

# NEW YORK STOCK EXCHANGE AND AMERICAN STOCK EXCHANGE AGREEMENT

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## APPLICATION AND AGREEMENT FOR THE PRIVILEGE OF RECEIVING LAST SALE INFORMATION AND BOND LAST SALE INFORMATION AS A NONPROFESSIONAL SUBSCRIBER

### Nonprofessional Subscriber\* (Part 1).

AGREEMENT between Subscriber and the undersigned vendor ("Vendor") governing Subscriber's receipt and display, as a Nonprofessional Subscriber, of last sale information\* ("Information") (Part IIA) and bond last sale information\* ("Bond Information") (Part IIB).

APPLICATION made by the undersigned person ("Subscriber") for classification as a **PART I - APPLICATION**

Subscriber hereby applies, in his/her individual and personal capacity, and neither as a principal, officer, partner, employee or agent of any business nor on behalf of any other individual, to be classified as a Nonprofessional Subscriber for the purpose of receiving Information and Bond Information subject to this Application and Agreement.

1. SUBSCRIBER'S NONPROFESSIONAL STATUS - - Subscriber certifies that he/she is a natural person who is neither

- a. registered or qualified with the Securities and Exchange Commission, ("SEC"), the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association,
- b. engaged as an "investment advisor" as that term is defined in Section 202(a)(II) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that act), nor
- c. employed by a bank or other organization exempt from registration under Federal and/or state securities laws to perform functions that would require him/her to be so registered or qualified if he/she were to perform such functions for an organization not so exempt.

2. SUBSCRIBER'S EMPLOYMENT - Subscriber certifies the truth and accuracy of the personal and employment information included in Part III of the Application and Agreement.

### **PART IIA - AGREEMENT: LAST SALE INFORMATION**

WHEREAS, New York Stock Exchange, Inc. ("NYSE"), acting on behalf of the Participants\* pursuant to the CTA Plan\*, has entered into one or more agreements with Vendor (the "Vendor Agreement(s)") permitting Vendor to disseminate, through interrogation devices. Information to Nonprofessional Subscribers subject to a rate structure and to terms and conditions different from those applicable to other classes of subscribers\*,

WHEREAS, the Vendor Agreement(s) prohibit Vendor from dissemination Information to a person as a Nonprofessional Subscriber unless such person meets the criteria set forth in Part I and in Paragraph 5.

WHEREAS, Subscriber wishes to receive Information from Vendor as a Nonprofessional Subscriber, and

WHEREAS, Vendor or NYSE, acting for the benefit of the Participants, has reviewed this Application and Agreement and determined that, based upon the representations made and information provided by Subscriber, Subscriber qualifies to receive Information as a Nonprofessional Subscriber.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and conditions herein contained, Subscriber and Vendor hereby represent, warrant and agree, for their own benefit and for the benefit of the Participants, as follows:

### 3. DEFINITIONS

- a. The term "CTA Network A last sale information" ("A Information") includes at any given time, (i) all last sale prices (A) that reflect completed transactions in equity securities listed on NYSE that have taken place on, or been reported by, and Participant or "other reporting party" (as defined in the CTA Plan) and (B) that have been reported pursuant to the CTA Plan and (ii) all information based thereon or derived therefrom.
- b. The term "CTA Network B last sale information" ("B Information") includes, at any given time, (i) all last sale prices (A) that reflect completed transactions in equity securities (and certain other securities as provided for in the CTA Plan) registered or admitted to unlisted trading privileges on an exchange other than NYSE that are registered or so admitted on, or meet the listing requirements of, the American Stock Exchange, Inc. ("AMEX"), which transactions have taken place on, or have been reported by, any Participant or other reporting party and (B) that have been reported pursuant to the CTA Plan and (ii) all information based thereon or derived therefrom.
- c. The term "CTA Plan" means the plan signed by the Participants and declared effective by the SEC (SEC file No. S7-433).
- d. The term "last sale information" ("Information") includes A Information and B Information.
- e. The term "network's administrator" means NYSE with respect to A Information and AMEX with respect to B Information.
- f. The term "Nonprofessional Subscriber" means a subscriber who meets the criteria set forth in Part I and in Paragraph 5 and who received Information pursuant to the terms and conditions the form of this Application and Agreement.
- g. The term "person" includes any natural person, proprietorship or organization.
- h. The term "Participant" means each of NYSE, AMEX and the several other national securities exchanges and the national securities association that is a signatory to, and has not withdrawn from, the CTA Plan and as to which the plan is effective.
- i. The term "subscriber" means any person authorized to receive Information through an interrogation service.
- j. The term "Subscriber-procured interrogation device" means any interrogation device used by Subscriber for the purpose of receiving an interrogation service from Vendor, which device is not supplied, installed, operated or maintained by, or made available through, Vendor.

4. PARTICIPANTS AS THIRD-PARTY BENEFICIARIES - (a) All actions to be taken by "NYSE" or by "Vendor" pursuant to this Application and Agreement shall be taken by, and (b) all payments, information and notifications to be made or given to "NYSE" or to "Vendor" pursuant to this Application and Agreement shall be accepted or received by NYSE and Vendor, respectively, for the benefit of the Participants.

5. PERMITTED USE OF INFORMATION - Subscriber shall received Information solely for his/her personal, non-business use. Subscriber shall not furnish Information to nay other person.

6. DATA RECEIPT COSTS - Subscriber shall not hold the Participants responsible for any costs associated with Subscriber's receipt of Information from Vendor.

#### 7. FAILURE TO QUALIFY

a. DETERMINATIONS - Subscriber understands that Vendor or NYSE may determine at any time that, for any of the following reasons, Subscriber does not qualify as a Nonprofessional Subscriber:

(i) Vendor made an erroneous initial determination regarding Subscriber's qualification.

(ii) Vendor or NYSE discovered a misrepresentation herein,

(iii) Subscriber failed to furnish all material information, or

(iv) Subscriber failed to update information contained herein.

Subscriber understands that following such a determination he/she may continue to received Information only after entering into one or more appropriate agreements directly with the appropriate network's administrator(s). The Participants may deny Subscriber the opportunity to enter into such agreement(s) if his/her failure to qualify results from willful misrepresentations or omissions or from willful breach of this Application and Agreement.

b. RETROACTIVE PAYMENT - In an event that such a determination is based upon any of clauses (ii) of Paragraph 7(a), or upon a violation of Paragraph 5, either network's administrator may notify Subscriber in writing (i) of such determination, (ii) of the period, as determined by NYSE, during which Subscriber received such network's Information but did not qualify as a Nonprofessional Subscriber and (iii) of the amount' calculated at Professional Subscriber rates, applicable to such period. Within 30 days of receipt of such notice, Subscriber shall pay such amount to such network's administrator at the address specified in Paragraph 17. subscriber has been informed by vendor of the rates (both professional and nonprofessional) in effect at the time of Subscriber's execution of this Application and Agreement. Subscriber understands that if, pursuant to an agreement between Vendor and the Participants or otherwise. Vendor pays to NYSE, any amount payable by Subscriber pursuant to the Paragraph 7(b), Vendor shall become subrogated to any and all rights of the Participants or recover such amount from Subscriber.

8. SUBSCRIBER-PROCURED EQUIPMENT - If Subscriber receives Information by means of one or more Subscriber procured interrogation devices, Subscriber, unless otherwise directed in writing by Vendor, (a) shall report to Vender, both at the commencement of such receipt and upon Vendor's request, the number and type(s) of such devices, and (b) shall promptly report to Vendor any change in the number or type(s) of such devices. Subscriber hereby indemnifies the Participants for any costs arising out of any claim that any Subscriber-procured interrogation device or the manner in which such device uses Information provided pursuant hereto infringes any patent or copyright

or violates any other property right.

9. **SUBSCRIBER REQUIRED TO UPDATE** - Subscriber shall notify vendor promptly in writing of any change in his/her circumstances that causes any of his/her statements or representations contained in either Part I or Part II to be in any way inaccurate or incomplete or that otherwise prevent him/her from continuing to comply with this Application and Agreement.

10. **STRICT COMPLIANCE REQUIRED** - Subscriber understands that he/she must comply strictly with the provisions of this Application and Agreement in order to continue to receive Information as a nonprofessional subscriber. Subscriber also understands that if, in NYSE's judgment, any breach of this Application and Agreement by Subscriber has occurred or any representation by Subscriber set forth in this Application and Agreement has been or is untrue, Vendor shall, if and as directed by NYSE, terminate this Application and Agreement and discontinue providing Information or Subscriber.

11. **DATA NOT GUARANTEED** - Subscriber understands that neither the Participants nor the "Processor" or "CTA" (as defined in the CTA Plan) guarantees the timelessness, sequence, accuracy or completeness of Information. Neither Subscriber nor any other person shall hold any of them liable in any way for:

- a. any inaccuracies or errors in, or omissions of, any such information or message,
- b. any delays or errors in the transmission or delivery of any part of any such information or message, or
- c. any loss or damage arising from or occasioned by any such inaccuracies, errors, omissions or delayed or by reason of non-performance, or of interruption in any such information or message, either due to any negligent act or omission by any of them or due to any cause beyond the reasonable control of them, including, but not limited to, flood, extraordinary weather conditions or other act of God, fire, war, insurrection, riot, strike, accident, action of government, communications or power failure, or equipment or software malfunction.

\* Term is defined in Paragraph 3 or Part IIB.

12. **DATA MODIFICATION OR DISCONTINUANCE** - Subscriber understands that the participants do not guarantee that they will continue to disseminate, or that they will not change or eliminate any of the methods by which they disseminate, Information. If the Participants discontinue disseminating Information or change or eliminate any such method, Subscriber shall not hold the Participants liable in any way from any loss or damage arising therefrom.

13. **PARTICIPANTS' ENFORCEMENT RIGHT** - The Participants may enforce this Application and the Agreement against Subscriber by legal proceedings or other appropriate means.

14. **PARTICIPANTS' SUBSTITUTED ADMINISTRATION** - Subscriber understands that NYSE may, by written notice, direct Subscriber to send any payments, information or notifications provided for herein to NYSE and, if Subscriber received B Information, to AMEX, as appropriate. Such direction shall specify whether such obligation is in lieu of, or in addition to, Subscriber's obligation to send such item to Vendor. Subscriber shall comply with any such directions.

15. **TERMINATION** - Upon becoming effective, this Application and Agreement shall supersede all agreements, (if any) between Subscriber and either network's administrator relating to Subscriber's receipt of Information through an interrogation service. Subject to Paragraphs 7, 10 and 12, either Subscriber or Vendor may terminate this application and Agreement on not less than 30 days' written notice to the other. Paragraphs 7(b), 8(second sentence only), 11 and

13 shall survive any termination of this Agreement.

16. GOVERNING LAW - This Application and Agreement shall be governed by, and interpreted in accordance with, the law of the State of New York.

17. NOTICES - Any communications to the Participants, NYSE, AMEX, Vendor or Subscriber provided for in, or otherwise relating to, this Application and Agreement shall be sent to such person's below - indicated address:

CTA Plan Participants C/O New York Stock Exchange, Inc. 11 Wall Street New York, New York 10005 Attention: Director of Market Data Services New York Stock Exchange, Inc. (as above)

American Stock Exchange, Inc. 86 Trinity Place New York, New York 10006 Attention: Director of Market Communications Vendor (as below) Subscriber (as below)

**PART IIB - AGREEMENT: NYSE BOND LAST SALE INFORMATION**

To the extent Subscriber received Bond Information by means of any interrogation device, Subscriber agrees that all provisions of Part IIA, except those of paragraphs 3(a) through 3(e) and 3(b), all shall govern such receipt, for that purpose, (a) all references in any such provision to "Information" or B Information" shall be changed to "Bond Information" and (b) all such references to the "Participants", the "network's administrator(s)" or "AMEX" shall be changed to "NYSE". The term "bond last sale information" ("Bond Information") as used in Part I and in this Part IIB shall mean, at any given time, (i) all fast sale prices that reflect completed transactions on NYSE relating to bonds and certain other securities as NYSE may designate from time to time, (ii) any other market information disseminated by NYSE as NYSE may designate from time to item and (iii) all information based on or derived from such last sale prices or market information.

**PART III - PERSONAL AND EMPLOYMENT DATA**

(Please type or print)

(a) Subscriber's name and address:

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(b) Subscriber's occupation(s) (list all occupations - including homemaker, student, retiree, etc.):

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(c) Subscriber's employer(s)\*\* (name and address of employer(s)\*\* , if any, and, if self-employed, businesses address (es), if different from residence):

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(d) Subscriber's title(s) and/or position(s):

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(e) Subscriber's employment functions (description):

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*\*\* Please attach an additional sheet if necessary to include information as to other employers.*

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(Subscriber's Signature)

Dated: \_\_\_\_\_

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(Vendor)

By: \_\_\_\_\_

Dated: \_\_\_\_\_

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