

registered as ITS/CAES Market Makers, but it will not generate an ITS Commitment to an ITS Exchange. In addition, ITS/CAES Market Makers will use this order without trading through the quotations of ITS Exchanges.

An ITS/CAES Market Maker that wishes to trade through multiple price levels and to avoid generating an ITS Commitment, but is willing to trade through those ITS Exchanges, can use the newly proposed "Sweep Order."<sup>17</sup> Nasdaq believes it is consistent with the ITS Plan to offer ITS/CAES Market Makers this functionality because there are many circumstances where an ITS/CAES Market Maker is permitted to trade through an ITS Exchange quotation without violating the ITS Plan. ITS/CAES Market Makers must decide for themselves when the use of such functionality is permitted by the rules, and they will be subject to continuous, rigorous surveillance to ensure proper compliance. On the other hand, Nasdaq will systematically prevent an Order Entry Firm from using the system to trade through the quotations of ITS Exchanges. If an Order Entry Firm enters a Sweep Order, the system will execute all shares available within the NNMS without trading through the quotation of an ITS Exchange, and will reject the unexecuted portion of the Sweep Order to be sent back to the entering party.

Finally, Nasdaq proposes to create three new order types that will participate in after hours trading of ITS Securities between 4:00 and 6:30 p.m. These orders—the "Total Day", Total Good-till-Canceled", and "Total Immediate or Cancel"—differ from the existing Day, Good till Canceled, and Immediate or Cancel orders only in their ability to participate in the pre-opening spin and after-hours sessions.<sup>18</sup> A Total Day Order, if not fully executed at entry, remains available for display between 7:30 a.m. and 6:30 p.m. and for execution between 9:29:55 a.m. and 6:30 p.m., after which it is returned to the entering party. A Total Good-till-Canceled Order, if not fully executed at entry remains available for display between 7:30 a.m. and 6:30 p.m. and for execution between 9:29:55 a.m. and 6:30 p.m., until cancelled by the entering party, or until 1 year after entry, whichever comes first. A Total Immediate or Cancel Order is a limit order that, upon becoming non-marketable, is canceled and returned to the entering participant. Such orders are

available for potential execution between 9:29:55 a.m. and 6:30 p.m.

#### 6. Quotation Updates

The manner in which ITS/CAES Market Makers update their quotations would differ in certain respects from NNMS Market Makers. First, if the bid side of an ITS/CAES Market Maker's quote/order is exhausted, the system then will automatically establish a bid of \$0.01 for 100 shares. If the offer side of the ITS/CAES Market Maker's quote/order is exhausted, the system will then automatically establish an offer of two times the system best bid plus \$0.01 and offer for 100 shares.<sup>19</sup> This modification will ensure that ITS/CAES Market Makers maintain continuous two-sided quotations whenever they are active in the NNMS.

To preserve a fair and orderly market, Nasdaq would close the quotation of any ITS/CAES Market Maker that regularly exceeds the standard five-second response time. Specifically, if an ITS/CAES Market Maker regularly fails to meet a five-second response time (as measured by the ITS/CAES Market Maker's Service Delivery Platform) over a period of orders, such that the failure endangers the maintenance of a fair and orderly market, Nasdaq will place that ITS/CAES Market Maker's quote in a closed-quote state. Nasdaq will lift the closed-quote state when the ITS/CAES Market Maker certifies that it can meet the five-second response time requirement with regularity sufficient to maintain a fair and orderly market.<sup>20</sup>

The Auto-Quote Refresh ("AQR") functionality described in NASD Rule 4710(b)(2)(B) is designed to assist market participants in maintaining a continuous two-sided quotation. Because the system will automatically enter a quotation for an ITS/CAES Market Maker whose quotation has been decremented to zero, Nasdaq does not believe it is necessary to provide ITS/CAES Market Makers with that AQR functionality.<sup>21</sup> Likewise, an ITS/CAES Market Maker that experience difficulty maintaining proper quotations may request an excused withdrawal pursuant to NASD Rule 6350, rather than utilizing the procedures set forth in NASD Rule 4619 for Nasdaq securities.<sup>22</sup>

#### 7. System Validations

Nasdaq would program SuperMontage to validate ITS Commitments to ensure that they comply with the formatting

requirements set forth in NASD Rule 5230. In addition, the system will screen ITS Commitments and reject any ITS Commitment that, if executed, would violate Rule 10a-1 of the Act<sup>23</sup> governing the execution of short sale orders or that would constitute an obvious error as set forth in NASD Rule 5265.<sup>24</sup>

#### 8. Odd-Lot Processing

Nasdaq is proposing to modify two aspects of the odd-lot processing of ITS Securities. This is necessary to accommodate the ITS Plan requirement that ITS Commitments be for a minimum of one round lot or for round lot multiples. This requirement is incorporated in Proposed NASD Rule 4706(d)(2), which requires that orders in ITS Securities must be entered for a minimum of one round lot, or in round lot multiples, or in mixed lots. This proposed rule also establishes that orders in ITS Securities will be delivered to ITS Exchanges in round lots only.

In addition, Nasdaq proposes to modify the aggregation of odd lots set forth in NASD Rule 4707. Specifically, in the case of ITS Securities, odd lot share amounts of each individual NNMS Participant will be aggregated separately and shall be displayed next to that NNMS Participant's MPID for a minimum of one round lot or for round lot multiples. Odd lot share amounts will be cancelled at the end of the day.<sup>25</sup> Nasdaq is modifying the processing of Nasdaq securities, which permits the aggregation of all market participants' orders together, to ensure that all ITS Commitments are for a minimum of one round lot.

#### 9. Adjustment of Open Orders

Nasdaq is proposing to modify the adjustment of open buy and sell orders to more closely conform that process to the practice of the listing exchange. Sell orders in Nasdaq-listed and NYSE-listed securities will not be adjusted by the system, except for reverse splits where sell orders will be purged from the system. In the event of a Stock Dividend or Stock Split, sell orders in Amex-listed securities will be adjusted differently, in accordance with the procedures set forth for buy orders. In such cases, sell orders, like buy orders in all securities, prices will be determined by first rounding up the dollar value of the stock dividend or split to the nearest penny. The resulting amount will then be subtracted from the

<sup>19</sup> See Proposed NASD Rule 4710(b)(1)(C)(v)(b).

<sup>20</sup> See Proposed NASD Rule 4710(b)(i)(c)(v)(c).

<sup>21</sup> See Proposed NASD Rule 4710(b)(3)(B)(v).

<sup>22</sup> See Proposed NASD Rule 4710(b)(6).

<sup>23</sup> 17 CFR 240.10a-1.

<sup>24</sup> See Proposed NASD Rule 4708(b)(1-2).

<sup>25</sup> See Proposed NASD Rule 4708(b)(3)(C).

<sup>17</sup> See Proposed NASD Rule 4710(pp).

<sup>18</sup> See Proposed NASD Rule 4710(ss "uu).