneous. Upon receipt of a timely filed request that satisfies the Numerical Guidelines set forth in paragraph (a)(2)(C) the counterparty to the trade shall be notified by the Exchange as soon as practicable, but generally within 30 minutes. An Exchange official may request additional supporting written information to aid in the resolution of the matter. If requested, each party to the transaction shall provide, within 30 minutes of the request, any supporting written information. Either party to the disputed trade may request the supporting written information provided by the other party on the matter.

(A) Filing Time Periods.

(i) Except as provided in paragraph (a)(2)(A)(ii) and (a)(2)(A)(iii), any member organization or person associated with a member organization that seeks to have a transaction reviewed pursuant to paragraph (a) hereof shall submit a written complaint to the Exchange within 30 minutes of the execution time.

(ii) Routed executions from other market centers will generally have an additional 30 minutes from receipt of their Participant's timely

filing, but no longer than 60 minutes from the time of the execution at issue, to file with the Exchange for review of transactions routed to PSX from that market center and executed on PSX.

(iii) In the case of an Outlier Transaction, an Exchange official may at its sole discretion, and on a case-by-case basis, consider requests received pursuant to this rule after 30 minutes, but not longer than 60 minutes after the transaction in question, depending on the facts and circumstances surrounding such request. "Outlier Transaction" means a transaction where:

A. the execution price of the security is greater than three times the current Numerical Guidelines set forth in paragraph (a)(2)(C), or

B. the execution price of the security in question is not within the Outlier Transaction parameters set forth in subparagraph (iii)(A) above, but the execution price breaches the 52-week high or 52-week low. In such cases, the Exchange may consider Additional Factors as outlined in paragraph (a)(2)(C)(3), in determining if the transaction qualifies for further review or if the Exchange shall decline to act.

(B) Once a party has applied to the Exchange for review and the transaction has been determined to be eligible for review, the transaction shall be reviewed and a determination rendered, unless (i) both parties to the transaction agree to withdraw the application for review prior to the time a decision is rendered by the Exchange official, or (ii) the complainant withdraws its application for review prior to the notification of counterparties. In the event that the Exchange official determines that the transaction in dispute is clearly erroneous, the official shall declare the transaction null and void. A determination shall be made generally within 30 minutes of receipt of the complaint, but in no case later than the start of Core Trading (9:30:00 to 4:00:00) on the following trading day. The parties shall be promptly notified of the determination.

(C) Determinations of a clearly erroneous execution will be based on all relevant factors on a case by case basis including, but not limited to, the following:

(i) Numerical Guidelines. A transaction executed may be found to be clearly erroneous only if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the Reference Price by an amount that equals or exceeds the Numerical Guidelines set forth below. The execution time of the transaction under review determines whether the guidance threshold is Core Session or Opening and Late Trading Session (which occurs before and after the Core Session). The Reference Price will be equal to the consolidated last sale immediately

prior to the execution(s) under review except for in Unusual Circumstances as described in subparagraph (C)(ii) below.

<u>Reference Price: Consolidated Last Sale</u>	<u>Core Trading Session Numerical Guidelines (Subject transaction's % difference from the Consolidated Last Sale):</u>	<u>Opening and Late Trading Session Numerical Guidelines (Subject transaction's % difference from the Consolidated Last Sale):</u>
<u>Greater than \$0.00 up to and including \$25.00</u>	<u>10%</u>	<u>20%</u>
<u>Greater than \$25.00 up to and including \$50.00</u>	<u>5%</u>	<u>10%</u>
<u>Greater than \$50.00</u>	<u>3%</u>	<u>6%</u>
<u>Filings involving five or more securities by the same participant may be considered a "Multi-Stock Event"</u>	<u>10%</u>	<u>10%</u>
<u>Leveraged ETF/ETN securities</u>	<u>Core Trading Session Numerical Guidelines multiplied by the leverage multiplier (i.e. 2x)</u>	<u>Core Trading Session Numerical Guidelines multiplied by the leverage multiplier (i.e. 2x)</u>

(ii) Unusual Circumstances and Joint Market Rulings. In Unusual Circumstances, which may include periods of extreme market volatility, sustained illiquidity, or widespread system issues, the Exchange may, in its discretion and with a view toward maintaining a fair and orderly market and the protection of investors and the public interest, use a Reference Price other than the consolidated last sale. Other Reference Prices may include the consolidated inside price, the consolidated opening price, the consolidated prior close, or the consolidated last sale prior to a series of executions. It may also be necessary to use a higher Numerical Guideline if, after market participants have been alerted to the existence of erroneous

activity, the price of the security returns toward its prior trading range but continues to trade beyond the price at which trades would normally be broken. The Exchange also may use a different Reference Price and/or higher Numerical Guideline in events that involve other markets in an effort to coordinate a Reference Price and/or Numerical Guideline that is consistent across markets. In order to achieve consistent results across markets, when a ruling is made in conjunction with another market center it may be determined that the number of affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest.

(iii) Additional Factors. An Exchange official may also consider additional factors to determine whether an execution is clearly erroneous, including but not limited to, system malfunctions or disruptions, volume and volatility for the security, derivative securities products that correspond to greater than 100% in the direction of a tracking index, news released for the security, whether trading in the security was recently halted/resumed, whether the security is an IPO, whether the security was subject to a stock-split, reorganization, or other corporate action, overall market conditions, Opening and Late Session executions, validity of the consolidated tapes trades and quotes, consideration of primary market indications, and executions inconsistent with the trading pattern in the stock. Each additional factor shall be considered with a view toward maintaining a fair and orderly market and the protection of investors and the public interest.

(iv) Numerical Guidelines Applicable to Volatile Market Opens. The Exchange may expand the Numerical Guidelines applicable to transactions occurring between 9:30 a.m. and 10:00 a.m. based on the disseminated value of the S & P 500 Futures at 9:15 a.m.

A. When the S & P 500 Futures are up or down 3%, or up to but not including 5% at 9:15 a.m. the Numerical Guidelines (calculated pursuant to paragraph (C)(1) above) are doubled for executions occurring between 9:30 a.m. and 10:00 am.

B. When the S & P 500 Futures are up or down 5% or greater at 9:15 a.m. the Numerical Guidelines (calculated pursuant to paragraph (C)(1) above) are tripled for executions occurring between 9:30 a.m. and 10:00 am.

(b) Procedures for Reviewing Transactions on the Exchange's Own Motion

In the event of (i) a disruption or malfunction in the use or operation of any quotation, execution, communication, or trade reporting system owned or operated by the Exchange and approved by the Commission, or (ii) extraordinary market conditions or other circumstances in

which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, the President of the Exchange or any designated officer of the Exchange or senior level employee ("Senior Official") may, on his or her own motion, review any transaction arising out of or reported through any such quotation, execution, communication, or trade reporting system. The Senior Official acting pursuant to this subsection will rely on the provisions of (a)(2)(C)(1), (a)(2)(C)(2) and (a)(2)(C)(3) of this rule to break. The Senior Official in extraordinary circumstances may use a lower Numerical Guideline for all trades if necessary to maintain a fair and orderly market, protect investors and the public interest. Absent extraordinary circumstances, any such action of the Senior Official shall be taken in a timely fashion, generally within 30 minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Senior Official must be taken by no later than the start of Core Trading on trading day following the date of execution(s) under review.

(c) Review by the Options Trade Review Committee ("OTRC")

(1) A member organization or person associated with a member organization may appeal a determination made under paragraph (a) to the OTRC. A member organization or person associated with a member organization may appeal a determination made under paragraph (b) to the OTRC unless the Senior Official making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. An appeal must be made in writing, and must be received by the Exchange within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed. Once a written appeal has been received, the counterparty to the trade that is the subject of the appeal will be notified of the appeal and both parties shall be able to submit any additional supporting written information up until the time the appeal is considered by the OTRC. Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal to the OTRC shall not operate as a stay of the determination being appealed, and the scope of the appeal shall be limited to trades which the person making the appeal is a party.

Once a party has appealed a determination to the OTRC, the determination shall be reviewed and a decision rendered, unless (i) both parties to the transaction agree to withdraw the appeal prior to the time a decision is rendered by the OTRC, or (ii) the party filing the appeal withdraws its appeal prior to the notification of counterparties. The OTRC panel shall review the facts and render a decision as soon as practicable, but generally on the same trading day as the execution(s) under review. On requests for appeal received between 3:00 ET and the close of trading in the Late Trading Session, a decision will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution under review. Upon consideration of the record, and after such hearings as it may in its discretion order, the OTRC, pursuant to the standards set forth in this rule, shall affirm, modify, reverse, or remand the determination.

(2) The panel shall consist of three or more members of the OTRC, provided that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a member organization whose revenues from market making activity exceed ten percent of its total revenues. In no case shall a OTRC Panel include a person affiliated with a party to the trade in question.

(3) The decision of the OTRC pursuant to an appeal, or a determination by an Exchange official that is not appealed, shall be final and binding upon all parties and shall constitute final action by the Exchange on the matter in issue. Any determination by an Exchange official pursuant to paragraph (a) or (b) or any decision by the OTRC pursuant to paragraph (c) shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

(d) Communications

(1) All materials submitted to the Exchange or the OTRC pursuant to this Rule shall be submitted in writing within the time parameters specified herein via the online complaint form available on the Exchange's website, facsimile, or such other telecommunications procedures as the Exchange may announce from time to time in a Equity Trader Alert. Materials shall be deemed received at the time indicated by the telecommunications equipment (e.g., facsimile machine or computer) receiving the materials. The Exchange, in its sole and absolute discretion, reserves the right to reject or accept any material that is not received within the time parameters specified herein. All times stated in this rule are Eastern Time.

(2) The Exchange shall provide affected parties with prompt notice of filings and determinations under this Rule via facsimile machine, electronic mail, telephone (including voicemail), press release, system status, web posting or any other method reasonably expected to provide rapid notice to many market participants. During periods of high volatility and large numbers of requests for clearly erroneous review, the Exchange may streamline the notification process to expedite the adjudicatory review in such manner as the Exchange may announce from time to time by Equity Trader Alert.

(e) Fees

(1) Filing Fees

No fee shall be assessed to a member organization for filing two or fewer unsuccessful clearly erroneous complaints pursuant to paragraph (a)(2) during a calendar month. A member organization shall be assessed a fee of \$250.00 for each additional unsuccessful complaint filed thereafter during the calendar month. An unsuccessful complaint is one in which the Exchange does not break any of the trades included in the complaint. Each security filed on is considered a separate complaint. In cases where the member organization files on multiple securities at the same time, the Exchange calculates the fee separately for each security depending upon whether the Exchange breaks any trades filed on by the member organization in that security. Adjustments or

voluntary breaks negotiated by the Exchange to trades executed at prices that meet the Numerical Guidelines set forth in (a)(2)(C)(1) count as breaks by the Exchange for purposes of this paragraph. A member organization for purposes of this paragraph (e)(1) is defined by each unique broker Web CRD Number. All market participant identifiers associated with that Web CRD Number shall be included when calculating the number of unsuccessful clearly erroneous complaints for that member organization during the calendar month. No fee pursuant to this paragraph (e)(1) shall be assessed for a complaint that is (A) successful, where the final decision by the Exchange (including after appeal, if any) is to break at least one of the trades filed on by the member organization, (B) not timely filed under the parameters in paragraph (a)(2)(A), (C) withdrawn by the complainant within five (5) minutes of filing and before the Exchange has performed any substantial work on the complaint, or (D) adjudicated by the Exchange on its own motion under Rule 3312(b).

(2) Appeal Fees

The party initiating an appeal shall be assessed a \$500.00 fee if the OTRC upholds the decision of the Exchange official.

(3) Fees Charged By Another Market Center

In instances where the Exchange, on behalf of a member organization, requests a determination by another market center that a transaction is clearly erroneous, the Exchange will pass any resulting charges through to the relevant member organization.

(f) Refusal to Abide by Rulings of an Exchange Official or the OTRC

It shall be considered conduct inconsistent with just and equitable principles of trade for any member organization to refuse to take any action that is necessary to effectuate a final decision of an Exchange official or the OTRC under this rule.

3400. Order Audit Trail System

3401. Definitions

For purposes of the Rule 3400 Series:

(a) "Bunched Order" shall mean two or more orders that are aggregated prior to execution.

(b) "Customer" shall mean a person other than a broker or dealer.

(c) "NASDAQ OMX PSX" or "PSX" shall mean the service provided by the Exchange that, among other things, provides for the automated execution and reporting of transactions in securities.

(d) "Electronic Communication Network" shall mean any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or over-the-counter market maker, and permits such orders to be executed in whole or in part, and as further defined in Rule 600 of SEC Regulation NMS.

(e) "Electronic Order" shall mean an order captured by a member organization in an electronic order-routing or execution system.

(f) "Index Arbitrage Trade" shall mean an arbitrage trading strategy involving the purchase or sale of a "basket" or group of securities in conjunction with the purchase or sale, or intended purchase or sale, of one or more cash-settled options or futures contracts on index stock groups, or options on any such futures contracts in an attempt to profit by the price difference, as further defined in New York Stock Exchange Rule 132B.

(g) "Intermarket sweep order" shall have the same meaning as contained in Rule 600 of SEC Regulation NMS.

(h) "Manual Order" shall mean an order that is captured by a member organization other than in an electronic order-routing or execution system.

(i) "Order" shall mean any oral, written, or electronic instruction to effect a transaction in an equity security listed on the Exchange or the NASDAQ Stock Market that is received by a member organization from another person for handling or execution, or that is originated by a department of a member organization for execution by the same or another broker or dealer that is a FINRA member or an Exchange member organization, other than any such instruction to effect a proprietary transaction originated by a trading desk in the ordinary course of a member organization's market making activities.

(j) "Order Audit Trail System" shall mean the automated system owned and operated by FINRA that is designed to capture order information in equity securities listed on the Exchange and the NASDAQ Stock Market reported by member organizations for integration with trade and quotation information to provide FINRA with an accurate time sequenced record of orders and transactions.

(k) "Program Trade" shall mean a trading strategy involving the related purchase or sale of a group of 15 or more securities having a total market value of \$1 million or more, as further defined in New York Stock Exchange Rule 132B.

(l) "Reporting Agent" shall mean a third party that enters into any agreement with a member organization pursuant to which the Reporting Agent agrees to fulfill such member organization's obligations under Rule 3405.

(m) "Reporting Member Organization" shall mean a member organization that receives or originates an order and has an obligation to record and report information under Rules 3404 and 3405. A member organization shall not be considered a Reporting Member Organization in connection with an order, if the following conditions are met:

(1) the member organization engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to a single receiving Reporting Member Organization;

(2) the member organization does not direct and does not maintain control over subsequent routing or execution by the receiving Reporting Member Organization;

(3) the receiving Reporting Member Organization records and reports all information required under Rules 3404 and 3405 with respect to the order; and

(4) the member organization has a written agreement with the receiving Reporting Member Organization specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of Rules 3404 and 3405.

(n) "Proprietary Trading Firm" shall mean an Exchange member organization that trades its own capital and that does not have customers, and that is not a FINRA member. The funds used by a Proprietary Trading firm must be exclusively firm funds and all trading must be in the firm's accounts. Traders must be owners of, employees of, or contractors to the firm.

3402. Applicability

(a) Unless otherwise indicated, the requirements of the Rule 3400 Series are in addition to the requirements contained elsewhere in the Rules of the Exchange.

(b) Unless otherwise indicated, the requirements of the Rule 3400 Series shall apply to all Exchange member organizations and to their associated persons.

(c) Unless otherwise indicated, the requirements of the Rule 3400 Series shall apply to all executed or unexecuted orders for equity securities listed on the Exchange or on the NASDAQ Stock Market.

3403. Synchronization of Member Organization Business Clocks

Each member organization shall synchronize its business clocks that are used for purposes of recording the date and time of any event that must be recorded pursuant to the rules of the Exchange, with reference to a time source as designated by the Exchange, and shall maintain the synchronization of such business clocks in conformity with such procedures as are prescribed by the Exchange.

3404. Recording of Order Information

With respect to orders for securities listed on the NASDAQ Stock Market or the Exchange, member organizations and persons associated with a member organization shall comply with the following rule:

(a) Procedures

(1) Subject to the terms and conditions contained in Rules 3402 through 3406, each Reporting Member Organization shall:

(A) immediately following receipt or origination of an order, record each item of information described in paragraph (b) of this Rule that applies to such order, and record any additional information described in paragraph (b) of this Rule that applies to such order immediately after such information is received or becomes available; and

(B) immediately following the transmission of an order to another broker or dealer that is a FINRA member or an Exchange member organization, or from one department to another within the same member organization, record each item of information described in paragraph (c) of this Rule that applies with respect to such transmission; and

(C) immediately following the modification, cancellation, or execution of an order, record each item of information described in paragraph (d) of this Rule that applies with respect to such modification, cancellation, or execution.

(2) Each required record of the time of an event shall be expressed in terms of hours, minutes, and seconds.

(3) Each Reporting Member Organization shall, by the end of each business day, record each item of information required to be recorded under this Rule in such electronic form as is prescribed by the Exchange from time to time.

(4) Maintaining and Preserving Records

(A) Each Reporting Member Organization shall maintain and preserve records of the information required to be recorded under this Rule for the period of time and accessibility specified in SEC Rule 17a-4(b).

(B) The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on "micrographic media" as defined in SEC Rule 17a-4(f)(1)(i) or by means of "electronic storage media" as defined in SEC Rule 17a-4(f)(1)(ii) that meet the conditions set forth in SEC Rule 17a-4(f) and be maintained and preserved for the required time in that form.

(b) Order Origination and Receipt

Unless otherwise indicated, the following order information must be recorded under this Rule when an order is received or originated. For purposes of this Rule, the order origination or receipt time is the time the order is received from the customer.

(1) an order identifier meeting such parameters as may be prescribed by the Exchange assigned to the order by the Reporting Member Organization that uniquely identifies the order for the date it was received;

(2) the identification symbol assigned by the Exchange to the security to which the order applies;

(3) the market participant symbol assigned by the Exchange to the Reporting Member Organization;

(4) the identification of any department or the identification number of any terminal where an order is received directly from a customer;

(5) where the order is originated by a Reporting Member Organization, the identification of the department of the member organization that originates the order;

(6) where the Reporting Member Organization is a party to an agreement described in Rule 3405(c), the identification of the Reporting Agent;

(7) the number of shares to which the order applies;

(8) the designation of the order as a buy or sell order;

(9) the designation of the order as a short sale order;

(10) the designation of the order as a market order, limit order, stop order or stop limit order;

(11) any limit or stop price prescribed in the order;

(12) the date on which the order expires, and, if the time in force is less than one day, the time when the order expires;

(13) the time limit during which the order is in force;

(14) any request by a customer that an order not be displayed, or that a block size order be displayed, pursuant to Rule 604(b) of SEC Regulation NMS;

(15) special handling requests, specified by the Exchange for purposes of this Rule;

(16) the date and time the order is originated or received by a Reporting Member Organization;

(17) an identification of the order as related to a Program Trade or an Index Arbitrage Trade; and

(18) the type of account, i.e., retail, wholesale, employee, proprietary, or any other type of account designated by the Exchange, for which the order is submitted.

(c) Order Transmittal

Order information required to be recorded under this Rule when an order is transmitted includes the following.

(1) When a Reporting Member Organization transmits an order to a department within the member organization, the Reporting Member Organization shall record:

(A) the order identifier assigned to the order by the Reporting Member Organization,

(B) the market participant symbol assigned by the Exchange to the Reporting Member Organization,

(C) the date the order was first originated or received by the Reporting Member Organization,

(D) an identification of the department and nature of the department to which the order was transmitted,

(E) the date and time the order was received by that department,

(F) the number of shares to which the transmission applies, and

(G) any special handling requests.

(2) When a member organization electronically transmits an order to another broker or dealer that is a FINRA member or an Exchange member organization, other than an order transmitted electronically for execution on an Electronic Communications Network:

(A) the transmitting Reporting Member Organization shall record:

(i) the order identifier assigned to the order by the Reporting Member Organization and the routed order identifier, if different, which the transmitting Reporting Member Organization also must provide to the receiving broker or dealer,

(ii) the market participant symbol assigned by the Exchange to the Reporting Member Organization,

(iii) the market participant symbol assigned by the Exchange to the broker or dealer to which the order is transmitted,

(iv) the date the order was first originated or received by the Reporting Member Organization,

(v) the date and time the order is transmitted,

(vi) the number of shares to which the transmission applies, and

(vii) whether the order is an intermarket sweep order; and

(B) the receiving broker or dealer shall record, in addition to all other information items in Rule 3404(b) that apply with respect to such order:

(i) the routed order identifier assigned to the order by the member organization that transmits the order and

(ii) the market participant symbol assigned by the Exchange to the member organization that transmits the order.

(3) When a member organization electronically transmits an order for execution on an Electronic Communications Network:

(A) the transmitting Reporting Member Organization shall record:

(i) the fact that the order was transmitted to an Electronic Communications Network,

(ii) the order identifier assigned to the order by the Reporting Member Organization and the routed order identifier, if different, which the transmitting Reporting Member Organization also must provide to the receiving Electronic Communications Network,

(iii) the market participant symbol assigned by the Exchange to the Reporting Member Organization,

(iv) the market participant symbol assigned by the Exchange to the Electronic Communications Network to which the order is transmitted,

(v) the date the order was first originated or received by the Reporting Member Organization,

(vi) the date and time the order is transmitted,

(vii) the number of shares to which the transmission applies, and

(viii) whether the order is an intermarket sweep order; and

(B) the receiving Electronic Communications Network shall record:

(i) the fact that the order was received by an Electronic Communications Network,

(ii) the routed order identifier assigned to the order by the member organization that transmits the order,

(iii) the market participant symbol assigned by FINRA to the transmitting Reporting Member Organization, and

(iv) other information items in Rule 3404(b) that apply with respect to such order, which must include information items (1), (2), (3), (6), (7), (8), (10), (11), (12), (13), (15), and (16).

(4) When a member organization manually transmits an order to another broker that is a FINRA member or an Exchange member organization, other than to an Electronic Communications Network:

(A) the transmitting Reporting Member Organization shall record:

(i) the fact that the order was transmitted manually,

(ii) the order identifier assigned to the order by the Reporting Member Organization,

(iii) the market participant symbol assigned by the Exchange to the Reporting Member Organization,

(iv) the market participant symbol assigned by the Exchange to the broker or dealer to which the order is transmitted,

(v) the date the order was first originated or received by the Reporting Member Organization,

(vi) the date and time the order is transmitted,

(vii) the number of shares to which the transmission applies,

(viii) for each order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member Organization, and

(ix) whether the order is an intermarket sweep order; and

(B) the receiving broker or dealer shall record, in addition to all other information items in Rule 3404(b) that apply with respect to such order:

(i) the fact that the order was received manually and

(ii) the market participant symbol assigned by the Exchange to the member organization that transmits the order.

(5) When a member organization manually transmits an order to an Electronic Communications Network:

(A) the transmitting Reporting Member Organization shall record:

(i) the fact that the order was transmitted manually,

(ii) the order identifier assigned to the order by the Reporting Member Organization,

(iii) the market participant symbol assigned by the Exchange to the Reporting Member Organization,

(iv) the market participant symbol assigned by the Exchange to the Electronic Communications Network to which the order is transmitted,

(v) the date the order was first originated or received by the Reporting Member Organization,

(vi) the date and time the order is transmitted,

(vii) the number of shares to which the transmission applies,

(viii) for each order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member Organization, and

(ix) whether the order is an intermarket sweep order; and

(B) the receiving Electronic Communications Network shall record:

(i) the fact that the order was received manually,

(ii) the market participant symbol assigned by the Exchange to the transmitting Reporting Member Organization, and

(iii) other information items in Rule 3404(b) that apply with respect to such order, which must include information items (1), (2), (3), (6), (7), (8), (10), (11), (12), (13), (15), and (16).

(6) When a member organization transmits an order to a person that is not a FINRA member or an Exchange member organization, including but not limited to a national securities exchange, the Reporting Member Organization shall record:

(A) the fact that the order was transmitted to a non-member,

(B) the order identifier assigned to the order by the Reporting Member Organization,

(C) the market participant symbol assigned by FINRA to the Reporting Member Organization,

(D) the date the order was first originated or received by the Reporting Member Organization,

(E) the date and time the order is transmitted,

(F) the number of shares to which the transmission applies,

(G) for each manual order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member Organization,

(H) the routed order identifier or other unique identifier required by the non-member receiving the order, as applicable,

(I) identification of the non-member where the trade was transmitted, and

(J) whether the order is an intermarket sweep order.

(d) Order Modifications, Cancellations, and Executions

Order information required to be recorded under this Rule when an order is modified, canceled, or executed includes the following.

(1) When a Reporting Member Organization modifies or receives a modification to the terms of the order, the Reporting Member Organization shall record, in addition to all other applicable information items (including a new order identifier) that would apply as if the modified order were originated or received at the time of the modification:

(A) the order identifier assigned to the order by the Reporting Member Organization prior to the modification,

(B) the date and time the modification was originated or received, and

(C) the date the order was first originated or received by the Reporting Member Organization,

(2) When the Reporting Member Organization cancels or receives a cancellation of an order, in whole or part, the Reporting Member Organization shall record:

(A) the order identifier assigned to the order by the Reporting Member Organization,

(B) the market participant symbol assigned by the Exchange to the Reporting Member Organization,

(C) the date the order was first originated or received by the Reporting Member Organization,

(D) the date and time the cancellation was originated or received,

(E) if the open balance of an order is canceled after a partial execution, the number of shares canceled, and

(F) whether the order was canceled on the instruction of a customer or the Reporting Member Organization.

(3) When a Reporting Member Organization executes an order, in whole or in part, the Reporting Member Organization shall record:

(A) the order identifier assigned to the order by the Reporting Member Organization,

(B) the market participant symbol assigned by the Exchange to the Reporting Member Organization,

(C) the date the order was first originated or received by the Reporting Member Organization,

(D) the Reporting Member Organization's number assigned for purposes of identifying transaction data in PSX, the Nasdaq Market Center, ADF, Trade Reporting Facility or other system or service as may be designated by the Exchange,

(E) the designation of the order as fully or partially executed,

(F) the number of shares to which a partial execution applies and the number of unexecuted shares remaining,

(G) the identification number of the terminal where the order was executed,

(H) the date and time of execution;

(I) the execution price,

(J) the capacity in which the member organization executed the transaction (e.g., agency, principal or riskless principal), and

(K) the national securities exchange or facility operated by a registered securities association where the trade was reported.

(e) Exchange member organizations shall assign and enter a unique order identifier, in the form prescribed by the Exchange, to all orders that are electronically transmitted to PSX. An order identifier shall not be required for orders that are manually transmitted.

3405. Order Data Transmission Requirements

(a) Securities Listed on NASDAQ.

Except as provided in paragraph (b), with respect to orders for securities listed on the NASDAQ Stock Market, Exchange member organizations and persons associated with a member organization shall comply with subsections (d), (e), and (f) of this rule at all times.

(b) Proprietary Trading Firms.

Proprietary Trading Firms and their associated persons shall be required to comply with subsections (d), (e), and (f) of this rule only when they receive a request from the Exchange to submit order information with respect to specific time periods identified in such request. Nothing in this Rule shall be construed to limit the obligations of Proprietary Trading Firms and their associated persons under any other Rule of the 3400 Series, including but not limited to, Rule 3404.

(c) Securities Listed on the Exchange.

With respect to orders for securities listed on the Exchange, Exchange member organizations and their associated persons shall be required to comply with subsections (d), (e), and (f) of this rule for orders for securities listed on the Exchange only when they receive a request from the Exchange to submit order information with respect to specific time periods identified in such request. Nothing in this Rule shall be construed to limit the obligations of Exchange member organizations and their associated persons under any other Rule of the 3400 Series, including but not limited to, Rule 3404.

(d) General Requirement

All applicable order information required to be recorded under Rule 3404 shall be transmitted to FINRA's Order Audit Trail System by each Reporting Member Organization or by a Reporting Agent pursuant to an agreement described by paragraph (c) of this Rule.

(e) Method of Transmitting Data

(1) Order information shall be transmitted in electronic form, as may be prescribed by the Exchange from time to time, to a receiving location designated by the Exchange.

(2) Each Reporting Member Organization shall transmit to the Order Audit Trail System a report containing each applicable item of order information identified in Rule 3404(b), (c), and (d) whenever an order is originated, received, transmitted to another department within the member organization or to another broker or dealer that is a FINRA member or an Exchange member organization, modified, canceled, or executed. Each report shall be transmitted on the day such event occurred; provided, however, that if any item of information identified in Rule 3404(b), (c), and (d) is not available on such day, then the report shall be transmitted on the day that all such items of information become available. Order information reports may be aggregated into one or more transmissions, during such business hours as may be prescribed by the Exchange.

(f) Reporting Agent Agreements

(1) Any Reporting Member Organization may enter into an agreement with a Reporting Agent pursuant to which the Reporting Agent agrees to fulfill the obligations of such Reporting Member Organization under this Rule. Any such agreement shall be evidenced in writing, which shall specify the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of this Rule.

(2) All written documents evidencing an agreement described in paragraph (1) shall be maintained by each party to the agreement.

(3) Each Reporting Member Organization remains primarily responsible for compliance with the requirements of this rule, notwithstanding the existence of an agreement described in this paragraph.

3406. Violation of Order Audit Trail System Rules

Failure of a member organization or person associated with a member organization to comply with any of the requirements of the Rule 3400 Series may be considered conduct that is inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 707.

3407. Exemption to the Order Recording and Data Transmission Requirements

(a) The Exchange, for good cause shown after taking into consideration all relevant factors, may exempt subject to specified terms and conditions, a member organization from the recording and order data transmission requirements of Rules 3404 and 3405, respectively, for manual orders, if such exemption is consistent with the protection of investors and the public interest, and the member organization meets the following criteria:

(1) the member organization and current control affiliates and associated persons of the member organization have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud;

(2) the member organization has annual revenues of less than \$2 million;

(3) the member organization does not conduct any market making activities in equity securities listed on the Exchange;

(4) the member organization does not execute principal transactions with its customers (with limited exception for principal transactions executed pursuant to error corrections); and

(5) the member organization does not conduct clearing or carrying activities for other firms.

(b) An exemption provided pursuant to this Rule shall not exceed a period of two years. At or prior to the expiration of a grant of exemptive relief under this Rule, a member organization meeting the criteria set forth in paragraph (a) above may request a subsequent exemption, which will be considered at the time of the request consistent with the protection of investors and the public interest.

(c) This Rule shall be in effect until July 10, 2011.