

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 666	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2021 - * 012	Amendment No. (req. for Amendments *)
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Filing by NASDAQ BX, 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 type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" 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 checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

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 action (limit 250 characters, required when Initial is checked \*).

A proposal to relocate its equity and general rules from its current Rulebook into its new Rulebook shell.

**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 action.

First Name \* Angela Last Name \* Dunn

Title \* Principal Associate General Counsel

E-mail \* angela.dunn@nasdaq.com

Telephone \* (215) 496-5692 Fax

**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.

(Title \*)

Date 04/05/2021

By John Zecca

EVP and Chief Legal Counsel

john.zecca@nasdaq.com

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 EFFF 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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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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, security-based swap submission, or advance notice 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 the Proposed Rule Change

(a) Nasdaq BX, Inc. (“BX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to relocate its equity and general rules from its current Rulebook into its new Rulebook shell.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5A (Current Rulebook) and Exhibit 5B (Shell Rulebook).

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on November 5, 2020. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Angela Saccomandi Dunn  
Principal Associate General Counsel  
Nasdaq, Inc.  
215-496-5692

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

a. Purpose

The purpose of this rule change is to relocate BX's equity and general rules from the current Rulebook into the new Rulebook shell.<sup>3</sup> The Exchange also proposes a number of minor, non-substantive changes to the Rulebook shell as described below.

The relocation and harmonization of these rules is part of the Exchange's continued effort to promote efficiency and conformity of its rules to the extent applicable with those of its affiliated exchanges. The Exchange believes that the placement of these rules into their new location in the Rulebook shell will facilitate the use of the Rulebook by members.

Universal Changes

The Exchange proposes to update all cross-references within the Rulebook shell to the new relocated rule cites. The Exchange proposes to replace internal rule references to simply state "this Rule" where the rule is citing itself without a more specific cite included in the Rule. For example, if BX Rule 4619 refers currently to "Rule 4619" or "this Rule 4619" the Exchange will amend the phrase to simply "this Rule." Except where the Exchange specifies below that it will retain the current rule numbering, the Exchange also proposes to conform the paragraph numbering and lettering to that used in the Rulebook shell for greater consistency, and to correct punctuation. The Exchange proposes to rename the term "Commentary" with "Supplementary Material."

Furthermore, the Exchange proposes to delete reserved rules, other than those within the 5000 Series Rules and 11100 Series Rules which are both being relocated without change

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<sup>3</sup> Previously, the Exchange filed to relocate other rules within its Rulebook. See Securities Exchange Act Release No. 87468 (November 5, 2019), 84 FR 61091 (November 12, 2019) (SR-BX-2019-039).

with the exception of Rules 5300 and 5400, which are currently reserved, and are being deleted. The Exchange also proposes to delete rules that are currently marked as deleted.

The Exchange proposes to update the references to the 9000 Series and 9600 Series to refer to the General 5, 9000 Series and General 5, 9600 Series respectively in connection with a prior rule change that incorporated Nasdaq General 5, Rule 9000 and 9600 Series into BX General 5.<sup>4</sup>

The Exchange also proposes to delete the following section headers that are currently within the BX Rules: 2100. General Standards; 2800. Special Products; 2900. Responsibilities to Other Brokers or Dealers;<sup>5</sup> 2000A. Business Conduct; 3000. Responsibilities Relating to Associated Persons, Employees, and Others' Employees; 3300. Trading; 4000. Listing and Trading on the Exchange; 4100, General; 4400, Other Listing Rules; 4600, Requirements for Equities Market Makers and Other Participants in the Nasdaq BX Equities Market; 4610, Registration and Other Requirements; 4700, The Nasdaq BX Equities Market; 4750, Execution Services; 5000. BX Venture Market Listing Rules; 6000. Other Systems and Programs;<sup>6</sup> 7000A. Order Audit Trail Series; 7400A, Order Audit Trail System; and 11000. Uniform Practice Code.

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<sup>4</sup> See Securities and Exchange Act Release No. 88938 (June 1, 2020), 85 FR 33235 (May 26, 2020) (SR-BX-2020-009) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the BX Disciplinary Rules and Incorporate by Reference the Disciplinary Rules of The Nasdaq Stock Market LLC).

<sup>5</sup> BX proposes to delete the other non-substantive rule text under this header which replicates the header and indicates that Rule 2910 was deleted.

<sup>6</sup> BX proposes to delete the non-substantive reference to 6800 which is reserved under this header.

### General 1

The Exchange proposes to amend the section heading from General 1, General 1 to General 1, Section 1. The Exchange also proposes to retitle General 1, Section 1 from “General Provisions” to “Definitions.” The Exchange proposes to update the citations within General 1, Section 10 (Exchange Review Council) to account for rule relocations proposed herein and remove the word “Rules” associated with the citations.

### General 2

The Exchange proposes to relocate Rule 4615 (Sponsored Participants) to General 2, Section 22, which is currently reserved, to harmonize the Exchange’s rule numbering to that of Nasdaq PHLX LLC (“Phlx”) General 2, Section 22, which currently sets forth the same rule on Phlx.

### General 3

The Exchange proposes to reword references to both the Nasdaq Rule 1000 Series and General 4, Rule 1200 Series rules to Nasdaq General 3, Rule 1000 Series and General 4, Section 1200 Series, respectively, to reflect the placement and numbering of such rules in the Nasdaq Rulebook.<sup>7</sup> The Exchange proposes to update citations to Nasdaq and BX Rules 0120 within General 3, Section 1. Rule 0120 was relocated to General 1 within SR-BX-2019-039.<sup>8</sup> The Exchange also proposes to update citations to Nasdaq and BX Rules 3010 and 3011 within General 3, Section 1. Rule 3010 was

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<sup>7</sup> See Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR-NASDAQ-2020-079) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Its Equity and General Rules From Its Current Rulebook Into Its New Rulebook Shell).

<sup>8</sup> The Exchange previously relocated certain definitions within Rule 0120, “Definitions” into General 1 and Equity 1. The definitions applicable to General 3 are located within General 1. See supra note 3.

relocated to General 9, Section 20 and Rule 3011 was relocated to General 9, Section 37 within SR-BX-2019-039.<sup>9</sup> Similarly, Nasdaq Rule 3010 was relocated to General 9, Section 20 and Nasdaq Rule 3011 was relocated to General 9, Section 37 within SR-NASDAQ-2019-039.<sup>10</sup>

### General 9

The Exchange proposes to relocate Rule 2170 (Disruptive Quoting and Trading Activity Prohibited) to General 9, Section 53, and to reserve General 9, Section 52. The Exchange also proposes to re-number certain subsections under proposed new General 9, Section 53 to conform to the numbering in Nasdaq General 9, Section 53. In particular, relocating Rule 2170 to General 9, Section 53 will harmonize the Exchange's rule numbering to that of Phlx General 9, Section 53, which currently sets forth the same rule prohibiting disruptive quoting and trading activity on Phlx. Because this Rule is being added to General 9, which applies to both the Exchange's equities and options markets, the Exchange proposes to delete a duplicate rule in Options 9, Section 4, which applies only to the options market. The Exchange proposes to relocate Rule 2843, Account Approval, to General 9, Section 64 to harmonize the Exchange's rules to that of Phlx General 9, Section 64. The proposed rule numbering is to ensure that the Exchange's General 9 rules mirror its affiliated exchanges' General 9 rules as closely as practicable.

The Exchange also proposes to relocate Rule 4570 (Custodian of Books and Records) to General 9, Section 71 similar to Nasdaq. Also, BX proposes to reserve

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<sup>9</sup> See supra note 3.

<sup>10</sup> See Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR-NASDAQ-2019-098) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell).

Sections 54 – 70, except Section 64.

The Exchange further proposes to update several obsolete cross-references throughout General 9 that presently refer to rules that were already moved to the Rulebook shell under SR-BX-2019-039.<sup>11</sup> The Exchange also proposes to update the cross-references to Rule 2310A (within General 9, Section 12(b)), and Rule 2310A (within General 9, Section 18(c)(1)(C)(iv)) to relocated Equity 10, Section 1, and update the references to General 4, Section 1.1200 Series and General 4, Section 1.1210 (within General 9, Section 20(b)) by replacing (Section 1.) with the word (Rule.).

### Equity 1

The Exchange proposes to amend the section header from Equity 1, Equity 1 to Equity 1, Section 1. The Exchange also proposes to add “(a)” before the phrase “When used in the Equity Rules...” to conform to the paragraph lettering of the Rulebook shell. Lastly, the Exchange proposes to relocate the defined terms currently within Rule 4701(a) – (l) into Equity 1, Section 1(a)(6)(1) - (4) and (8) – (18). With respect to current Rule 4701(a), which contains the term “Nasdaq BX Equities Market” or “System”, BX notes this term currently exists within Equity 1, Section 1(a)(6), however, BX proposes to add portions of Rule 4701(a) that are not currently described within Equity 1, Section 1(a)(6). Current Rule 4701(a) provides, “(a) The term "Nasdaq BX Equities Market" or "System" shall mean the automated system for order execution and trade reporting owned and operated by the Exchange. The System comprises:...”. The Exchange notes that provisions of Rule 4701(a) starting with the phrase “The System comprises...” are not contained in the current definition of “Nasdaq BX Equities Market” or “System” at

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<sup>11</sup> See supra note 3.

Equity 1, Section 1(a)(6), and therefore, the Exchange proposes to relocate those provisions to Equity 1, Section 1(a)(6). The Exchange notes that the remainder of the rule text within Rule 4701(a) was duplicative with the rule text within Equity 1, Section 1(a)(6) and therefore, the Exchange proposes to delete the duplicative text.

### Equity 2

The Exchange proposes to relocate the following rules into Equity 2 which is titled Equity Market Participants. The Exchange proposes to instead title this section “Market Participants” to conform to Nasdaq’s Rulebook Structure.<sup>12</sup>

Shell Rule	Current Rule
Section 1	4601. Scope
Section 2	4200. Definitions <sup>13</sup>
Section 3	4611. Nasdaq BX Market Participant Registration
Section 4	4612. Registration as an Equities Market Maker
Section 5	4613. Market Maker Obligations <sup>14</sup>
Section 6	4614. Stabilizing Bids
Section 7	4616. Reports

<sup>12</sup> See Securities Exchange Act Release No. 90577 (December 7, 2020), 85 FR 80202 (December 11, 2020) (SR-NASDAQ-2020-079) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Its Equity and General Rules From Its Current Rulebook Into Its New Rulebook Shell).

<sup>13</sup> The Exchange proposes to amend the current rule text of Rule 4200(a), which refers to the Rule 4000 Series, to refer to Equity 2. The definitions within current Rule 4200(a)(1) and (2) are federal rules which apply to Equity 2 in general and the definition within Rule 4200(a)(3) is simply a defined term. The defined terms are only used in Equity 2.

<sup>14</sup> BX proposes a minor technical amendment to change an “a” to “an” within the first sentence of proposed Section 5.

Shell Rule	Current Rule
Section 8	4617. Normal Business Hours
Section 9	4618. Clearance and Settlement
Section 10	4619. Withdrawal of Quotations
Section 11	4620. Voluntary Termination of Registration
Section 12	4621. Suspension and Termination of Quotations
Section 13	4622. Termination of Exchange Service
Section 14	4623. Alternative Trading Systems
Section 15	4624. Penalty Bids and Syndicate Covering Transactions
Section 16	4625. Obligation to Provide Information <sup>15</sup>
Section 17	4626. Limitation of Liability
Section 18	4627. Obligation to Honor System Trades
Section 19	4628. Compliance with Rules and Registration Requirements
Section 20	4631. Customer Disclosures

### Equity 3

The Exchange proposes to re-title Equity 3, from “Equity Trading Rules” to “BX Venture Market Listing Rules.” The Exchange proposes to relocate to Equity 3 the Rule 5000 Series BX Venture Market Listing Rules without changing the rule numbers. The Exchange proposes to delete Rules 5300 and 5400, which are reserved. The Exchange also proposes to correct the spelling of the word “decision” within Rule 5815, Review of Staff Determinations by Hearing Panel.

<sup>15</sup> The Exchange will not port over the reference to IM-4120-1 into the Rulebook shell as this Rule does not currently exist in the BX Rulebook.

Equity 3A

The Exchange proposes to add a new Equity 3A, titled “Other Listing Rules and Rules Regarding Unlisted Trading Privileges.” The Exchange proposes to relocate the following rules into Equity 3A:

<b>Shell Rule</b>	<b>Current Rule</b>
Section 1	4201. Operation of Listing Standards
Section 2	4420. Additional Quantitative Listing Criteria
Section 3	4421. Derivative Securities Traded under Unlisted Trading Privileges
Section 4	4450. Additional Quantitative Maintenance Criteria

The Exchange proposes to remove reserved sections and re-letter and re-number the remaining sections in Rules 4201, 4420, 4421, and 4450.

Equity 4

The Exchange proposes to re-title Equity 4, currently “Limit Up Limit Down,” to “Equity Trading Rules.” The Exchange proposes to relocate Rules 4110, 4120, 4121, 4702, 4703, 4752, 4756, 4757, 4758, 4759, 4760, 4761, 4762, 4763, 4770 and 4780 into Equity 4 and retain the current rule numbers. Within Rule 4110 the Exchange is adding a reference to Equity 3A because the listing standards, as proposed herein, are set forth in the Rule 5000 Series under Equity 3 and in Equity 3A. Equity 3A contains current Rules 4201, 4420, 4421 and 4450. The Exchange proposes to relocate the rule text of IM-4120-3, Circuit Breaker Securities Pilot, to the end of Rule 4120. Also, a reference to Rule 4751(f) is being updated to Rule 4703(g) within Rule 4756, Discretionary Orders, to correct the current citation.

Equity 5

The Exchange proposes to relocate the 7000A Series Rules to Equity 5 as follows:

Shell Rule	Current Rule
Section 1	7410A. Definitions <sup>16</sup>
Section 2	7420A. Applicability
Section 3	7430A. Synchronization of Member Business Clocks
Section 4	7440A. Recording of Order Information <sup>17</sup>
Section 5	7450A. Order Data Transmission Requirements <sup>18</sup>
Section 6	7460A. Violation of Order Audit Trail System Rules <sup>19</sup>

The Exchange proposes to delete Rule 7470A which is currently reserved.

<sup>16</sup> The Exchange proposes to update a cross reference currently within Rule 7410A(o) that defines “Proprietary Trading Firm.” With that defined term, there is a reference to Rule 0120(g), which refers to the term “customer”. The Exchange previously relocated certain definitions within Rule 0120, “Definitions” into General 1 and Equity 1. The term “customer” was relocated to BX Equity 1. See supra note 3. The proposed rule change seeks to re-number and re-letter the term “customer” in Equity 1 to proposed new Equity 1, Section 1(a)(1). This definition of customer is the same definition as current Rule 7410A(a) which is being relocated within this proposal to proposed Equity 5, Section 1(c). The Exchange proposes to utilize the definition of the term “customer” within Equity 5, Section 1(c) within proposed new Equity 5, Section 1(o).

<sup>17</sup> The Exchange proposes to update the reference within current Rule 7440A, Recording of Order Information, to IM-2110-2 to General 9, Section 1. IM-2110-2 was relocated to General 9, Section 1 in SR-BX-2019-039. See supra note 3.

<sup>18</sup> The Exchange proposes to amend the term “Equity Rule of the 7400A Series” within proposed Section 5, Order Data Transmission Requirements, to instead provide “Section within Equity 5.”

<sup>19</sup> The Exchange is amending the reference to Rule 2210 to instead refer to General 9, Section 1. Rule 2210 was relocated to General 9, Section 1 in SR-BX-2019-039. See supra note 3.

Equity 6

The Exchange proposes to title Equity 6, which is currently reserved, to “BX Risk Management Service; Other Systems and Programs,” and to relocate the following rules into Equity 6:

Shell Rule	Current Rule
Section 1	Reserved
Section 2	Reserved
Section 3	4764. BX Kill Switch
Section 4	4765. Exchange Sharing of Participant Risk Settings, excluding Commentary
Section 5	Commentary to 4765. Exchange Sharing of Participant Risk Settings (Re-titled as “Risk Settings”)
Section 6	Reserved

Equity 8

The Exchange proposes to reserve Equity 8 which is currently titled “Uniform Practice Code.” This section does not currently contain any rules.

Equity 8A

The Exchange proposes to add an Equity 8A, which will be reserved.

Equity 9

The Exchange proposes to re-title Equity 9, currently “Supplementary Conduct Rules,” to “Business Conduct.” This section does not currently contain any rules. The Exchange proposes to relocate the following rules into Equity 9:

Shell Rule	Current Rule
Section 1	3220. Adjustment of Open Orders

Shell Rule	Current Rule
Section 2	3230. Clearing Agreements
Section 3	3310. Publication of Transactions and Quotations
Section 4	IM-3310. Manipulative and Deceptive Quotations
Section 5	3320. Offers at Stated Prices
Section 6	3340. Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts
Section 7	3350. Suspension of Trading
Section 8	3351. Trading Practices
Section 9	3360. Short-Interest Reporting
Section 10	3370. Prompt Receipt and Delivery of Securities
Section 11	3380. Order Entry and Execution Practices
Section 12	3381. SEC Rule 19c-1 — Governing Certain Off-Board Agency Transactions by Members of National Securities Exchanges
Section 13	3385. SEC Rule 19c-3 — Governing Off-Board Trading by Members of National Securities Exchanges
Section 14	3390. SEC Rule 604 — Display of Customer Limit Orders
Section 15	2844. Suitability
Section 16	2845. Discretionary Accounts <sup>20</sup>
Section 17	2846. Supervision of Accounts
Section 18	2847. Customer Complaints
Section 19	2848. Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants, and Currency Warrants

<sup>20</sup> The Exchange amended the reference in proposed new Section 16(b) of this rule to “General 9, Sections 19 and 45.”

Shell Rule	Current Rule
Section 20	2849. Maintenance of Records

A reference to “NASD” is being updated to refer to “FINRA” within proposed Equity 9, Section 1, Adjustment of Open Orders. The Exchange proposes to update two obsolete cross-references in Equity 9, Section 4 (Manipulative and Deceptive Quotations) that currently point to Rules 2110 and 2120. Rule 2110 (Standards of Commercial Honor and Principles of Trade) was relocated to General 9, Section 1 of the Rulebook shell under SR-BX-2019-039.<sup>21</sup> Rule 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices) was likewise relocated to General 9, Section 1 of the Rulebook shell under SR-BX-2019-039. The Exchange proposes to capitalize the “The” before “Options Clearing Corporation” within new Section 13, SEC Rule 19c-3 - Governing Off-Board Trading by Members of National Securities Exchanges. Finally, the Exchange proposes to reserve Section 21 through Section 23.

#### Equity 10

The Exchange proposes to re-title Equity 10, which is currently titled “BX Venture Listing Rules,” to “Other Products and Securities,” and to relocate the following rules into Equity 10:

Shell Rule	Current Rule
Section 1	2310A. Direct Participation Programs
Section 2	2830. Investment Company Securities
Section 3	2840. Trading in Index Warrants, Currency Index Warrants, and Currency Warrants

<sup>21</sup> See supra note 3.

Shell Rule	Current Rule
	2841. General 2842. Definitions
Section 4	2850. Position Limits
Section 5	2851. Exercise Limits
Section 6	2852. Reporting Requirements
Section 7	2853. Liquidation of Index Warrant Positions
Section 8	4630. Trading in Commodity-Related Securities

### Equity 11

The Exchange proposes to add new Equity 11, titled “Uniform Practice Code,” and relocate the current Rule 11000 Series into new Equity 11 without renumbering the rules.

The Exchange proposes to correct a spelling error in the title of IM-11110 to provide “Refusal to Abide by Rulings of the Exchange’s Regulation Department Staff”. The spelling of the word “Staff” is being amended.

The Exchange proposes to correct the spelling of the word “certificate” and remove the apostrophe within IM-11710. Uniform Reclamation Form.

The Exchange also proposes to update an obsolete cross-reference in IM-11720 (Obligations of Members Who Discover Securities in Their Possession to Which They Are Not Entitled) that currently points to Rule 2110. Rule 2110 (Standards of Commercial Honor and Principles of Trade) was relocated to General 9, Section 1 of the

Rulebook shell under SR-BX-2019-039.<sup>22</sup>

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>23</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>24</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by bringing greater transparency to its rules by relocating the equity and general rules into the new Rulebook shell together with other rules which have already been relocated.<sup>25</sup> The Exchange's proposal is consistent with the Act and will protect investors and the public interest by harmonizing its rules, where applicable, across Nasdaq affiliated markets so that members can readily locate rules which cover similar topics. The relocation and harmonization of the BX Rules is part of the Exchange's continued effort to promote efficiency and conformity of its rules to the extent applicable with those of its affiliated exchanges. The Exchange believes that the placement of the BX equity and general rules into their new location in the shell will facilitate the use of the Rulebook by members. Specifically, the Exchange believes that market participants that are members of more than one Nasdaq affiliated market will benefit from the ability to compare Rulebooks.

The Exchange is not substantively amending rule text. The renumbering, re-lettering, deleting reserved and already deleted rules, amending cross-references and

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<sup>22</sup> See supra note 3.

<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> See supra note 3.

other minor technical changes will bring greater transparency to BX's Rules. The Exchange's affiliates have already filed similar rule changes to relocate their respective equity and general rules into the same location in each Rulebook for ease of reference.<sup>26</sup> The Exchange believes its proposal will benefit investors and the general public by increasing the transparency of its Rulebook and promoting easy comparisons among the various Nasdaq affiliated exchanges' Rulebooks.

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

The Exchange 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. The Exchange believes that the proposed amendments do not impose an undue burden on competition because the amendments to relocate the equity and general rules are non-substantive. This rule change is intended to bring greater clarity to the Exchange's Rules and to promote easy comparisons among the various Nasdaq affiliated exchanges' Rulebooks. Renumbering, re-lettering, deleting reserved rules and already deleted rules, and amending cross-references will bring greater transparency to BX's Rules.

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

Not Applicable.

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<sup>26</sup> The Nasdaq Stock Market LLC previously filed to relocate its equity and general rules. See Securities Exchange Act Release No. 90577 (December 7, 2020), 85 FR 80202 (December 11, 2020) (SR-NASDAQ-2020-079). See also Securities Exchange Act Release No. 91058 (February 4, 2021), 86 FR 8966 (February 10, 2021) (SR-Phlx-2021-04).

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)<sup>27</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>28</sup> in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that this proposal does not significantly affect the protection of investors or the public interest because the rule changes are intended to reorganize BX Rules to make it easier for members to locate the various rules. The proposed rule change does not impose any significant burden on competition because the rule changes are non-substantive in nature and intended to bring clarity to the Rulebook. Renumbering, re-lettering, deleting reserved rules and already deleted rules, and amending cross-references will bring greater transparency to BX's Rules.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the

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<sup>27</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>28</sup> 17 CFR 240.19b-4(f)(6).

Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the operative delay to permit the Exchange to immediately relocate its rules. The Exchange desires to bring greater clarity to its rules for the benefit of investors and the general public. The Exchange's relocation is part of a larger effort to reorganize its rules and those of affiliated exchanges. The Exchange notes that it is important that it be permitted to reorganize its Rulebook without delay to ensure that it would be able to continue to file other rules which are affected by this relocation in a timely manner to maintain the Exchange's obligations as a self-regulatory organization and also to permit the Exchange to modify its Rules without delay.<sup>29</sup>

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<sup>29</sup> This rule change would amend and update certain rules within SR-BX-2020-034, specifically Rules 4613, 4702, and 4703. See Exchange Act Release No. 90607 (December 8, 2020), 85 FR 80842 (December 14, 2020) (SR-BX-2020-34) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 4613, 4702, and 4703). This rule change is effective and not yet operative and this filing (including the Exhibit 5) reflects the currently effective but not yet operative rule text.

This rule change would also amend and update the following rules within SR-BX-2021-006: General 3, Section 1, General 9, Sections 12 and 20, 2830, 2843-2849, 3360, 4200, 11210, IM-11710, 11860 and 11870. This rule change is effective and not yet operative and this filing (including the Exhibit 5) reflect the currently effective but not yet operative rule text. Specifically, this rule change will be operative upon the approval of the Exchange's request for an exemption under

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

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5A. Text of the proposed rule change – current Rulebook.

5B. Text of the proposed rule change – shell Rulebook.

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Section 36 of the Exchange Act from filing proposed rule changes. See Securities Exchange Act Release No. 91370, March 19, 2021, 86 FR 15996 (March 25, 2021) (SR-BX-2021-006) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Books and Records Rules and Update Obsolete NASD References in Its Rulebook).

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-BX-2021-012)

April \_\_, 2021

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Relocate its Equity and General Rules from its Current Rulebook into its New Rulebook Shell

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 5, 2021, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 Substance of the Proposed Rule Change

The Exchange proposes to relocate its equity and general rules from its current Rulebook into its new Rulebook shell.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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

The purpose of this rule change is to relocate BX's equity and general rules from the current Rulebook into the new Rulebook shell.<sup>3</sup> The Exchange also proposes a number of minor, non-substantive changes to the Rulebook shell as described below. The relocation and harmonization of these rules is part of the Exchange's continued effort to promote efficiency and conformity of its rules to the extent applicable with those of its affiliated exchanges. The Exchange believes that the placement of these rules into their new location in the Rulebook shell will facilitate the use of the Rulebook by members.

Universal Changes

The Exchange proposes to update all cross-references within the Rulebook shell to the new relocated rule cites. The Exchange proposes to replace internal rule references to simply state "this Rule" where the rule is citing itself without a more specific cite included in the Rule. For example, if BX Rule 4619 refers currently to "Rule 4619" or "this Rule 4619" the Exchange will amend the phrase to simply "this Rule." Except where the Exchange specifies below that it will retain the current rule numbering, the Exchange also proposes to conform the paragraph numbering and lettering to that used in the Rulebook shell for greater consistency, and to correct punctuation. The Exchange

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<sup>3</sup> Previously, the Exchange filed to relocate other rules within its Rulebook. See Securities Exchange Act Release No. 87468 (November 5, 2019), 84 FR 61091 (November 12, 2019) (SR-BX-2019-039).

proposes to rename the term “Commentary” with “Supplementary Material.”

Furthermore, the Exchange proposes to delete reserved rules, other than those within the 5000 Series Rules and 11100 Series Rules which are both being relocated without change with the exception of Rules 5300 and 5400, which are currently reserved, and are being deleted. The Exchange also proposes to delete rules that are currently marked as deleted.

The Exchange proposes to update the references to the 9000 Series and 9600 Series to refer to the General 5, 9000 Series and General 5, 9600 Series respectively in connection with a prior rule change that incorporated Nasdaq General 5, Rule 9000 and 9600 Series into BX General 5.<sup>4</sup>

The Exchange also proposes to delete the following section headers that are currently within the BX Rules: 2100. General Standards; 2800. Special Products; 2900. Responsibilities to Other Brokers or Dealers;<sup>5</sup> 2000A. Business Conduct; 3000. Responsibilities Relating to Associated Persons, Employees, and Others’ Employees; 3300. Trading; 4000. Listing and Trading on the Exchange; 4100, General; 4400, Other Listing Rules; 4600, Requirements for Equities Market Makers and Other Participants in the Nasdaq BX Equities Market; 4610, Registration and Other Requirements; 4700, The Nasdaq BX Equities Market; 4750, Execution Services; 5000. BX Venture Market

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<sup>4</sup> See Securities and Exchange Act Release No. 88938 (June 1, 2020), 85 FR 33235 (May 26, 2020) (SR-BX-2020-009) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the BX Disciplinary Rules and Incorporate by Reference the Disciplinary Rules of The Nasdaq Stock Market LLC).

<sup>5</sup> BX proposes to delete the other non-substantive rule text under this header which replicates the header and indicates that Rule 2910 was deleted.

Listing Rules; 6000. Other Systems and Programs;<sup>6</sup> 7000A. Order Audit Trail Series; 7400A, Order Audit Trail System; and 11000. Uniform Practice Code.

### General 1

The Exchange proposes to amend the section heading from General 1, General 1 to General 1, Section 1. The Exchange also proposes to retitle General 1, Section 1 from “General Provisions” to “Definitions.” The Exchange proposes to update the citations within General 1, Section 10 (Exchange Review Council) to account for rule relocations proposed herein and remove the word “Rules” associated with the citations.

### General 2

The Exchange proposes to relocate Rule 4615 (Sponsored Participants) to General 2, Section 22, which is currently reserved, to harmonize the Exchange’s rule numbering to that of Nasdaq PHLX LLC (“Phlx”) General 2, Section 22, which currently sets forth the same rule on Phlx.

### General 3

The Exchange proposes to reword references to both the Nasdaq Rule 1000 Series and General 4, Rule 1200 Series rules to Nasdaq General 3, Rule 1000 Series and General 4, Section 1200 Series, respectively, to reflect the placement and numbering of such rules in the Nasdaq Rulebook.<sup>7</sup> The Exchange proposes to update citations to Nasdaq and BX Rules 0120 within General 3, Section 1. Rule 0120 was relocated to

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<sup>6</sup> BX proposes to delete the non-substantive reference to 6800 which is reserved under this header.

<sup>7</sup> See Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR-NASDAQ-2020-079) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Its Equity and General Rules From Its Current Rulebook Into Its New Rulebook Shell).

General 1 within SR-BX-2019-039.<sup>8</sup> The Exchange also proposes to update citations to Nasdaq and BX Rules 3010 and 3011 within General 3, Section 1. Rule 3010 was relocated to General 9, Section 20 and Rule 3011 was relocated to General 9, Section 37 within SR-BX-2019-039.<sup>9</sup> Similarly, Nasdaq Rule 3010 was relocated to General 9, Section 20 and Nasdaq Rule 3011 was relocated to General 9, Section 37 within SR-NASDAQ-2019-039.<sup>10</sup>

### General 9

The Exchange proposes to relocate Rule 2170 (Disruptive Quoting and Trading Activity Prohibited) to General 9, Section 53, and to reserve General 9, Section 52. The Exchange also proposes to re-number certain subsections under proposed new General 9, Section 53 to conform to the numbering in Nasdaq General 9, Section 53. In particular, relocating Rule 2170 to General 9, Section 53 will harmonize the Exchange's rule numbering to that of Phlx General 9, Section 53, which currently sets forth the same rule prohibiting disruptive quoting and trading activity on Phlx. Because this Rule is being added to General 9, which applies to both the Exchange's equities and options markets, the Exchange proposes to delete a duplicate rule in Options 9, Section 4, which applies only to the options market. The Exchange proposes to relocate Rule 2843, Account Approval, to General 9, Section 64 to harmonize the Exchange's rules to that of Phlx

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<sup>8</sup> The Exchange previously relocated certain definitions within Rule 0120, "Definitions" into General 1 and Equity 1. The definitions applicable to General 3 are located within General 1. See supra note 3.

<sup>9</sup> See supra note 3.

<sup>10</sup> See Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR-NASDAQ-2019-098) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell).

General 9, Section 64. The proposed rule numbering is to ensure that the Exchange's General 9 rules mirror its affiliated exchanges' General 9 rules as closely as practicable.

The Exchange also proposes to relocate Rule 4570 (Custodian of Books and Records) to General 9, Section 71 similar to Nasdaq. Also, BX proposes to reserve Sections 54 – 70, except Section 64.

The Exchange further proposes to update several obsolete cross-references throughout General 9 that presently refer to rules that were already moved to the Rulebook shell under SR-BX-2019-039.<sup>11</sup> The Exchange also proposes to update the cross-references to Rule 2310A (within General 9, Section 12(b)), and Rule 2310A (within General 9, Section 18(c)(1)(C)(iv)) to relocated Equity 10, Section 1, and update the references to General 4, Section 1.1200 Series and General 4, Section 1.1210 (within General 9, Section 20(b)) by replacing (Section 1.) with the word (Rule.).

#### Equity 1

The Exchange proposes to amend the section header from Equity 1, Equity 1 to Equity 1, Section 1. The Exchange also proposes to add “(a)” before the phrase “When used in the Equity Rules...” to conform to the paragraph lettering of the Rulebook shell. Lastly, the Exchange proposes to relocate the defined terms currently within Rule 4701(a) – (l) into Equity 1, Section 1(a)(6)(1) - (4) and (8) – (18). With respect to current Rule 4701(a), which contains the term “Nasdaq BX Equities Market” or “System”, BX notes this term currently exists within Equity 1, Section 1(a)(6), however, BX proposes to add portions of Rule 4701(a) that are not currently described within Equity 1, Section 1(a)(6). Current Rule 4701(a) provides, “(a) The term "Nasdaq BX Equities Market" or

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<sup>11</sup> See supra note 3.

"System" shall mean the automated system for order execution and trade reporting owned and operated by the Exchange. The System comprises:...". The Exchange notes that provisions of Rule 4701(a) starting with the phrase "The System comprises..." are not contained in the current definition of "Nasdaq BX Equities Market" or "System" at Equity 1, Section 1(a)(6), and therefore, the Exchange proposes to relocate those provisions to Equity 1, Section 1(a)(6). The Exchange notes that the remainder of the rule text within Rule 4701(a) was duplicative with the rule text within Equity 1, Section 1(a)(6) and therefore, the Exchange proposes to delete the duplicative text.

### Equity 2

The Exchange proposes to relocate the following rules into Equity 2 which is titled Equity Market Participants. The Exchange proposes to instead title this section "Market Participants" to conform to Nasdaq's Rulebook Structure.<sup>12</sup>

Shell Rule	Current Rule
Section 1	4601. Scope
Section 2	4200. Definitions <sup>13</sup>
Section 3	4611. Nasdaq BX Market Participant Registration
Section 4	4612. Registration as an Equities Market Maker

<sup>12</sup> See Securities Exchange Act Release No. 90577 (December 7, 2020), 85 FR 80202 (December 11, 2020) (SR-NASDAQ-2020-079) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Its Equity and General Rules From Its Current Rulebook Into Its New Rulebook Shell).

<sup>13</sup> The Exchange proposes to amend the current rule text of Rule 4200(a), which refers to the Rule 4000 Series, to refer to Equity 2. The definitions within current Rule 4200(a)(1) and (2) are federal rules which apply to Equity 2 in general and the definition within Rule 4200(a)(3) is simply a defined term. The defined terms are only used in Equity 2.

Shell Rule	Current Rule
Section 5	4613. Market Maker Obligations <sup>14</sup>
Section 6	4614. Stabilizing Bids
Section 7	4616. Reports
Section 8	4617. Normal Business Hours
Section 9	4618. Clearance and Settlement
Section 10	4619. Withdrawal of Quotations
Section 11	4620. Voluntary Termination of Registration
Section 12	4621. Suspension and Termination of Quotations
Section 13	4622. Termination of Exchange Service
Section 14	4623. Alternative Trading Systems
Section 15	4624. Penalty Bids and Syndicate Covering Transactions
Section 16	4625. Obligation to Provide Information <sup>15</sup>
Section 17	4626. Limitation of Liability
Section 18	4627. Obligation to Honor System Trades
Section 19	4628. Compliance with Rules and Registration Requirements
Section 20	4631. Customer Disclosures

### Equity 3

The Exchange proposes to re-title Equity 3, from “Equity Trading Rules” to “BX

<sup>14</sup> BX proposes a minor technical amendment to change an “a” to “an” within the first sentence of proposed Section 5.

<sup>15</sup> The Exchange will not port over the reference to IM-4120-1 into the Rulebook shell as this Rule does not currently exist in the BX Rulebook.

Venture Market Listing Rules.” The Exchange proposes to relocate to Equity 3 the Rule 5000 Series BX Venture Market Listing Rules without changing the rule numbers. The Exchange proposes to delete Rules 5300 and 5400, which are reserved. The Exchange also proposes to correct the spelling of the word “decision” within Rule 5815, Review of Staff Determinations by Hearing Panel.

#### Equity 3A

The Exchange proposes to add a new Equity 3A, titled “Other Listing Rules and Rules Regarding Unlisted Trading Privileges.” The Exchange proposes to relocate the following rules into Equity 3A:

<b>Shell Rule</b>	<b>Current Rule</b>
Section 1	4201. Operation of Listing Standards
Section 2	4420. Additional Quantitative Listing Criteria
Section 3	4421. Derivative Securities Traded under Unlisted Trading Privileges
Section 4	4450. Additional Quantitative Maintenance Criteria

The Exchange proposes to remove reserved sections and re-letter and re-number the remaining sections in Rules 4201, 4420, 4421, and 4450.

#### Equity 4

The Exchange proposes to re-title Equity 4, currently “Limit Up Limit Down,” to “Equity Trading Rules.” The Exchange proposes to relocate Rules 4110, 4120, 4121, 4702, 4703, 4752, 4756, 4757, 4758, 4759, 4760, 4761, 4762, 4763, 4770 and 4780 into Equity 4 and retain the current rule numbers. Within Rule 4110 the Exchange is adding a reference to Equity 3A because the listing standards, as proposed herein, are set forth in the Rule 5000 Series under Equity 3 and in Equity 3A. Equity 3A contains current Rules

4201, 4420, 4421 and 4450. The Exchange proposes to relocate the rule text of IM-4120-3, Circuit Breaker Securities Pilot, to the end of Rule 4120. Also, a reference to Rule 4751(f) is being updated to Rule 4703(g) within Rule 4756, Discretionary Orders, to correct the current citation.

### Equity 5

The Exchange proposes to relocate the 7000A Series Rules to Equity 5 as follows:

Shell Rule	Current Rule
Section 1	7410A. Definitions <sup>16</sup>
Section 2	7420A. Applicability
Section 3	7430A. Synchronization of Member Business Clocks
Section 4	7440A. Recording of Order Information <sup>17</sup>
Section 5	7450A. Order Data Transmission Requirements <sup>18</sup>
Section 6	7460A. Violation of Order Audit Trail System Rules <sup>19</sup>

<sup>16</sup> The Exchange proposes to update a cross reference currently within Rule 7410A(o) that defines “Proprietary Trading Firm.” With that defined term, there is a reference to Rule 0120(g), which refers to the term “customer”. The Exchange previously relocated certain definitions within Rule 0120, “Definitions” into General 1 and Equity 1. The term “customer” was relocated to BX Equity 1. See supra note 3. The proposed rule change seeks to re-number and re-letter the term “customer” in Equity 1 to proposed new Equity 1, Section 1(a)(1). This definition of customer is the same definition as current Rule 7410A(a) which is being relocated within this proposal to proposed Equity 5, Section 1(c). The Exchange proposes to utilize the definition of the term “customer” within Equity 5, Section 1(c) within proposed new Equity 5, Section 1(o).

<sup>17</sup> The Exchange proposes to update the reference within current Rule 7440A, Recording of Order Information, to IM-2110-2 to General 9, Section 1. IM-2110-2 was relocated to General 9, Section 1 in SR-BX-2019-039. See supra note 3.

<sup>18</sup> The Exchange proposes to amend the term “Equity Rule of the 7400A Series” within proposed Section 5, Order Data Transmission Requirements, to instead provide “Section within Equity 5.”

The Exchange proposes to delete Rule 7470A which is currently reserved.

### Equity 6

The Exchange proposes to title Equity 6, which is currently reserved, to “BX Risk Management Service; Other Systems and Programs,” and to relocate the following rules into Equity 6:

Shell Rule	Current Rule
Section 1	Reserved
Section 2	Reserved
Section 3	4764. BX Kill Switch
Section 4	4765. Exchange Sharing of Participant Risk Settings, excluding Commentary
Section 5	Commentary to 4765. Exchange Sharing of Participant Risk Settings (Re-titled as “Risk Settings”)
Section 6	Reserved

### Equity 8

The Exchange proposes to reserve Equity 8 which is currently titled “Uniform Practice Code.” This section does not currently contain any rules.

### Equity 8A

The Exchange proposes to add an Equity 8A, which will be reserved.

### Equity 9

The Exchange proposes to re-title Equity 9, currently “Supplementary Conduct Rules,” to “Business Conduct.” This section does not currently contain any rules. The

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<sup>19</sup> The Exchange is amending the reference to Rule 2210 to instead refer to General 9, Section 1. Rule 2210 was relocated to General 9, Section 1 in SR-BX-2019-039. See supra note 3.

Exchange proposes to relocate the following rules into Equity 9:

<b>Shell Rule</b>	<b>Current Rule</b>
Section 1	3220. Adjustment of Open Orders
Section 2	3230. Clearing Agreements
Section 3	3310. Publication of Transactions and Quotations
Section 4	IM-3310. Manipulative and Deceptive Quotations
Section 5	3320. Offers at Stated Prices
Section 6	3340. Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts
Section 7	3350. Suspension of Trading
Section 8	3351. Trading Practices
Section 9	3360. Short-Interest Reporting
Section 10	3370. Prompt Receipt and Delivery of Securities
Section 11	3380. Order Entry and Execution Practices
Section 12	3381. SEC Rule 19c-1 — Governing Certain Off-Board Agency Transactions by Members of National Securities Exchanges
Section 13	<i>3385. SEC Rule 19c-3 — Governing Off-Board Trading by Members of National Securities Exchanges</i>
Section 14	3390. SEC Rule 604 — Display of Customer Limit Orders
Section 15	2844. Suitability
Section 16	2845. Discretionary Accounts <sup>20</sup>
Section 17	2846. Supervision of Accounts
Section 18	2847. Customer Complaints

<sup>20</sup> The Exchange amended the reference in proposed new Section 16(b) of this rule to “General 9, Sections 19 and 45.”

Shell Rule	Current Rule
Section 19	2848. Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants, and Currency Warrants
Section 20	2849. Maintenance of Records

A reference to “NASD” is being updated to refer to “FINRA” within proposed Equity 9, Section 1, Adjustment of Open Orders. The Exchange proposes to update two obsolete cross-references in Equity 9, Section 4 (Manipulative and Deceptive Quotations) that currently point to Rules 2110 and 2120. Rule 2110 (Standards of Commercial Honor and Principles of Trade) was relocated to General 9, Section 1 of the Rulebook shell under SR-BX-2019-039.<sup>21</sup> Rule 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices) was likewise relocated to General 9, Section 1 of the Rulebook shell under SR-BX-2019-039. The Exchange proposes to capitalize the “The” before “Options Clearing Corporation” within new Section 13, SEC Rule 19c-3 - Governing Off-Board Trading by Members of National Securities Exchanges. Finally, the Exchange proposes to reserve Section 21 through Section 23.

#### Equity 10

The Exchange proposes to re-title Equity 10, which is currently titled “BX Venture Listing Rules,” to “Other Products and Securities,” and to relocate the following rules into Equity 10:

Shell Rule	Current Rule
Section 1	2310A. Direct Participation Programs

<sup>21</sup> See supra note 3.

Shell Rule	Current Rule
Section 2	2830. Investment Company Securities
Section 3	2840. Trading in Index Warrants, Currency Index Warrants, and Currency Warrants  2841. General  2842. Definitions
Section 4	2850. Position Limits
Section 5	2851. Exercise Limits
Section 6	2852. Reporting Requirements
Section 7	2853. Liquidation of Index Warrant Positions
Section 8	4630. Trading in Commodity-Related Securities

### Equity 11

The Exchange proposes to add new Equity 11, titled “Uniform Practice Code,” and relocate the current Rule 11000 Series into new Equity 11 without renumbering the rules.

The Exchange proposes to correct a spelling error in the title of IM-11110 to provide “Refusal to Abide by Rulings of the Exchange’s Regulation Department Staff”. The spelling of the word “Staff” is being amended.

The Exchange proposes to correct the spelling of the word “certificate” and remove the apostrophe within IM-11710. Uniform Reclamation Form.

The Exchange also proposes to update an obsolete cross-reference in IM-11720 (Obligations of Members Who Discover Securities in Their Possession to Which They Are Not Entitled) that currently points to Rule 2110. Rule 2110 (Standards of Commercial Honor and Principles of Trade) was relocated to General 9, Section 1 of the

Rulebook shell under SR-BX-2019-039.<sup>22</sup>

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>23</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>24</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by bringing greater transparency to its rules by relocating the equity and general rules into the new Rulebook shell together with other rules which have already been relocated.<sup>25</sup> The Exchange's proposal is consistent with the Act and will protect investors and the public interest by harmonizing its rules, where applicable, across Nasdaq affiliated markets so that members can readily locate rules which cover similar topics. The relocation and harmonization of the BX Rules is part of the Exchange's continued effort to promote efficiency and conformity of its rules to the extent applicable with those of its affiliated exchanges. The Exchange believes that the placement of the BX equity and general rules into their new location in the shell will facilitate the use of the Rulebook by members. Specifically, the Exchange believes that market participants that are members of more than one Nasdaq affiliated market will benefit from the ability to compare Rulebooks.

The Exchange is not substantively amending rule text. The renumbering, re-lettering, deleting reserved and already deleted rules, amending cross-references and

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<sup>22</sup> See supra note 3.

<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> See supra note 3.

other minor technical changes will bring greater transparency to BX's Rules. The Exchange's affiliates have already filed similar rule changes to relocate their respective equity and general rules into the same location in each Rulebook for ease of reference.<sup>26</sup> The Exchange believes its proposal will benefit investors and the general public by increasing the transparency of its Rulebook and promoting easy comparisons among the various Nasdaq affiliated exchanges' Rulebooks.

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

The Exchange 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. The Exchange believes that the proposed amendments do not impose an undue burden on competition because the amendments to relocate the equity and general rules are non-substantive. This rule change is intended to bring greater clarity to the Exchange's Rules and to promote easy comparisons among the various Nasdaq affiliated exchanges' Rulebooks. Renumbering, re-lettering, deleting reserved rules and already deleted rules, and amending cross-references will bring greater transparency to BX's Rules.

C. 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.

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<sup>26</sup> The Nasdaq Stock Market LLC previously filed to relocate its equity and general rules. See Securities Exchange Act Release No. 90577 (December 7, 2020), 85 FR 80202 (December 11, 2020) (SR-NASDAQ-2020-079). See also Securities Exchange Act Release No. 91058 (February 4, 2021), 86 FR 8966 (February 10, 2021) (SR-Phlx-2021-04).

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>27</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>28</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 is consistent with the Act. Comments may be submitted by any of the following methods:

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<sup>27</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>28</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2021-012 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-BX-2021-012. 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office 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-BX-2021-012 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.<sup>29</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>29</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5A**  
**Current Rulebook of Nasdaq BX, Inc. Rules**

*New text is underlined; deleted text is in brackets.*

**Nasdaq BX, Inc. Rules**

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**Equity Rules**

\* \* \* \* \*

**[2100. GENERAL STANDARDS**

**2170. Disruptive Quoting and Trading Activity Prohibited**

(a) No Member shall engage in or facilitate disruptive quoting and trading activity on the Exchange, as described in subsections (i) and (ii) of this Rule, including acting in concert with other persons to effect such activity.

(i) For purposes of this Rule, disruptive quoting and trading activity shall include a frequent pattern in which the following facts are present:

(a) Disruptive Quoting and Trading Activity Type 1:

(i) a party enters multiple limit orders on one side of the market at various price levels (the "Displayed Orders"); and

(ii) following the entry of the Displayed Orders, the level of supply and demand for the security changes; and

(iii) the party enters one or more orders on the opposite side of the market of the Displayed Orders (the "Contra-Side Orders") that are subsequently executed; and

(iv) following the execution of the Contra-Side Orders, the party cancels the Displayed Orders.

(b) Disruptive Quoting and Trading Activity Type 2:

(i) a party narrows the spread for a security by placing an order inside the NBBO; and

(ii) the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the order described in paragraph (b)(i).

(ii) Applicability. For purposes of this Rule, disruptive quoting and trading activity shall include a frequent pattern in which the facts listed above are present. Unless otherwise

indicated, the order of the events indicating the pattern does not modify the applicability of the Rule. Further, disruptive quoting and trading activity includes a pattern or practice in which of the quoting and trading activity is conducted on the Exchange as well as a pattern or practice in which some portion of the quoting or trading activity is conducted on the Exchange and the other portions of the quoting or trading activity are conducted on one or more other exchanges.

## **2800. SPECIAL PRODUCTS**

### **2830. Investment Company Securities**

(a) Exchange Members and their associated persons shall comply with FINRA Rule 2341 as if such Rule were part of the Rules of the Exchange.

(b) For purposes of this Rule:

(1) references to "FINRA rules" shall be construed as references to "the Rules of the Exchange",

(2) references to Rule 2320 shall be deleted, and no comparable Exchange Rule shall apply to activities of Exchange Members in connection with contracts providing for benefits or values which may vary according to the investment experience of any separate or segregated account or accounts maintained by an insurance company,

(3) references to Rule 2040 shall be construed as a requirement that an Exchange member who is an underwriter of the securities of an investment company selling any such securities, may not directly or indirectly, pay any compensation, fees, concessions, discounts, commissions or other allowances to any person that is not registered as a broker-dealer under Section 15(a) of the Exchange Act but, by reason of receipt of any such payments and the activities related thereto, is required to be so registered under applicable federal securities laws and Exchange Act rules and regulations; or any appropriately registered associated person unless such payment complies with all applicable federal securities laws, Exchange rules and Exchange Act rules and regulations, and

(4) references to Rule 2232 shall be construed as references to SEC Rule 10b-10.

### **2840. Trading in Index Warrants, Currency Index Warrants, and Currency Warrants**

#### **2841. General**

(a) Applicability. This Rule 2840 Series shall be applicable: (1) to the conduct of accounts, the execution of transactions, and the handling of orders in index warrants listed on the Exchange; and (2) to the extent appropriate unless otherwise stated herein, to the conduct of accounts, the execution of transactions, and the handling of orders in other exchange-listed stock index warrants, currency index warrants, and currency

warrants by members who are not members of the exchange on which the warrant is listed or traded.

(b) Except to the extent that specific provisions in this Rule Series govern, or unless the context otherwise requires, the provisions of the Equity Rules and all other interpretations and policies shall also be applicable to transactions in index warrants, currency index warrants, and currency warrants.

(c) The Rules in this Rule 2840 Series are not applicable to stock index warrants, currency index warrants, and currency warrants listed on national securities exchanges prior to September 28, 1995.

## **2842. Definitions**

(a) "Control"

(1) The term "control" means the power or ability of an individual or entity to make investment decisions for an account or accounts, or influence directly or indirectly the investment decisions of any person or entity who makes investment decisions for an account. In addition, control will be presumed in the following circumstances:

(A) among all parties to a joint account who have authority to act on behalf of the account;

(B) among all general partners to a partnership account;

(C) when a person or entity:

(i) holds an ownership interest of 10 percent or more in an entity (ownership interest of less than 10 percent will not preclude aggregation), or

(ii) shares in 10 percent or more of profits and/or losses of an account;

(D) when accounts have common directors or management;

(E) where a person or entity has the authority to execute transactions in an account.

(2) Control, presumed by one or more of the above powers, abilities or circumstances, can be rebutted by proving the factor does not exist or by showing other factors which negate the presumption of control. The rebuttal proof must be submitted by affidavit and/or such other evidence as may be appropriate in the circumstances.

(3) The Exchange will also consider the following factors in determining if aggregation of accounts is required:

- (A) similar patterns of trading activity among separate entities;
  - (B) the sharing of kindred business purposes and interests;
  - (C) whether there is common supervision of the entities which extends beyond assuring adherence to each entity's investment objectives and/or restrictions;
  - (D) the degree of contact and communication between directors and/or managers of separate accounts.
- (b) The term "currency index" means a group of currencies each of whose inclusion and relative representation in the group is determined by its inclusion and relative representation in a currency index.
- (c) The term "currency index warrants" shall mean instruments that are direct obligations of the issuing company, either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style), entitling the holder thereof to a cash settlement in U.S. dollars to the extent that the value of the underlying currency index has declined below (in the case of a put warrant) or increased above (in the case of a call warrant) the pre-stated cash settlement value of the underlying currency index.
- (d) The term "currency warrants" shall mean instruments that are direct obligations of the issuing company, either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style), entitling the holder thereof to a cash settlement in U.S. dollars to the extent that the value of the underlying foreign currency has declined below (in the case of a put warrant) or increased above (in the case of a call warrant) the pre-stated cash settlement value of the underlying foreign currency. The term "foreign currency warrants" shall also include cross-rate currency warrants.
- (e) The term "index warrants" means instruments that are direct obligations of the issuing company, either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style), entitling the holder thereof to a cash settlement in U.S. dollars to the extent that the value of the underlying stock index group has declined below (in the case of a put warrant) or increased above (in the case of a call warrant) the pre-stated cash settlement value of the underlying stock index group.
- (f) The term "stock index group" means a group of stocks each of whose inclusion and relative representation in the group is determined by its inclusion and relative representation in a stock index.

**2843. Account Approval**

- (a) No member or person associated with a member shall accept an order from a customer to purchase or sell an index warrant, currency index warrant, or currency

warrant unless the customer's account has been approved for options trading pursuant to FINRA Rule 2360(b)(16). To the extent that it is made applicable to index warrants, currency index warrants, and currency warrants by FINRA Rule 2352, Exchange Members and their associated persons shall comply with FINRA Rule 2360(b)(16) as if such Rule were part of the Rules of the Exchange.

(b) For purposes of this Rule, references to "FINRA Rules" shall be construed as references to "the Rules of the Exchange", and references to "FINRA" shall be construed as references to the Exchange.

#### **2844. Suitability**

The provisions of FINRA Rule 2360(b)(19) shall apply to recommendations by members and persons associated with members regarding the purchase or sale of index warrants, currency index warrants, or currency warrants. To the extent that it is made applicable to index warrants, currency index warrants, and currency warrants by FINRA Rule 2353, Exchange Members and their associated persons shall comply with FINRA Rule 2360(b)(19) as if such Rule were part of the Rules of the Exchange.

#### **2845. Discretionary Accounts**

(a) Insofar as a member or person associated with a member exercises discretion to trade in index warrants, currency index warrants, or currency warrants in a customer's account, such account shall be subject to the provisions of FINRA Rule 2360(b)(18). To the extent that it is made applicable to index warrants, currency index warrants, and currency warrants by FINRA Rule 2354, Exchange Members and their associated persons shall comply with FINRA Rule 2360(b)(18) as if such Rule were part of the Rules of the Exchange.

(b) For purposes of this rule, references to Rule 3260 and Rule 4512(c) shall be construed as references to General 9, Section 19 and General 9, Section 45.

#### **2846. Supervision of Accounts**

(a) The provisions of FINRA Rule 2360(b)(20) shall apply to all customer accounts of a member in which transactions in index warrants, currency index warrants, or currency warrants are effected. To the extent that it is made applicable to index warrants, currency index warrants, and currency warrants by FINRA Rule 2355, Exchange Members and their associated persons shall comply with FINRA Rule 2360(b)(20) as if such Rule were part of the Rules of the Exchange.

(b) For purposes of this rule, references to Rules 3110, 3120, and 3130 shall be construed as references to General 9, Sections 20 and 21.

#### **2847. Customer Complaints**

(a) The record-keeping requirements of FINRA Rule 2360(b)(17)(A) concerning the receipt and handling of customer complaints relating to options shall also apply to customer complaints relating to index warrants, currency index warrants, or currency

warrants. To the extent that it is made applicable to index warrants, currency index warrants, and currency warrants by FINRA Rule 2356, Exchange Members and their associated persons shall comply with FINRA Rule 2360(b)(17)(A) as if such Rule were part of the Rules of the Exchange.

(b) For purposes of this rule, references to Rule 2268 and the Rule 4510 Series shall be construed as references to General 6, Section 1(b) and General 9, Section 30. The reference to Rule 5340 shall be disregarded.

**2848. Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants, and Currency Warrants**

(a) The provisions of FINRA Rule 2220 (except FINRA Rule 2220(c)) shall be applicable to communications to customers regarding index warrants, currency index warrants, or currency warrants. To the extent that it is made applicable to index warrants, currency index warrants, and currency warrants by FINRA Rule 2357, Exchange Members and their associated persons shall comply with FINRA Rule 2220 (except FINRA Rule 2220(c)) as if such Rule were part of the Rules of the Exchange.

(b) For purposes of this rule, references to "FINRA" shall be construed as references to the Exchange.

**2849. Maintenance of Records**

The record-keeping provisions of FINRA Rule 2360(b)(17)(B) shall be applicable to customer accounts approved to trade index warrants, currency index warrants, or currency warrants. To the extent that it is made applicable to index warrants, currency index warrants, and currency warrants by FINRA Rule 2358, Exchange Members and their associated persons shall comply with FINRA Rule 2360(b)(17)(B) as if such Rule were part of the Rules of the Exchange.

**2850. Position Limits**

(a) Except with the prior written approval of the Exchange pursuant to the Rule 9600 Series for good cause shown, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, a purchase or sale transaction in an index warrant listed on the Exchange or on another national securities exchange if the member has reason to believe that as a result of such transaction the member, or partner, officer, director or employee thereof, or customer would, acting alone or in concert with others, directly or indirectly, hold or control an aggregate position in an index warrant issue on the same side of the market, combining such index warrant position with positions in index warrants overlying the same index on the same side of the market, in excess of the

position limits established by the Exchange or the other exchange on which the index warrant is listed.

(b) In determining compliance with this Rule, the position limits for index warrants listed on the Exchange are as follows:

(1) Fifteen million warrants with respect to warrants on the same stock index (other than the Standard & Poor's MidCap 400 Index) with an original issue price of ten dollars or less.

(2) Seven million five hundred thousand warrants, with respect to warrants on the Standard & Poor's MidCap 400 Index with an original issue price of ten dollars or less.

(3) For stock index warrants with an original issue price greater than ten dollars, positions in these warrants must be converted to the equivalent of warrants on the same index priced initially at ten dollars by dividing the original issue price of the index warrants priced above ten dollars by ten and multiplying this number by the size of such index warrant position. After recalculating a warrant position pursuant to this subparagraph, such recalculated warrant position shall be aggregated with other warrant positions on the same underlying index on the same side of the market and subjected to the applicable position limit set forth in subparagraph (1) or (2) above. For example, if an investor held 100,000 Nasdaq 100 Index warrants offered originally at \$20 per warrant, the size of this position for the purpose of calculating position limits would be 200,000, or 100,000 times 20/10.

### **2851. Exercise Limits**

(a) Except with the prior written approval of the Exchange pursuant to the Rule 9600 Series for good cause shown, in each instance, no member or person associated with a member shall exercise, for any account in which such member or person associated with such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, a long position in any index warrant if as a result thereof such member or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly:

(1) has or will have exercised within any five (5) consecutive business days a number of index warrants overlying the same index in excess of the limits for index warrant positions contained in Rule 2850; or

(2) has or will have exceeded the applicable exercise limit fixed from time to time by an exchange other than the Exchange.

(b) The Exchange, pursuant to the Rule 9600 Series for good cause shown, may institute other limitations concerning the exercise of index warrants from time to time. Reasonable notice shall be given of each new limitation fixed by the Exchange. These exercise

limitations are separate and distinct from any other exercise limitations imposed by the issuers of index warrants.

### **2852. Reporting Requirements**

(a) Each member shall file with the Regulation Department a report with respect to each account in which the member has an interest, each account of a partner, officer, director or employee of such member, and each customer account of the member, which has established an aggregate position of 100,000 index warrants on the same side of the market in an index warrant issue listed on the Exchange, combining such index warrant position with positions in index warrants overlying the same index on the same side of the market traded on the Exchange or another national securities exchange.

(b) Such report shall identify the person or persons having an interest in such account and shall identify separately the total number of each type of index warrant that comprises the reportable position in such account. The report shall be in such form as may be prescribed by the Regulation Department and shall be filed no later than the close of business on the next business day following the day on which the transaction or transactions necessitating the filing of such report occurred. Whenever a report shall be required to be filed with respect to an account pursuant to this Rule, the member filing such report shall file with the Regulation Department such additional periodic reports with respect to such account as the Regulation Department may from time to time prescribe.

### **2853. Liquidation of Index Warrant Positions**

(a) Whenever the Regulation Department determines that a person or group of persons acting in concert holds or controls an aggregate position (whether short or long) in index warrants overlying the same index in excess of the position limitations established by Rule 2850, it may, when deemed necessary or appropriate in the public interest and for the protection of investors, direct any member or all members carrying a position in index warrants overlying such index for such person or persons to liquidate such position or positions, or portions thereof, as expeditiously as possible and consistent with the maintenance of an orderly market, so as to bring such person or persons into compliance with the position limitations contained in Rule 2850.

(b) Whenever such a directive is issued by the Regulation Department no member receiving notice thereof shall accept and/or execute for any person or persons named in such directive any order to purchase or sell short any index warrants based on the same index, unless in each instance express approval therefor is given by the Regulation Department, or the directive is rescinded.

### **2854. Reserved**

## **2900. RESPONSIBILITIES TO OTHER BROKERS OR DEALERS**

### **2900. Responsibilities to Other Brokers or Dealers**

### **2910. Deleted**

**2000A. BUSINESS CONDUCT****2310A. Direct Participation Programs**

(a) Exchange Members and their associated persons shall comply with FINRA Rule 2310 as if such Rule were part of the Rules of the Exchange.

(b) For purposes of this Rule 2310A:

(1) references to amounts fixed by the Board of Governors with respect to noncash compensation arrangements shall be construed to reflect the policy of the Exchange with respect to the application of Rule 2310A,

(2) references to "procedures established by the FINRA" and "FINRA Rules" shall be construed as references to "Rules of the Exchange", and

(3) for purposes of this Rule only, Exchange members and their associated persons shall comply with applicable provisions of FINRA Rule 5110 as if such Rule were part of the Rules of the Exchange, and references to the "Corporate Financing Department" shall be construed as references to FINRA's Corporate Financing Department.

(c) Pursuant to the Rule 9600 Series, the Exchange may exempt any member from the provisions of this Rule for good cause shown.

**3000. Responsibilities Relating to Associated Persons, Employees, and Others' Employees****3220. Adjustment of Open Orders**

(a) A member holding an open order from a customer or another broker/dealer shall, prior to executing or permitting the order to be executed, reduce, increase or adjust the price and/or number of shares of such order by an amount equal to the dividend, payment or distribution, on the day that the security is quoted ex-dividend, ex-rights, ex-distribution or ex-interest, except where a cash dividend or distribution is less than one cent (\$.01), as follows:

(1) In the case of a cash dividend or distribution, the price of the order shall be reduced by subtracting the dollar amount of the dividend or distribution from the price of the order and rounding the result to the next lower minimum quotation variation used in the primary market, provided that if there is more than one minimum quotation variation in the primary market, then the greater of the variations shall be used;

(2) In the case of a stock dividend or split, the price of the order shall be reduced by rounding the dollar value of the stock dividend or split to the next higher minimum quotation variation used in the primary market as specified in paragraph (a)(1) and

subtracting that amount from the price of the order; provided further, that the size of the order shall be increased by (A) multiplying the size of the original order by the numerator of the ratio of the dividend or split, (B) dividing the result by the denominator of the ratio of the dividend or split, and (C) rounding the result to the next lower round lot; and

(3) In the case of a dividend payable in either cash or securities at the option of the stockholder, the price of the order shall be reduced by the dollar value of the cash or securities, whichever is greater, according to the formulas in subparagraph (1) or (2), above; provided, that if the stockholder opts for securities, the size of the order shall be increased pursuant to the formula in subparagraph (2), above.

(b) If the value of the distribution cannot be determined, the member shall not execute or permit such order to be executed without reconfirming the order with the customer.

(c) If a security is the subject of a reverse split, all open orders shall be cancelled.

(d) The term "open order" means an order to buy or an open stop order to sell, including but not limited to "good `til cancelled," "limit" or "stop limit" orders which remain in effect for a definite or indefinite period until executed, cancelled or expired.

(e) The provisions of this Rule shall not apply to:

(1) orders governed by the rules of another registered national securities exchange or the NASD;

(2) orders marked "do not reduce" where the dividend is payable in cash;

(3) orders marked "do not increase" where the dividend is payable in stock, provided that the price of such orders shall be adjusted as required by this Rule;

(4) open stop orders to buy;

(5) open sell orders; or

(6) orders for the purchase or sale of securities where the issuer of the securities has not reported a dividend, payment or distribution pursuant to SEC Rule 10b-17.

### **3230. Clearing Agreements**

(a) All clearing or carrying agreements entered into by a member shall specify the respective functions and responsibilities of each party to the agreement and shall, at a minimum, specify the responsibility of each party with respect to each of the following matters:

(1) opening, approving and monitoring customer accounts;

- (2) extension of credit;
- (3) maintenance of books and records;
- (4) receipt and delivery of funds and securities;
- (5) safeguarding of funds and securities;
- (6) confirmations and statements;
- (7) acceptance of orders and execution of transactions;
- (8) whether, for purposes of the Commission's financial responsibility rules adopted under the Act, and the Securities Investor Protection Act, as amended, and regulations adopted thereunder, customers are customers of the clearing member;  
and
- (9) the requirement to provide customer notification under paragraph (g) of this Rule.

**(b)**

- (1) In order for the introducing member to carry out its functions and responsibilities under the agreement, each clearing member must forward promptly any written customer complaint received by the clearing member regarding the introducing member or its associated persons relating to functions and responsibilities allocated to the introducing member under the agreement directly to: (A) the introducing member; and (B) the introducing member's examining authority designated under Section 17 of the Act ("DEA") (or, if none, to its appropriate regulatory agency or authority). The clearing or carrying agreement must specifically direct and authorize the clearing member to do so.
- (2) The clearing member must also notify the customer, in writing, that it has received the complaint, and that the complaint has been forwarded to the introducing member and to the introducing member's DEA (or, if none, to its appropriate regulatory agency or authority).
- (3) Pursuant to the Rule 9600 Series, the Exchange may exempt a member or person associated with a member from the requirements of this paragraph for good cause shown in instances where the introducing organization is an affiliated entity of the carrying organization.

**(c)**

- (1) A clearing member, when it enters into a clearing agreement, must immediately, and annually thereafter, provide the introducing member a list or description of all

reports (exception and other types of reports) which it offers to the introducing member to assist the introducing member in supervising its activities, monitoring its customer accounts, and carrying out its functions and responsibilities under the clearing agreement. The introducing member must notify promptly the clearing member, in writing, of those specific reports offered by the clearing member that the introducing member requires to supervise and monitor its customer accounts.

(2) The clearing member must retain as part of its books and records required to be maintained under the Act and the Rules of the Exchange, copies of the reports requested by or provided to the introducing member. For purposes of this Rule, the clearing member will be in compliance with the requirements of this paragraph if it retains the data from which the original report was produced, provided, the clearing member can, at the request of the DEA (or, if none, to its appropriate regulatory agency or authority), either (A) recreate the report; or (B) provide the data and the data formatting that was used to prepare the report.

(3) Each year, no later than July 31, the clearing member must notify in writing the introducing member's chief executive and compliance officers of the reports offered to the introducing member pursuant to paragraph (c)(1) and the reports requested by or supplied to the introducing member as of such date. The clearing member must also provide a copy of the notice to the introducing member's DEA (or, if none, to its appropriate regulatory agency or authority).

(4) Pursuant to the Rule 9600 Series, the Exchange may exempt a member or person associated with a member from the requirements of this paragraph for good cause shown in instances where the introducing organization is an affiliated entity of the carrying organization.

(d) The clearing or carrying agreement may permit the introducing member to issue negotiable instruments directly to the introducing member's customers using instruments for which the clearing member is the maker or drawer. The clearing member may not grant the introducing member the authority to issue negotiable instruments until the introducing member has notified the clearing member in writing that it has established, and will maintain and enforce, supervisory procedures with respect to the issuance of such instruments that are satisfactory to the carrying organization.

(e) Whenever a clearing member designated to the Exchange for oversight pursuant to Section 17 of the Act, or a rule of the Commission adopted thereunder, amends any of its clearing or carrying agreements with respect to any item enumerated in subparagraphs (a)(1) through (a)(9) or enters into a new clearing or carrying agreement with an introducing member, the clearing member shall submit the agreement to the Exchange for review and approval.

(f) Whenever an introducing member designated to the Exchange for oversight pursuant to Section 17 of the Act, or a rule of the Commission adopted thereunder, amends its clearing or carrying agreement with a clearing member designated to another self-

regulatory organization for oversight with respect to any item enumerated in subparagraphs (a)(1) through (a)(9) or enters into a new clearing agreement with another clearing member, the introducing member shall submit the agreement to the Exchange for review.

(g) Each customer whose account is introduced on a fully disclosed basis shall be notified in writing upon the opening of his account of the existence of the clearing or carrying agreement.

(h) All clearing agreements shall require each introducing member to maintain its proprietary and customer accounts and the proprietary and customer accounts of any member for which it is acting as an intermediary in obtaining clearing services from the clearing firm in such a manner as to enable the clearing firm and the Exchange to identify data belonging to the proprietary and customer accounts of each member. The requirements of this paragraph (h) shall apply to intermediary clearing arrangements between a member and an introducing member that are established on or after December 23, 2008.

(i) Members shall be exempt from Rule 3230 to the extent any party to the clearing agreement is subject to a comparable rule of the self-regulatory organization designated pursuant to SEC Rule 17d-1 as the party's designated examining authority.

### **3300. Trading**

#### **3310. Publication of Transactions and Quotations**

No member shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such member believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security. If nominal quotations are used or given, they shall be clearly stated or indicated to be only nominal quotations.

#### **IM-3310. Manipulative and Deceptive Quotations**

Rule 2110 provides that:

A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

Rule 3310 provides that:

No member shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless

such member believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security. If nominal quotations are used or given, they shall be clearly stated or indicated to be only nominal quotations.

Rule 2120 provides that:

No member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.

It would be inconsistent with the above provisions for a member to publish or circulate or cause to be published or circulated, by any means whatsoever, any report of any securities transaction or of any purchase or sale of any security unless such member knows or has reason to believe that such transaction was a bona fide transaction, purchase or sale.

Similarly, it would be inconsistent with the above provisions for a member, for itself or for any other person, to publish or circulate or to cause to be published or circulated, by any means whatsoever, any quotation for any security without having reasonable cause to believe that such quotation is a bona fide quotation, is not fictitious and is not published or circulated or caused to be published or circulated for any fraudulent, deceptive or manipulative purpose.

For the purposes of this interpretation, the term "quotation" shall include any bid or offer or any formula, such as "bid wanted" or "offer wanted," designed to induce any person to make or submit any bid or offer.

### **3320. Offers at Stated Prices**

No member shall make an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

### **3330. Deleted**

### **3340. Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts**

(a) No member or person associated with a member shall, directly or indirectly, effect any transaction or publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" and "offer wanted" and name only indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest, in any security as to which a trading halt is currently in effect.

(b) No member or person associated with a member shall, directly or indirectly, effect any transaction or publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" and "offer wanted" and name only indications), or a bid or offer, accompanied by a modifier to reflect unsolicited customer interest, in:

(1) a future for a single security when the underlying security has a regulatory trading halt that is currently in effect; and

(2) a future on a narrow-based securities index when one or more underlying securities that constitute 50% or more of the market capitalization of the index has a regulatory trading halt that is currently in effect.

### **3350. Suspension of Trading**

(a) Members shall promptly notify Nasdaq whenever they have knowledge of any matter related to any "NMS Stock" (as defined in SEC Rule 600 (b)(42)) or the issuer thereof which has not been adequately disclosed to the public or where they have knowledge of a regulatory problem relating to such security.

(b) Whenever any market for any NMS Stock halts or suspends trading in such security, members may continue to conduct trading in such security during the period of any such halt or suspension and shall continue to report all last sale prices reflecting transactions in such security, unless Nasdaq has initiated a trading halt for the security, pursuant to Rule 4120.

### **3351. Trading Practices**

(a) No member shall execute or cause to be executed or participate in an account for which there are executed purchases of any "NMS Stock" (as defined in SEC Rule 600(b)(42)) at successively higher prices, or sales of any such security at successively lower prices, for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security or for the purpose of unduly or improperly influencing the market price for such security or for the purpose of establishing a price which does not reflect the true state of the market in such security.

(b) No member shall, for the purpose of creating or inducing a false or misleading appearance of activity in an NMS Stock or creating or inducing a false or misleading appearance with respect to the market in such security:

(1) execute any transaction in such security which involves no change in the beneficial ownership thereof; or

(2) enter any order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties; or

(3) enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.

(c) No member shall execute purchases or sales of any NMS Stock for any account in which such member is directly or indirectly interested, which purchases or sales are excessive in view of the member's financial resources or in view of the market for such security.

(d) No member shall participate or have any interest, directly or indirectly, in the profits of a manipulative operation or knowingly manage or finance a manipulative operation.

(1) Any pool, syndicate or joint account organized or used intentionally for the purpose of unfairly influencing the market price of an NMS Stock shall be deemed to be a manipulative operation.

(2) The solicitation of subscriptions to or the acceptance of discretionary orders from any such pool, syndicate or joint account shall be deemed to be managing a manipulative operation.

(3) The carrying on margin of a position in such securities or the advancing of credit through loans to any such pool, syndicate or joint account shall be deemed to be financing a manipulative operation.

(e) No member shall make any statement or circulate and disseminate any information concerning any NMS Stock which such member knows or has reasonable grounds for believing is false or misleading or would improperly influence the market price of such security.

(f) No member or person associated with a member shall, directly or indirectly, hold any interest or participation in any joint account for buying or selling an NMS Stock, unless such joint account is promptly reported to Nasdaq. The report should contain the following information for each account:

(1) Name of the account, with names of all participants and their respective interests in profits and losses;

(2) a statement regarding the purpose of the account;

(3) name of the member carrying and clearing the account; and

(4) a copy of any written agreement or instrument relating to the account.

(g) No member shall offer that a transaction or transactions to buy or sell an NMS Stock will influence the closing transaction on the Consolidated Tape.

**(h)**

(1) A member may, but is not obligated to, accept a stop order in an NMS Stock.

(A) A buy stop order is an order to buy which becomes a market order when a transaction takes place at or above the stop price.

(B) A sell stop order is an order to sell which becomes a market order when a transaction takes place at or below the stop price.

(2) A member may, but is not obligated to, accept stop limit orders in NMS Stocks. When a transaction occurs at the stop price, the stop limit order to buy or sell becomes a limit order at the limit price.

(i) No member or person associated with a member shall execute or cause to be executed, directly or indirectly, on Nasdaq a transaction in a security subject to an initial public offering until such security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination of an opening transaction in the security by the listing exchange via the Consolidated Tape.

**3360. Short-Interest Reporting**

(a) To the extent such information is not otherwise reported to FINRA in conformance with FINRA Rule 4560, each member shall maintain a record of total "short" positions in all customer and proprietary firm accounts in all securities listed on the Exchange and shall regularly report such information to the Exchange in such a manner as may be prescribed by the Exchange. Reports shall be received by the Exchange no later than the second business day after the reporting settlement date designated by the Exchange.

(b) Members shall record and report all gross short positions existing in each individual firm or customer account, including the account of a broker-dealer, that resulted from (1) a "short sale" as that term is defined in Rule 200(a) of SEC Regulation SHO, or (2) where the transaction(s) that caused the short position was marked "long," consistent with SEC Regulation SHO, due to the firm's or the customer's net long position at the time of the transaction. Members shall report only those short positions resulting from short sales that have settled or reached settlement date by the close of the reporting settlement date designated by the Exchange.

(c) The recording and reporting requirements of this Rule shall not apply to:

(1) any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as is possible without undue inconvenience or expense; and

(2) any sale by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities through rights or a standby underwriting commitment.

### **3370. Prompt Receipt and Delivery of Securities**

No member or person associated with a member may accept a customer's purchase order for any security unless it has first ascertained that the customer placing the order or its agent agrees to receive securities against payment in an amount equal to any execution, even though such an execution may represent the purchase of only a part of a larger order.

### **3380. Order Entry and Execution Practices**

No member or associated person may engage in conduct that has the intent or effect of splitting any order into multiple smaller orders for execution or any execution into multiple smaller executions for transaction reporting for the primary purpose of maximizing a monetary or in-kind amount to be received by the member or associated person as a result of the execution of such orders or the transaction reporting of such executions. For purposes of this rule, "monetary or in-kind amount" shall be defined to include, but not be limited to, any credits, commissions, gratuities, payments for or rebates of fees, or any other payments of value to the member or associated person.

### **3381. SEC Rule 19c-1 Governing Certain Off-Board Agency Transactions by Members of National Securities Exchanges**

No rule, stated policy, or practice of this exchange shall prohibit or condition, or be construed to prohibit or condition or otherwise limit, directly or indirectly, the ability of any member acting as agent to effect any transaction otherwise than on this exchange with another person (except when such member also is acting as agent for such other person in such transaction), in any equity security listed on this exchange or to which unlisted trading privileges on this exchange have been extended.

### **3385. SEC Rule 19c-3 Governing Off-Board Trading by Members of National Securities Exchanges**

(a) No rule, stated policy or practice of this exchange shall prohibit or condition, or be construed to prohibit, condition or otherwise limit, directly or indirectly, the ability of any member to effect any transaction otherwise than on this exchange in any reported security listed and registered on this exchange or as to which unlisted trading

privileges on this exchange have been extended (other than a put option or call option issued by the Options Clearing Corporation) which is not a covered security.

(b) For purposes of this rule,

(1) The term "Act" shall mean the Securities Exchange Act of 1934, as amended.

(2) The term "exchange" shall mean a national securities exchange registered as such with the Securities and Exchange Commission pursuant to section 6 of the Act.

(3) The term "covered security" shall mean:

(A) Any equity security or class of equity securities which

(i) was listed and registered on an exchange on April 26, 1979, and

(ii) remains listed and registered on at least one exchange continuously thereafter;

(B) Any equity security or class of equity securities which

(i) was traded on one or more exchanges on April 26, 1979, pursuant to unlisted trading privileges permitted by Section 12(f)(1)(A) of the Act, and

(ii) remains traded on any such exchange pursuant to such unlisted trading privileges continuously thereafter; and

(C) Any equity security or class of equity securities which

(i) is issued in connection with a statutory merger, consolidation or similar plan or reorganization (including a reincorporation or change of domicile) in exchange for an equity security or class of equity securities described in paragraph (b)(3)(A) or (b)(3)(B) of this rule,

(ii) is listed and registered on an exchange after April 26, 1979, and

(iii) remains listed and registered on at least one exchange continuously thereafter.

(4) The term "reported security" shall mean any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan.

(5) The term "transaction report" shall mean a report containing the price and volume associated with a completed transaction involving the purchase or sale of a security.

(6) The term "effective transaction reporting plan" shall mean any plan approved by the Commission pursuant to Rule 11Aa3-1 for collecting, processing and making available transaction reports with respect to transactions in an equity security or class of equity securities.

### **3390. SEC Rule 604 Display of Customer Limit Orders**

Equities Market Makers shall comply with the obligations of SEC Rule 604 and any interpretations issued thereunder. Solely for the purposes of this Rule and SEC Rule 604, Equities Market Makers shall be deemed to be exchange specialists.

### **3400. Reserved**

## **4000. LISTING AND TRADING ON THE EXCHANGE**

### **4100. General**

#### **4110. Use of the Exchange on a Test Basis**

Notwithstanding the listing standards set forth in the Rule 4300 and 4400 Series, the Exchange may at any time authorize the use of its systems on a test basis for whatever studies it considers necessary and appropriate.

#### **4120. Limit Up-Limit Down Plan and Trading Halts**

##### **(a) Authority to Initiate Trading Halts or Pauses**

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

- (1) may halt trading on the Exchange of a security listed on the Exchange to permit the dissemination of material news; or
- (2) may halt trading on the Exchange of a security listed on another national securities exchange during a trading halt imposed by such exchange to permit the dissemination of material news; or
- (3) may halt trading on the Exchange: (A) in a security listed on another national securities exchange when such exchange imposes a trading halt in that security because of an order imbalance or influx ("operational trading halt"); or (B) by Equities Market Makers in a security listed on the Exchange, when the security is a derivative or component of a security listed on another national securities exchange and such exchange imposes an operational trading halt in that security. In the event that the Exchange halts trading, Exchange Participants may commence quotations and trading at any time

following initiation of operational trading halts, without regard to procedures for resuming trading set forth in paragraph (c); or

(4) may halt trading in an American Depositary Receipt ("ADR") or other security listed on the Exchange, when the security listed on the Exchange or the security underlying the ADR is listed on or registered with another national or foreign securities exchange or market, and the national or foreign securities exchange or market, or regulatory authority overseeing such exchange or market, halts trading in such security for regulatory reasons; or

(5) may halt trading in a security listed on the Exchange when the Exchange requests from the issuer information relating to:

(A) material news;

(B) the issuer's ability to meet Exchange listing qualification requirements, as set forth in the Rule 5000 Series; or

(C) any other information which is necessary to protect investors and the public interest.

(6) may halt trading in a security listed on the Exchange when

(A) extraordinary market activity in the security is occurring, such as the execution of a series of transactions for a significant dollar value at prices substantially unrelated to the current market for the security, as measured by the national best bid and offer, and

(B) the Exchange determines that such extraordinary market activity is likely to have a material effect on the market for the security; and

(C)

(i) the Exchange believes that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, the Exchange;

(ii) After consultation with another national securities exchange trading the security on an unlisted trading privileges basis, the Exchange believes that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, such other national securities exchange; or

(iii) After consultation with FINRA regarding a FINRA facility trading the security, the Exchange believes that such extraordinary market activity is caused by the misuse or malfunction of such FINRA facility or an electronic quotation, communication, reporting, or execution system linked to such FINRA facility.

(7) Reserved

(8) may halt trading in an index warrant on the Exchange whenever the Regulation Department 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.

(9) may halt trading in a series of Portfolio Depository Receipts, Index Fund Shares, or Managed Fund Shares (as defined in 4420

) listed on the Exchange if the Intraday Indicative Value (as defined in Rule 4420) or the index value applicable to that series is not being disseminated as required, during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. If the interruption to the dissemination of the Intraday Indicative Value or the index 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. The Exchange may also exercise discretion to halt trading in a series of Portfolio Depository Receipts, Index Fund Shares, or Managed Fund Shares based on a consideration of the following factors: (A) trading in underlying securities comprising the index applicable to that series has been halted in the primary market(s), (B) the extent to which trading has ceased in securities underlying the index, or (C) the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.

(10) shall halt trading in Derivative Securities Products (as defined in Rule 4120(b)(4)(A)) for which a net asset value ("NAV") (and in the case of Managed Fund Shares under Rule 4420(o), a Disclosed Portfolio) is disseminated if the Exchange becomes aware that the NAV (or in the case of Managed Fund Shares, 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 the Exchange becomes aware that the NAV (or in the case of Managed Fund Shares, the Disclosed Portfolio, as applicable) is available to all market participants or, in the case of Derivative Securities Products traded on the Exchange pursuant to unlisted trading privileges, until such time trading resumes in the listing market.

(11) If a primary listing market issues an individual stock trading pause in any of the Circuit Breaker Securities, as defined in IM-4120-3, 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 subparagraph shall be in effect during a pilot set to end on February 4, 2014. During the pilot, the term "Circuit Breaker Securities" shall mean all NMS stocks other than NMS stocks subject to the Regulation NMS Plan to Address Extraordinary Market Volatility.

(12) shall halt trading on the Exchange in a security listed on the Exchange if the security fails to comply with Rule 5550(d).

(13) Limit Up-Limit Down Mechanism.

(A) Definitions.

(1) "Plan" means the Plan to Address Extraordinary Market Volatility Submitted to the Securities and Exchange Commission Pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934, Exhibit A to Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

(2) All capitalized terms not otherwise defined in this Rule shall have the meanings set forth in the Plan or Exchange rules, as applicable.

(B) Exchange Participation in the Plan. The Exchange is a Participant in, and subject to the applicable requirements of, the Plan, which establishes procedures to address extraordinary volatility in NMS Stocks.

(C) Member Organization Compliance. Member organizations shall comply with the applicable provisions of the Plan.

(D) Exchange Compliance with the Plan. Exchange systems shall not display or execute buy (sell) interest above (below) the Upper (Lower) Price Bands, unless such interest is specifically exempted under the Plan.

(E) Repricing and Cancellation of Interest. Exchange systems shall reprice and/or cancel buy (sell) interest that is priced or could be executed above (below) the Upper (Lower) Price Band. Any interest that is repriced pursuant to this Rule shall receive a new time stamp and new execution priority.

(1) Market Orders. If a market order with a time in force other than Immediate or Cancel cannot be fully executed at or within the Price Bands, Exchange systems shall post the unexecuted portion of the buy (sell) market order at the Upper (Lower) Price Band.

(2) Limit-priced Interest. Both displayable and non-displayable incoming limit-priced interest to buy (sell) that is priced above (below) the Upper (Lower) Price Band shall be repriced to the Upper (Lower) Price Band.

(a) For limit-priced orders entered via the OUCH protocol, the order shall be repriced upon entry only if the Price Bands are such that the price of the limit-priced interest to buy (sell) would be above (below) the upper (lower) Price Band. Once slid:

(i) if the Price Bands move such that the price of the order to buy (sell) would be below (above) the lower (upper) Price Band, the order will not be re-priced again. Rather, the order will either remain on the book at the same price or be cancelled back to the entering party, depending on how the entering party has configured its order entry port.

(ii) if the Price Bands move such that the price of the order to buy (sell) would be above (below) the upper (lower) Price Band, the order will not be re-priced again. Rather, the order will be cancelled.

(b) For limit-priced orders entered via RASH or FIX protocols, the order shall be eligible to be repriced by the system multiple times if the Price Bands move such that the price of resting limit-priced interest to buy (sell) would be above (below) the upper (lower) Price Band. Once slid, if the Price Bands again move such that the price of resting limit interest to buy (sell) would be below (above) the upper (lower) Price Band the order will continue to be repriced either to its original limit price or to the new price bands, whichever is less aggressive.

(3) IOC Orders. If an IOC order cannot be fully executed at or within the Price Bands, Exchange systems shall cancel any unexecuted portion of the IOC Order.

(4) Routable Orders. Exchange systems shall not route buy (sell) interest to an away market displaying a sell (buy) quote that is above (below) the Upper (Lower) Price Band. Orders that are eligible to be routed to away destinations will be price slid before routing if the buy (sell) is priced above (below) the Upper (Lower) Price Band.

(5) Auction Orders. On close or halt auction orders are not price slid or cancelled due to LULD price bands.

(6) Sell Short Orders. During a Short Sale Price Test, as defined in Rule 4763(b), Short Sale Orders priced below the Lower Price Band shall be repriced to the higher of the Lower Price Band or the Permitted Price, as defined in Rule 4763(b).

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

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

(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, the Exchange 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, the Exchange 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, the Exchange 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 Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares, or Trust Issued Receipts (as defined in Equity Rule 4420), a series of Commodity-Related Securities (as defined in Equity Rule 4630), securities representing interests in unit investment trusts or investment companies, or any other UTP Derivative Security (as defined in Rule 4421).

(B) "Pre-Market Session" means the trading session that begins at 7:00 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 7:00 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 Security 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 and Terminating a Trading Halt

(1) Issuers of securities listed on the Exchange are required to notify the Exchange of the release of certain material news prior to the release of such information to the public as required by Rule 5250(b)(1).

(2) Except in emergency situations, notification shall be provided directly to the Exchange's MarketWatch Department through the Exchange's electronic disclosure submission system available at a website designated by the Exchange for that purpose. In emergency situations, issuers shall instead provide notification by telephone or facsimile.

(3) Upon receipt of information, from the issuer or other source, the Exchange will promptly evaluate the information, estimate its potential impact on the market and determine whether a trading halt in the security is appropriate.

(4)(A) Should the Exchange determine that a basis exists under Rule 4120(a) 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 website of the Exchange. In addition, the Exchange shall disseminate notice of the commencement of a trading halt through major wire services.

(B) During any trading halt or pause, orders entered during the trading halt or pause will not be accepted.

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

(6)

(A) In the case of a trading halt under Rule 4120(a)(6) based on the misuse or malfunction of an electronic quotation, communication, reporting, or execution system

that is not operated by the Exchange, the Exchange will promptly contact the operator of the system in question (as well as any national securities exchange or FINRA facility to which such system is linked) to ascertain information that will assist the Exchange in determining whether a misuse or malfunction has occurred, what effect the misuse or malfunction is having on trading in a security, and what steps are being taken to address the misuse or malfunction. If the operator of the system is unavailable when contacted by the Exchange, the Exchange will continue efforts to contact the operator of the system to ascertain information that will assist the Exchange in determining whether the trading halt should be terminated.

(B) A trading halt initiated under Rule 4120(a)(6) shall be terminated as soon as the Exchange determines either that the system misuse or malfunction that caused the extraordinary market activity will no longer have a material effect on the market for the security or that system misuse or malfunction is not the cause of the extraordinary market activity.

(7)

(A) A trading halt initiated under Rule 4120(a)(1), (4), (5), (6), (9), (10) or (11) or Rule 4120(b) shall be terminated when the Exchange releases the security for trading, at a time announced to market participants in advance by the Exchange.

**IM-4120-1. Deleted**

**IM-4120-2. Deleted**

**IM-4120-3. Circuit Breaker Securities Pilot**

The provisions of paragraph (a)(11) of this Rule shall be in effect during a pilot set to end on the earlier of the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility or February 4, 2014. During the pilot, the term "Circuit Breaker Securities" shall mean all NMS stocks except rights and warrants.

**4121. Trading Halts Due to Extraordinary Market Volatility**

This Rule shall be in effect during a pilot period that expires at the close of business on October 18, 2021. If the pilot is not either extended or approved permanently at the end of the pilot period, the prior version of Rule 4121 shall be in effect.

(a) The Exchange shall halt trading in all stocks and shall not reopen for the time periods specified in this Rule if there is a Level 1, 2, or 3 Market Decline.

(i) For purposes of this Rule, a Market Decline means a decline in price of the S&P 500® Index between 9:30 a.m. EST and 4:00 p.m. EST on a trading day as compared to the closing price of the S&P 500® Index for the immediately preceding trading day. The

Level 1, Level 2, and Level 3 Market Declines that will be applicable for the trading day will be publicly disseminated before 9:30 a.m. EST.

(ii) A "Level 1 Market Decline" means a Market Decline of 7%.

(iii) A "Level 2 Market Decline" means a Market Decline of 13%.

(iv) A "Level 3 Market Decline" means a Market Decline of 20%.

(b) Halts in Trading.

(i) If a Level 1 Market Decline or a Level 2 Market Decline occurs after 9:30 a.m. EST and up to and including 3:25 p.m. EST or in the case of an early scheduled close, 12:25 p.m. EST the Exchange shall halt trading in all stocks for 15 minutes after a Level 1 or Level 2 Market Decline. The Exchange shall halt trading based on a Level 1 or Level 2 Market Decline only once per trading day. The Exchange will not halt trading if a Level 1 Market Decline or a Level 2 Market Decline occurs after 3:25 p.m. EST or in the case of an early scheduled close, 12:25 p.m. EST.

(ii) If a Level 3 Market Decline occurs at any time during the trading day, the Exchange shall halt trading in all stocks for the remainder of the trading day.

(c) Re-opening of Trading

(i) The re-opening of trading following a Level 1 or 2 trading halt shall follow the procedures set forth in Rule 4120.

(ii) If the primary listing market halts trading in all stocks, the Exchange will halt trading in those stocks until trading has resumed on the primary listing market or notice has been received from the primary listing market that trading may resume. If the primary listing market does not reopen a security within 15 minutes following the end of the 15-minute halt period, the Exchange may resume trading in that security.

(d) Nothing in this Rule 4121 should be construed to limit the ability of the Exchange to otherwise halt, suspend, or pause the trading in any stock or stocks traded on the Exchange pursuant to any other Exchange rule or policy.

#### **4200. Definitions**

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1) "SEC Rule 100," "SEC Rule 101," and "SEC Rule 104" means the rules adopted by the Commission under Regulation M, and any amendments thereto.

(2) "Stabilizing bid" means the terms "stabilizing" or to "stabilize" as defined in SEC Rule 100.

(3) "Underwriting Activity Report" is a report provided by the Corporate Financing Department of FINRA in connection with a distribution of securities subject to SEC Rule 101 pursuant to FINRA Rule 5190 and includes forms that are submitted by members to comply with their notification obligations under Rules 4614, 4619, and 4624.

(b) For purposes of Rules 4614, 4619, and 4624, the following terms shall have the meanings as defined in SEC Rule 100: "affiliated purchaser," "distribution," "distribution participant," "independent bid," "net purchases," "penalty bid," "reference security," "restricted period," "subject security," and "syndicate covering transaction."

#### **IM-4200. Deleted**

##### **4201. Operation of Listing Standards**

The Exchange listing standards are contained in the Rule 5000 Series. The provisions of the Equity Rule 4000 Series that permit the listing of securities are maintained solely to permit the trading of securities that cannot be listed on the Exchange through unlisted trading privileges. These rules will not be operative to permit the listing of these securities unless and until the Exchange files a proposed rule change under Section 19(b)(2) under the Act to adopt listing fees for these securities and such proposed rule change is approved by the Commission.

##### **4300**

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##### **4305. Deleted**

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**4400. Other Listing Rules**

**4410. Deleted**

**4420. Additional Quantitative Listing Criteria**

In order to be listed on the Exchange, an issuer shall be required to meet the criteria set forth in the Rule 5000 Series or one or more of the paragraphs below. The Exchange may extend unlisted trading privileges to any security that is an NMS Stock (as defined in Rule 600 of Regulation NMS) 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 provisions of Rules 4120, 4420, 4421, and 4630 .

(a) The Exchange may list Common Stock, Preferred Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests, American Depositary Receipts (ADR), American Depositary Shares (ADS), Units, Rights or Warrants pursuant to the Rule 5000 Series.

(b) Reserved

(c) Reserved

(d) Index Warrants

An index warrant may be listed if it substantially meets the following criteria:

- (1) The minimum public distribution shall be at least 1 million warrants.
- (2) The minimum number of public holders shall be at least 400.
- (3) The aggregate market value of the outstanding index warrants shall be at least \$4 million.
- (4) The issuer of the index warrants must have a minimum tangible net worth in excess of \$150 million.
- (5) The term of the index warrant shall be for a period from one to five years.
- (6) Limitations on Issuance — Where an issuer has a minimum tangible net worth in excess of \$150 million but less than \$250 million, the Exchange will not list stock index warrants of the issuer if the value of such warrants plus the aggregate value, based upon the original issuing price, of all outstanding stock index, currency index and currency warrants of the issuer and its affiliates combined that are listed for trading on the Exchange or another national securities exchange exceeds 25% of the issuer's net worth.
- (7) A.M. Settlement — The terms of stock index warrants for which 25% or more of the value of the underlying index is represented by securities that are traded primarily in the United States must provide that the opening prices of the stocks comprising the index will be used to determine (i) the final settlement value (i.e., the settlement value for warrants that are exercised at expiration) and (ii) the settlement value for such warrants that are valued on either of the two business days preceding the day on which the final settlement value is to be determined.
- (8) Automatic Exercise — All stock index warrants and any other cash-settled warrants must include in their terms provisions specifying (i) the time by which all exercise notices must be submitted and (ii) that all unexercised warrants that are in the money (or that are in the money by a stated amount) will be automatically exercised on their expiration date or on or promptly following the date on which such warrants are delisted by the Exchange (if such warrant issue has not been listed on another national securities exchange).
- (9) Foreign Country Securities — In instances where the stock index underlying a warrant is comprised in whole or in part with securities traded outside the United States, the foreign country securities or American Depositary Receipts ("ADRs") thereon that (i) are not subject to a comprehensive surveillance agreement, and (ii) have less than 50% of their global trading volume in dollar value within the United States, shall not, in the aggregate represent more than 20% of the weight of the index, unless such index is otherwise approved for warrant or option trading.

(10) Changes in Number of Warrants Outstanding — Issuers of stock index warrants either will make arrangements with warrant transfer agents to advise the Exchange immediately of any change in the number of warrants outstanding due to the early exercise of such warrants or will provide this information themselves. With respect to stock index warrants for which 25% or more of the value of the underlying index is represented by securities traded primarily in the United States, such notice shall be filed with the Exchange no later than 4:30 p.m. Eastern Time, on the date when the settlement value for such warrants is determined. Such notice shall be filed in such form and manner as may be prescribed by the Exchange from time to time.

(11) Only eligible broad-based indexes can underlie index warrants. For purposes of this subparagraph, eligible broad-based indexes shall include those indexes approved by the Commission to underlie index warrants or index options traded on the Exchange or another national securities exchange.

Any index warrant listed pursuant to this paragraph shall not be required to meet the requirements of Rule 4450. The Exchange may apply additional or more stringent criteria as necessary to protect investors and the public interest.

(e) Reserved

(f) Other Securities

(1) The Exchange will consider listing any security not otherwise covered by the listing criteria of the Rule 4000 or 5000 Series, provided the instrument is otherwise suited to trade through the facilities of the Exchange. Such securities will be evaluated for listing against the following criteria:

(A) The issuer shall have assets in excess of \$100 million and stockholders' equity of at least \$10 million. In the case of an issuer which is unable to satisfy the income criteria set forth in the Rule 4300 Series, the Exchange generally will require the issuer to have the following: (i) assets in excess of \$200 million and stockholders' equity of at least \$10 million; or (ii) assets in excess of \$100 million and stockholders' equity of at least \$20 million.

(B) There must be a minimum of 400 holders of the security, provided, however, that if the instrument is traded in \$1,000 denominations, there must be a minimum of 100 holders.

(C) For equity securities listed pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units.

(D) The aggregate market value/principal amount of the security shall be at least \$4 million.

(2) Issuers of securities listed pursuant to this paragraph (f) must also be eligible for listing on the Nasdaq Global Market or the New York Stock Exchange (NYSE) or be an affiliate of a company that is also eligible for listing on the Nasdaq Global Market or the NYSE; provided, however, that the provisions of Rule 4450 will be applied to sovereign issuers of "other" securities on a case-by-case basis.

(3) Prior to the commencement of trading of securities listed pursuant to this paragraph, the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance regarding member firm compliance responsibilities and requirements when handling transactions in such securities.

(g) The Exchange will consider listing Selected Equity-linked Debt Securities (SEEDS), pursuant to Rule 19b-4(e) under the Act, that generally meet the criteria of this paragraph (g). SEEDS are limited-term, non-convertible debt securities of an issuer where the value of the debt is based, at least in part, on the value of up to thirty (30) other issuers' common stock or non-convertible preferred stock (or sponsored American Depositary Receipts (ADRs) overlying such equity securities).

#### (1) Issuer Listing Standards

(A) The issuer of a SEEDS must be an entity that:

(i) is eligible for listing on the Nasdaq Global Market or the New York Stock Exchange (NYSE) or is an affiliate of a company eligible for listing on the Nasdaq Global Market or the NYSE; provided, however, that the provisions of Rule 4450 will be applied to sovereign issuers of SEEDS on a case-by-case basis; and

(ii) has a minimum net worth of \$150 million.

(B) In addition, the market value of a SEEDS offering, when combined with the market value of all other SEEDS offerings previously completed by the issuer and traded on the Exchange or another national securities exchange, may not be greater than 25 percent of the issuer's net worth at the time of issuance.

#### (2) Equity-Linked Debt Security Listing Standards

The issue must have:

(A) a minimum public distribution of one million SEEDS;

(B) a minimum of 400 holders of the SEEDS, provided, however, that if the SEEDS is traded in \$1,000 denominations, there is no minimum number of holders;

(C) a minimum market value of \$4 million; and

(D) a minimum term of one year.

(3) Minimum Standards Applicable to the Linked Security

An equity security on which the value of the SEEDS is based must:

(A)

(i) have a market value of listed securities of at least \$3 billion and a trading volume in the United States of at least 2.5 million shares in the one-year period preceding the listing of the SEEDS;

(ii) have a market value of listed securities of at least \$1.5 billion and a trading volume in the United States of at least 10 million shares in the one-year period preceding the listing of the SEEDS; or

(iii) have a market value of listed securities of at least \$500 million and a trading volume in the United States of at least 15 million shares in the one-year period preceding the listing of the SEEDS.

(B) be issued by a company that has a continuous reporting obligation under the Act, and the security must be listed on the Exchange or another national securities exchange and be subject to last sale reporting; and

(C) be issued by:

(i) a U.S. company; or

(ii) a non-U.S. company (including a company that is traded in the United States through sponsored ADRs) (for purposes of this paragraph (g), a non-U.S. company is any company formed or incorporated outside of the United States) if:

a. the Exchange or its subsidiaries has a comprehensive surveillance sharing agreement in place with the primary exchange in the country where the security is primarily traded (in the case of an ADR, the primary exchange on which the security underlying the ADR is traded);

b. the combined trading volume of the non-U.S. security (a security issued by a non-U.S. company) and other related non-U.S. securities occurring in the U.S. market and in markets with which the Exchange or its subsidiaries has in place a comprehensive surveillance sharing agreement represents (on a share equivalent basis for any ADRs) at least 50% of the combined world-wide trading volume in the non-U.S. security, other related non-U.S. securities, and other classes of common stock related to the non-U.S. security over the six month period preceding the date of listing; or

c.

1. the combined trading volume of the non-U.S. security and other related non-U.S. securities occurring in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the non-U.S. security and in other related non-U.S. securities over the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing.
2. the average daily trading volume for the non-U.S. security in the U.S. markets over the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing is 100,000 or more shares; and
3. the trading volume for the non-U.S. security in the U.S. market is at least 60,000 shares per day for a majority of the trading days for the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing.

d. If the underlying security to which the SEEDS is to be linked is the stock of a non-U.S. company which is traded in the U.S. market as a sponsored ADR, ordinary shares or otherwise, then the minimum number of holders of the underlying linked security shall be 2,000.

#### (4) Limits on the Number of SEEDS Linked to a Particular Security

(A) The issuance of SEEDS relating to any underlying U.S. security may not exceed five percent of the total outstanding shares of such underlying security. The issuance of SEEDS relating to any underlying non-U.S. security or sponsored ADR may not exceed:

- (i) two percent of the total shares outstanding worldwide if at least 30 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing;<sup>1</sup>
- (ii) three percent of the total shares outstanding worldwide if at least 50 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing;
- (iii) five percent of the total shares outstanding worldwide if at least 70 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing.

(B) If an issuer proposes to issue SEEDS that relate to more than the allowable percentages of the underlying security specified above, then the Exchange, with the concurrence of the staff of the Division of Trading and Markets of the Commission, will evaluate the maximum percentage of SEEDS that may be issued on a case-by-case basis.

(5) Prior to the commencement of trading of a particular SEEDS listed pursuant to this subsection, the Exchange or its subsidiaries will distribute a circular to the membership providing guidance regarding member firm compliance responsibilities (including

suitability recommendations and account approval) when handling transactions in SEEDS.

(h) Reserved.

(i) Portfolio Depository Receipts

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

(A) Portfolio Depository Receipt. The term "Portfolio Depository Receipt" means a security:

(i) that is based on a unit investment trust ("Trust") which holds the securities which comprise an index or portfolio underlying a series of Portfolio Depository Receipts;

(ii) that is issued by the Trust in a specified aggregate minimum number in return for a "Portfolio Deposit" consisting of specified numbers of shares of stock and/or a cash amount, a specified portfolio of fixed income securities and/or a cash amount and/or a combination of the above;

(iii) that, when aggregated in the same specified minimum number, may be redeemed from the Trust which will pay to the redeeming holder the stock and/or cash, fixed income securities and/or cash and/or a combination thereof then comprising the "Portfolio Deposit"; and

(iv) that pays holders a periodic cash payment corresponding to the regular cash dividends or distributions declared with respect to the component securities of the securities index or portfolio of securities underlying the Portfolio Depository Receipts, less certain expenses and other charges as set forth in the Trust prospectus.

(B) Reporting Authority. The term "Reporting Authority" in respect to a particular series of Portfolio Depository Receipts means the Exchange, an affiliate of the Exchange, an institution (including the Trustee for a series of Portfolio Depository Receipts), or a reporting service designated by the Exchange or its affiliate as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the Trust in connection with issuance of Portfolio Depository Receipts; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depository Receipts, net asset value, and other information relating to the creation, redemption or trading of Portfolio Depository Receipts.

Nothing in this paragraph shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Portfolio Depository Receipts

must be designated by the Exchange; the term "Reporting Authority" shall not refer to an institution or reporting service not so designated.

(C) US Component Stock. The term "US Component Stock" shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Act, or an American Depository Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act.

(D) Non-US Component Stock. The term "Non-US Component Stock" shall mean an equity security that (a) is not registered under Sections 12(b) or 12(g) of the Act, (b) is issued by an entity that is not organized, domiciled or incorporated in the United States, and (c) is issued by an entity that is an operating company (including Real Estate Investment Trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

(2) The Exchange requires that members provide to all purchasers of a series of Portfolio Depository Receipts a written description of the terms and characteristics of such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of Portfolio Depository Receipts that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Portfolio Depository Receipts as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of Portfolio Depository Receipts] has been prepared by [Trust name] and is available from your broker or Nasdaq BX. It is recommended that you obtain and review such circular before purchasing [the series of Portfolio Depository Receipts]. In addition, upon request you may obtain from your broker a prospectus for [the series of Portfolio Depository Receipts]."

A member 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 Portfolio Depository Receipts 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 shall also provide a prospectus for the particular series of Portfolio Depository Receipts.

(3) Equity. The Exchange may approve a series of Portfolio Depository Receipts for listing and trading pursuant to Rule 19b-4(e) under the Act, provided each of the following criteria is satisfied:

(A) Eligibility Criteria for Index Components.

(i) US Index or Portfolio. Upon the initial listing of a series of Portfolio Depository Receipts pursuant to Rule 19b-4(e) under the Act, the component stocks of an index or portfolio of US Component Stocks underlying such series of Portfolio Depository Receipts shall meet the following criteria:

- a. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least \$75 million;
- b. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares;
- c. The most heavily weighted component stock shall not exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks shall not exceed 65% of the weight of the index or portfolio;
- d. The index or portfolio shall include a minimum of 13 component stocks; and
- e. All securities in the index or portfolio shall be US Component Stocks listed on the Exchange or another national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act.

(ii) International or global index or portfolio. Upon the initial listing of a series of Portfolio Depository Receipts pursuant to Rule 19b-4(e) under the Act, the components of an index or portfolio underlying a series of Portfolio Depository Receipts that consist of either only Non-US Component Stocks or both US Component Stocks and Non-US Component Stocks shall meet the following criteria:

- a. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least \$100 million;
- b. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares;
- c. The most heavily weighted component stock shall not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks shall not exceed 60% of the weight of the index or portfolio;
- d. The index or portfolio shall include a minimum of 20 component stocks; and
- e. Each US Component Stock shall be listed on a national securities exchange and shall be an NMS Stock as defined in Rule 600 of Regulation NMS under the Act, and each

Non-US Component Stock shall be listed and traded on an exchange that has last-sale reporting.

(iii) Index or portfolio approved in connection with derivative securities. Upon the initial listing of a series of Portfolio Depository Receipts pursuant to Rule 19b-4(e) under the Act, the index or portfolio underlying a series of Portfolio Depository Receipts shall have been reviewed and approved for trading of options, Portfolio Depository Receipts, Index Fund Shares, index-linked exchangeable notes, or index-linked securities 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 with respect to Non-US Component Stocks and the requirements regarding dissemination of information, continue to be satisfied. Each component stock of the index or portfolio shall be either

a. a US Component Stock that is listed on a national securities exchange and is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act, or

b. a Non-US Component Stock that is listed and traded on an exchange that has last-sale reporting.

(B) Index Methodology and Calculation.

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" 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 or fund advisor;

(ii) The current index value for Portfolio Depository Receipts listed pursuant to:

a. Rule 4420(i)(3)(A)(i) will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's regular market session.

b. Rule 4420(i)(3)(A)(ii) will be widely disseminated by one or more major market data vendors at least every 60 seconds during the Exchange's regular market session; or

c. Rule 4420(i)(3)(A)(iii) will be widely disseminated by one or more major market data vendors at least every 15 seconds with respect to indexes containing only US Component Stocks and at least every 60 seconds with respect to indexes containing Non-US Component Stocks, during the Exchange's regular market session.

If the index value does not change during some or all of the period when trading is occurring on the Exchange (for example, for indexes of Non-US Component Stocks because of time zone differences or holidays in the countries where such indexes'

component stocks trade), then the last official calculated index value must remain available throughout the Exchange's trading hours; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority 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.

(C) Disseminated Information. The Reporting Authority will disseminate for each series of Portfolio Depository Receipts an estimate, updated at least every 15 seconds, of the value of a share of each series (the "Intraday Indicative Value") during the Exchange's regular market session. The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value will be updated at least every 15 seconds during the Exchange's regular market session; to reflect changes in the exchange rate between the US dollar and the currency in which any component stock is denominated. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on the Exchange, then the last official calculated Intraday Indicative Value must remain available throughout the Exchange's trading hours.

(D) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Portfolio Depository Receipts is required to be outstanding at start-up of trading.

(E) Surveillance Procedures. FINRA will implement written surveillance procedures for Portfolio Depository Receipts.

(F) Creation and redemption. For Portfolio Depository Receipts listed pursuant to Rule 4420(i)(3)(A)(ii) or (iii) above, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the series of Portfolio Depository Receipts must state that the Trust 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.

(4) Fixed Income. Fixed Income Securities are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or subdivision thereof. The Exchange may approve a series of Portfolio Depository Receipts based on Fixed Income Securities

for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided such portfolio or index: (i) has been reviewed and approved for the trading of options, Portfolio Depository Receipts, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and the rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied; or (ii) the following criteria are satisfied:

(A) Eligibility Criteria for Index Components. Upon the initial listing of a series of Portfolio Depository Receipts pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, each component of an index or portfolio that underlies a series of Portfolio Depository Receipts shall meet the following criteria:

- (i) The index or portfolio must consist of Fixed Income Securities;
- (ii) Components that in aggregate account for at least 75% of the weight of the index or portfolio must have a minimum original principal amount outstanding of \$100 million or more;
- (iii) A component may be a convertible security, however, once the convertible security component converts to an underlying equity security, the component is removed from the index or portfolio;
- (iv) No component fixed-income security (excluding Treasury Securities) will represent more than 30% of the weight of the index or portfolio, and the five highest weighted component fixed-income securities do not in the aggregate account for more than 65% of the weight of the index or portfolio;
- (v) An underlying index or portfolio (excluding exempted securities) must include securities from a minimum of 13 non-affiliated issuers; and
- (vi) Component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either: (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Exchange Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (c) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; (d) exempted securities as defined in section 3(a)(12) of the Securities Exchange Act of 1934; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

(B) Index Methodology and Calculation.

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current index value will be widely disseminated by one or more major market data vendors at least once per day; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index 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.

(5) The Exchange may approve a series of Portfolio Depositary Receipts based on a combination of indexes or an index or portfolio of component securities representing the U.S. equity market, the international equity market, and the fixed income market for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided: (i) each index has been reviewed and approved for the trading of options, Portfolio Depositary Receipts, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied; or (ii) each index or portfolio of equity and fixed income component securities separately meets either the criteria set forth in Rule 4420(i)(3) or (4) above.

(A) Index Methodology and Calculation.

(i) If an index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current composite index value will be widely disseminated by one or more major market data vendors at least once every 15 seconds during the regular market session, provided however, that (a) with respect to the Non-US Component Stocks of the combination index, the impact on the index is only required to be updated at least every 60 seconds during the regular market session, and (b) with respect to the fixed income components of the combination index the impact on the index is only required to be updated at least once each day; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on index 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.

(6) The following provisions shall apply to all series of Portfolio Depositary Receipts listed pursuant Rules 4420(i)(4) and (5) above:

(A) Disseminated Information. The Reporting Authority will disseminate for each series of Portfolio Depositary Receipts an estimate, updated at least every 15 seconds, of the value of a share of each series (the "Intraday Indicative Value"). The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value may be calculated by the Exchange or by an independent third party throughout the day using prices obtained from independent market data providers or other independent pricing sources such as a broker-dealer or price evaluation services.

(B) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Portfolio Depositary Receipts is required to be outstanding at start-up of trading.

(C) Surveillance Procedures. FINRA will implement written surveillance procedures for Portfolio Depositary Receipts.

(7) Regular market session trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Portfolio Depositary Receipts, as specified by the Exchange. In addition, the Exchange may designate each series of Portfolio Depositary Receipts for trading during a pre-market session beginning at 7:00 a.m. and/or a post-market session ending at 7:00 p.m.

(8) The Exchange may list and trade Portfolio Depositary Receipts based on one or more indexes or portfolios. The Portfolio Depositary Receipts based on each particular index or portfolio, or combination thereof, shall be designated as a separate series and shall be identified by a unique symbol. The components of an index or portfolio on which Portfolio Depositary Receipts are based shall be selected by the Exchange or its agent, an affiliate of the Exchange, or by such other person as shall have a proprietary interest in and authorized use of such index or portfolio, and may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(9) A Trust upon which a series of Portfolio Depositary Receipts is based will be listed and traded on the Exchange subject to application of the following criteria:

(A) Initial Listing —

(i) for each Trust, the Exchange will establish a minimum number of Portfolio Depository Receipts 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 Portfolio Depository Receipts that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.

(B) Continued Listing —

(i) The Exchange will consider the suspension of trading in or removal from listing of a Trust upon which a series of Portfolio Depository Receipts is based under any of the following circumstances:

a. if, following the initial twelve month period after the formation of a Trust and commencement of trading on the Exchange, the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Portfolio Depository Receipts for 30 or more consecutive trading days;

b. if the value of the index or portfolio of securities on which the Trust is based is no longer calculated or available or the index or portfolio on which the Trust is based is replaced with a new index or portfolio, unless the new index or portfolio meets the requirements of this Rule 4420(i) for listing either pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 (including the filing of a Form 19b-4(e) with the Commission) or by Commission approval of a filing pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934; or

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

Upon termination of a Trust, the Exchange requires that Portfolio Depository Receipts issued in connection with such Trust be removed from listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(C) Term — the stated term of the Trust shall be as stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(D) Voting — voting rights shall be as set forth in the Trust prospectus. The Trustee of a Trust may have the right to vote all of the voting securities of such Trust.

(10) 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 index or portfolio value, the current value of the portfolio of securities required to be deposited to the Trust; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depository Receipts; net asset value; or other information relating to the creation, redemption or trading of Portfolio Depository Receipts, 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.

(j) Index Fund Shares

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

(A) Index Fund Share. The term "Index Fund Share" means a security:

(i) that is issued by an open-end management investment company based on a portfolio of stocks or fixed income securities or a combination thereof, that seeks to provide investment results that correspond generally to the price and yield performance or total return performance of a specified foreign or domestic stock index, fixed income securities index or combination thereof;

(ii) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount, a specified portfolio of fixed income securities and/or a cash amount and/or a combination of the above, with a value equal to the next determined net asset value; and

(iii) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock and/or cash, fixed income securities and/or cash and/or a combination thereof, with a value equal to the next determined net asset value.

(B)

(i) The term "Index Fund Share" includes a security issued by an open-end management investment company that seeks to provide investment results that either exceed the performance of a specified domestic equity, international or global equity, or fixed income index or a combination thereof by a specified multiple or that correspond to the

inverse (opposite) of the performance of a specified domestic equity, international or global equity, or fixed income index or a combination thereof by a specified multiple. Such a security is issued in a specified aggregate number in return for a deposit of a specified number of shares of stock, a specified portfolio of fixed income securities or a combination of the above and/or cash with a value equal to the next determined net asset value. When aggregated in the same specified minimum number, Index Fund Shares may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock, fixed income securities or a combination thereof and/or cash with a value equal to the next determined net asset value.

(ii) In order to achieve the investment result that it seeks to provide, such an investment company may hold a combination of financial instruments, including, but not limited to, stock index futures contracts; options on futures contracts; options on securities and indices; equity caps, collars and floors; swap agreements; forward contracts; repurchase agreements and reverse repurchase agreements (the "Financial Instruments"), but only to the extent and in the amounts or percentages as set forth in the registration statement for such Index Fund Shares.

(iii) Any open-end management investment company which issues Index Fund Shares referenced in this subparagraph (1)(B) that seeks to provide investment results, before fees and expenses, in an amount that exceeds -200% of the percentage performance on a given day of a particular domestic equity, international or global equity or fixed income securities index or a combination thereof shall not be approved by the Exchange for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934.

(iv) For the initial and continued listing of a series of Index Fund Shares referenced in the provisions of this subparagraph (1)(B), the following requirements must be adhered to:

Daily public website disclosure of portfolio holdings that will form the basis for the calculation of the net asset value by the issuer of such series, including, as applicable, the following instruments:

- a. The identity and number of shares held of each specific equity security;
- b. The identity and amount held for each specific fixed income security;
- c. The specific types of Financial Instruments and characteristics of such Financial Instruments; and
- d. Cash equivalents and the amount of cash held in the portfolio.

If the Exchange becomes aware that the net asset value related to Index Fund Shares included in the provisions of this subparagraph (1)(B) is not being disseminated to all market participants at the same time or the daily public website disclosure of portfolio

holdings does not occur, the Exchange shall halt trading in such series of Index Fund Share, as appropriate. The Exchange may resume trading in such Index Fund Shares only when the net asset value is disseminated to all market participants at the same time or the daily public website disclosure of portfolio holdings occurs, as appropriate.

(C) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Index Fund Shares means the Exchange, an affiliate of the Exchange, or an institution or reporting service designated by the Exchange or its affiliate as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares, net asset value, and other information relating to the issuance, redemption or trading of Index Fund Shares.

Nothing in this paragraph shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Index Fund Shares must be designated by the Exchange; the term "Reporting Authority" shall not refer to an institution or reporting service not so designated.

(D) US Component Stock. The term "US Component Stock" shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Act, or an American Depository Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act.

(E) Non-US Component Stock. The term "Non-US Component Stock" shall mean an equity security that (a) is not registered under Sections 12(b) or 12(g) of the Act, (b) is issued by an entity that is not organized, domiciled or incorporated in the United States, and (c) is issued by an entity that is an operating company (including Real Estate Investment Trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

(2) The Exchange requires that members provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such 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 shall include such a written description with any sales material relating to a series of Index Fund Shares that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Index 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 Index Fund Shares] has been prepared by the [open-

end management investment company name] and is available from your broker or Nasdaq BX. It is recommended that you obtain and review such circular before purchasing [the series of Index Fund Shares]. In addition, upon request you may obtain from your broker a prospectus for [the series of Index Fund Shares]."

A member 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 Index 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 shall also provide a prospectus for the particular series of Index Fund Shares.

(3) Equity. The Exchange may approve a series of Index Fund Shares for listing and trading pursuant to Rule 19b-4(e) under the Act provided each of the following criteria is satisfied:

(A) Eligibility Criteria for Index Components.

(i) US Index or Portfolio. Upon the initial listing of a series of Index Fund Shares pursuant to 19b-4(e) under the Act, the component stocks of an index or portfolio of US Component Stocks underlying a series of Index Fund Shares shall meet the following criteria:

- a. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least \$75 million;
- b. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares;
- c. The most heavily weighted component stock shall not exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks shall not exceed 65% of the weight of the index or portfolio;
- d. The index or portfolio shall include a minimum of 13 component stocks; and
- e. All securities in the index or portfolio shall be US Component Stocks listed on the Exchange or another national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act.

(ii) International or global index or portfolio. Upon the initial listing of a series of Index Fund Shares pursuant to Rule 19b-4(e) under the Act, the components of an index or portfolio underlying a series of Index Fund Shares that consist of either only Non-US

Component Stocks or both US Component Stocks and Non-US Component Stocks shall meet the following criteria:

- a. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least \$100 million;
- b. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares;
- c. The most heavily weighted component stock shall not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks shall not exceed 60% of the weight of the index or portfolio;
- d. The index or portfolio shall include a minimum of 20 component stocks; and
- e. Each US Component Stock shall be listed on a national securities exchange and shall be an NMS Stock as defined in Rule 600 of Regulation NMS under the Act, and each Non-US Component Stock shall be listed and traded on an exchange that has last-sale reporting.

(iii) Index or portfolio approved in connection with derivative securities. Upon the initial listing of a series of Index Fund Shares pursuant to Rule 19b-4(e) under the Act, the index or portfolio underlying a series of Index Fund Shares shall have been reviewed and approved for trading of options, Portfolio Depository Receipts, Index Fund Shares, index-linked exchangeable notes, or index-linked securities 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 with respect to Non-US Component Stocks and the requirements regarding dissemination of information, continue to be satisfied. Each component stock of the index or portfolio shall be either

- a. a US Component Stock that is listed on a national securities exchange and is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act, or
- b. a Non-US Component Stock that is listed and traded on an exchange that has last-sale reporting.

#### (B) Index Methodology and Calculation

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" 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 or fund advisor;

(ii) The current index value for Index Fund Shares listed pursuant to:

- a. Rule 4420(j)(3)(A)(i) will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's regular market session;
- b. Rule 4420(j)(3)(A)(ii) will be widely disseminated by one or more major market data vendors at least every 60 seconds during the Exchange's regular market session; or
- c. Rule 4420(j)(3)(A)(iii) will be widely disseminated by one or more major market data vendors at least every 15 seconds with respect to indexes containing only US Component Stocks and at least every 60 seconds with respect to indexes containing Non-US Component Stocks, during the Exchange's regular market session

If the index value does not change during some or all of the period when trading is occurring on the Exchange (for example, for indexes of Non-US Component Stocks because of time zone differences or holidays in the countries where such indexes' component stocks trade), then the last official calculated index value must remain available throughout the Exchange's trading hours; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority 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.

(C) Disseminated Information. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated at least every 15 seconds, of the value of a share of each series (the "Intraday Indicative Value") during the Exchange's regular market session. The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value will be updated at least every 15 seconds during the Exchange's regular market session; to reflect changes in the exchange rate between the US dollar and the currency in which any component stock is denominated. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on the Exchange, then the last official calculated Intraday Indicative Value must remain available throughout the Exchange's trading hours.

(D) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at start-up of trading.

(E) Surveillance Procedures. FINRA will implement written surveillance procedures for Index Fund Shares.

(F) Creation and redemption. For Index Fund Shares listed pursuant to Rule 4420(j)(3)(A)(ii) or (iii) above, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the series of Index Fund Shares must state that the series of Index Fund Shares 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.

(4) Fixed Income. Fixed Income Securities are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or subdivision thereof. The Exchange may approve a series of Index Fund Shares based on Fixed Income Securities for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided such portfolio or index: (i) has been reviewed and approved for the trading of options, Portfolio Depository Receipts, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and the rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied; or (ii) the following criteria are satisfied:

(A) Eligibility Criteria for Index Components. Upon the initial listing of Index Fund Shares pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, each component of an index or portfolio that underlies a series of Index Fund Shares shall meet the following criteria:

- (i) The index or portfolio must consist of Fixed Income Securities;
- (ii) Components that in aggregate account for at least 75% of the weight of the index or portfolio must have a minimum original principal amount outstanding of \$100 million or more;
- (iii) A component may be a convertible security, however, once the convertible security component converts to an underlying equity security, the component is removed from the index or portfolio;
- (iv) No component fixed-income security (excluding Treasury Securities) will represent more than 30% of the weight of the index or portfolio, and the five highest weighted component fixed-income securities do not in the aggregate account for more than 65% of the weight of the index or portfolio;

(v) An underlying index or portfolio (excluding exempted securities) must include securities from a minimum of 13 non-affiliated issuers; and

(vi) Component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either: (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Exchange Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (c) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; (d) exempted securities as defined in section 3(a)(12) of the Securities Exchange Act of 1934; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

(B) Index Methodology and Calculation.

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current index value will be widely disseminated by one or more major market data vendors at least once per day; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index 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.

(5) The Exchange may approve a series of Index Fund Shares based on a combination of indexes or an index or portfolio of component securities representing the U.S. equity market, the international equity market, and the fixed income market for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided: (i) such portfolio or combination of indexes has been reviewed and approved for the trading of options, Portfolio Depository Receipts, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied; or (ii) each index or portfolio of equity and fixed income component securities separately meets either the criteria set forth in Rule 4420(j)(3) or (4) above.

(A) Index Methodology and Calculation.

(i) If an index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current composite index value will be widely disseminated by one or more major market data vendors at least once every 15 seconds during regular market session, provided however, that (a) with respect to the Non-US Component Stocks of the combination index, the impact on the index is only required to be updated at least every 60 seconds during the regular market session, and (b) with respect to the fixed income components of the combination index the impact on the index is only required to be updated at least once each day; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on index 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.

(6) The following provisions shall apply to all series of Index Fund Shares listed pursuant Rules 4420(j)(4) and (5) above:

(A) Disseminated Information. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated at least every 15 seconds, of the value of a share of each series (the "Intraday Indicative Value"). The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value may be calculated by the Exchange or by an independent third party throughout the day using prices obtained from independent market data providers or other independent pricing sources such as a broker-dealer or price evaluation services.

(B) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at start-up of trading.

(C) Surveillance Procedures. FINRA will implement written surveillance procedures for Index Fund Shares.

(7) Regular market session trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by the Exchange. In addition, the Exchange may designate each series of Index Fund Shares for trading during a pre-market session beginning at 7:00 a.m. and/or a post-market session ending at 7:00 p.m.

(8) The Exchange may list and trade Index Fund Shares based on one or more foreign or domestic indexes or portfolios. Each issue of Index Fund Shares based on each particular index or portfolio, or combination thereof, shall be designated as a separate series and shall be identified by a unique symbol. The components that are included in an index or portfolio on which a series of Index Fund Shares are based shall be selected by such person, which may be the Exchange or an agent or wholly-owned subsidiary thereof, as shall have authorized use of such index or portfolio. Such index or portfolio may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(9) Each series of Index Fund Shares will be listed and traded on the Exchange subject to application of the following criteria:

(A) Initial Listing —

(i) for each series, the Exchange will establish a minimum number of Index 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 Index Fund Shares that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.

(B) Continued Listing —

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

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

b. if the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available or the index or portfolio on which the series of Index Fund Shares is based is replaced with a new index or portfolio, unless the new index or portfolio meets the requirements of this Rule 4420(j) for listing either pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 (including the filing of a Form 19b-4(e) with the Commission) or by Commission approval of a filing pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934; or

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

Upon termination of an open-end management investment company, the Exchange requires that Index Fund Shares issued in connection with such entity be removed from listing.

(C) Voting — voting rights shall be as set forth in the applicable open-end management investment company prospectus.

(10) 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 index or 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 Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares; net asset value; or other information relating to the purchase, redemption or trading of Index 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.

(k) Reserved

(l) Trust Issued Receipts

(1) Definition. The term "Trust Issued Receipt" means a security (a) that is issued by a trust ("Trust") which holds specified securities deposited with the Trust; (b) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.

(2) The Exchange requires that members provide to all purchasers of newly issued Trust Issued Receipts a prospectus for the series of Trust Issued Receipts.

(3) The eligibility requirements for component securities that are represented by a series of Trust Issued Receipts and that became part of the Trust Issued Receipt when the security was either: (a) distributed by a company already included as a component security in the series of Trust Issued Receipts; or (b) received in exchange for the securities of a company previously included as a component security that is no longer outstanding due to a merger, consolidation, corporate combination or other event, shall be as follows:

(A) the component security must be listed on the Exchange or another national securities exchange;

(B) the component security must be registered under Section 12 of the Act; and

(C) the component security must have a Standard & Poor's Sector Classification that is the same as the Standard & Poor's Sector Classification represented by the component securities included in the Trust Issued Receipt at the time of the distribution or exchange.

(4) Transactions in Trust Issued Receipts may be effected until 4:00 p.m. each business day.

(5) The Exchange may list and trade Trust Issued Receipts based on one or more securities. The Trust Issued Receipts based on particular securities shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Trust Issued Receipts shall be selected by the Exchange or its agent, an affiliate of the Exchange, or by such other person as shall have a proprietary interest in such Trust Issued Receipts.

(6) Trust Issued Receipts will be listed and traded on the Exchange subject to application of the following criteria:

(A) Initial Listing — for each Trust, the Exchange will establish a minimum number of Trust Issued Receipts required to be outstanding at the time of the commencement of trading on the Exchange.

(B) Continued Listing — following the initial twelve month period following formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in or removal from listing of a Trust upon which a series of Trust Issued Receipts is based under any of the following circumstances:

(i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days;

(ii) if the Trust has fewer than 50,000 receipts issued and outstanding;

(iii) if the market value of all receipts issued and outstanding is less than \$1 million; 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.

Upon termination of a Trust, the Exchange requires that Trust Issued Receipts issued in connection with such Trust be removed from listing. A Trust may terminate in

accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(C) Term — the stated term of the Trust shall be as stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(D) Trustee — the following requirements apply:

(i) the trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

(ii) no change is to be made in the trustee of a listed issue without prior notice to and approval of the Exchange.

(E) Voting — voting rights shall be as set forth in the Trust prospectus.

(7) Unit of Trading — transactions in Trust Issued Receipts may only be made in round lots of 100 receipts or round lot multiples.

(8) The Exchange may approve a series of Trust Issued Receipts for listing and trading on the Exchange pursuant to Rule 19b-4(e) under the Act, provided each of the component securities satisfies the following criteria:

(A) each component security must be registered under Section 12 of the Act;

(B) each component security must have a minimum public float of at least \$150 million;

(C) each component security must be listed on the Exchange or another national securities exchange;

(D) each component security must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period;

(E) each component security must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least \$1 million; and

(F) the most heavily weighted component security may not initially represent more than 20% of the overall value of the Trust Issued Receipt.

(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 4630.

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 Securities Exchange Act of 1934 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 Securities Exchange Act of 1934, provided:

(1) Both the issue and the issuer of such security meet the criteria for other securities set forth in paragraph (f) of this rule, 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 issuer.

(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 issuer 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 issuer 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 issuer's other index-linked note offerings (combined with index-linked note offerings of the issuer's affiliates) listed on a national securities exchange 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) 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 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

(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 SEC Regulation NMS) 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 1934 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 (1) the generally accepted spot price for the currency exchange rate in question or (2) derived from a market 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—(i) 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. (ii) 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 (iii). (iii) 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). (iv) 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. (v) 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) FINRA

The Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions described in this Rule on behalf of the Exchange. Functions performed by FINRA, FINRA departments, and FINRA staff under Rule 4420 are being performed by FINRA on behalf of the Exchange.

Notwithstanding the fact that the Exchange has entered into the Regulatory Contract with

FINRA to perform some of the Exchange's functions, the Exchange shall retain ultimate legal responsibility for, and control of, such functions.

(o) Managed Fund Shares

(1) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Fund Shares that meet the criteria of Rule 4420(o).

(2) Applicability. Rule 4420(o) is applicable only to Managed Fund Shares. Except to the extent inconsistent with Rule 4420(o), 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 Equity Rules.

(A) The Exchange will file separate proposals under Section 19(b) of the Act before the listing of Managed Fund Shares. Trading of Managed Fund Shares on an unlisted trading privileges basis shall be governed by 4421.

(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) Nasdaq 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.

(iii) 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:

(a) 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;

(b) 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;

(c) 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

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

(iv) 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. If a series of Managed Fund Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading in that series as specified in Rules 4120 and 4121. 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.

(v) 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.

(vi) 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 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 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 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 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 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 under this rule.

Upon request of a customer, a member 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.

1 The two percent limit, based on 20 percent of the worldwide trading volume in the non-U.S. security or sponsored ADR, applies only if there is a comprehensive surveillance sharing agreement in place with the primary exchange in the country where the security is primarily traded (in the case of an ADR, the primary exchange on which the security underlying the ADR is traded). If there is no such agreement, subparagraph (3) above requires that the combined trading volume of such security and other related securities occurring in the U.S. market represents (on a share equivalent basis for any ADRs) at least 50% of the combined world-wide trading volume in such security, other related securities, and other classes of common stock related to such security over the six month period preceding the date of listing.

#### 4421. Derivative Securities Traded under Unlisted Trading Privileges

(a) Any security that is a "new derivative securities product" as defined in Rule 19b-4(e) under the Exchange Act (a "UTP Derivative Security") and traded under unlisted trading privileges pursuant to Rule 19b-4(e) under the Act shall be subject to the additional following rules:

(1) Information Circular. The Exchange shall distribute an information circular prior to the commencement of trading in each such UTP Derivative Security that generally includes the same information as contained in the information circular provided by the listing exchange, including: (a) the special risks of trading the new derivative securities product; (b) the Rules of the Exchange that will apply to the new derivative securities product, including Equity Rule 2310; (c) information about the dissemination of the value of the underlying assets or indexes; and (d) the applicable trading hours for the UTP Derivative Security and the risks of trading during the period from 7:00 a.m. to 9:30 a.m. and from 4:00 p.m. to 7:00 p.m. due to the lack of calculation or dissemination of the underlying index value, the Intra-Day Indicative Value (as defined in Equity Rule 4420), or a similar value.

(2) Product Description.

Members are subject to the prospectus delivery requirements under the Securities Act of 1933, unless the UTP Derivative Security is the subject of an order by the 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 Members of the application of the provisions of this subparagraph to UTP Derivative Securities by means of an information circular. The Exchange requires that Members provide all purchasers of UTP Derivative Securities 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, Members shall include a written description with any sales material relating to UTP Derivative Securities that is provided to customers or the public. Any other written materials provided by a Member to customers or the public making specific reference to the UTP Derivative Securities as an investment vehicle must include a statement substantially in the following form:

"A circular describing the terms and characteristics of [the UTP Derivative Securities] 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 [the UTP Derivative Securities]."

A Member carrying an omnibus account for a non-Member is required to inform such non-Member that execution of an order to purchase UTP Derivative Securities 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 Member under this Rule.

Upon request of a customer, a Member shall also provide a prospectus for the particular UTP Derivative Securities.

(3) Trading Halts. Trading halts of UTP Derivative Securities shall be governed by Equity Rule 4120.

(4) Limitations on Market Makers. Market makers in a UTP Derivative Security that is a Commodity-Related Security (as defined in Equity Rule 4630) shall comply with Rule 4630.

(5) Surveillance. The Exchange shall enter into a comprehensive surveillance sharing agreement with markets trading components of the index or portfolio on which the UTP Derivative Security is based to the same extent as the listing exchange's rules require the listing exchange to enter into a comprehensive surveillance sharing agreement with such markets.

4425. Reserved

4426. Reserved

4427. Reserved

4430. Deleted

4440. Reserved

#### **4450. Additional Quantitative Maintenance Criteria**

After listing on the Exchange, certain securities must substantially meet the criteria set forth in the paragraphs below to continue to remain listed on the Exchange.

(a) Reserved

(b) Reserved

(c) Other Securities Listed Pursuant to Rule 4420(f) and Linked Securities

(1) The aggregate market value or principal amount of publicly-held units (except Linked Securities that were listed pursuant to Rule 4420(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 Equity Index-Linked Security that was listed pursuant to paragraph (7)(B) of Rule 4420(m) if any of the standards set forth in paragraph (7)(B) of 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 Equity Index-Linked Security that was listed pursuant to paragraph (7)(A) of Rule 4420(m), delisting or removal proceedings will be commenced (unless the Commission has approved the continued trading of the subject 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 1934 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 4420(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 4420(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 4420(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 4420(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 4420(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.

(d) Rights and Warrants

The common stock of the issuer must continue to be listed on the Exchange.

(e) Reserved

(f) Bankruptcy and/or Liquidation

Should an issuer file under any of the sections of the Bankruptcy Act or announce that liquidation has been authorized by its board of directors and that it is committed to proceed, the Exchange may suspend or terminate the issuer's securities unless it is determined that the public interest and the protection of investors would be served by continued listing.

(g) Reserved

(h) Reserved

(i) Reserved

**4500. Reserved**

**4570. Custodian of Books and Records**

A member who files a Form BDW shall designate on the Form BDW, as the custodian of the member's books and records, a person associated with the member at the time that the Form BDW is filed.

**4600. Requirements for Equities Market Makers and Other Participants in the Nasdaq BX Equities Market**

**4601. Scope**

Unless otherwise specified, the rules set forth in this 4600 Series apply only to the quoting and trading of System securities via the Nasdaq BX Equities Market.

#### **4602. Reserved**

#### **4610. Registration and Other Requirements**

#### **4611. Nasdaq BX Market Participant Registration**

(a) Participation in the Nasdaq BX Market as a BX Market Maker, BX ECN or Order Entry Firm requires current registration as such with the Exchange. Such registration shall be conditioned upon the 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 Nasdaq BX Market compared trades may be settled;
- (3) compliance with all applicable rules and operating procedures of the Exchange and the Commission in their use of the System;
- (4) maintenance of the physical security of the equipment located on the premises of the BX Market Maker, BX ECN or Order Entry Firm to prevent the improper use or access to Exchange systems, including unauthorized entry of information into the Nasdaq BX Market; and
- (5) acceptance and settlement of each Nasdaq BX Market trade that the Nasdaq BX Market identifies as having been effected by such participant, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified Nasdaq BX Market trade by the clearing member on the regularly scheduled settlement date.

A member's registration shall become effective upon receipt by the member 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. Such registration shall not be conditioned upon registration in any particular Nasdaq BX Market securities.

(b) Each BX Market Maker, BX ECN or Order Entry Firm 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 BX Market Maker, BX ECN or Order Entry Firm such temporary restrictions upon the automated entry or updating of orders or Quotes/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 BX Market Maker, BX ECN or Order Entry Firm 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 BX Market Maker, BX ECN or Order Entry Firm in writing.

#### **4612. Registration as an Equities Market Maker**

(a) Quotations and quotation sizes may be entered into the Nasdaq BX Equities Market only by a member registered as an Equities Market Maker or other entity approved by the Exchange to function in a market making capacity.

(b) An Equities Market Maker may become registered in an issue by entering a registration request via an Exchange-approved electronic interface with the Exchange's systems or by contacting Exchange Market Operations. Registration shall become effective on the day the registration request is entered.

(c) An Equities Market Maker's registration in an issue shall be terminated by the Exchange if the market maker fails to enter quotations in the issue within five (5) business days after the market maker's registration in the issue becomes effective.

#### **4613. Market Maker Obligations**

A member registered as an Equities Market Maker shall engage in a course of dealings for its own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets in accordance with this Rule.

##### **(a) Quotation Requirements and Obligations**

(1) Two-Sided Quote Obligation. For each security in which a member is registered as a Equities Market Maker, the member shall be willing to buy and sell such security for its own account on a continuous basis during regular market hours and shall enter and maintain a two-sided trading interest ("Two-Sided Obligation") that is identified to the Exchange as the interest meeting the obligation and is displayed in the Exchange's quotation montage at all times. Interest eligible to be considered as part of an Equities Market Maker's Two-Sided Obligation shall have a displayed quotation size of at least one normal unit of trading (or a larger multiple thereof); provided, however, that an Equities Market Maker may augment its Two-Sided Obligation size to display limit orders priced at the same price as the Two-Sided Obligation. Unless otherwise designated, a "normal unit of trading" shall be 100 shares. After an execution against its

Two-Sided Obligation, an Equities Market Maker must ensure that additional trading interest exists in the Exchange to satisfy its Two-Sided Obligation either by immediately entering new interest to comply with this obligation to maintain continuous two-sided quotations or by identifying existing interest on the Exchange book that will satisfy this obligation.

(2) Pricing Obligations. For NMS stocks (as defined in Rule 600 under Regulation NMS) a Market Maker shall adhere to the pricing obligations established by this Rule during Regular Trading Hours; provided, however, that such pricing obligations (i) shall not commence during any trading day until after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan processor, and (ii) shall be suspended during a trading halt, suspension, or pause, and shall not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor.

(A) Bid Quotations. At the time of entry of bid interest satisfying the Two-Sided Obligation, the price of the bid interest shall be not more than the Designated Percentage away from the then current National Best Bid, or if no National Best Bid, not more than the Designated Percentage away from the last reported sale from the responsible single plan processor. In the event that the National Best Bid (or if no National Best Bid, the last reported sale) increases to a level that would cause the bid interest of the Two-Sided Obligation to be more than the Defined Limit away from the National Best Bid (or if no National Best Bid, the last reported sale), or if the bid is executed or cancelled, the Equities Market Maker shall enter new bid interest at a price not more than the Designated Percentage away from the then current National Best Bid (or if no National Best Bid, the last reported sale), or identify to the Exchange current resting interest that satisfies the Two-Sided Obligation.

(B) Offer Quotations. At the time of entry of offer interest satisfying the Two-Sided Obligation, the price of the offer interest shall be not more than the Designated Percentage away from the then current National Best Offer, or if no National Best Offer, not more than the Designated Percentage away from the last reported sale received from the responsible single plan processor. In the event that the National Best Offer (or if no National Best Offer, the last reported sale) decreases to a level that would cause the offer interest of the Two-Sided Obligation to be more than the Defined Limit away from the National Best Offer (or if no National Best Offer, the last reported sale), or if the offer is executed or cancelled, the Equities Market Maker shall enter new offer interest at a price not more than the Designated Percentage away from the then current National Best Offer (or if no National Best Offer, the last reported sale), or identify to the Exchange current resting interest that satisfies the Two-Sided Obligation.

(C) The National Best Bid and Offer shall be determined by the Exchange in accordance with its procedures for determining protected quotations under Rule 600 under Regulation NMS.

(D) For purposes of this Rule, the "Designated Percentage" shall be 8% for all Tier 1 NMS Stocks under the LULD Plan, 28% for all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than \$1, and 30% for all Tier 2 NMS Stocks under the LULD Plan with a price less than \$1, except that prior to 9:45 a.m. and between 3:35 p.m. and the close of trading, the Designated Percentage shall be 20% for all Tier 1 NMS Stocks under the LULD Plan, 28% for all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than \$1, and 30% for all Tier 2 NMS Stocks under the LULD Plan with a price less than \$1. The Designated Percentage for rights and warrants shall be 30%.

(E) For purposes of this Rule, the "Defined Limit" shall be 9.5% for Tier 1 NMS Stocks under the LULD Plan, 29.5% for all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than \$1, and 31.5% for all Tier 2 NMS Stocks under the LULD Plan with a price less than \$1, except that prior to 9:45 a.m. and between 3:35 p.m. and the close of trading, the Defined Limit shall be 21.5% for all Tier 1 NMS Stocks under the LULD Plan, 29.5% for all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than \$1, and 31.5% for all Tier 2 NMS Stocks under the LULD Plan with a price less than \$1. The Defined Limit for rights and warrants shall be 31.5%.

(F) Reserved.

(G) Reserved.

(H) Nothing in this Rule shall preclude an Equities Market Maker from quoting at price levels that are closer to the National Best Bid and Offer than the levels required by this Rule.

(I) The minimum quotation increment for quotations of \$1.00 or above in all System Securities shall be \$0.01. The minimum quotation increment in the System for quotations below \$1.00 in System Securities shall be \$0.0001.

(J) The individual Market Participant Identifier ("MPID") assigned to a member to meet its Two-Sided Obligation pursuant to subparagraph (a)(1) of this Rule, or Rule 4623, shall be referred to as the member's "Primary MPID." Equities Market Makers and ECNs may request the use of additional MPIDs that shall be referred to as "Supplemental MPIDs." An Equities Market Maker may request the use of Supplemental MPIDs for displaying Attributable Quotes/Orders in the Quotation Montage for any security in which it is registered and meets the obligations set forth in subparagraph (1) of this rule. An ECN may request the use of Supplemental MPIDs for displaying Attributable

Quotes/Orders in the Quotation Montage for any security in which it meets the obligations set forth in Rule 4623. An Equities Market Maker or ECN that ceases to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use a Supplemental MPID for any purpose in that security.

(K) Equities Market Makers and ECNs that are permitted the use of Supplemental MPIDs for displaying Attributable Quotes/Orders pursuant to subparagraph (2) of this rule are subject to the same rules applicable to the members' first quotation, with two exceptions: (a) the continuous two-sided quote requirement and excused withdrawal procedures described in subparagraph (1) above do not apply to Equities Market Makers' Supplemental MPIDs; and (b) Supplemental MPIDs may not be used by Equities Market Makers to engage in passive market making or to enter stabilizing bids pursuant to Rule 4614.

(b) Firm Quotations

All quotations and orders to buy and sell entered into the System by Equities Market Makers, Equities ECNs, and Order Entry firms are firm and automatically executable for their displayed and non-displayed size in the System.

(c) Impaired Ability to Enter or Update Quotations

In the event that an Equities Market Maker's ability to enter or update quotations is impaired, the market maker shall immediately contact Exchange Market Operations to request the withdrawal of its quotations.

In the event that an Equities Market Maker's ability to enter or update quotations is impaired and the market maker elects to continue quoting in the Exchange, the Equities Market Maker shall execute an offer to buy or sell received from another member at its quotations as disseminated through the Nasdaq BX Equities Market.

(d) Reserved

(e) Locked and Crossed Markets

(1) Locked and Cross Markets within the System: Any quotes or 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 4757, 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 (e)(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 members 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 a member of the Exchange displays a manual quotation that locks or crosses a quotation previously disseminated pursuant to an effective national market system plan, such member of the Exchange 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 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 member of the Exchange 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.

#### **4614. Stabilizing Bids**

##### **(a) Equities Market Maker Obligation/Identifier**

An Equities Market Maker that intends to stabilize the price of a security that is a subject or reference security under SEC Rule 101 shall submit a request to the Exchange's MarketWatch Department for the entry of a one-sided bid that is identified on the Exchange as a stabilizing bid in compliance with the standards set forth in this Rule and SEC Rules 101 and 104.

##### **(b) Eligibility**

Only one Equities Market Maker in a security may enter a stabilizing bid.

##### **(c) Limitations on Stabilizing Bids**

(1) A stabilizing bid shall not be entered in the Nasdaq BX Equities Market unless at least one other Equities Market Maker in addition to the market maker entering the stabilizing bid is registered as an Equities Market Maker in the security and entering quotations that are considered an independent bid under SEC Rule 104.

(2) A stabilizing bid must be available for all freely tradable outstanding securities of the same class being offered.

##### **(d) Submission of Request to the Exchange**

(1) An Equities Market Maker that wishes to enter a stabilizing bid shall submit a request to the Exchange's MarketWatch Department for entry in the Nasdaq BX Equities Market of a one-sided bid identified as a stabilizing bid. The Equities Market Maker shall confirm its request in writing no later than the close of business the day the stabilizing bid is entered by submitting an Underwriting Activity Report to the Exchange's MarketWatch Department that includes the information required by subparagraph (d)(2).

(2) In lieu of submitting the Underwriting Activity Report as set forth in subparagraph (d)(1), the market maker may provide written confirmation to MarketWatch that shall include:

- (A) the identity of the security and its symbol;
- (B) the contemplated effective date of the offering and the date when the offering will be priced;
- (C) the date and time that an identifier should be included on the Exchange; and
- (D) a copy of the cover page of the preliminary or final prospectus or similar offering document, unless the Exchange determines otherwise.

#### **4615. Sponsored Participants**

(a) The Exchange shall be available for entry and execution of orders by Sponsored Participants with authorized access. Sponsored Access shall mean an arrangement whereby a member permits its customers to enter orders into the System that bypass the member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third party technology provider.

(b) Sponsored Participants. A Sponsored Participant may obtain authorized access to the BX Market only if such access is authorized in advance by one or more Exchange members as follows:

(i) Sponsored Participants must enter into and maintain customer agreements with one or more Sponsoring Members establishing proper relationship(s) and account(s) through which the Sponsored Participant may trade on the BX Market ("Customer Agreement"). Such Customer Agreement(s) must incorporate the Sponsorship Provisions set forth in paragraph (ii) below.

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

(A) The authorized access must comply with Rule 15c3-5 under the Securities Exchange Act of 1934.

(B) Sponsoring Member acknowledges and agrees that

(1) 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 and

(2) Sponsoring Member 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 shall comply with the Exchange's Certificate of Incorporation, By-Laws, Rules and procedures with regard to the BX Market and Sponsored Participant shall comply with the Exchange's Certificate of Incorporation, Bylaws, Rules and procedures with regard to the BX Market, as if Sponsored Participant were an Exchange Member.

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

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

(G) Sponsored Participant shall take reasonable security precautions to prevent unauthorized use or access to the BX Market, including unauthorized entry of information into the BX Market, 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 the BX Market for compliance with the terms of this agreement.

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

#### **4616. Reports**

An Equities Market Maker, Equities ECN, or Order Entry Firm shall make such reports to the Exchange as may be prescribed from time to time by the Exchange.

#### **4617. Normal Business Hours**

The System operates from 7:00 a.m. to 7:00 p.m. Eastern Time on each business day, unless modified by the Exchange. An Equities Market Maker shall be open for business

as of 9:30 a.m. Eastern Time and shall close no earlier than 4:00 p.m. Eastern Time. An Equities Market Maker may voluntarily open for business prior to 9:30 a.m. and remain open for business later than 4:00 p.m. Eastern Time. Equities Market Makers whose quotes are open prior to 9:30 a.m. Eastern Time or after 4:00 p.m. Eastern Time shall be obligated to comply, while their quotes are open, with all Rules that are not by their express terms, or by an official interpretation of the Exchange, inapplicable to any part of the 7:00 a.m. to 9:30 a.m. or 4:00 p.m. to 7:00 p.m. Eastern Time period.

#### **4618. Clearance and Settlement**

(a) All transactions through the facilities of the Nasdaq BX Equities Market 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, by entry into a correspondent clearing arrangement with another member that clears trades through such a clearing agency, or by use of the services of CDS Clearing and Depository Services, Inc. in its capacity as a member of such a clearing agency.

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

#### **4619. Withdrawal of Quotations**

(a) Except as provided in paragraph (b) of this Rule, a market maker that wishes to withdraw quotations in a security shall contact the Exchange's MarketWatch Department to obtain excused withdrawal status prior to withdrawing its quotations. Withdrawals of quotations shall be granted by MarketWatch only upon satisfying one of the conditions specified in this Rule.

(b) An Equities Market Maker that wishes to obtain excused withdrawal status based on a market maker's systemic equipment problems, such as defects in an Equities Market Maker's software or hardware systems or connectivity problems associated with the circuits connecting Nasdaq BX Equities Market systems with the Equities Market Maker's systems, shall contact Exchange Market Operations. Exchange Market Operations may grant excused withdrawal status based on systemic equipment problems for up to five (5) business days, unless extended by Exchange Market Operations.

(c)

(1) For Nasdaq-listed securities, excused withdrawal status based on circumstances beyond the Equities Market Maker's control, other than systemic equipment problems, may be granted for up to five (5) business days, unless extended by the Exchange's MarketWatch Department. Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a

representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon notification, be granted for not more than sixty (60) days (unless such request is required to be made pursuant to paragraph (e) below). Excused withdrawal status based on religious holidays may be granted only if written notice is received by the Exchange one business day in advance and is approved by the Exchange. Excused withdrawal status based on vacation may be granted only if:

(A) The written request for withdrawal is received by the Exchange one business day in advance, and is approved by the Exchange; and

(B) The request includes a list of the securities for which withdrawal is requested.

Excused withdrawal status may be granted to an Equities Market Maker that has withdrawn from an issue prior to the public announcement of a merger or acquisition and wishes to re-register in the issue pursuant to the same-day registration procedures contained in Rule 4611 above, provided the Equities Market Maker has remained registered in one of the affected issues. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not constitute acceptable reasons for granting excused withdrawal status.

(2) For securities listed on the Exchange or any other exchange other than Nasdaq, an Equities Market Maker that wishes to withdraw quotations shall contact the Exchange's MarketWatch Department to obtain excused withdrawal status prior to withdrawing its quotations. Excused withdrawal status based on illness, vacations or physical circumstances beyond the Equities Market Maker's control may be granted for up to five (5) business days, unless extended by MarketWatch. Excused withdrawal status based on investment activity or advice of legal counsel, accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon written request, be granted for not more than sixty (60) days. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not normally constitute acceptable reasons for granting excused withdrawal status, unless the Exchange has initiated a trading halt for market makers in the security, pursuant to Rule 4120.

(d) Excused withdrawal status may be granted to an Equities Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the trade reporting service of the Nasdaq BX Equities Market, thereby terminating its registration as an Equities Market Maker; provided, however, that if the Exchange finds that the Equities Market Maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4620 and the Rule 4700 Series

governing the Nasdaq BX Equities Market. Equities Market Makers that fail to maintain a clearing relationship will have their Nasdaq BX Equities Market system status set to "suspend" and be thereby prevented from entering, or executing against, any quotes/orders in the system.

(e) Excused withdrawal status may be granted to an Equities Market Maker that is a distribution participant (or, in the case of excused withdrawal status, an affiliated purchaser) in order to comply with SEC Rule 101 or 104 under the Act on the following conditions:

(1) A member acting as a manager (or in a similar capacity) of a distribution of a security that is a subject security or reference security under SEC Rule 101 and any member that is a distribution participant or an affiliated purchaser in such a distribution that does not have a manager shall provide written notice to the Exchange's MarketWatch Department and the Market Regulation Department of FINRA no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SEC Rule 101, unless later notification is necessary under the specific circumstances.

(A) The notice required by subparagraph (e)(1) of this Rule shall be provided by submitting a completed Underwriting Activity Report that includes a request on behalf of each Equities Market Maker that is a distribution participant or an affiliated purchaser to withdraw the Equities Market Maker's quotations and includes the contemplated date and time of the commencement of the restricted period.

(B) The managing underwriter shall advise each Equities Market Maker that it has been identified as a distribution participant or an affiliated purchaser to MarketWatch and that its quotations will be automatically withdrawn, unless a market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) notifies MarketWatch as required by subparagraph (e)(2), below.

(2) An Equities Market Maker that has been identified to MarketWatch as a distribution participant (or an affiliated purchaser of a distribution participant) shall promptly notify MarketWatch and the manager of its intention not to participate in the prospective distribution in order to avoid having its quotations withdrawn.

(3) If an Equities Market Maker that is a distribution participant withdraws its quotations in order to comply with any provision of SEC Regulation M and promptly notifies MarketWatch of its action, the withdrawal shall be deemed an excused withdrawal. Nothing in this subparagraph shall prohibit the Exchange from taking such action as is necessary under the circumstances against a member and its associated persons for failure to contact MarketWatch to obtain an excused withdrawal as required by subparagraphs (a) and (e) of this Rule.

(4) A member acting as a manager (or in a similar capacity of a distribution subject to subparagraph (e)(1)) of this Rule shall submit a request to MarketWatch and the Market Regulation Department of FINRA to rescind the excused withdrawal status of distribution participants and affiliated purchasers, which request shall include the date and time of the pricing of the offering, the offering price, and the time the offering terminated, and, if not in writing, shall be confirmed in writing no later than the close of business the day the offering terminates. The request by this subparagraph may be submitted on the Underwriting Activity Report.

(f) The Exchange Review Council shall have jurisdiction over proceedings brought by Equities Market Makers seeking review of the denial of an excused withdrawal pursuant to this Rule 4619, or the conditions imposed on their reentry.

#### **4620. Voluntary Termination of Registration**

(a) A market maker may voluntarily terminate its registration in a security by withdrawing its two-sided quotation from the Nasdaq BX Equities Market. An Equities Market Maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days in the case of securities listed on the Exchange or for one (1) business day in the case of other securities. Withdrawal from participation as an Equities Market Maker in the Nasdaq BX Equities Market shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that an Equities Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Nasdaq BX Equities Market and thereby terminates its registration as an Equities Market Maker may register as a market maker at any time after a clearing arrangement has been reestablished unless the Exchange finds that the Equities Market Maker's failure to maintain a clearing arrangement is voluntary, in which case the withdrawal of quotations will be considered voluntary and unexcused.

(b) Notwithstanding the above, an Equities Market Maker that accidentally withdraws as an Equities Market Maker may be reinstated if:

(1) the Equities Market Maker notified the Exchange's MarketWatch Department of the accidental withdrawal as soon as practicable under the circumstances, but within at least one hour of such withdrawal, and immediately thereafter provided written notification of the withdrawal and reinstatement request;

(2) it is clear that the withdrawal was inadvertent and the market maker was not attempting to avoid its market making obligations; and

(3) the Equities Market Maker's firm would not exceed the following reinstatement limitations:

(A) for firms that simultaneously made markets in less than 250 stocks during the previous calendar year, the firm can receive no more than two (2) reinstatements per year;

(B) for firms that simultaneously made markets in 250 or more but less than 500 stocks during the previous calendar year, the firm can receive no more than three (3) reinstatements per year; and

(C) for firms that simultaneously made markets in 500 or more stocks during the previous calendar year, the firm can receive no more than six (6) reinstatements per year.

(c) Factors that the Exchange will consider in granting a reinstatement under paragraph (b) of this rule include, but are not limited to:

(1) the number of accidental withdrawals by the Equities Market Maker in the past, as compared with Equities Market Makers making markets in a comparable number of stocks;

(2) the similarity between the symbol of the stock that the Equities Market Maker intended to withdraw from and the symbol of the stock that the Equities Market Maker actually withdrew from;

(3) market conditions at the time of the withdrawal;

(4) whether, given the market conditions at the time of the withdrawal, the withdrawal served to reduce the exposure of the member's position in the security at the time of the withdrawal to market risk; and

(5) the timeliness with which the Equities Market Maker notified MarketWatch of the error.

(d) For purposes of paragraph (a) of this Rule, a market maker shall not be deemed to have voluntarily terminated its registration in a security by voluntarily withdrawing its two-sided quotation from the Nasdaq BX Equities Market if the Equities Market Maker's two-sided quotation in the subject security is withdrawn by the Exchange's systems due to issuer corporate action related to a dividend, payment or distribution, or due to a trading halt, and one of the following conditions is satisfied:

(1) the Equities Market Maker enters a new two-sided quotation prior to the close of the regular market session on the same day when the Exchange's systems withdrew such a quotation;

(2) the Equities Market Maker enters a new two-sided quotation on the day when trading resumes following a trading halt, or, if the resumption of trading occurs when the market is not in regular session, the Equities Market Maker enters a new two-sided quotation prior to the opening of the next regular market session; or

(3) upon request from the market maker, MarketWatch authorizes the market maker to enter a new two-sided quotation, provided that MarketWatch receives the market maker's request prior to the close of the regular market session on the next regular trading day after the day on which the market maker became eligible to re-enter a quotation pursuant to subparagraph (d)(1) or (d)(2) hereof and determines that the market maker was not attempting to avoid its market making obligations by failing to re-enter such a quotation earlier.

(e) The Exchange Review Council shall have jurisdiction over proceedings brought by market makers seeking review of their denial of a reinstatement pursuant to paragraphs (b) or (d) of this Rule.

#### **4621. Suspension and Termination of Quotations**

The Exchange may, pursuant to the procedures set forth in the Rule 9000 Series, suspend, condition, limit, prohibit or terminate the authority of an Equities Market Maker, Equities ECN, or Order Entry Firm to enter quotations in one or more authorized securities for violations of applicable requirements or prohibitions.

#### **4622. Termination of Exchange Service**

The Exchange may, upon notice, terminate service in the event that an Equities Market Maker, Equities ECN, or Order Entry Firm fails to qualify under specified standards of eligibility or fails to pay promptly for services rendered by the Exchange.

#### **4623. 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 alternative provided for in SEC Rule 602(b)(5)(ii)(A) and (B) ("ECN display alternatives"); or

(3) to provide orders to the Exchange 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 the Exchange, and allows any Exchange member the electronic ability to effect a transaction with such priced orders that is equivalent to the ability to effect a transaction with a market maker quotation in systems operated by the Exchange.

(b) An ATS or ECN that seeks to utilize the Exchange-provided means to comply with SEC Rule 301(b)(3), 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 an Exchange member;

(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 quotation data made available to quotation 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 the Exchange, 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 Exchange Market Operations as an ATS or ECN;

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

#### **4624. Penalty Bids and Syndicate Covering Transactions**

(a) An Equities Market Maker acting as a manager (or in a similar capacity) of a distribution of a security that is a subject or reference security under SEC Rule 101 shall provide written notice to the Corporate Financing Department of FINRA of its intention to impose a penalty bid on syndicate members or to conduct syndicate covering transactions pursuant to SEC Rule 104 prior to imposing the penalty bid or engaging in the first syndicate covering transaction. An Equities Market Maker that intends to impose a penalty bid on syndicate members may request that its quotation be identified as a penalty bid on the Exchange pursuant to paragraph (c) below.

(b) The notice required by paragraph (a) shall include:

(1) the identity of the security and its symbol;

(2) the date the member is intending to impose the penalty bid and/or conduct syndicate covering transactions.

(c) Notwithstanding paragraph (a), an Equities Market Maker may request that its quotation be identified as a penalty bid on the Exchange by providing notice to the Exchange's MarketWatch Department, which notice shall include the date and time that the penalty bid identifier should be entered on the Exchange and, if not in writing, shall be confirmed in writing no later than the close of business the day the penalty bid identifier is entered on the Exchange.

(d) The written notice required by this Rule may be submitted on the Underwriting Activity Report.

#### **4625. Obligation to Provide Information**

(a) An Equities Market Maker, Equities ECN, or Order Entry Firm operating in or participating in the Nasdaq BX Equities Market or other system operated by the Exchange shall provide information orally, in writing, or electronically (if such information is, or is required to be, maintained in electronic form) to the staff of the Exchange when:

(1) the Exchange's MarketWatch 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 MarketWatch is responsible for administering or to other duties and/or obligations imposed on MarketWatch by 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 may possess that may assist in determining whether there is a basis to initiate a trading halt, pursuant to Rule 4120 and IM-4120-1; or

(C) a clearly erroneous transaction, pursuant to Rule 11890; or

(D) a request for an excused withdrawal or reinstatement, pursuant to Rules 4619 and 4620; or

(E) trade-throughs; or

(F) a request to submit a stabilizing bid, pursuant to Equity Rule 4614, or a request to have a quotation identified as a penalty bid on the Exchange, pursuant to Equity Rule 4624.

(2) Exchange Market Operations staff makes an oral, written, or electronically communicated request for information relating to a specific Exchange rule, SEC rule, provision of a joint industry plan (e.g., UTP, CTA, and CQA) (as promulgated and

amended from time-to-time) that Exchange Market Operations is responsible for administering or to other duties and/or obligations for which Exchange Market Operations is responsible; this shall include, but not be limited to, 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.

#### **4626. 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 the Nasdaq BX Equities Market, any other Exchange facility, or the use thereof. Any losses, damages, or other claims, related to a failure of the Nasdaq BX Equities Market or any other Exchange facility to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, Quote/Order, message, or other data entered into, or created by, the Nasdaq BX Equities Market or any other Exchange facility shall be absorbed by the member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data.

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

(1) For the aggregate of all claims made by all market participants related to the use of the Nasdaq BX Equities Market 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 the Nasdaq BX Equities Market 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 the Nasdaq BX Equities Market gave rise to such claims. Nothing in this rule shall obligate the Exchange to seek recovery under any applicable insurance policy.

#### **4627. Obligation to Honor System Trades**

(a) If a Participant, or clearing member acting on a Participant's behalf, is reported by the System, or shown by the activity reports generated by the System, 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).

#### **4628. Compliance with Rules and Registration Requirements**

(a) Failure by a Participant to comply with any of the rules or registration requirements applicable to the Nasdaq BX Equities Market identified herein shall subject such Participant to censure, fine, suspension or revocation of its registration as an Equities Market Maker, Order Entry Firm, and/or Equities ECN or any other fitting penalty under the Equity Rules.

(b)

(1) If a Participant fails to maintain a clearing relationship as required under paragraphs (a)(2) of Rule 4611, it shall be removed from the Nasdaq BX Equities Market 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 4611 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.

#### **4630. Trading in Commodity-Related Securities**

(a) The Exchange will consider for trading pursuant to unlisted trading privileges, 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 market sessions if members comply with Rule 4631 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 Equity Rules shall be applicable to the trading on the Exchange of such securities. Commodity-Related Securities are included within the definition of "security" or "securities" as such terms are used in the Equity Rules.

(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) Information Barriers. A member acting as a registered market maker in a Commodity-Related Security is obligated to establish adequate information barriers when such market maker engages in inter-departmental communications. Members should refer to NASD/NYSE Joint Memo on Chinese Wall Policies and Procedures (NASD Notice to Members 91-45) for guidance on the "'minimum elements' of adequate Chinese Wall policy and procedures." For purposes of a Commodity-Related Security only, "inter-departmental communications" shall include communications to other departments within the same firm or the firm's affiliates that involve trading in commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

(e) Market Maker Accounts. A member acting as a registered market maker in a Commodity-Related Security must file with the Exchange's Regulation Department in a manner prescribed by such Department and keep current a list identifying all accounts for trading in commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security, in which the market maker holds an interest, over which it may exercise investment discretion, or in which it shares in the profits and losses. No market maker shall trade in, or exercise investment discretion with respect to, such underlying commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, in an account in which a market maker, directly or indirectly, controls trading activities, or has an interest in the profits or losses thereof, that has not been reported as required by this Rule. A member acting as a registered market maker in a Commodity-Related Security shall not act or register as a market maker in any commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

(f) The member acting as a registered market maker in a Commodity-Related Security shall make available to the Exchange's Regulation Department such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security, as may be requested by the Regulation Department.

(g) In connection with trading a Commodity-Related Security or commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying a Commodity-Related Security, the member acting as a market maker in a Commodity-Related Security shall not use any material nonpublic information received from any person associated with the member or employee of such person regarding trading by such person or employee in the commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

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

#### **4631. Customer Disclosures**

No member may accept an order from a customer for execution in the premarket 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.

#### **4700. The Nasdaq BX Equities Market**

##### **4701. Definitions**

The following definitions apply to the Rule 4000 Series for the trading of securities listed on the Exchange or another national securities exchange.

(a) The term "Nasdaq BX Equities Market" or "System" shall mean the automated system for order execution and trade reporting owned and operated by the Exchange. The System comprises:

- (1) a montage for Quotes and Orders, referred to herein as the "Exchange Book", that collects and ranks all Quotes and Orders submitted by Participants;
- (2) 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;
- (3) 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
- (4) data feeds that can be used to display with attribution to Participants' MPIDs all Quotes and displayed Orders on both the bid and offer side of the market for all price levels then within the Nasdaq BX Equities Market, and that disseminate such additional information about Quotes, Orders, and transactions within the System as shall be reflected in the Exchange Rules.

(b) The term "System Securities" shall mean any NMS stock, as defined in SEC Rule 600 except securities specifically excluded from trading via a list of excluded securities posted on [www.nasdaqtrader.com](http://www.nasdaqtrader.com).

(c) The term "Participant" shall mean an entity that fulfills the obligations contained in Rule 4611 regarding participation in the System, and shall include:

- (1) "Equities ECNs," members that meet all of the requirements of Rule 4623, and that participates in the System with respect to one or more System Securities.
- (2) "Equities Market Makers" or "Market Makers", members that are registered as Equities Market Makers for purposes of participation in the System on a fully automated basis with respect to one or more System Securities.
- (3) "Order Entry Firms," members that are registered as Order Entry Firms for purposes of entering orders in System Securities into the System. This term shall also include any Electronic Communications Network or Alternative Trading System (as such terms are defined in Regulation NMS) that fails to meet all the requirements of Rule 4623.

(d) The term "Quote" means a single bid or offer quotation submitted to the System by a Market Maker or Equities ECN and designated for display (price and size) next to the

Participant's MPID in the Exchange Book. Quotes are entered in the form of Orders with Attribution (as defined in Rule 4703). Accordingly, all Quotes are also Orders.

(e) The term "Order" means an instruction to trade a specified number of shares in a specified System Security submitted to the System by a Participant. An "Order Type" is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the System. An "Order Attribute" is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the System. The available Order Types and Order Attributes, and the Order Attributes that may be associated with particular Order Types, are described in Rules 4702 and 4703. One or more Order Attributes may be assigned to a single Order; provided, however, that if the use of multiple Order Attributes would provide contradictory instructions to an Order, the System will reject the Order or remove non-conforming Order Attributes.

(f) The term "ET" means Eastern Standard Time or Eastern Daylight Time, as applicable.

(g) The term "Market Hours" means the period of time beginning at 9:30 a.m. ET and ending at 4:00 p.m. ET (or such earlier time as may be designated by the Exchange on a day when the Exchange closes early). The term "System Hours" means the period of time beginning at 7:00 a.m. ET and ending at 7:00 p.m. ET (or such earlier time as may be designated by the Exchange on a day when the Exchange closes early). The term "Pre-Market Hours" means the period of time beginning at 7:00 a.m. ET and ending immediately prior to the commencement of Market Hours. The term "Post-Market Hours" means the period of time beginning immediately after the end of Market Hours and ending at 7:00 p.m. ET. The Exchange notes that in certain contexts, times cited in the Exchange Rules may be approximate.

(h) The term "marketable" with respect to an Order to buy (sell) means that, at the time it is entered into the System, the Order is priced at the current Best Offer or higher (at the current Best Bid or lower).

(i) The term "market participant identifier" or "MPID" means a unique four-letter mnemonic assigned to each Participant in the System. A Participant may have one or more than one MPID.

(j) The terms "Best Bid", "Best Offer", "National Best Bid and National Best Offer", "Protected Bid", "Protected Offer", "Protected Quotation" and "Intermarket Sweep Order" shall have the meanings assigned to them under Rule 600 under SEC Regulation NMS; provided, however, that the terms "Best Bid", "Best Offer", "Protected Bid", "Protected Offer", and "Protected Quotation" shall, unless otherwise stated, refer to the

bid, offer, or quotation of a market center other than the Exchange. The term "NBBO" shall mean the "National Best Bid and National Best Offer".

(k) The term "minimum price increment" means \$0.01 in the case of a System Security priced at \$1 or more per share, and \$0.0001 in the case of a System Security priced at less than \$1 per share.

(l) The term "System Book Feed" shall mean a data feed for System Securities, generally known as the BX TotalView ITCH feed.

#### **4702. Order Types.**

(a) Participants may express their trading interest in the Nasdaq BX Equities Market by entering Orders. The Nasdaq BX Equities Market offers a range of Order Types that behave in the manner specified for each particular Order Type. Each Order Type may be assigned certain Order Attributes that further define its behavior. All Order Types and Order Attributes operate in a manner that is reasonably designed to comply with the requirements of Rules 610 and 611 under Regulation NMS. Each Order must designate whether it is to effect a buy, a long sale, a short sale, or an exempt short sale.

The Exchange maintains several communications protocols for Participants to use in entering Orders and sending other messages to the System:

- OUCH is an Exchange proprietary protocol.
- RASH is an Exchange proprietary protocol.
- FLITE is an Exchange proprietary protocol.
- FIX is a non-proprietary protocol.

Except where otherwise stated, all protocols are available for all Order Types and Order Attributes.

Upon entry, an Order is processed to determine whether it may execute against any contra-side Orders on the Exchange Book in accordance with the parameters applicable to the Order Type and Order Attributes selected by the Participant and in accordance with the priority for Orders on the Exchange Book provided in Rule 4757. In addition, the Order may have its price adjusted in accordance with applicable parameters and may be routed to other market centers for potential execution if designated as Routable. The Order may then be posted to the Exchange Book if consistent with the parameters of the Order Type and Order Attributes selected by the Participant. Thereafter, as detailed in Rules 4702, 4703, and 4758, there are numerous circumstances in which the Order on the Exchange Book may be modified and receive a new timestamp. The sole instances in which the modification of an Order on the Exchange Book will not result in a new

timestamp are: (i) a decrease in the size of the Order due to execution or modification by the Participant or by the System, and (ii) a redesignation of a sell Order as a long sale, a short sale, or an exempt short sale. Whenever an Order receives a new timestamp for any reason, it is processed by the System as a new Order with respect to potential execution against Orders on the Exchange Book, price adjustment, routing, reposting to the Exchange Book, and subsequent execution against incoming Orders, except where otherwise stated.

All Orders are also subject to cancellation and/or repricing and reentry onto the Exchange Book in the circumstances described in Rule 4120(a)(13) (providing for compliance with Plan to Address Extraordinary Market Volatility) and Rule 4763 (providing for compliance with Regulation SHO). In all circumstances where an Order is repriced pursuant to those provisions, it is processed by the System as a new Order with respect to potential execution against Orders on the Exchange Book, price adjustment, routing, reposting to the Exchange Book, and subsequent execution against incoming Orders. If multiple Orders at a given price are repriced, the Order in which they are reentered is random, based on the respective processing time for each such Order; provided, however, that in the case of Price to Comply Orders and Post-Only Orders that have their prices adjusted upon entry because they lock a Protected Quotation but that are subsequently displayed at their original entered limit price as provided in Rules 4702(b)(1)(B) and (4)(B), they are processed in accordance with the time priority under which they were previously ranked on the Exchange Book.

(b) Except where stated otherwise, the following Order Types are available to all Participants:

(1) (A) A "Price to Comply Order" is an Order Type designed to comply with Rule 610(d) under Regulation NMS by avoiding the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours. The Price to Comply Order is also designed to provide potential price improvement.

When a Price to Comply Order is entered, the Price to Comply Order will be executed against previously posted Orders on the Exchange Book that are priced equal to or better than the price of the Price to Comply Order, up to the full amount of such previously posted Orders, unless such executions would trade through a Protected Quotation. Any portion of the Order that cannot be executed in this manner will be posted on the Exchange Book (and/or routed if it has been designated as Routable).

During Market Hours, the price at which a Price to Comply Order is posted is determined in the following manner. If the entered limit price of the Price to Comply Order would lock or cross a Protected Quotation and the Price to Comply Order could not execute against an Order on the Exchange Book at a price equal to or better than the price of the

Protected Quotation, the Price to Comply Order will be displayed on the Exchange Book at a price one minimum price increment lower than the current Best Offer (for a Price to Comply Order to buy) or higher than the current Best Bid (for a Price to Comply Order to sell) but will also be ranked on the Exchange Book with a non-displayed price equal to the current Best Offer (for a Price to Comply Order to buy) or to the current Best Bid (for a Price to Comply Order to sell). For example, if a Price to Comply Order to buy at \$11 would lock a Protected Offer of \$11, the Price to Comply Order will be ranked at a non-displayed price of \$11 but will be displayed at \$10.99. An incoming Order to sell at a price of \$11 or lower would execute against the Price to Comply Order at \$11 (unless the incoming Order was an Order Type that was not immediately executable, in which case the incoming Order would behave in the manner specified for that Order Type).

During Pre-Market Hours and Post-Market Hours, a Price to Comply Order will be ranked and displayed at its entered limit price without adjustment.

(B) If a Price to Comply Order is entered through RASH or FIX, during Market Hours the price of the Price to Comply Order will be adjusted in the following manner after initial entry and posting to the Exchange Book (unless the Order is assigned a Routing Order Attribute that would cause it to be routed to another market center rather than remaining on the Exchange Book):

- If the entered limit price of the Price to Comply Order locked or crossed a Protected Quotation and the NBBO changes, the displayed and non-displayed price of the Price to Comply Order will be adjusted repeatedly in accordance with changes to the NBBO; provided, however, that if the quotation of another market center moves in a manner that would lock or cross the displayed price of a Price to Comply Order, the prices of the Price to Comply Order will not be adjusted. For example, if a Price to Comply Order to buy at \$11.02 would cross a Protected Offer of \$11, the Order will be ranked at a non-displayed price of \$11 but will be displayed at \$10.99. If the Best Offer then moves to \$11.01, the displayed price will be changed to \$11 and the Order will be ranked at a non-displayed price of \$11.01. However, if another market center then displays an offer of \$11 (thereby locking the previously displayed price of the Price to Comply Order, notwithstanding Rule 610(d) under Regulation NMS), the price of the Price to Comply Order will not be changed. The Order may be repriced repeatedly until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price (\$11.02 in the example). The Price to Comply Order receives a new timestamp each time its price is changed.

- If the original entered limit price of the Price to Comply Order would no longer lock or cross a Protected Quotation, the Price to Comply Order will be ranked and displayed at that price and will receive a new timestamp, and will not thereafter be adjusted under this paragraph (B).

If a Price to Comply Order is entered through OUCH or FLITE, during Market Hours the price of the Price to Comply Order may be adjusted in the following manner after initial entry and posting to the Exchange Book:

- If the entered limit price of the Price to Comply Order crossed a Protected Quotation and the NBBO changes so that the Price to Comply Order could be displayed at a price at or closer to its entered limit price without locking or crossing a Protected Quotation, the Price to Comply Order may either remain on the Exchange Book unchanged or may be cancelled back to the Participant, depending on its choice. For example, if a Price to Comply Order to buy at \$11.02 would cross a Protected Offer of \$11, the Order will be ranked at a non-displayed price of \$11 but will be displayed at \$10.99. If the Best Offer changes to \$11.01, the Order will not be repriced, but rather will either remain with a displayed price of \$10.99 but ranked at a non-displayed price of \$11 or be cancelled back to the Participant, depending on its choice. A Participant's choice with regard to maintaining the Price to Comply Order or cancelling it is set in advance for each port through which the Participant enters Orders.

- If the entered limit price of the Price to Comply Order locked a Protected Quotation, the price of the Price to Comply Order will be adjusted after initial entry only as follows. If the entered limit price would no longer lock a Protected Quotation, the Price to Comply Order may either remain on the Exchange Book unchanged, may be cancelled back to the Participant, or may be ranked and displayed at its original entered limit price, depending on the Participant's choice. For example, if a Price to Comply Order to buy at \$11 would lock a Protected Offer of \$11, the Price to Comply Order will be ranked at a non-displayed price of \$11 but will be displayed at \$10.99. If the Best Offer changes to \$11.01, the Price to Comply Order may either remain with a displayed price of \$10.99 but ranked at a non-displayed price of \$11, be cancelled back to the Participant, or be ranked and displayed at \$11, depending on the Participant's choice. A Participant's choice with regard to maintaining the Price to Comply Order, cancelling it, or allowing it to be displayed is set in advance for each port through which the Participant enters Orders. If the Price to Comply Order is ranked and displayed at its original entered limit price, it will receive a new timestamp, and will not thereafter be adjusted under this paragraph (B).

(C) The following Order Attributes may be assigned to a Price to Comply Order:

- Price. As described above, the price of the Order may be adjusted to avoid locking or crossing a Protected Quotation, and may include a displayed price as well as a non-displayed price.
- Size.
- Reserve Size (available through RASH and FIX only).

- A Time-in-Force other than IOC. (A Price to Comply Order entered with a Time-in-Force of IOC would be processed as a Non-Displayed Order with a Time-in-Force of IOC).
- Designation as an ISO. In accordance with Regulation NMS, a Price to Comply Order designated as an ISO would be processed at its entered limit price, since such a designation reflects a representation by the Participant that it has simultaneously routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Price to Comply Order would lock or cross.
- Routing (available through RASH and FIX only).
- Primary Pegging and Market Pegging (available through RASH and FIX only).
- Discretion (available through RASH and FIX only).
- Display. A Price to Comply Order is always displayed, although as provided above, may also have a non-displayed price and/or Reserve Size.
- Trade Now (available through OUCH, RASH, FLITE and FIX).

(2) (A) A "Price to Display Order" is an Order Type designed to comply with Rule 610(d) under Regulation NMS by avoiding the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours. Price to Display Orders are available solely to Participants that are Market Makers.

When a Price to Display Order is entered, if its entered limit price would lock or cross a Protected Quotation, the Price to Display Order will be repriced to one minimum price increment lower than the current Best Offer (for a Price to Display Order to buy) or higher than the current Best Bid (for a Price to Display Order to sell). For example, if a Price to Display Order to buy at \$11 would cross a Protected Offer of \$10.99, the Price to Display Order will be repriced to \$10.98. The Price to Display Order (whether repriced or not repriced) will then be executed against previously posted Orders on the Exchange Book that are priced equal to or better than the adjusted price of the Price to Display Order, up to the full amount of such previously posted Orders, unless such executions would trade through a Protected Quotation. Any portion of the Order that cannot be executed in this manner will be posted on the Exchange Book (and/or routed if it has been designated as Routable).

During Market Hours, the price at which a Price to Display Order is displayed and ranked on the Exchange Book will be its entered limit price if the Price to Display Order was not repriced upon entry, or the adjusted price if the Price to Display Order was repriced upon entry, such that the price will not lock or cross a Protected Quotation.

During Pre-Market Hours and Post-Market Hours, a Price to Display Order will be displayed and ranked at its entered limit price without adjustment.

(B) If a Price to Display Order is entered through RASH or FIX, during Market Hours the Price to Display Order may be adjusted in the following manner after initial entry and posting to the Exchange Book (unless the Order is assigned a Routing Order Attribute that would cause it to be routed to another market center rather than remaining on the Exchange Book):

- If the entered limit price of the Price to Display Order locked or crossed a Protected Quotation and the NBBO changes, the price of the Order will be adjusted repeatedly in accordance with changes to the NBBO; provided, however, that if the quotation of another market center moves in a manner that would lock or cross the price of a Price to Display Order, the price of the Price to Display Order will not be adjusted. For example, if a Price to Display Order to buy at \$11.02 would cross a Protected Offer of \$11, the Order will be displayed and ranked at \$10.99. If the Best Offer then moves to \$11.01, the displayed/ranked price will be changed to \$11. However, if another market center then displays an offer of \$11 (thereby locking the previously displayed price of the Price to Display Order, notwithstanding Rule 610(d) under Regulation NMS), the price of the Price to Display Order will not be changed. The Order may be repriced repeatedly until such time as the Price to Display Order is able to be displayed and ranked at its original entered limit price (\$11.02 in the example). The Price to Display Order receives a new timestamp each time its price is changed.
- If the original entered limit price of the Price to Display Order would no longer lock or cross a Protected Quotation, the Price to Display Order will be displayed and ranked at that price and will receive a new timestamp, and will not thereafter be adjusted under this paragraph (B).

If a Price to Display Order is entered through OUCH or FLITE, during Market Hours the Price to Display Order may be adjusted in the following manner after initial entry and posting to the Exchange Book:

- If the entered limit price of the Price to Display Order locked or crossed a Protected Quotation and the NBBO changes so that the Price to Display Order could be ranked and displayed at a price at or closer to its original entered limit price without locking or crossing a Protected Quotation, the Price to Display Order may either remain on the Exchange Book unchanged or may be cancelled back to the Participant, depending on the Participant's choice. For example, if a Price to Display Order to buy at \$11.02 would cross a Protected Offer of \$11, the Order will be ranked and displayed at \$10.99. If the Best Offer changes to \$11.01, the Price to Display Order will not be repriced, but rather will either remain at its current price or be cancelled back to the Participant, depending

on its choice. A Participant's choice with regard to maintaining the Price to Display Order or cancelling it is set in advance for each port through which the Participant enters Orders.

(C) The following Order Attributes may be assigned to a Price to Display Order:

- Price. As described above, the price of the Order may be adjusted to avoid locking or crossing a Protected Quotation.
- Size.
- Reserve Size (available through RASH and FIX only).
- A Time-in-Force other than IOC. (A Price to Display Order entered with a Time-in-Force of IOC would be processed as a Non-Displayed Order with a Time-in-Force of IOC).
- Designation as an ISO. In accordance with Regulation NMS, a Price to Display Order designated as an ISO would be processed at its entered limit price, since such a designation reflects a representation by the Participant that it has simultaneously routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Price to Display Order would lock or cross.
- Routing (available through RASH and FIX only).
- Primary Pegging and Market Pegging (available through RASH and FIX only).
- Discretion (available through RASH and FIX only).
- Attribution. All Price to Display Orders are Attributable Orders.
- Display. A Price to Display Order is always displayed (but may also have Reserve Size).

(3) (A) A "Non-Displayed Order" is an Order Type that is not displayed to other Participants, but nevertheless remains available for potential execution against incoming Orders until executed in full or cancelled. In addition to the Non-Displayed Order Type, there are other Order Types that are not displayed on the Exchange Book. Thus, "Non-Display" is both a specific Order Type and an Order Attribute of certain other Order Types.

When a Non-Displayed Order is entered, the Non-Displayed Order will be executed against previously posted Orders on the Exchange Book that are priced equal to or better than the price of the Non-Displayed Order, up to the full amount of such previously posted Orders, unless such executions would trade through a Protected Quotation. Any

portion of the Non-Displayed Order that cannot be executed in this manner will be posted to the Exchange Book (unless the Non-Displayed Order has a Time-in-Force of IOC) and/or routed if it has been designated as Routable.

During Market Hours, the price at which a Non-Displayed Order is posted is determined in the following manner. If the entered limit price of the Non-Displayed Order would lock a Protected Quotation, the Non-Displayed Order will be placed on the Exchange Book at the locking price. If the Non-Displayed Order would cross a Protected Quotation, the Non-Displayed Order will be repriced to a price that would lock the Protected Quotation and will be placed on the Exchange Book at that price. For example, if a Non-Displayed Order to buy at \$11 would cross a Protected Offer of \$10.99, the Non-Displayed Order will be repriced and posted at \$10.99. A Non-Displayed Order to buy at \$10.99 would also be posted at \$10.99.

During Pre-Market Hours and Post-Market Hours, a Non-Displayed Order will be posted at its entered limit price without adjustment.

(B) If a Non-Displayed Order is entered through RASH or FIX, during Market Hours the Non-Displayed Order may be adjusted in the following manner after initial entry and posting to the Exchange Book (unless the Order is assigned a Routing Order Attribute that would cause it to be routed to another market center rather than remaining on the Exchange Book):

- If the original entered limit price of a Non-Displayed Order is higher than the Best Offer (for an Order to buy) or lower than the Best Bid (for an Order to sell) and the NBBO moves toward the original entered limit price of the Non-Displayed Order, the price of the Non-Displayed Order will be adjusted repeatedly in accordance with changes to the NBBO. For example, if a Non-Displayed Order to buy at \$11.02 would cross a Protected Offer of \$11, the Non-Displayed Order will be priced and posted at \$11. If the Best Offer then changes to \$11.01, the price of the Non-Displayed Order will be changed to \$11.01. The Order may be repriced repeatedly in this manner, receiving a new timestamp each time its price is changed, until the Non-Displayed Order is posted at its original entered limit price. The Non-Displayed Order will not thereafter be repriced under this paragraph (B), except as provided below with respect to crossing a Protected Quotation.

- If, after being posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would cross a Protected Quotation, the Non-Displayed Order will be repriced at a price that would lock the new NBBO and receive a new timestamp. For example, if a Non-Displayed Order to buy at \$11 would lock a Protected Offer of \$11, the Non-Displayed Order will be posted at \$11. If the Best Offer then changes to \$10.99,

the Non-Displayed Order will be repriced at \$10.99, receiving a new timestamp. The Non-Displayed Order may be repriced and receive a new timestamp repeatedly.

If a Non-Displayed Order is entered through OUCH or FLITE, during Market Hours the Non-Displayed Order may be adjusted in the following manner after initial entry and posting to the Exchange Book:

- If the original entered limit price of the Non-Displayed Order locked or crossed a Protected Quotation and the NBBO changes so that the Non-Displayed Order could be posted at a price at or closer to its original entered limit price without crossing a Protected Quotation, the Non-Displayed Order may either remain on the Exchange Book unchanged or may be cancelled back to the Participant, depending on its choice. For example, if a Non-Displayed Order to buy at \$11.02 would cross a Protected Offer of \$11, the Order will be priced at \$11. If the Best Offer changes to \$11.01, the Order will not be repriced, but rather will either remain at its current \$11 price or be cancelled back to the Participant, depending on its choice. A Participant's choice with regard to maintaining the Non-Displayed Order or cancelling it is set in advance for each port through which the Participant enters Orders.
- If, after a Non-Displayed Order is posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would cross a Protected Quotation, the Non-Displayed Order will be cancelled back to the Participant. For example, if a Non-Displayed Order to buy at \$11 would lock a Protected Offer of \$11, the Non-Displayed Order will be posted at \$11. If the Best Offer then changes to \$10.99, the Non-Displayed Order will be cancelled back to the Participant.

(C) The following Order Attributes may be assigned to a Non-Displayed Order:

- Price. As described above, the price of the Order may be adjusted to avoid crossing a Protected Quotation.
- Size.
- Minimum Quantity.
- Time-in-Force.
- Designation as an ISO. In accordance with Regulation NMS, a Non-Displayed Order designated as an ISO would be processed at its entered limit price, since such a designation reflects a representation by the Participant that it has simultaneously routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Non-Displayed Order would cross. As discussed above, a Non-Displayed Order would be accepted at a price that locked a Protected Quotation, even if the Order was not designated as an ISO, because the non-

displayed nature of the Order allows it to lock a Protected Quotation under Regulation NMS. Accordingly, the System would not interpret receipt of a Non-Displayed Order marked ISO that locked a Protected Quotation as the basis for determining that the Protected Quotation had been executed for purposes of accepting additional Orders at that price level.

- Routing (available through RASH and FIX only).
- Primary Pegging and Market Pegging (available through RASH and FIX only).
- Pegging to the Midpoint (see Rule 4703(d) with respect to differences between OUCH and FLITE and RASH and FIX).
- Discretion (available through RASH and FIX only).
- Trade Now (available through OUCH, RASH, FLITE and FIX).

(4) (A) A "Post-Only Order" is an Order Type designed to have its price adjusted as needed to post to the Exchange Book in compliance with Rule 610(d) under Regulation NMS by avoiding the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours, or to execute against locking or crossing quotations in circumstances where economically beneficial to the Participant entering the Post-Only Order.

During Market Hours, a Post-Only Order is evaluated at the time of entry with respect to locking or crossing other Orders on the Exchange Book, Protected Quotations, and potential execution as follows:

- If a Post-Only Order would lock or cross a Protected Quotation, the price of the Order will first be adjusted. If the Order is Attributable, its adjusted price will be one minimum price increment lower than the current Best Offer (for bids) or higher than the current Best Bid (for offers). If the Order is not Attributable, its adjusted price will be equal to the current Best Offer (for bids) or the current Best Bid (for offers). However, the Order will not post or execute until the Order, as adjusted, is evaluated with respect to Orders on the Exchange Book.

— If the adjusted price of the Post-Only Order would not lock or cross an Order on the Exchange Book, the Order will be posted in the same manner as a Price to Comply Order (if it is not Attributable) or a Price to Display Order (if it is Attributable). Specifically, if the Post-Only Order is not Attributable, it will be displayed on the Exchange Book at a price one minimum price increment lower than the current Best Offer (for bids) or higher than the current Best Bid (for offers) but will be ranked on the Exchange Book with a non-displayed price equal to the current Best Offer (for bids) or to the current Best Bid (for offers). For example, if a Post- Only Order to buy at \$11 would lock a Protected

Offer of \$11, the Order will be ranked at a non-displayed price of \$11 but will be displayed at \$10.99. If the Post-Only Order is Attributable, it will be ranked and displayed on the Exchange Book at a price one minimum increment lower than the current Best Offer (for bids) or higher than the current Best Bid (for offers). Thus, in the preceding example, the Post-Only Order to buy would be ranked and displayed at \$10.99.

— If the adjusted price of the Post-Only Order would lock or cross a displayed Order at its displayed price on the Exchange Book, the Post Only Order will be repriced, ranked, and displayed at one minimum price increment below the current best-priced displayed Order to sell on the Exchange Book (for bids) or above the current best-priced displayed Order to buy on the Exchange Book (for offers); provided, however, the Post-Only Order will execute if (i) it is priced at \$1.00 or more, or (ii) it is priced below \$1.00 and the value of price improvement associated with executing against an Order on the Exchange Book (as measured against the original limit price of the Order) equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the Order posted to the Exchange Book and subsequently provided liquidity. For example, if a Participant entered a Non-Attributable Post-Only Order to buy at \$11.01, another market center is displaying a Protected Offer at \$11, and there is an Order on the Exchange Book to sell at \$11, the adjusted price of the Post-Only Order will be \$11. However, because the Post-Only Order would be executable against the Order on the Exchange Book, the Post-Only Order would execute.

— If the adjusted price of the Post-Only Order would lock or cross a nondisplayed price on the Exchange Book, the Post-Only Order will be posted in the same manner as a Price to Comply Order; provided, however, the Post-Only Order will execute if (i) it is priced at \$1.00 or more, or (ii) it is priced below \$1.00 and the value of price improvement associated with executing against an Order on the Exchange Book (as measured against the original limit price of the Order) equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the Order posted to the Exchange Book and subsequently provided liquidity. For example, if a Participant entered a Non-Attributable Post-Only Order to buy at \$11.01, another market center is displaying a Protected Offer at \$11, and there is a Non-Displayed Order on the Exchange Book to sell at \$11, the adjusted price of the Post-Only Order will be \$11. However, because the Post-Only Order would be executable against the Non-Displayed Order on the Exchange Book, the Post-Only Order would execute.

- If the Post-Only Order would not lock or cross a Protected Quotation but would lock or cross a displayed Order at its displayed price on the Exchange Book, the Post Only Order will be repriced, ranked, and displayed at one minimum price increment below the current best-priced Order to sell on the Exchange Book (for bids) or above the current best-priced Order to buy on the Exchange Book (for offers); provided, however, the Post-Only Order will execute if (i) it is priced at \$1.00 or more, or (ii) it is priced below \$1.00

and the value of price improvement associated with executing against an Order on the Exchange Book (as measured against the original limit price of the Order) equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the Order posted to the Exchange Book and subsequently provided liquidity. For example, if a Participant entered a Post-Only Order to buy at \$11.02, the Best Offer on an away exchange was \$11.04, and there was a Displayed Order on the Exchange Book to sell at \$11.02, the Post-Only Order would execute.

- If the Post-Only Order would not lock or cross a Protected Quotation but would lock or cross a non-displayed Order on the Exchange Book, the Post-Only Order will be posted, ranked, and displayed at its limit price; provided, however, the Post-Only Order will execute if (i) it is priced at \$1.00 or more, or (ii) it is priced below \$1.00 and the value of price improvement associated with executing against an Order on the Exchange Book equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the Order posted to the Exchange Book and subsequently provided liquidity. For example, if a Participant entered a Post-Only Order to buy at \$0.95, the Best Offer was \$0.97, and there was a Non-Displayed Order on the Exchange Book to sell at \$0.95, the Post-Only Order would be ranked and displayed at \$0.95.
- If a Post-Only Order is entered with a Time-in-Force of IOC, the Order will be evaluated for possible execution in the same manner as any other Post-Only Order but will be cancelled rather than posted if the Order cannot execute.
- If a Post-Only Order would not lock or cross an Order on the Exchange Book or any Protected Quotation, it will be posted on the Exchange Book at its entered limit price.

During Pre-Market and Post-Market Hours, a Post-Only Order will be processed in a manner identical to Market Hours with respect to locking or crossing Orders on the Exchange Book, but will not have its price adjusted with respect to locking or crossing the quotations of other market centers.

(B) If a Post-Only Order is entered through RASH or FIX, during System Hours the Post-Only Order may be adjusted in the following manner after initial entry and posting to the Exchange Book:

- If the original entered limit price of the Post-Only Order is not being displayed, the displayed price (and non-displayed price, if any) of the Order will be adjusted repeatedly in accordance with changes to the NBBO or the best price on the Exchange Book, as applicable; provided, however, that if the quotation of another market center moves in a manner that would lock or cross the displayed price of a Post-Only Order, the price(s) of the Post-Only Order will not be adjusted. For example, if a Non-Attributable Post-Only Order to buy at \$11.02 would cross a Protected Offer of \$11, the Order will be ranked at a non-displayed price of \$11 but will be displayed at \$10.99. If the Best Offer then moves

to \$11.01, the displayed price will be changed to \$11 and the non-displayed price at which the Order is ranked will be changed to \$11.01. However, if another market center then displays an offer of \$11 (thereby locking the previously displayed price of the Post-Only Order notwithstanding Rule 610(d) under Regulation NMS), the price of the Post-Only Order will not be changed. The Order may be repriced repeatedly until such time as the Post-Only Order is able to be displayed at its original entered limit price (\$11.02 in the example). The Post-Only Order receives a new timestamp each time its price is changed.

- If the original entered limit price of the Post-Only Order would no longer lock or cross a Protected Quotation or a displayed Order on the Exchange Book, the Post-Only Order will be ranked and displayed at that price and will receive a new timestamp, and will not thereafter be adjusted under this paragraph (B).

If a Post-Only Order is entered through OUCH or FLITE, the Post-Only Order may be adjusted in the following manner after initial entry and posting to the Exchange Book:

- During Market Hours, if the original entered limit price of the Post-Only Order locked or crossed a Protected Quotation, the Post-Only Order may be adjusted after initial entry in the same manner as a Price to Comply Order (or a Price to Display Order, if it is Attributable). Thus, in the case of a Non-Attributable Post-Only Order that crossed a Protected Quotation, if the NBBO changed so that the Post-Only Order could be ranked and displayed at a price at or closer to its original entered limit price without locking or crossing a Protected Quotation, the Post-Only Order may either remain on the Exchange Book unchanged or may be cancelled back to the Participant, depending on its choice. In the case of a Non-Attributable Post-Only Order that locked a Protected Quotation, if the limit price would no longer lock a Protected Quotation, the Post-Only Order may either remain on the Exchange Book unchanged, may be cancelled back to the Participant, or may be ranked and displayed at its original entered limit price, depending on the Participant's choice, and will not thereafter be adjusted under this paragraph (B). If the Post-Only Order is displayed at its original entered limit price, it will receive a new timestamp. Finally, in the case of an Attributable Post-Only Order that locked or crossed a Protected Quotation, if the NBBO changed so that the Post-Only Order could be ranked and displayed at a price at or closer to its original entered limit price without locking or crossing a Protected Quotation, the Post-Only Order may either remain on the Exchange Book unchanged or may be cancelled back to the Participant, depending on the Participant's choice. A Participant's choice with regard to adjustment of Post-Only Orders is set in advance for each port through which the Participant enters Orders.

- During System Hours, if the original entered limit price of the Post-Only Order locked or crossed a displayed Order on the Exchange Book and the Exchange Book changes so that the original entered limit price would no longer lock or cross an Order on the

Exchange Book, the Post-Only Order may either remain on the Exchange Book unchanged or may be cancelled back to the Participant, depending on the Participant's choice. For example, if a Post-Only Order to buy at \$0.98 would lock a displayed Order on the Exchange Book priced at \$0.98, the Post-Only Order will be ranked and displayed at \$0.9799. If the Order at \$0.98 is cancelled or executed, the Post-Only Order may either remain with a displayed price of \$0.9799 or be cancelled back to the Participant, depending on the Participant's choice. A Participant's choice with regard to maintaining the Post-Only Order or cancelling it is set in advance for each port through which the Participant enters Orders.

(C) The following Order Attributes may be assigned to a Post-Only Order:

- Price. As described above, the price of the Order may be adjusted to avoid locking or crossing a Protected Quotation, and may include a displayed price as well as a non-displayed price.
- Size.
- Time-in-Force; provided, however, that a Post-Only Order with a Time-in-Force of IOC may not be entered through RASH or FIX.
- Designation as an ISO. In accordance with Regulation NMS, a Post-Only Order designated as an ISO that locked or crossed a Protected Quotation would be processed at its entered limit price, since such a designation reflects a representation by the Participant that it has simultaneously routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Post-Only Order would lock or cross. However, as described above, a Post-Only Order designated as an ISO that locked or crossed an Order on the Exchange Book would either execute at time of entry, post at its limit price, or would have its price adjusted prior to posting. Accordingly, the System would not interpret receipt of a Post-Only Order marked ISO that had its price adjusted prior to posting as the basis for determining that any Protected Quotation at the Order's original entered limit price level had been executed for purposes of accepting additional Orders at that price level. However, if the Post-Only Order is ranked and displayed at its adjusted price, the System would consider the adjusted price level to be open for purposes of accepting additional Orders at that price level. For example, assume that there is a Protected Offer at \$0.98 and a Participant enters a Post-Only Order marked ISO to buy at \$0.98. If there are no Orders to sell at \$0.98 on the Exchange Book, the Order to buy will be displayed and ranked at \$0.98, since the designation of the Order as an ISO reflects the Participant's representation that it has routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Post-Only Order would lock or cross. However, if there was also a displayed Order to sell at \$0.98 on the Exchange Book, the

Post-Only Order may be repriced, ranked, and displayed at \$0.9799. In that case, the mere fact that the Post-Only Order was designated as an ISO would not allow the Exchange to conclude that the \$0.98 price level was "open" for receiving orders to buy at that price; the \$0.98 price level would be considered open only if market data received by the System demonstrated that the Protected Offer at \$0.98 had been removed or if a subsequent Displayed Order marked ISO was received and ranked at that price.

- Attribution.
- Display. A Post-Only Order is always displayed, although as provided above, may also have a non-displayed price.
- Trade Now (available through OUCH, RASH, FLITE and FIX).

(5) (A) A "Retail Price Improving Order" or "RPI Order" is an Order Type with a Non-Display Order Attribute that is held on the Exchange Book in order to provide liquidity at a price at least \$0.001 better than the NBBO through a special execution process described in Rule 4780. A Retail Price Improving Order may be entered in price increments of \$0.001. RPI Orders collectively may be referred to as "RPI Interest."

An RPI Order will be posted to the Exchange Book regardless of its price, but an RPI Order may execute only against a Retail Order, and only if its price is at least \$0.001 better than the NBBO.

(B) The following Order Attributes may be assigned to an RPI Order:

- Price. The price of an RPI Order must be at least \$0.001 better than the NBBO in order to execute.
- Size.
- A Time-in-Force other than IOC.
- Primary Pegging (available through RASH and FIX only).
- Midpoint Pegging (available through RASH and FIX only).
- Non-Display. All RPI Orders are Non-Displayed.

(6) (A) A "Retail Order" is an Order Type with a Non-Display Order Attribute submitted to the Exchange by a Retail Member Organization (as defined in Rule 4780). A Retail Order must be an agency Order, or riskless principal Order that satisfies the criteria of FINRA Rule 5320.03. The Retail Order must reflect trading interest of a natural person with no change made to the terms of the underlying order of the natural person with respect to price (except in the case of a market order that is changed to a marketable limit

order) or side of market and that does not originate from a trading algorithm or any other computerized methodology.

A Retail Order may be designated as either a Type-1 Retail Order or a Type-2 Retail Order. Upon entry, a Type-1 Retail Order will attempt to execute against RPI Orders and any other Orders on the Exchange Book with a price that is (i) equal to or better than the price of the Type-1 Retail Order and (ii) at least \$0.001 better than the NBBO. A Type-1 Retail Order is not Routable and will thereafter be cancelled.

Upon entry, a Type-2 Retail Order will first attempt to execute against RPI Orders and any other Orders on the Exchange Book with a price that is (i) equal to or better than the price of the Type-2 Retail Order and (ii) at least \$0.001 better than the NBBO and will then attempt to execute against any other Order on the Exchange Book with a price that is equal to or better than the price of the Type-2 Retail Order, unless such executions would trade through a Protected Quotation. A Type-2 Retail Order may be designated as Routable.

(B) The following Order Attributes may be assigned to a Retail Order:

- Price.
- Size.
- A Time-in-Force of IOC.
- Routing (available through RASH or FIX only).
- Midpoint Pegging (available through RASH or FIX only).
- Non-Display. All Retail Orders are Non-Displayed.

(7) (A) A "Market Maker Peg Order" is an Order Type designed to allow a Market Maker to maintain a continuous two-sided quotation at a displayed price that is compliant with the quotation requirements for Market Makers set forth in Rule 4613(a)(2). The displayed price of the Market Maker Peg Order is set with reference to a "Reference Price" in order to keep the displayed price of the Market Maker Peg Order within a bounded price range. A Market Maker Peg Order may be entered through RASH or FIX only. A Market Maker Peg Order must be entered with a limit price beyond which the Order may not be priced. The Reference Price for a Market Maker Peg Order to buy (sell) is the then-current National Best Bid (National Best Offer), including BX, or if no such National Best Bid or National Best Offer, the most recent reported last-sale eligible trade from the responsible single plan processor for that day, or if none, the previous closing price of the security as adjusted to reflect any corporate actions (e.g., dividends or stock splits) in the security.

Upon entry, the displayed price of a Market Maker Peg Order to buy (sell) is automatically set by the System at the Designated Percentage (as defined in Rule 4613) away from the Reference Price in order to comply with the quotation requirements for Market Makers set forth in Rule 4613(a)(2). For example, if the National Best Bid is \$10 and the Designated Percentage for the security is 8%, the displayed price of a Market Maker Peg Order to buy would be \$9.20. If the limit price of the Order is not within the Designated Percentage, the Order will be sent back to the Participant.

Once a Market Maker Peg Order has posted to the BX Book, it is repriced if needed as the Reference Price changes. Specifically, if as a result of a change to the Reference Price, the difference between the displayed price of the Market Maker Peg Order and the Reference Price exceeds the Defined Limit (as defined in Rule 4613), the Market Maker Peg Order to buy (sell) will be repriced to the Designated Percentage away from the Reference Price. In the foregoing example, if the Defined Limit is 9.5% and the National Best Bid increased to \$10.17, such that the displayed price of the Market Maker Peg Order would be more than 9.5% away, the Order will be repriced to \$9.36, or 8% away from the National Best Bid. Note that prices will be rounded in a manner to ensure that they are calculated and displayed at a level that is consistent with the Designated Percentage and the permissible minimum increment of \$0.01 or \$0.0001, as applicable. If the limit price of the Order is not within the Designated Percentage, the Order will be sent back to the Participant.

Similarly, if as a result of a change to the Reference Price, the displayed price of a Market Maker Peg Order to buy (sell) is at least one minimum price variation more than (less than) a price that is 4% less than (more than) the Reference Price, rounded up (down), then the Market Maker Peg Order to buy (sell) will be repriced to the Designated Percentage away from the Reference Price. For example, if the National Best Bid is \$10 and the Designated Percentage for the security is 8%, the displayed price of a Market Maker Peg Order to buy would initially be \$9.20. If the National Best Bid then moved to \$9.57, such that the displayed price of the Market Maker Peg Order would be a minimum of \$0.01 more than a price that is 4% less than the National Best Bid, rounded up (i.e.  $\$9.57 - (\$9.57 \times 0.04) = \$9.1872$ , rounding up to \$9.19), the Order will be repriced to \$8.81, or 8% away from the National Best Bid.

Market Maker Peg Orders entered with a pegging offset will not be accepted.

A new timestamp is created for a Market Maker Peg Order each time that it is repriced. In the absence of a Reference Price, a Market Maker Peg Order will be cancelled (if on the BX Book) or rejected (if it is an incoming Order). If, after entry, a Market Maker Peg Order has a displayed price based on a Reference Price other than the National Best Bid or National Best Offer and such Market Maker Peg Order is established as the National Best Bid or National Best Offer, the Market Maker Peg Order will not be subsequently

repriced in accordance with this rule until a new Reference Price is established. Additionally, if after entry, a Market Maker Peg Order has a displayed price based on the NBBO, and the NBBO subsequently shifts such that the displayed price of the Market Maker Peg Order to buy (sell) is equal to or greater (less) than the National Best Bid (or National Best Offer), the Market Maker Peg Order will not be subsequently repriced in accordance with this Rule until a new Reference Price is established that is more aggressive than the displayed price of the Market Maker Peg Order. In such cases, the new Reference Price may be established by a change in the National Best Bid or National Best Offer based on another market center's quotation or by the entry into the System of any Displayed Order with a price better than the displayed price of the Market Maker Peg Order, whether the new Order is at a price that is lower than, higher than or equal to the prior Reference Price.

Notwithstanding the availability of Market Maker Peg Order functionality, a Market Maker remains responsible for entering, monitoring, and resubmitting, as applicable, quotations that meet the requirements of Rule 4613.

(B) The following Order Attributes may be assigned to a Market Maker Peg Order:

- Price. The displayed price of a Market Maker Peg Order is established by the BX System based on the Reference Price, the Designated Percentage, the Defined Limit, and the 4% minimum difference from the Reference Price.
- Size.
- A Time-in-Force other than IOC or GTC.
- Attribution. All Market Maker Peg Orders are Attributable.
- Display. Market Marker Peg Orders are always Displayed.

#### **4703. Order Attributes.**

As described in Rule 4702, the following Order Attributes may be assigned to those Order Types for which they are available.

(a) Time-in-Force

The "Time-in-Force" assigned to an Order means the period of time that the System will hold the Order for potential execution. Participants specify an Order's Time-in-Force by designating a time at which the Order will become active and a time at which the Order will cease to be active. The available times for activating Orders are:

- The time of the Order's receipt by the System;

- the beginning of Market Hours;
- the end of Market Hours;
- the resumption of trading, in the case of a security that is the subject of a trading halt.

The available times for deactivating Orders are:

- "Immediate" (i.e., immediately after determining whether the Order is marketable);
- the end of Market Hours;
- the end of System Hours;
- one year after entry; or
- a specific time identified by the Participant; provided, however, that an Order specifying an expire time beyond the current trading day will be cancelled at the end of the current trading day.

Notwithstanding the Time-in-Force originally designated for an Order, a Participant may always cancel an Order after it is entered.

The following Times-in-Force are referenced elsewhere in the Exchange's Rules by the designations noted below:

- (1) An Order that is designated to deactivate immediately after determining whether the Order is marketable may be referred to as having a Time in Force of "Immediate or Cancel" or "IOC". An Order with a Time-in-Force of IOC that is entered at any time between 7:00 a.m. ET and 7:00 p.m. ET may be referred to as having a Time-in-Force of "System Hours Immediate or Cancel" or "SIOC".
- (2) An Order that is designated to deactivate at 7:00 p.m. may be referred to as having a Time in Force of "System Hours Day" or "SDAY".
- (3) An Order that is designated to deactivate one year after entry may be referred to as a "Good-till-Cancelled" or "GTC" Order. If a GTC Order is designated as eligible for execution during Market Hours only, it may be referred to as having a Time in Force of "Market Hours Good-till-Cancelled" or "MGTC". If a GTC is designated as eligible for execution during System Hours, it may be referred to as having a Time in Force of "System Hours Good-till-Cancelled" or "SGTC".
- (4) An Order that is designated to deactivate at the time specified in advance by the entering Participant may be referred to as having a Time-in-Force of "System Hours Expire Time" or "SHEX".

- (5) An Order that is designated to activate at any time during Market Hours and deactivate at 4:00 p.m. ET may be referred to as having a Time-in-Force of "Market Hours Day" or "MDAY". An Order entered with a Time-in-Force of MDAY after 4:00 p.m. ET will be accepted but given a Time-in-Force of IOC.
- (6) An Order that is designated to activate when entered and deactivate at 4:00 p.m. ET may be referred to as having a Time-in-Force of "Good-till-Market Close" or "GTMC". GTMC Orders entered after 4:00 p.m. ET will not be accepted.
- (b) Size. Except as otherwise provided, an Order may be entered in any whole share size between one share and 999,999 shares. Orders for fractional shares are not permitted. The following terms may be used to describe particular Order sizes:
- (1) "normal unit of trading" or "round lot" means the size generally employed by traders when trading a particular security, which is 100 shares in most instances;
  - (2) "mixed lot" means a size of more than one normal unit of trading but not a multiple thereof; and
  - (3) "odd lot" means a size of less than one normal unit of trading.
- (c) Price. With limited exceptions, all Orders must have a price, such that they will execute only if the price available is equal to or better than the price of the Order. The maximum price that the System will accept is \$199,999.99. Certain Orders have a price that is determined by the System based on the NBBO or other reference prices, rather than by the Participant. As described below with respect to the Pegging Order Attribute, an Order may have a price that is pegged to the opposite side of the market, in which case the Order will behave like a "market order" or "unpriced order" (i.e., an Order that executes against accessible liquidity on the opposite side of the market, regardless of its price).
- (d) Pegging. Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the NBBO; provided, however, that if the Exchange is the sole market center at the Best Bid or Best Offer (as applicable), then the price of any Displayed Order with Primary Pegging (as defined below) will be set with reference to the highest bid or lowest offer disseminated by a market center other than the Exchange. An Order with a Pegging Order Attribute may be referred to as a "Pegged Order." For purposes of this rule, the price to which an Order is pegged will be referred to as the Inside Quotation, the Inside Bid, or the Inside Offer, as appropriate. There are three varieties of Pegging:
- Primary Pegging means Pegging with reference to the Inside Quotation on the same side of the market. For example, if the Inside Bid was \$11, an Order to buy with Primary Pegging would be priced at \$11.

- Market Pegging means Pegging with reference to the Inside Quotation on the opposite side of the market. For example, if the Inside Offer was \$11.06, an Order to buy with Market Pegging would be priced at \$11.06.
- Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid and the Inside Offer (the "Midpoint"). Thus, if the Inside Bid was \$11 and the Inside Offer was \$11.06, an Order with Midpoint Pegging would be priced at \$11.03. An Order with Midpoint Pegging is not displayed. An Order with Midpoint Pegging may be executed in sub-pennies if necessary to obtain a midpoint price.

Pegging is available only during Market Hours. An Order with Pegging may specify a limit price beyond which the Order may not be executed; provided, however, that if an Order has been assigned a Pegging Order Attribute and a Discretion Order Attribute, the Order may execute at any price within the discretionary price range, even if beyond the limit price specified with respect to the Pegging Order Attribute. If an Order with Pegging is priced at its limit price, the price of the Order may nevertheless be changed to a less aggressive price based on changes to the Inside Quotation. In addition, an Order with Primary Pegging or Market Pegging may specify an Offset Amount, such that the price of the Order will vary from the Inside Quotation by the selected Offset Amount. The Offset Amount may be either aggressive or passive. Thus, for example, if a Participant entered an Order to buy with Primary Pegging and a passive Offset Amount of \$0.05 and the Inside Bid was \$11, the Order would be priced at \$10.95. If the Participant selected an aggressive Offset Amount of \$0.02, however, the Order would be priced at \$11.02. An Order with Primary Pegging and an Offset Amount will not be Displayed, unless the Order is Attributable. An Order with Midpoint Pegging will not be Displayed. An Order with Market Pegging and no Offset behaves as a "market order" with respect to any liquidity on the Exchange Book at the Inside Quotation on the opposite side of the market because it is immediately executable at that price. If, at the time of entry, there is no price to which a Pegged Order can be pegged, the Order will be rejected; provided, however, that a Displayed Order that has Market Pegging, or an Order with a Non-Display Attribute that has Primary Pegging or Market Pegging, will be accepted at its limit price. In the case of an Order with Midpoint Pegging, if the Inside Bid and Inside Offer are locked, the Order will be priced at the locking price, if the Inside Bid and Inside Offer are crossed or if there is no Inside Bid and/or Inside Offer, the Order will be cancelled or rejected. However, even if the Inside Bid and Inside Offer are locked, an Order with Midpoint Pegging that locked an Order on the Exchange Book would execute.

Primary Pegging and Market Pegging are available through RASH and FIX only. An Order entered through OUCH or FLITE with Midpoint Pegging will have its price set upon initial entry to the Midpoint, unless the Order has a limit price, and that limit price is lower than the Midpoint for an Order to buy (higher than the Midpoint for an Order to sell), in which case the Order will be ranked on the Exchange Book at its limit price. The price of the Order will not thereafter be adjusted based on

changes to the Inside Bid or Offer. However, an Order with Midpoint Pegging entered through OUCH or FLITE will be cancelled back to the Participant after initial entry and posting to the Exchange Book if any of the following conditions are met:

- There is no Inside Bid and/or Inside Offer;
- The Order to buy (sell) is entered with a limit price above (below) the Midpoint and is ranked at the Midpoint; thereafter the Inside Bid and/or Inside Offer change so that the Midpoint changes and the Order is no longer at the Midpoint;
- The Order to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint and is ranked at its limit price; thereafter, the Inside Bid and/or Inside Offer change so that the Midpoint is lower (higher) than the limit price of the Order;
- The Order to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint and is ranked at its limit price; thereafter, the Inside Bid and Inside Offer become crossed, such that the Midpoint of the crossed Quotation remains equal to or higher (lower) than the limit price of the Order, and then a new sell (buy) Order is received at a price that locks or crosses the limit price of the resting Order marked for Midpoint Pegging; or
- The Order to buy (sell) is entered at a limit price that is greater than (less than) the Midpoint and is therefore ranked at the Midpoint; thereafter the Inside Bid and Inside Offer become crossed but the Midpoint does not change, and then a new sell (buy) Order is received at a price that locks or crosses the Midpoint of the Inside Bid and Inside Offer.

An Order entered through RASH or FIX with Pegging will have its price set upon initial entry and will thereafter have its price reset in accordance with changes to the relevant Inside Quotation. An Order with Pegging receives a new timestamp whenever its price is updated and therefore will be evaluated with respect to possible execution (and routing, if it has been assigned a Routing Order Attribute) in the same manner as a newly entered Order. If the price to which an Order is pegged is not available, the Order will be rejected.

Primary Pegging Orders and Market Pegging Orders are subject to a collar. Any portion of a Primary Pegging Order or Market Pegging Order that would execute, either on the Exchange or when routed to another market center, at a price of more than \$0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled.

(e) Minimum Quantity. Minimum Quantity is an Order Attribute that allows a Participant to provide that an Order will not execute unless a specified minimum quantity of shares can be obtained. An Order with a Minimum Quantity Order

Attribute may be referred to as a "Minimum Quantity Order." For example, a Participant could enter an Order with a Size of 1000 shares and specify a Minimum Quantity of 500 shares.

A Participant may specify two alternatives with respect to the processing of a Minimum Quantity Order at time of entry:

- First, the Participant may specify that the minimum quantity condition may be satisfied by execution against multiple Orders. In that case, upon entry, the System would determine whether there were one or more posted Orders executable against the incoming Order with an aggregate size of at least the minimum quantity (500 shares in the above example). If there were not, the Order would post on the Exchange Book in accordance with the characteristics of its underlying Order Type.
- Second, the Participant may specify that the minimum quantity condition must be satisfied by execution against one or more Orders, each of which must have a size that satisfies the minimum quantity condition. If there are such Orders but there are also other Orders that do not satisfy the minimum quantity condition, the Minimum Quantity Order will execute against Orders on the Exchange Book in accordance with Rule 4757 (pertaining to execution priority) until it reaches an Order that does not satisfy the minimum quantity condition, and then the remainder of the Order will be cancelled. For example, if a Participant entered an Order to buy at \$11 with a size of 1,500 shares and a minimum quantity condition of 500 shares, and there were three Orders to sell at \$11 on the Exchange Book, two with a size of 500 shares each and one with a size of 200 shares, with the 200 share Order ranked in time priority between the 500 share Orders, the 500 share Order with the first time priority would execute and the remainder of the Minimum Quantity Order would be cancelled. Alternatively, if the Order would lock or cross Orders on the Exchange Book but none of the resting Orders would satisfy the minimum quantity condition, an Order with a minimum quantity condition to buy (sell) will be repriced to one minimum price increment lower than (higher than) the lowest price (highest price) of such Orders. For example, if there was an Order to buy at \$11 with a minimum quantity condition of 500 shares, and there were resting Orders on the Exchange Book to sell 200 shares at \$10.99 and 300 shares at \$11, the Order would be repriced to \$10.98 and ranked at that price.
- Once posted to the Exchange Book, a Minimum Quantity Order retains its Minimum Quantity Order Attribute, such that the Order may execute only against incoming Orders with a size of at least the minimum quantity condition. An Order that has a Minimum Quantity Order Attribute and that posts to the Exchange Book will not be displayed.

Upon entry, an Order with a Minimum Quantity Order Attribute must have a size of at least one round lot. An Order entered through OUCH or FLITE may have a

minimum quantity condition of any size of at least one round lot. An Order entered through RASH or FIX must have a minimum quantity of one round lot or any multiple thereof, and a mixed lot minimum quantity condition will be rounded down to the nearest round lot. In the event that the shares remaining in the size of an Order with a Minimum Quantity Order Attribute following a partial execution thereof are less than the minimum quantity specified by the Participant entering the Order, the minimum quantity value of the Order will be reduced to the number of shares remaining. An Order with a Minimum Quantity Order Attribute may not be displayed; if a Participant marks an Order with both a Minimum Quantity Order Attribute and a Display Order Attribute, the System will accept the Order but will give a Time-in-Force of IOC, regardless of the Time-in-Force marked by the Participant. An Order marked with a Minimum Quantity Order Attribute and a Routing Order Attribute will be rejected.

- (f) Routing. Routing is an Order Attribute that allows a Participant to designate an Order to employ one of several Routing Strategies offered by the Exchange, as described in Rule 4758; such an Order may be referred to as a "Routable Order." Upon receipt of an Order with the Routing Order Attribute, the System will process the Order in accordance with the applicable Routing Strategy. In the case of a limited number of Routing Strategies, the Order will be sent directly to other market centers for potential execution. For most other Routing Strategies, the Order will attempt to access liquidity available on the Exchange in the manner specified for the underlying Order Type and will then be routed in accordance with the applicable Routing Strategy. Shares of the Order that cannot be executed are then returned to the Exchange, where they will (i) again attempt to access liquidity available on the Exchange and (ii) post to the Exchange Book or be cancelled, depending on the Time-in-Force of the Order. Under certain Routing Strategies, the Order may be routed again if the System observes an accessible quotation of another market center, and returned to the Exchange again for potential execution and/or posting to the Exchange Book. In connection with the trading of securities governed by Regulation NMS, all Orders shall be routed for potential execution in compliance with Regulation NMS. Where appropriate, Routable Orders will be marked as Intermarket Sweep Orders.
- (g) Discretion. Discretion is an Order Attribute under which an Order has a non-displayed discretionary price range within which the entering Participant is willing to trade; such an Order may be referred to as a "Discretionary Order." Thus, an Order with Discretion has both a price (for example, buy at \$11) and a discretionary price range (for example, buy up to \$11.03). Depending on the Order Type used, the price may be displayed (for example, a Price to Display Order) or non-displayed (for example, a Non-Displayed Order). The discretionary price range is always non-displayed. In addition, it should be noted that the Discretion Order Attribute may be combined with the Pegging Order Attribute, in which case either the price of the Order or the discretionary price range or both may be pegged in the ways described in Rule 4702(d) with respect to the Pegging Order Attribute. For example, an Order with Discretion to buy might be pegged to the Best Bid with a \$0.05 passive Offset

and might have a discretionary price range pegged to the Best Bid with a \$0.02 passive Offset. In that case, if the Best Bid was \$11, the price of the Order would be \$10.95, with a discretionary price range up to \$10.98. If the Best Bid moved to \$10.99, the price of the Order would then be \$10.94, with a discretionary price range up to \$10.97. Alternatively, if the price of the Order was pegged but the discretionary price range was not, the price of the Order would be \$10.94, but the discretionary price range would continue to range up to \$10.98. Likewise, if the discretionary price range was pegged but the price of the Order was not, the Order would remain priced at \$10.95 but with a discretionary price range of up to \$10.97. A Participant may also specify a limit price beyond which the discretionary price range may not extend.

Under the circumstances described below, the System processes an Order with Discretion by generating a Non-Displayed Order with a Time-in-Force of IOC (a "Discretionary IOC") that will attempt to access liquidity available within the discretionary price range. The Discretionary IOC will not be permitted to execute, however, if the price of the execution would trade through a Protected Quotation. If more than one Order with Discretion satisfies conditions that would cause the generation of a Discretionary IOC simultaneously, the order in which such Discretionary IOCs are presented for execution is random, based on the respective processing time for each such Order. Whenever a Discretionary IOC is generated, the underlying Order with Discretion will be withheld or removed from the Exchange Book and will then be routed and/or placed on the Exchange Book if the Discretionary IOC does not exhaust the full size of the underlying Order with Discretion, with its price determined by the underlying Order Type and Order Attributes selected by the Participant. Because the circumstances under which a Discretionary IOC will be generated are dependent upon a range of factors, several specific scenarios are described below.

- If an Order has been assigned a Discretion Order Attribute, but has not been assigned a Routing Order Attribute, upon entry of the Order, the System will automatically generate a Discretionary IOC with a price equal to the highest price for an Order with Discretion to buy (lowest price for an Order with Discretion to sell) within the discretionary price range and a size equal to the full size of the underlying Order to determine if there are any Orders within the discretionary price range on the Exchange Book. If the Discretionary IOC does not exhaust the full size of the Order with Discretion, the remaining size of the Order with Discretion will post to the Exchange Book in accordance with the parameters that apply to the underlying Order Type. Thus, for example, if a Participant enters a Price to Display Order to buy at \$11 with a discretionary price range of up to \$11.03, upon entry the System will generate a Discretionary IOC to buy priced at \$11.03. If there is an Order on the Exchange Book to sell priced at \$11.02 and an execution at \$11.02 would not trade through a Protected Quotation, the Discretionary IOC will execute against the Order on the Exchange Book, up to the full size of each Order.

- After the Order posts to the Exchange Book, the System will examine whether at any time there is an Order on the Exchange Book with a price in the discretionary price range against which the Order with Discretion could execute. In doing so, the System will examine all Orders (including Orders that are not Displayed). If the System observes such an Order, it will generate a Discretionary IOC with a price equal to the highest price for an Order to buy (lowest price for an Order to sell) within the discretionary price range and a size equal to the full size of the Order.
- If an Order that uses a passive routing strategy (i.e., a strategy that does not seek routing opportunities after posting to the Exchange Book) has been assigned a Discretion Order Attribute but does not have a pegged discretionary price range, upon entry of the Order, the System will examine all Orders (including Orders that are not Displayed) on the Exchange Book to determine if there is an Order on the Exchange Book with a price in the discretionary price range against which the Order with Discretion could execute. If the System observes such an Order, it will generate a Discretionary IOC with a price equal to the price of the Order on the Exchange Book and a size equal to the applicable size of the Order on the Exchange Book. The System will also determine if there are any accessible quotations with prices that are within the discretionary price range at destinations on the applicable routing table for the selected routing strategy. If there are such quotations, the System will generate one or more Discretionary IOCs to route to such destinations, with a price and size that match the price and size of the market center's quotation. If necessary to maximize execution opportunities and comply with Regulation NMS, the System's routing broker may mark such Discretionary IOCs as Intermarket Sweep Orders. If the Discretionary IOC(s) do not exhaust the full size of the Order with Discretion, the remaining size of the Order with Discretion will post to the Exchange Book in accordance with the parameters that apply to the underlying Order Type. The System will then examine whether at any time there is an Order on the Exchange Book with a price in the discretionary price range against which the Order with Discretion could execute. In doing so, the System will examine all Orders (including Orders that are not Displayed). If the System observes such an Order, it will generate a Discretionary IOC with a price equal to the price of the Order on the Exchange Book and a size equal to the applicable size of the Order on the Exchange Book.
- If an Order that uses a reactive routing strategy (i.e., a strategy that seeks routing opportunities after posting to the Exchange Book) has been assigned a Discretion Order Attribute but does not have a pegged discretionary price range, upon entry of the Order, the System will examine all Orders (including Orders that are not Displayed) on the Exchange Book to determine if there is an Order on the Exchange Book with a price in the discretionary price range against which the Order with Discretion could execute. If the System observes such an Order, it will generate a Discretionary IOC with a price equal to the price of the Order on the Exchange Book and a size equal to the applicable size of the Order on the Exchange Book. The System will also determine if there are any accessible

- quotations with prices that are within the discretionary price range at destinations on the applicable routing table for the selected routing strategy. If there are such quotations, the System will generate one or more Discretionary IOCs to route to such destinations, with a price and size that match the price and size of the market center's quotation. If necessary to maximize execution opportunities and comply with Regulation NMS, the System may mark such Discretionary IOCs as Intermarket Sweep Orders. If the Discretionary IOC(s) do not exhaust the full size of the Order with Discretion, the remaining size of the Order with Discretion will post to the Exchange Book in accordance with the parameters that apply to the underlying Order Type. The System will then examine whether at any time there is an Order on the Exchange Book or an accessible quotation at another trading venue with a price in the discretionary price range against which the Order with Discretion could execute. In examining the Exchange Book, the System will examine all Orders (including Orders that are not Displayed). If the System observes such an Order or quotation, it will generate a Discretionary IOC with a price equal to the price of such the Order or quotation and a size equal to the applicable size of the Order on the Exchange Book or the displayed size of the quotation.
- If an Order that uses a passive routing strategy has been assigned a Discretion Order Attribute and does have a pegged discretionary price range, upon entry of the Order, the System will examine all Orders (including Orders that are not Displayed) on the Exchange Book to determine if there is an Order on the Exchange Book with a price in the discretionary price range against which the Order with Discretion could execute. If the System observes such an Order, it will generate a Discretionary IOC with a price equal to the price of the Order on the Exchange Book and a size equal to the applicable size of the Order on the Exchange Book. The System will also determine if there are any accessible quotations with prices that are within the discretionary price range at destinations on the applicable routing table for the selected routing strategy. If there are such quotations, the System will generate one or more Discretionary IOCs to route to such destinations, with a price and size that match the price and size of the market center's quotation. If necessary to maximize execution opportunities and comply with Regulation NMS, the System may mark such Discretionary IOCs as Intermarket Sweep Orders. If the Discretionary IOC(s) do not exhaust the full size of the Order with Discretion, the remaining size of the Order with Discretion will post to the Exchange Book in accordance with the parameters that apply to the underlying Order Type. Thereafter, the Order will not generate further Discretionary IOCs unless the Order is updated in a manner that causes it to receive a new timestamp, in which case the Order will behave in the same manner as a newly entered Order.
  - If an Order that uses a reactive routing strategy has been assigned a Discretion Order Attribute and does have a pegged discretionary price range, upon entry of the Order, the System will examine all Orders (including Orders that are not Displayed) on the Exchange Book to determine if there is an Order on the

Exchange Book with a price in the discretionary price range against which the Order with Discretion could execute. If the System observes such an Order, it will generate a Discretionary IOC with a price equal to the price of the Order on the Exchange Book and a size equal to the applicable size of the Order on the Exchange Book. The System will also determine if there are any accessible quotations with prices that are within the discretionary price range at destinations on the applicable routing table for the selected routing strategy. If there are such quotations, the System will generate one or more Discretionary IOCs to route to such destinations, with a price and size that match the price and size of the market center's quotation. If necessary to maximize execution opportunities and comply with Regulation NMS, the System may mark such Discretionary IOCs as Intermarket Sweep Orders. If the Discretionary IOC(s) do not exhaust the full size of the Order with Discretion, the remaining size of the Order with Discretion will post to the Exchange Book in accordance with the parameters that apply to the underlying Order Type. The System will then examine whether at any time there is an Order on the Exchange Book or an accessible quotation at another trading venue with a price in the discretionary price range against which the Order with Discretion could execute. In examining the Exchange Book, the System will examine Displayed Orders but will not examine Non-Displayed Orders. If the System observes such an Order or quotation, it will generate a Discretionary IOC with a price equal to the price of such the Order or quotation and a size equal to the applicable size of the Order on the Exchange Book or the displayed size of the quotation.

(h) Reserve Size. Reserve Size is an Order Attribute that permits a Participant to stipulate that an Order Type that is displayed may have its displayed size replenished from additional non-displayed size. An Order with Reserve Size may be referred to as a "Reserve Order." At the time of entry, the displayed size of such an Order selected by the Participant must be one or more normal units of trading; an Order with a displayed size of a mixed lot will be rounded down to the nearest round lot. A Reserve Order with displayed size of an odd lot will be accepted but with the full size of the Order displayed. Reserve Size is not available for Orders that are not displayed; provided, however, that if a Participant enters Reserve Size for a Non-Displayed Order with a Time-in-Force of IOC, the full size of the Order, including Reserve Size, will be processed as a Non- Displayed Order.

Whenever a Participant enters an Order with Reserve Size, the full size of the Order will be presented for potential execution in compliance with Regulation NMS; thereafter, unexecuted portions of the Order will be processed as two Orders: a Displayed Order (with the characteristics of its selected Order Type) and a Non-Displayed Order. For example, a Participant might enter a Price to Display Order with 200 shares displayed and an additional 3,000 shares non-displayed. Upon entry, the Order would attempt to execute against available liquidity on the Exchange Book, up to 3,200 shares. Thereafter, unexecuted portions of the Order would post to the Exchange Book as a Displayed Price to Display Order and a Non-Displayed Order; provided, however, that if the remaining total size is less than the display size

stipulated by the Participant, the Displayed Order will post without Reserve Size. Thus, if 3,050 shares executed upon entry, the Price to Display Order would post with a size of 150 shares and no Reserve Size.

When an Order with Reserve Size is posted, if there is an execution against the Displayed Order that causes its size to decrease below a normal unit of trading, another Displayed Order will be entered at the level stipulated by the Participant while the size of the Non- Displayed Order will be reduced by the same amount. Any remaining size of the original Displayed Order will remain on the Exchange Book. The new Displayed Order will receive a new timestamp, but the Non- Displayed Order (and the original Displayed Order, if any) will not; although the new Displayed Order will be processed by the System as a new Order in most respects at that time, if it was designated as Routable, the System will not automatically route it upon reentry. If the new Displayed Order would lock an Order that posted to the Exchange Book before replenishment can occur, the Displayed Order will post at the locking price if the resting Order is Non-Display or will be repriced, ranked, and displayed at one minimum price increment lower (higher) than the locking price if the resting order to sell (buy) is Displayed. For example, if a Price to Comply Order with Reserve Size posted with a Displayed Size of 200 shares, along with a Non- Displayed Order of 3,000 and 150 shares of the Displayed Order was executed, the remaining 50 shares of the original Price to Comply Order would remain, a new Price to Comply Order would post with a size of 200 shares and a new timestamp, and the Non- Displayed Order would be decremented to 2,800 shares. Because a new Displayed Order is entered and the Non-Displayed Order is not reentered, there are circumstances in which the Displayed Order may receive a different price than the Non-Displayed Order. For example, if, upon reentry, a Price to Display Order would lock or cross a newly posted Protected Quotation, the price of the Order will be adjusted but its associated Non-Displayed Order would not be adjusted. In that circumstance, it would be possible for the better priced Non- Displayed Order to execute prior to the Price to Display Order.

A Participant may stipulate that the Displayed Order should be replenished to its original size. Alternatively, the Participant may stipulate that the original and subsequent displayed size will be an amount randomly determined based on factors selected by the Participant. Specifically, the Participant would select both a theoretical displayed size and a range size, which may be any share amount less than the theoretical displayed size. The actual displayed size will then be determined by the System within a range in which the minimum size is the theoretical displayed size minus the range size, and the maximum size is (i) the minimum size plus (ii) an amount that is two times the range size minus one round lot. For example, if the theoretical displayed size is 600 shares and the range size is 500, the minimum displayed size will be 100 shares (600-500), and the maximum size will be 1,000 shares  $((600-500) + ((2 \times 500) - 100))$ .

When the Displayed Order with Reserve Size is executed and replenished, applicable market data disseminated by the Exchange will show the execution and

decrementation of the Displayed Order, followed by replenishment of the Displayed Order.

In all cases, if the remaining size of the Non-Displayed Order is less than the fixed or random amount stipulated by the Participant, the full remaining size of the Non-Displayed Order will be displayed and the Non-Displayed Order will be removed.

- (i) Attribution. Attribution is an Order Attribute that permits a Participant to designate that the price and size of the Order will be displayed next to the Participant's MPID in market data disseminated by the Exchange. An Order with Attribution is referred to as an "Attributable Order" and an Order without attribution is referred to as a "Non-Attributable Order."
- (j) Intermarket Sweep Order. Designation of an Order as an Intermarket Sweep Order, or ISO, is an Order Attribute that allows the Order to be 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) under Regulation NMS. ISOs are immediately executable within the System against Orders against which they are marketable. An Order designated as an ISO may not be assigned a Routing Order Attribute. In connection with the trading of securities governed by Regulation NMS, Intermarket Sweep Orders shall be executed exclusively within the System and the entering Participant shall be responsible for compliance with Rules 610 and 611 under Regulation NMS with respect to order protection and locked and crossed markets with respect to such Orders. Orders eligible for execution outside the System shall be processed in compliance with Regulation NMS, including accessing Protected Quotations and resolving locked and crossed markets, as instructed.

Simultaneously with the routing of an ISO to the System, one or more additional limit orders, as necessary, are routed by the entering Participant to execute against the full displayed size of any Protected Quotation with a price that is superior to the price of the Order identified as an Intermarket Sweep Order (as defined in Rule 600(b) under Regulation NMS). These additional routed orders must be identified as Intermarket Sweep Orders.

Upon receipt of an ISO, the System will consider the stated price of the ISO to be available for other Orders to be entered at that price, unless the ISO is not itself accepted at that price level (for example, a Post-Only Order that has its price adjusted to avoid executing against an Order on the Exchange Book) or the ISO is not Displayed.

In addition, as described with respect to various Order Types, such as the Price to Comply Order, Orders on the Exchange Book that had their price adjusted may be eligible to be reentered at the stated price of the ISO. For example, if a Price to Comply Order to buy at \$11 would lock a Protected Offer at \$11, the Price to Comply Order will be posted with a non-displayed price of \$11 and a displayed price of \$10.99. If the System then receives an ISO to buy at \$11, the ISO will be

posted at \$11 and the Price to Comply Order will be reentered at \$11 (if the Participant opted to have its Orders reentered). The respective priority of such reentered Orders will be maintained among multiple repriced Orders; however, other new Orders may also be received after receipt of the ISO but before the repricing of the Price to Comply Order is complete; accordingly, the priority of an Order on the Exchange Book vis-à-vis a newly entered Order is not guaranteed.

(k) Display. Display is an Order Attribute that allows the price and size of an Order to be displayed to market participants via market data feeds. All Orders that are Attributable are also displayed, but an Order may be displayed without being Attributable. As discussed in Rule 4702, a Non-Displayed Order is a specific Order Type, but other Order Types may also be non-displayed if they are not assigned a Display Order Attribute; however, depending on context, all Orders that are not displayed may be referred to as "Non-Displayed Orders." An Order with a Display Order Attribute may be referred to as a "Displayed Order."

(l) Trade Now. Trade Now is an Order Attribute that allows a resting Order that becomes locked by an incoming Displayed Order to execute against the available size of the contra-side locking Order as a liquidity taker, and any remaining shares of the resting Order will remain posted on the BX Book with the same priority.

- An Order entered through RASH or FIX protocol with a Trade Now Order Attribute will execute against locking interest automatically. When entered through RASH or FIX protocol, the Trade Now Order Attribute may be enabled on an order-by-order or a port-level basis.

- An Order entered through OUCH or FLITE may not be assigned a Trade Now attribute upon entry, but rather the Participant that entered the Order must send a Trade Now instruction after the Order becomes locked. If a Trade Now instruction is given when there is no locking interest, the instruction will be ignored by the System and the Order will remain on the BX Book with the same priority. When entered through OUCH or FLITE protocol, the Trade Now instruction must be sent on an order-by-order basis.

#### **4750. Execution Services**

##### **4752. Opening Process; Opening and Closing Price**

(a) Trading Prior To Normal Market Hours. The system shall process all eligible Quotes/Orders at 7:00 a.m.:

(1) At 7:00 a.m., the system shall add in time priority all eligible Orders in accordance with each order's defined characteristics.

(2) Quoting Market Participants must enter quotations in compliance with Rule 4613 at 9:25 a.m. until market open, and at all times thereafter during Regular Market Hours.

(3) All trades executed prior to 9:30 shall be automatically appended with the ".T" modifier.

(b) The official opening price for a security listed on the Exchange will be the price of the first trade executed at or after 9:30 a.m. and the official closing price will be the price of the last trade executed at or prior to 4:00 p.m.

**4753. Reserved**

**4754. Reserved**

**4755. Reserved**

**4756. Entry and Display of Quotes and 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 shall indicate the amount of Reserve Size (if applicable).

(2) The System shall time-stamp an order which shall determine the time ranking of the order for purposes of processing the order.

(3) Orders can be entered into the System (or previously entered Orders cancelled or modified) from 7:00 a.m. until 7:00 p.m. ET. Participants may modify a previously entered Order without cancelling it or affecting the priority of the Order on the Exchange Book solely for the purpose of modifying the marking of a sell Order as long, short, or short exempt; provided, however, that such a modification may be made only with respect to Orders entered through OUCH or FLITE; and provided further, that if an Order is redesignated as short, a Short Sale Period is in effect under Rule 4763, and the Order is not priced at a Permitted Price or higher under Rule 4763(d), the Order will be cancelled. In addition, a partial cancellation of an Order to reduce its share size will not affect the priority of the Order on the book; provided, however, that such a partial cancellation may not be made with respect to a Pegged Order (including a Discretionary Order that is Pegged). Except as provided in Rule 4761, all other modifications of orders will result in the replacement of the original order with a new order with a new time stamp.

(4) Each Order is subject to a daily limit on the number of changes that may occur with respect to the Order; if the daily limit is reached, the Order will be cancelled. The number of permissible changes may vary by Order Type or Order Attribute and may change from

time to time. The Exchange will post on its website what is considered a change for a particular Order Type and Order Attribute, and the current limits on the number of such changes.

(b) Entry of Quotes—Equities Market Makers and Equities ECNs can enter Quotes into the system from 7:00 a.m. to 7:00 p.m. Eastern Time. Quotes will be processed as Attributable Orders, with such time-in-force designation as the Equities Market Maker or Equities ECN may assign. Entry of Quotes will be subject to the requirements and conditions set forth in section (a) above.

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

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

(2) Best Priced Order Display—Pursuant to Rule 602 of Regulation NMS under the Exchange Act, the Exchange will transmit for display to the appropriate network processor for each System Security:

(i) the highest price to buy wherein the aggregate size of all displayed buy interest in the System greater than or equal to that price is one round lot or greater;

(ii) the aggregate size of all displayed buy interest in the System greater than or equal to the price in (i), rounded down to the nearest round lot;

(iii) the lowest price to sell wherein the aggregate size of all displayed sell interest in the System less than or equal to that price is one round lot or greater; and

(iv) the aggregate size of all displayed sell interest in the System less than or equal to the price in (iii), rounded down to the nearest round lot.

(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 4757.

(B) Discretionary Orders—The discretionary portion of Discretionary Orders shall not be displayed but shall be made available for execution only upon the appearance of contra-side marketable trading interest, and shall be executed pursuant to Rule 4751(f) and Rule 4757.

(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 time stamp, and shall be executed pursuant to Rule 4757.

(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 members 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.

#### **4757. Book Processing**

Orders on the Exchange Book shall be presented for execution against incoming Orders in the order set forth below:

(a) Execution Algorithm - Price/Display/Time. The System shall present Orders on the Exchange Book for execution against incoming Order in accordance with a price/display/time algorithm:

(A) Price. Better priced Orders will be presented for execution first. For example, an Order on the Exchange Book to buy at \$10.00 will be ranked ahead of an Order to buy at \$9.99.

(1) Display and Time. Equally priced Orders with a Display Attribute will be ranked in time priority.

(2) Non-Display and Time. Orders with a Non-Display Attribute, including the Non-Displayed portion of an Order with Reserve Size, will be ranked in time priority.

(3) Exception: Anti-Internalization - Market participants may direct that quotes/orders entered into the System not execute against quotes/orders entered under the same MPID. In addition, market participants using the OUCH order entry protocol may assign to orders entered through a specific order entry port a unique group identification modifier that will prevent quotes/orders with such modifier from executing against each other. In such a case, a market participant may elect from the following options:

(i) if the interacting quotes/orders are equivalent in size, both quotes/orders will be cancelled back to their entering parties. If the interacting quotes/orders are not equivalent in size, share amounts equal to size of the smaller of the two quotes/orders will be cancelled back to their originating parties with the remainder of the larger quote/order being retained by the System for potential execution;

(ii) regardless of the size of the interacting quotes/orders, cancelling the oldest of them in full; or

(iii) regardless of the size of the interacting quotes/orders, cancelling the most recent of them in full.

The foregoing options may be applied to all orders entered under the same MPID, or, in the case of market participants using the OUCH order entry protocol, may be applied to all orders entered through a specific order entry port.

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

(c) 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 the Exchange book at 10.

Incoming order to sell priced at 9 comes into the System

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

(d) Limit Order Protection ("LOP"). LOP is a feature of BX that prevents certain Limit Orders at prices outside of pre-set standard limits ("LOP Limit") from being accepted by the System.

(i) Applicability. LOP applies to all Quotes and Orders, including Quotes and Orders that have been modified, where the modification results in a new timestamp and priority. LOP does not apply to Orders with Market and Primary Pegging, Market Maker Peg Orders or Intermarket Sweep Orders. A Midpoint Pegging Order with a discretion price would not be subject to LOP. LOP is operational each trading day. LOP is not operational during trading halts and pauses. LOP would not apply in the event there is no established LOP Reference Price or the National Best Bid, when used as the LOP Reference Price, is equal to or less than \$0.50.

(ii) LOP Limit. The LOP Limit shall be the greater of 10% of the LOP Reference Price or \$0.50 for all securities across all trading sessions.

(iii) LOP Reference Price. The LOP Reference Price shall be the current National Best Bid or Best Offer, the bid for sell orders and the offer for buy orders.

(iv) LOP Reference Threshold. The LOP Reference Threshold for buy orders will be the LOP Reference Price (offer) plus the applicable LOP Limit. The LOP Reference Threshold for sell orders will be the LOP Reference Price (bid) minus the applicable LOP Limit.

(v) Acceptance of Orders. LOP will reject incoming Limit Orders that exceed the LOP Reference Threshold. Limit Orders will be rejected if the price of the Limit Order is greater than the LOP Reference Threshold for a buy Limit Order. Limit Orders will be rejected if the price of the Limit Order is less than the LOP Reference Threshold for a sell Limit Order.

#### **4758. Order Routing**

##### **(a) Order Routing Process**

(1) The Order Routing Process shall be available to Participants from 7:00 a.m. until 7:00 p.m. Eastern Time, and shall route orders as described below. All routing of orders shall comply with Rule 611 of Regulation NMS under the Act.

(A) The System provides a variety of routing options. Routing options may be combined with all available order types and times-in-force, with the exception of order types and times-in-force whose terms are inconsistent with the terms of a particular routing option. The System will consider the quotations only of accessible markets. The term "System routing table" refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. The System routing options are:

(i)-(ii) Reserved.

(iii) BSTG is a routing option under which orders check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table. If shares remain un-executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another accessible market center, the System shall route the order to the locking or crossing market center. BSKN is a form of BSTG in which the entering firm instructs the System to bypass any market centers included in the BSTG System routing table that are not posting Protected Quotations within the meaning of Regulation NMS.

(iv) BSCN is a routing option under which orders check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table. If shares remain un-executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. BSKP is a form of BSCN in which the entering firm instructs the System to bypass any market centers included in the BSCN System routing table that are not posting Protected Quotations within the meaning of Regulation NMS.

(v) BTFY is a routing option under which orders check the System for available shares only if so instructed by the entering firm and are thereafter routed to destinations on the System routing table. If shares remain un-executed after routing, they are posted to the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

(vi) BMOP is a routing option under which orders route only to Protected Quotations and only for displayed size. If shares remain unexecuted after routing, they are posted to the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

(vii) BCRT is a routing option under which orders check the System and then route to the Nasdaq PSX facility of Nasdaq PHLX and Nasdaq. If shares remain un-executed, they are posted to the book or cancelled. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

(viii) BDRK is a routing option under which orders check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table that are not posting Protected Quotations within the meaning of Regulation NMS. If shares remain un-executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

(ix) BCST is a routing option under which orders check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table that are not posting Protected Quotations within the meaning of Regulation NMS and to certain, but not all, exchanges. If shares remain un-executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

(x) SCAR is a routing option under which orders will check the System for available shares and simultaneously route to The Nasdaq Stock Market and Nasdaq PSX in accordance with the System routing table. If shares remain unexecuted after routing, they are posted on the book or cancelled. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

(B) Priority of Routed Orders. Regardless of the routing option selected, orders sent by the System to other markets do not retain time priority with respect to other orders in the System and the System shall continue to execute other orders while routed orders are away at another market center. Once routed by the System, an order becomes subject to the rules and procedures of the destination market including, but not limited to, order cancellation. If a routed order is subsequently returned, in whole or in part, that order, or its remainder, shall receive a new time stamp reflecting the time of its return to the System.

(b) Routing Broker

(1) All routing by the System shall be performed by the Exchange's affiliated broker-dealer, Nasdaq Execution Services, LLC, ("NES"), which, in turn, shall route orders to other market centers as directed by the Exchange either directly or through one or more third-party unaffiliated routing broker-dealers. The Exchange will determine the logic that provides when, how, and where orders are routed away to other exchanges. Except as provided in subparagraph (8) below, the routing broker(s) cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order.

(2) NES will not engage in any business other than: (a) as an outbound router for the Exchange and (b) any other activities it may engage in as approved by the Commission; provided, however, that immediately prior to the commencement of operations of NES as an outbound router for the Exchange, the Exchange may use NES to conduct a test of its routing functionality, as provided in SR-BX-2011-076.

(3) NES shall operate as a facility, as defined in Section 3(a)(2) of the Act, of the Exchange.

(4) For purposes of SEC Rule 17d-1, the designated examining authority of NES shall be a self-regulatory organization unaffiliated with the Exchange or any of its affiliates. The Exchange and NES may not use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority.

(5) The Exchange shall be responsible for filing with the Securities and Exchange Commission rule changes related to the operation of, and fees for services provided by, NES and NES shall be subject to exchange non-discrimination requirements.

(6) The books, records, premises, officers, agents, directors and employees of NES as a facility of the Exchange shall be deemed to be the books, records, premises, officers, agents, directors and employees of the Exchange for purposes of, and subject to oversight pursuant to, the Act. The books and records of NES as a facility of the Exchange shall be subject at all times to inspection and copying by the Commission.

(7) Use of NES to route orders to other market centers will be optional. Parties that do not desire to use NES must enter orders into the System as immediate-or-cancel orders or any other order type available through the System that is ineligible for routing.

(8) NES shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and its facilities (including NES as its routing facility) and any other entity; or, where there is a routing broker, the Exchange, the Routing Facility and any routing broker, and any other entity, including any affiliate of the routing broker (and if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services).

(c) Market Access. In addition to the Exchange Rules regarding routing to away trading centers, NES has, pursuant to Rule 15c3-5 under the Act, implemented certain tests designed to mitigate risks associated with providing the Exchange's Members with access to such away trading centers. Pursuant to the policies and procedures developed by NES to comply with Rule 15c3-5, if an order or series of orders are deemed to be violative of applicable pre-trade requirements under Rule 15c3-5, the order will be rejected prior to routing and/or NES will seek to cancel the order if it has been routed.

(d) Cancellation of Orders and Error Account

(1) The Exchange or NES may cancel orders as either deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, NES, or a routing destination. The Exchange or NES shall provide notice of the cancellation to affected members as soon as practicable.

(2) NES shall maintain an error account for the purpose of addressing positions that result from a technical or systems issue at NES, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders ("error positions").

(A) For purposes of this Rule 4758(d), an error position shall not include any position that results from an order submitted by a member to the Exchange that is executed on the Exchange and automatically processed for clearance and settlement on a locked-in basis.

(B) Except as provided in Rule 4758(d)(2)(C), NES shall not (i) accept any positions in its error account from an account of a member, or (ii) permit any member to transfer any positions from the member's account to NES's error account.

(C) If a technical or systems issue results in the Exchange not having valid clearing instructions for a member to a trade, NES may assume that member's side of the trade so that the trade can be automatically processed for clearance and settlement on a locked-in basis.

(3) In connection with a particular technical or systems issue, NES or the Exchange shall either (i) assign all resulting error positions to members in accordance with subparagraph (A) below, or (ii) have all resulting error positions liquidated in accordance with subparagraph (B) below. Any determination to assign or liquidate error positions, as well as any resulting assignments, shall be made in a nondiscriminatory fashion.

(A) NES or the Exchange shall assign all error positions resulting from a particular technical or systems issue to the members affected by that technical or systems issue if NES or the Exchange:

(i) determines that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the members affected by that technical or systems issue;

(ii) determines that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the members affected by that technical or systems issue; and

(iii) has not determined to cancel all orders affected by that technical or systems issue in accordance with subparagraph (d)(1) above.

(B) If NES or the Exchange is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected members in accordance with subparagraph (A) above, or if NES or the Exchange determines to cancel all orders affected by the technical or systems issue in accordance with subparagraph (d)(1) above, then NES shall liquidate the error positions as soon as practicable. NES shall:

(i) provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading; and

(ii) establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer and NES/the Exchange associated with the liquidation of the error positions.

(4) NES and the Exchange shall make and keep records to document all determinations to treat positions as error positions and all determinations for the assignment of error positions to members or the liquidation of error positions, as well as records associated with the liquidation of error positions through the third-party broker-dealer.

#### **4759. Data Feeds Utilized**

(a) The BX System consumes quotation data from the below proprietary and network processor feeds for the handling, routing, and execution of orders, as well as for the regulatory compliance processes related to those functions. The Primary Source of data is used unless it is delayed by a configurable amount compared to the Secondary Source of data. The Exchange will revert to the Primary Source of data once the delay has been resolved. The configurable amount described in this rule will be made available to members via Equity Trader Alert.

Market Center	Primary Source Quotes	Secondary Source Quotes
A - NYSE American	Direct Feed	CQS/UQDF
B - Nasdaq BX	Direct Feed	CQS/UQDF
C - NYSE National	Direct Feed	CQS/UQDF
D - FINRA ADF	CQS/UQDF	n/a
H - MIAX Pearl	Direct Feed	CQS/UQDF
J - CBOE EDGA	Direct Feed	CQS/UQDF

K - CBOE EDGX	Direct Feed	CQS/UQDF
L – LTSE	CQS/UQDF	n/a
M - NYSE Chicago	Direct Feed	CQS/UQDF
N - NYSE	Direct Feed	CQS/UQDF
P - NYSE Arca	Direct Feed	CQS/UQDF
T/Q - Nasdaq	Direct Feed	CQS/UQDF
U – MEMX	Direct Feed	CQS/UQDF
V - IEX	Direct Feed	CQS/UQDF
X - Nasdaq PSX	Direct Feed	CQS/UQDF
Y - CBOE BYX	Direct Feed	CQS/UQDF
Z - CBOE BZX	Direct Feed	CQS/UQDF

(b) SIP Trade and Administrative Data. The SIP is the Primary Source of trade and administrative messages such as limit-up limit-down price bands, market-wide circuit breaker decline and status messages, Regulation SHO state messages, halts and resumes, and last sale information. Where available, the Direct Feeds are the Secondary Source of such information.

#### **4760. 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, the Exchange will reveal to a member, no later than the end of the day on the date an anonymous trade was executed, when the member's Quote or Order has been decremented by another Quote or Order submitted by that same member.

#### **4761 Issuer Corporate Actions Related to a Dividend, Payment or Distribution**

(a) Except as provided below, the System will automatically cancel open quotes and/or orders in all System Securities resident in the System in response to issuer corporate actions, including any dividend (whether payable in cash or securities or both), payment, distribution, forward or reverse stock split, symbol change, or change in primary listing venue, immediately prior to the opening of the System at 7:00 a.m. on the ex-date of such actions.

(b) A member may designate that all orders with a time-in-force of good-till-cancelled that are entered through one or more order entry ports specified by the member will be processed in the following manner in the event of certain issuer corporate actions as specified below. The member may opt for the processing provided in this paragraph (b) on a port-by-port basis, but all of the provisions of this paragraph shall apply to all good till-cancelled orders entered through a port that has been specified by the member hereunder.

(1) Cash Dividend. If an issuer is paying a cash dividend, the price of an order to buy will be reduced by the amount of the sum of all dividends payable, rounded up to the nearest whole cent; provided, however, that there will be no adjustment if the sum of all dividends is less than \$0.01. For example, if the sum of all dividends is \$0.381, the price of the order will be reduced by \$0.39. An order to sell will be retained but will receive no price adjustment.

(2) Forward Stock Split or Stock Dividend. If an issuer is implementing a forward stock split or a stock dividend (i.e., a corporate action in which additional shares are issued to holders), the order will be cancelled if its size is less than one round lot. If the order's size is greater than one round lot, (i) the size of the order will be multiplied by the ratio of post-action shares to pre-action shares, with the result rounded downward to the nearest whole share, and (ii) the price of the order will be multiplied by the ratio of pre-action shares to post-action shares, with the result rounded down to the nearest whole penny in the case of orders to buy and rounded up to the nearest whole penny in the case of orders to sell. For example, if a member has entered a good-till-cancelled order to buy 375 shares at \$10.95 per share and the issuer implemented a split or dividend under which an additional 1.25 shares would be issued for each share outstanding, the size of the order would be adjusted to 843 shares ( $375 \times 2.25/1 = 843.75$ , rounded down to 843) and the price of the order would be adjusted to \$4.86 per share ( $\$10.95 \text{ per share} \times 1/2.25 = \$4.8667$  per share, rounded down to \$4.86 per share). An order to sell at the same price and size would be adjusted to 843 shares with a price of \$4.87 per share.

(3) Combination of Cash Dividend and Forward Stock Split or Stock Dividend. If an issuer is implementing a cash dividend and a forward stock split or stock dividend on the same date, the adjustments described above will both be applied, in the order described in the notice of the corporate actions received by the Exchange.

(4) For other corporate actions, including symbol changes, changes in primary listing venue, reverse stock splits, and dividends payable in either cash or securities at the option of the stockholder, the order will be cancelled.

(5) All of the foregoing changes will be effected immediately prior to the opening of the System at 7:00 a.m. on the ex-date of the applicable corporate action. Open orders that are retained will be re-entered by the System (as adjusted above) immediately prior to the opening of the System, such that they will retain time priority over new orders entered at or after 7:00 a.m.

#### **4762 Clearly Erroneous Transactions**

All matters related to clearly erroneous transactions executed in the System shall be initiated and adjudicated pursuant to Rule 11890.

#### **4763 Short Sale Price Test Pursuant to Rule 201 of Regulation SHO**

(a) Definitions. For purposes of this Rule, the terms "covered security," "listing market," and "national best bid" shall have the same meaning as in Rule 201 of Regulation SHO.

(b) Short Sale Price Test. The System (as defined in BX Rule 0120(x)) shall not execute or display a short sale order with respect to a covered security at a price that is less than

or equal to the current national best bid if the price of that security decreases by 10% or more, as determined by the listing market for the security, from the security's closing price on the listing market as of the end of regular trading hours on the prior day ("Trigger Price").

(c) Duration of Short Sale Price Test. If the Short Sale Price Test is triggered by the listing market with respect to a covered security, the Short Sale Price Test shall remain in effect until the close of trading on the next trading day, as provided for in Regulation SHO Rule 201(b)(1)(ii) (the "Short Sale Period").

(d) Re-pricing of Orders during Short Sale Period. Except as provided below, during the Short Sale Period, short sale orders that are limited to the national best bid or lower and short sale market orders will be re-priced by the System one minimum allowable price increment above the current national best bid ("Permitted Price"). To reflect declines in the national best bid, the Exchange will continue to re-price a short sale order at the lowest Permitted Price down to the order's original limit price, or if a market order, until the order is filled. Non-displayed orders between the BX bid and offer will also be re-priced upward to a Permitted Price to correspond with a rise in the national best bid.

(1) During the Short Sale Period, immediate or cancel orders ("IOC") requiring that all or part of the order be executed immediately will be executed at a Permitted Price and higher and then cancelled, and will not be re-priced. IOC short sale orders that are inter-market sweep orders and not marked "short exempt" will be handled in the same manner as IOC orders.

(2) During the Short Sale Period, if an order was entered as a long sale order or a short sale exempt order but is subsequently marked pursuant to Rule 4756(a)(3) as a short sale order, the System will cancel the order unless it is priced at a Permitted Price or higher.

(e) Execution of Permissible Orders during the Short Sale Period. During the Short Sale Period, the System will execute and display a short sale order without regard to whether the order is at a Permitted Price or higher if, at the time of initial display of the short sale order, the order was at a price above the then current national best bid. Short sale orders that are entered into the Exchange prior to the Short Sale Period but are not displayed will be re-priced as described in (d) above.

(f) Short Exempt Orders. During the Short Sale Period, the System will execute and display orders marked "short exempt" without regard to whether the order is at a Permitted Price or higher. The System will accept orders marked "short exempt" at any time when the System is open for order entry, regardless of whether the Short Sale Price Test has been triggered.

#### **4764 BX Kill Switch**

(a) **Definition** . The BX Kill Switch is an optional tool offered at no charge that enables Participants to establish pre-determined levels of risk exposure, to receive notifications as the value of executed orders and if applicable, unexecuted orders approaches the risk levels, and to have order entry ports disabled and unexecuted orders administratively cancelled when the value of executed orders, and if applicable unexecuted orders exceeds the risk levels set forth below. For purposes of this Rule, the term "Participant" has the meaning set forth in Rule 4701(c).

(1) Gross Executed Risk Exposure . This refers to a pre-established maximum daily dollar amount for buy and sell orders across all symbols, where both buy and sell orders are counted as positive values. For purposes of calculating Gross Executed Risk Exposure, only executed orders are included.

(2) Gross Notional Risk Exposure . This refers to a pre-established maximum daily dollar amount for buy and sell orders across all symbols, where both buy and sell orders are counted as positive values. For purposes of calculating Gross Notional Risk Exposure, unexecuted orders on the Exchange book and executed orders are included.

(b) **Establishing and Adjusting Levels** . Participants or a Participant's clearing member, as designated pursuant to paragraph (d), may set risk levels for each MPID individually. Each Participant, or a Participant's clearing member, as designated pursuant to paragraph (d), is responsible for establishing and maintaining its risk levels. Participants or a Participant's clearing member, as designated pursuant to paragraph (d), may set and adjust risk level values before the beginning of a trading day and during the trading day.

(c) **Notification** . Participants and a Participant's clearing member, as designated pursuant to paragraph (d), will receive notifications when the total value of executed orders and, if applicable, unexecuted orders associated with an MPID exceeds 50, 75, 85, 90, and 95 percent of either of the risk level values. When either risk level value is exceeded, the notification will include the total number of orders cancelled and remaining open in the System.

(d) **Clearing Member Designation** . A Participant that does not self-clear may allocate the responsibility for establishing and adjusting the risk levels identified in paragraph (a) of this Rule to a clearing member that clears transactions on behalf of the Participant, if designated in a manner prescribed by the Exchange. A Participant that chooses to allocate responsibility to its clearing member may view any risk levels established by the clearing member pursuant to this Rule, and will be notified of any action taken by the Exchange with respect to its trading activity. By allocating responsibility to its clearing member, the Participant consents to the Exchange taking action with respect to the Participant's trading activity as provided for in paragraph (e) of this Rule. A Participant may revoke responsibility allocated to its clearing member pursuant to this paragraph at any time, if designated in a manner prescribed by the Exchange.

(e) ***Breach Action and Reinstatement.*** When a pre-established risk level is breached and the Kill Switch is triggered, it shall result in the immediate cancellation of all unexecuted orders of any type or duration entered by the Participant via the affected MPID, and in the immediate prevention of order entry of any type via the affected MPID. The Participant or the Participant's clearing member, if designated pursuant to paragraph (d), must request reactivation of the MPID before trading will be reauthorized.

#### **4765 Exchange Sharing of Participant Risk Settings**

The Exchange may share any Participant risk settings in the trading system specified in the commentary below with the clearing member that clears transactions on behalf of the Participant. For purposes of this Rule, the term "Participant" has the meaning set forth in Rule 4701(c).

Commentary:

The Exchange offers certain risk settings applicable to a Participant's activities on the Exchange. The risk settings currently offered by the Exchange are:

(a) Share Size Control - When enabled by a Participant, this optional control will allow a Participant to limit the number of shares that the Participant may associate with an order placed on the Exchange;

(b) ISO Control - When enabled by a Participant, this optional control will prevent a Participant from entering an ISO order onto the Exchange;

(c) Cancel-on-Disconnect Control - When enabled by a Participant, this optional control will allow a Participant, when it experiences a disruption in its connection to the Exchange, to immediately cancel all pending Exchange orders except for Good-Till-Canceled orders (RASH & FIX only);

(d) The BX Kill Switch - This control is described in Rule 4764;

(e) Limit Order Protection - This control is described in Rule 4757(d);

(f) Price Collar Check - This control will automatically restrict a routed order from executing at a price that differs from the NBBO (at the time of order entry) by more than five percent or \$0.25, whichever difference is greater. The system will proceed to route an order unless and until it crosses the greater of these two price collars, and if it does so, then the system will block further routings of the order that fall outside of the collars. For example, if the NBBO is \$99 x \$100 at the time of entry of a buy order, then the system will route the order at prices at or below \$105, but will stop doing so if the offer price rises above \$105 (five percent of the NBO).

(g) Maximum Order Volume Check - This control will automatically reject an order for routing away that exceeds a maximum volume of shares. As applied to equity orders, the default maximum order volume is set at 25,000 shares, but the Participant may request that the Exchange set a higher default based on historic volume.

(h) Maximum Single Order Notional Check – When enabled by a Participant, this optional control will allow the Participant to limit the maximum dollar amount that the Participant may associate with an order placed on the Exchange;

(i) Cumulative Order Volume Check - This control will automatically block an attempt by a Participant using a particular MPID to route orders away to buy or sell equity securities that, cumulatively, exceed 9.5 million shares during a five second time period; and

(j) Duplication Control - This control will automatically reject an order that a Participant submits to the Exchange to the extent that it is duplicative of another order that the Participant submitted to the Exchange during the prior five seconds.

#### **4770 Compliance with Regulation NMS Plan to Implement a Tick Size Pilot**

(a) Tick Size Pilot Program

(1) Definitions.

(A) "Plan" means the Tick Size Pilot Plan Submitted to the Securities and Exchange Commission Pursuant to Rule 608(a)(3) of Regulation NMS under the Exchange Act.

(B) "Pilot Test Groups" means the three test groups established under the Plan, consisting of 400 Pilot Securities each, which satisfy the respective criteria established by the Plan for each such test group.

(C) "Retail Investor Order" means an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted in a Participant-operated retail liquidity program by a retail member, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. A Retail Investor Order may be an odd lot, round lot, or partial round lot.

(D) "Trade-at Intermarket Sweep Order" means a limit order for a Pilot Security that meets the following requirements:

(i) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and

(ii) Simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders or Intermarket Sweep Orders.

(E) All capitalized terms not otherwise defined in this Rule shall have the meanings set forth in the Plan, Regulation NMS under the Exchange Act, or Exchange rules, as applicable.

(2) Exchange Participation in the Plan. The Exchange is a Participant in, and subject to the applicable requirements of, the Plan, which establishes a Tick Size Pilot Program that will allow the Securities and Exchange Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies.

(3) Member Compliance. Members shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the applicable requirements of the Plan.

(4) Exchange Compliance with the Plan. Exchange systems will not display, quote or trade in violation of the applicable quoting and trading requirements for a Pilot Security specified in the Plan and this Rule, unless such quotation or transaction is specifically exempted under the Plan.

(5) Pilot Securities That Drop Below \$1.00 during the Pilot Period. If the price of a Pilot Security drops below \$1.00 during regular trading on any given business day, such Pilot Security will continue to be subject to the Plan and the requirements enumerated in (c)(1)-(3) below and will continue to trade in accordance with such Rules as if the price of the Pilot Security had not dropped below \$1.00. However, if the Closing Price of a Pilot Security on any given business day is below \$1.00, such Pilot Security will be moved out of its respective Pilot Test Group into the Control Group, and may then be quoted and traded at any price increment that is currently permitted by Exchange rules for the remainder of the Pilot Period. Notwithstanding anything contained herein to the contrary, at all times during the Pilot Period, Pilot Securities (whether in the Control Group or any Pilot Test Group) will continue to be subject to the requirements contained in Paragraph (b).

(b) Compliance with Data Collection Requirements

(1) Policies and Procedures Requirement. A Member that operates a Trading Center shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Items I and II of Appendix B of the Plan, and a Member that is a Market Maker shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Item IV of Appendix B of the Plan and Item I of Appendix C of the Plan.

(2) The Exchange shall collect and transmit to the SEC the data described in Items I and II of Appendix B of the Plan relating to trading activity in Pre-Pilot Securities and Pilot Securities on a Trading Center operated by the Exchange. The Exchange shall transmit such data to the SEC in a pipe delimited format, on a disaggregated basis by Trading Center, within 30 calendar days following month end for:

(A) Each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through thirty-one days prior to the first day of the Pilot Period; and

(B) Each Pilot Security for the period beginning thirty days prior to the first day of the Pilot Period through six months after the end of the Pilot Period. The Exchange also shall make such data publicly available on the Exchange web site within 120 calendar days following month end at no charge and shall not identify the Member that generated the data.

### (3) Daily Market Maker Participation Statistics Requirement

(A) A Member that is a Market Maker shall collect and transmit to their DEA data relating to Item IV of Appendix B of the Plan, with respect to activity conducted on any Trading Center in Pre-Pilot Securities and Pilot Securities in furtherance of its status as a Market Maker, including a Trading Center that executes trades otherwise than on a national securities exchange, for transactions that have settled or reached settlement date. Market Makers shall transmit such data in a format required by their DEA by 12:00 p.m. EST on T+4:

(i) For transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through thirty-one days prior to the first day of the Pilot Period; and

(ii) For transactions in each Pilot Security for the period beginning thirty days prior to the first day of the Pilot Period through six months after the end of the Pilot Period.

(B) A Member that is a Market Maker whose DEA is not a Participant to the Plan shall transmit the data collected pursuant to paragraph (3)(A) above to the Financial Industry Regulatory Authority, Inc. ("FINRA"). Market Makers shall transmit such data in a

format required by FINRA by 12:00 p.m. EST on T+4 in accordance with paragraphs (3)(A)(i) and (ii) above.

(C) The Exchange shall transmit the data collected by the DEA or FINRA pursuant to paragraphs (3)(A) and (B) above relating to Market Maker activity on a Trading Center operated by the Exchange to the SEC in a pipe delimited format within 30 calendar days following month end. The Exchange shall also make such data publicly available on the Exchange web site within 120 calendar days following month end at no charge and shall not identify the Trading Center that generated the data.

#### (4) Market Maker Profitability

(A) A Member that is a Market Maker shall collect and transmit to their DEA the data described in Item I of Appendix C of the Plan with respect to executions on any Trading Center that have settled or reached settlement date. Market Makers shall transmit such data in a format required by their DEA by 12:00 p.m. EST on T+4 for executions during and outside of Regular Trading Hours in each:

(i) Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through thirty-one days prior to the first day of the Pilot Period; and

(ii) Pilot Security for the period beginning thirty days prior to the first day of the Pilot Period through six months after the end of the Pilot Period.

(B) A Member that is a Market Maker whose DEA is not a Participant to the Plan shall transmit the data collected pursuant to paragraph (4)(A) above to FINRA. Market Makers shall transmit such data in a format required by FINRA by 12:00 p.m. EST on T+4 for executions during and outside of Regular Trading Hours in accordance with paragraphs (4)(A)(i) and (ii) above.

(5) Market Maker Registration Statistics. The Exchange shall collect and transmit to the SEC the data described in Item III of Appendix B of the Plan relating to daily Market Maker registration statistics in a pipe delimited format within 30 calendar days following month end for:

(A) For transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and

(B) For transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

The Exchange also shall make such data publicly available on the Exchange web site within 120 calendar days following month end at no charge.

(c) Compliance with Quoting and Trading Restrictions

(1) Pilot Securities in Test Group One will be subject to the following requirement: No member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than \$0.05. However, orders priced to trade at the midpoint of the national best bid and national best offer ("NBBO") or best protected bid and best protected offer ("PBBO") and orders entered in the Exchange's Retail Price Improvement Program as Retail Price Improvement Orders (as defined in Rule 4780(a)(3)) may be ranked and accepted in increments of less than \$0.05. Pilot Securities in Test Group One may continue to trade at any price increment that is currently permitted by Rule 4701(k).

(2) Pilot Securities in Test Group Two shall be subject to the following requirements:

(A) No member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than \$0.05. However, orders priced to trade at the midpoint of the NBBO or PBBO and orders entered in the Exchange's Retail Price Improvement Program as Retail Price Improvement Orders (as defined in Rule 4780(a)(3)) may be ranked and accepted in increments of less than \$0.05.

(B) Absent any of the exceptions listed in (C) below, no member may execute orders in any Pilot Security in Test Group Two in price increments other than \$0.05. The \$0.05 trading increment will apply to all trades, including Brokered Cross Trades.

(C) Pilot Securities in Test Group Two may trade in increments less than \$0.05 under the following circumstances:

(i) Trading may occur at the midpoint between the NBBO or the PBBO;

(ii) Retail Investor Orders may be provided with price improvement that is at least \$0.005 better than the PBBO;

(iii) Negotiated Trades may trade in increments less than \$0.05; and

(iv) Execution of a customer order to comply with IM-2110-2 following the execution of a proprietary trade by the member at an increment other than \$0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.

(3) Pilot Securities in Test Group Three shall be subject to the following requirements:

(A) No member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than \$0.05. However, orders priced to trade at the midpoint of the NBBO or PBBO and orders entered in the Exchange's Retail Price Improvement Program as Retail Price

Improvement Orders (as defined in Rule 4780(a)(3)) may be ranked and accepted in increments of less than \$0.05.

(B) Absent any of the exceptions listed in (C) below, no member may execute orders in any Pilot Security in Test Group Three in price increments other than \$0.05. The \$0.05 trading increment will apply to all trades, including Brokered Cross Trades.

(C) Pilot Securities in Test Group Three may trade in increments less than \$0.05 under the following circumstances:

- (i) Trading may occur at the midpoint between the NBBO or PBBO;
- (ii) Retail Investor Orders may be provided with price improvement that is at least \$0.005 better than the Best Protected Bid or the Best Protected Offer;
- (iii) Negotiated Trades may trade in increments less than \$0.05; and
- (iv) Execution of a customer order to comply with IM-2110-2 following the execution of a proprietary trade by the member at an increment other than \$0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.

(D) Pilot Securities in Test Group Three will be subject to the following Trade-at Prohibition:

- (i) "Trade-at Prohibition" means the prohibition against executions by a Trading Center of a sell order for a Pilot Security at the price of a Protected Bid or the execution of a buy order for a Pilot Security at the price of a Protected Offer during regular trading hours.
- (ii) Absent any of the exceptions listed in (iii) below, no member may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer.
- (iii) Members may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer if any of the following circumstances exist:
  - (a) The order is executed as agent or riskless principal by an independent trading unit, as defined under Rule 200(f) of Regulation SHO, of a Trading Center within a member that has a displayed quotation as agent or riskless principal, via either a processor or an SRO Quotation Feed, at a price equal to the traded-at Protected Quotation, that was displayed before the order was received, but only up to the full displayed size of that independent trading unit's previously displayed quote;
  - (b) The order is executed by an independent trading unit, as defined under Rule 200(f) of Regulation SHO, of a Trading Center within a member that has a displayed quotation for

the account of that Trading Center on a principal (excluding riskless principal) basis, via either a processor or an SRO Quotation Feed, at a price equal to the traded-at Protected Quotation, that was displayed before the order was received, but only up to the full displayed size of that independent trading unit's previously displayed quote;

(c) The order is of Block Size at the time of origin and may not be:

(A) an aggregation of non-block orders; or

(B) broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution;

(d) The order is a Retail Investor Order executed with at least \$0.005 price improvement;

(e) The order is executed when the Trading Center displaying the Protected Quotation that was traded at was experiencing a failure, material delay, or malfunction of its systems or equipment;

(f) The order is executed as part of a transaction that was not a "regular way" contract;

(g) The order is executed as part of a single-priced opening, reopening, or closing transaction on the Exchange;

(h) The order is executed when a Protected Bid was priced higher than a Protected Offer in the Pilot Security;

(i) The order is identified as a Trade-at Intermarket Sweep Order;

(j) The order is executed by a Trading Center that simultaneously routed Trade-at Intermarket Sweep Orders or Intermarket Sweep Orders to execute against the full displayed size of the Protected Quotation that was traded at;

(k) The order is executed as part of a Negotiated Trade;

(l) The order is executed when the Trading Center displaying the Protected Quotation that was traded at had displayed, within one second prior to execution of the transaction that constituted the Trade-at, a Best Protected Bid or Best Protected Offer, as applicable, for the Pilot Security with a price that was inferior to the price of the Trade-at transaction;

(m) The order is executed by a Trading Center which, at the time of order receipt, the Trading Center had guaranteed an execution at no worse than a specified price (a "stopped order"), where:

(A) The stopped order was for the account of a customer;

(B) The customer agreed to the specified price on an order-by-order basis; and

(C) The price of the Trade-at transaction was, for a stopped buy order, equal to or less than the National Best Bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to or greater than the National Best Offer in the Pilot Security at the time of execution, as long as such order is priced at an acceptable increment;

(n) The order is for a fractional share of a Pilot Security, provided that such fractional share order was not the result of breaking an order for one or more whole shares of a Pilot Security into orders for fractional shares or was not otherwise effected to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan; or

(o) The order is to correct a bona fide error, which is recorded by the Trading Center in its error account. A bona fide error is defined as:

(A) The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market;

(B) The unauthorized or unintended purchase, sale, or allocation of securities, or the failure to follow specific client instructions;

(C) The incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or

(D) A delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.

(iv) No member shall break an order into smaller orders or otherwise effect or execute an order to evade the requirements of the Trade-at Prohibition of this Rule or any other provisions of the Plan.

(d) Operation of Order Types and Order Attributes

This section sets forth BX's specific procedures for handling, executing, re-pricing and displaying of certain Order Types and Order Attributes applicable to Pilot Securities. Unless otherwise indicated, this section applies to orders in all three Test Group Pilot Securities.

(1) All Order Types. Any Order Type in a security of any of the Test Groups that requires a price and does not otherwise qualify for an exception, will not be accepted if it is in a minimum price increment other than \$0.05. This minimum price increment applies to repricing and rounding by the System, unless otherwise noted below.

Subject to the provisions below, if the entered limit price of an Order in a Test Group Three Pilot Security, entered through RASH or FIX, locked or crossed a Protected Quotation and the NBBO changes so that the Order can be ranked closer to its original entered limit price, the price of the Order will be adjusted repeatedly in accordance with changes to the NBBO.

(2) Price to Comply Order. A Price to Comply Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(1) except as provided under this paragraph. If a Price to Comply Order for a Test Group Three Pilot Security is partially executed upon entry and the remainder would lock a Protected Quotation of another market center, the unexecuted portion of the Order will be cancelled. If the Order is not executable against any previously posted orders on the Exchange Book, and the limit price of a buy (sell) Price to Comply Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be ranked on the Exchange Book at the current midpoint of the NBBO.

A Price to Comply Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the Exchange Book:

- If entered at a price that locked a Protected Quotation, and if the NBBO changes such that it can be ranked and displayed at the price of the Protected Quotation that it locked, the Price to Comply Order will be adjusted to rank and display at its original entered limit price.
- If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Price to Comply Order, based on the participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed upon entry with its displayed price remaining unchanged.
- If, after being posted on the Exchange Book, the non-displayed price of a Price to Comply Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Price to Comply Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Price to Comply Order will be cancelled.

(3) Non-Displayed Order. A Non-Displayed Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(3) except as provided under this paragraph. A resting Non-Displayed Order in a Test Group Three Pilot security cannot execute at the price of a Protected Quotation of another market center unless the incoming Order otherwise qualifies for an exception to the Trade-at prohibition provided under Rule

4770(c)(3)(D). If the limit price of a buy (sell) Non-Displayed Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will be ranked on the Exchange Book at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower). If a resting Non-Displayed Order in a Test Group Three Pilot Security entered through RASH or FIX becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Non-Displayed Order is at an impermissible price under Regulation NMS or the Plan, the Non-Displayed Order will be repriced to a price that is at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower) and will receive a new timestamp.

For a Non-Displayed Order in a Test Group Three Pilot Security entered through OUCH or FLITE, if after such a Non-Displayed Order is posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order will be cancelled back to the Participant.

A Non-Displayed Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the Exchange Book:

- If entered at a price that locked a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation that it locked, the Non-Displayed Order will be adjusted to rank at its original entered limit price.
- If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Order, based on the Participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed.
- If entered at a price that locked or crossed a Protected Quotation, and if the NBBO changes such that it cannot be ranked at the price of the Protected Quotation it locked or crossed but can be ranked closer to its original limit price, the Non-Displayed Order will be adjusted to the new midpoint of the NBBO.
- If, after being posted on the Exchange Book, the Non-Displayed Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Non-Displayed Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Non-Displayed Order will be cancelled.

(4) Post-Only Order. A Post-Only Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(4) except as provided under this paragraph. For orders that are

not attributable, if the limit price of a buy (sell) Post-Only Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be ranked on the Exchange Book at the current midpoint of the NBBO.

A Non-Attributable Post-Only Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the Exchange Book:

- If entered at a price that locked a Protected Quotation, and if the NBBO changes such that it can be ranked and displayed at the price of the Protected Quotation that it locked,, the Post-Only Order will be adjusted to rank and display at its original entered limit price.
- If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Post-Only Order, based on the Participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed upon entry with its displayed price remaining unchanged.
- If, after being posted on the Exchange Book, the non-displayed price of a resting Post-Only Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Post-Only Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Post-Only Order will be cancelled.

(5) Retail Price Improving Order. A Retail Price Improving Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(5) except as provided under this paragraph. A Retail Price Improving Order in a Test Group Two or Three Pilot Security must be entered in a minimum price increment of \$0.005 and will only execute against Retail Orders if its price is at least \$0.005 better than the NBBO.

(6) Retail Order. A Retail Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(6) except as provided under this paragraph. A Retail Order in a Test Group One Pilot Security must be entered with a limit price in a minimum price increment and may execute in an increment other than a minimum price increment if the Order is provided with price improvement that is at least \$0.001 better than the NBBO. A Retail Order in a Test Group Two or Three Pilot Security must be entered in a minimum price increment and may execute in an increment other than a minimum price increment if the Order is provided with price improvement that is at least \$0.005 better than the NBBO.

(7) Market Maker Peg Order. A Market Maker Peg Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(7) except as provided under this paragraph. The displayed price of a Market Maker Peg Order in a Test Group Pilot Security will be rounded up (down) to the nearest minimum price increment for bids (offers), if it would otherwise display at an increment smaller than the minimum price increment. For example, if the NBB is \$10.05 and NBO is \$10.15, and the Designated Percentage (as defined in Rule 4613) is 28%, the displayed price of a Market Maker Peg Order to buy 100 shares of a Test Group Pilot Security would be \$7.25 (i.e.,  $\$10.05 - (\$10.05 \times 0.28) = \$7.236$ , rounded up to \$7.25). Using the same market, but with a Market Maker Peg Order to sell 100 shares, the displayed price of the Order would be \$12.95 (i.e.,  $\$10.15 + (\$10.15 \times 0.28) = \$12.992$ , rounded down to \$12.95).

(8) Midpoint Pegging. An Order with Midpoint Pegging in a Test Group Pilot Security will operate as described in Rule 4703(d) except as provided under this paragraph. An order in a Test Group Pilot Security with Midpoint Pegging may execute at the midpoint of the NBBO in an increment other than the minimum price increment.

(9) Reserve Size. An Order with Reserve Size in a Test Group Pilot Security will operate as described in Rule 4703(h) except as provided under this paragraph. A resting Order in a Test Group Three Pilot Security with a Reserve Size (either a Price to Comply Order or a Price to Display Order through RASH or FIX) may not execute the non-displayed Reserve Size at the price of a Protected Quotation of another market center unless the incoming Order otherwise qualifies for an exception to the Trade-at prohibition provided under Rule 4770(c)(3)(D). If an Order with Reserve Size for a Test Group Three Pilot Security is partially executed upon entry and the remainder would lock a Protected Quotation of another market center, the unexecuted portion of the Order will be cancelled. If the Order is not executable against any previously posted orders on the Exchange Book, and the limit price of a buy (sell) Price to Comply Order with Reserve Size in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the displayed portion of the Order will display at one minimum price increment below (above) the Protected Quotation, and the displayed and non-displayed portions of the Order will be ranked on the Exchange Book at the current midpoint of the NBBO. If the Order is not executable against any previously posted orders on the Exchange Book, and the limit price of a buy (sell) Price to Display Order with Reserve Size in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the displayed portion of the Order will display and be ranked at one minimum price increment below (above) the Protected Quotation, and the non-displayed portion of the Order will be ranked on the Exchange Book at the current midpoint of the NBBO. If after being posted to the Exchange Book, the NBBO changes so that the Order with Reserve Size in a Test Group Three Pilot Security would no longer

be executable at its ranked price due to the requirements of Regulation NMS or the Plan, the order will be adjusted in the same manner as described above.

(10) Good-till-Cancelled. An Order with a Time-in-Force of Good-till-Cancelled in a Test Group Pilot Security will operate as described in Rule 4703(a)(3) except as provided under this paragraph. An order in a Test Group Security with a Good-till-Cancelled Time-in-Force that is adjusted pursuant to Rule 4761(b) will be adjusted based on a \$0.05 increment.

Commentary:

.01 The terms used in this Rule 4770 shall have the same meaning as provided in the Plan, unless otherwise specified.

.02 For purposes of the reporting requirement in Appendix B.II.(n), a Trading Center shall report "Y" to their DEA where it is relying upon the Retail Investor Order exception to Test Groups Two and Three, and "N" in all other instances.

.03 For purposes of Appendix B.I, the field "Affected by Limit-Up Limit-Down bands" shall be included. A Trading Center shall report a value of "Y" to their DEA when the ability of an order to execute has been affected by the Limit-Up Limit-Down (LULD) bands in effect at the time of order receipt. A Trading Center shall report a value of "N" to their DEA when the ability of an order to execute has not been affected by the LULD bands in effect at the time of order receipt. For purposes of Appendix B.I, the Participants shall classify all orders in Pilot and Pre-Pilot Securities that may trade in a foreign market as: (1) fully executed domestically or (2) fully or partially executed on a foreign market. For purposes of Appendix B.II, the Participants shall classify all orders in Pilot and Pre-Pilot Securities that may trade in a foreign market as: (1) directed to a domestic venue for execution; (2) may only be directed to a foreign venue for execution; or (3) fully or partially directed to a foreign venue at the discretion of the Member.

.04 (a) For purposes of Appendix B.I.a(14), B.I.a(15), B.I.a(21) and B.I.a(22), the time ranges shall be changed as follows:

(1) Appendix B.I.a(14A): The cumulative number of shares of orders executed from 100 microseconds to less than 1 millisecond after the time of order receipt;

(2) Appendix B.I.a(15): The cumulative number of shares of orders executed from 1 millisecond to less than 100 milliseconds after the time of order receipt;

(3) Appendix B.I.a(21A): The cumulative number of shares of orders canceled from 100 microseconds to less than 1 millisecond after the time of order receipt; and

(4) Appendix B.I.a(22): The cumulative number of shares of orders canceled from 1 millisecond to less than 100 milliseconds after the time of order receipt.

(b) For purposes of Appendix B.I.a(21) through B.I.a(27), unexecuted Immediate or Cancel orders shall be categorized separately irrespective of the duration of time after order receipt.

.05 For purposes of Appendix B.I.a(31)-(33), the relevant measurement is the time of order receipt.

.06 For purposes of Appendix B, the following order types and numbers shall be included and assigned the following numbers: "not held" orders (18); clean cross orders (19); auction orders (20); and orders that cannot otherwise be classified, including orders received when the NBBO is crossed (21); and limit order priced more than \$0.10 away from the NBBO (22). For purposes of order types 12-14 in Appendix B, such order types shall include all orders and not solely "resting" orders.

.07 A Member shall not be deemed a Trading Center for purposes of Appendix B of the Plan where that Member only executes orders otherwise than on a national securities exchange for the purpose of: (i) correcting a bona fide error related to the execution of a customer order; (ii) purchases a security from a customer at a nominal price solely for purposes of liquidating the customer's position; or (iii) completing the fractional share portion of an order.

.08 A Trading Center shall begin the data collection required pursuant to Appendix B.I.a(1) through B.II.(y) of the Plan and Item I of Appendix C of the Plan on April 4, 2016. The requirement that the Exchange or their DEA provide information to the SEC within 30 days following month end pursuant to Appendix B and C of the Plan shall commence at the beginning of the Pilot Period. Notwithstanding the provisions of paragraphs (b)(2)(B), (b)(3)(C), and (b)(5) of this Rule, with respect to data for the Pre-Pilot and Pilot Period, the requirement that the Exchange or DEA make Appendix B data publicly available on the Exchange's or DEA's web site shall commence on August 31, 2017. Notwithstanding the provisions of paragraph (b)(4) of this Rule, the Exchange or DEA shall make Appendix C data for the Pre-Pilot Period through January 2017 publicly available on the Exchange or DEA's web site by February 28, 2017.

.09 For purposes of Appendix B.IV, the count of the number of Market Makers used in the calculation of share (trade) participation shall be added to each category. For purposes of Appendix B.IV(b) and (c), share participation and trade participation shall be calculated by using a total count instead of a share-weighted average or a trade-weighted average. For purposes of Appendix B, B.IV(d) (cross-quote share (trade) participation), (e) (inside-the-quote share (trade) participation), (f) (at-the-quote share (trade) participation), and (g) (outside-the-quote share (trade) participation), shall be calculated

by reference to the National Best Bid or National Best Offer in effect immediately prior to the trade.

.10 For purposes of Item I of Appendix C, the Participants shall calculate daily Market Maker realized profitability statistics for each trading day on a daily last in, first out (LIFO) basis using reported trade price and shall include only trades executed on the subject trading day. The daily LIFO calculation shall not include any positions carried over from previous trading days. For purposes of Item I.c of Appendix C, the Participants shall calculate daily Market Maker unrealized profitability statistics for each trading day on an average price basis. Specifically, the Participants must calculate the volume weighted average price of the excess (deficit) of buy volume over sell volume for the current trading day using reported trade price. The gain (loss) of the excess (deficit) of buy volume over sell volume shall be determined by using the volume weighted average price compared to the closing price of the security as reported by the primary listing exchange. In calculating unrealized trading profits, the Participant also shall report the number of excess (deficit) shares held by the Market Maker, the volume weighted average price of that excess (deficit), and the closing price of the security as reported by the primary listing exchange used in reporting unrealized profit.

.11 "Pre-Pilot Data Collection Securities" are the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C of the Plan for the period beginning six months prior to the Pilot Period through thirty-one days prior to the Pilot Period. The Participants shall compile the list of Pre-Pilot Data Collection Securities by selecting all NMS stocks with a market capitalization of \$5 billion or less, a Consolidated Average Daily Volume (CADV) of 2 million shares or less and a closing price of \$1 per share or more. The market capitalization and the closing price thresholds shall be applied to the last day of the Pre-Pilot measurement period, and the CADV threshold shall be applied to the duration of the Pre-Pilot measurement period. The Pre-Pilot measurement period shall be the three calendar months ending on the day when the Pre-Pilot Data Collection Securities are selected. The Pre-Pilot Data Collection Securities shall be selected thirty days prior to the commencement of the six-month Pre-Pilot Period.

.12 This Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

.13 For purposes of qualifying for the Block Size exception under paragraph (c)(3)(D)(iii) of this Rule, the Order must have a size of 5,000 shares or more and the resulting execution upon entry must have a size of 5,000 shares or more in aggregate.

#### **4780 Retail Price Improvement Program**

(a) Definitions.

(1) Retail Member Organization. A "Retail Member Organization" or "RMO" is a Member (or a division thereof) that has been approved by the Exchange under this Rule to submit Retail Orders.

(2) "Retail Order" shall have the meaning provided in Rule 4702.

(3) "Retail Price Improvement Order" shall have the meaning provided in Rule 4702.

(4) Other Price Improving Contra-Side Interest. For purposes of Rule 4780, "Other Price Improving Contra-Side Interest" shall refer to booked, non-displayed orders that are priced more aggressively than the NBBO.

(b) Retail Member Organization Qualifications and Application.

(1) To qualify as a Retail Member Organization, a Member must conduct a retail business or route retail orders on behalf of another broker-dealer. For purposes of this Rule, conducting a retail business shall include carrying retail customer accounts on a fully disclosed basis.

(2) To become a Retail Member Organization, a Member must submit:

(A) an application form;

(B) supporting documentation, which may include sample marketing literature, website screenshots, other publicly disclosed materials describing the Member's retail order flow, and any other documentation and information requested by the Exchange in order to confirm that the applicant's order flow would meet the requirements of the Retail Order definition; and

(C) an attestation, in a form prescribed by the Exchange, that substantially all orders submitted as Retail Orders will qualify as such under this Rule.

(3) After an applicant submits the application form, supporting documentation, and attestation, the Exchange shall notify the applicant of its decision in writing.

(4) A disapproved applicant may: (A) request an appeal of such disapproval by the Exchange as provided in paragraph (d) below; and/or (B) reapply for Retail Member Organization status 90 days after the disapproval notice is issued by the Exchange.

(5) A Retail Member Organization may voluntarily withdraw from such status at any time by giving written notice to the Exchange.

(6) A Retail Member Organization must have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and procedures must require the Member to:

(i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements of this Rule, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If a Retail Member Organization does not itself conduct a retail business but routes Retail Orders on behalf of another broker-dealer, the Retail Member Organization's supervisory procedures must be reasonably designed to assure that the orders it receives from such other broker-dealer that are designated as Retail Orders meet the definition of a Retail Order. The Retail Member Organization must: (i) obtain an annual written representation, in a form acceptable to the Exchange, from each other broker-dealer that sends the Retail Member Organization orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this Rule; and (ii) monitor whether Retail Order flow routed on behalf of such other broker-dealers meets the applicable requirements.

(c) Failure of RMO to Abide by Retail Order Requirements.

(1) If a Retail Member Organization designates orders submitted to the Exchange as Retail Orders and the Exchange determines, in its sole discretion, that such orders fail to meet any of the requirements set forth in paragraph (a) of this Rule, the Exchange may disqualify a Member from its status as a Retail Member Organization.

(2) Disqualification Determinations. The Exchange shall determine if and when a Member is disqualified from its status as a Retail Member Organization. When disqualification determinations are made, the Exchange shall provide a written disqualification notice to the Member.

(3) Appeal and/or Reapplication for Retail Member Organization Status. A Retail Member Organization that is disqualified under this paragraph (c) may: (A) appeal such disqualification as provided in paragraph (d) below; and/or (B) reapply for Retail Organization status 90 days after the date of the disqualification notice from the Exchange.

(d) Appeal of Disapproval or Disqualification.

(1) If a Member disputes the Exchange's decision to disapprove it under paragraph (b) above or disqualify it under paragraph (c) above, the Member ("appellant") may request, within five business days after notice of the decision is issued by the Exchange, that the Retail Price Improvement Panel ("RPI Panel") review the decision to determine if it was correct.

(2) The RPI Panel shall consist of the Exchange's Chief Regulatory Officer ("CRO"), or a designee of the CRO, and two officers of the Exchange designated by the Chief Executive Officer of the Exchange.

(3) The RPI Panel shall review the facts and render a decision within the time frame prescribed by the Exchange.

(4) The RPI Panel may overturn or modify an action taken by the Exchange under this Rule. A determination by the RPI Panel shall constitute final action by the Exchange.

(e) Retail Liquidity Identifier. An identifier shall be disseminated through proprietary data feeds and through the appropriate Securities Information Processor when RPI interest priced at least \$0.001 better than the Exchange's Protected Bid or Protected Offer for a particular security is available in the System ("Retail Liquidity Identifier"). The Retail Liquidity Identifier shall reflect the symbol for the particular security and the side (buy or sell) of the RPI interest, but shall not include the price or size of the RPI interest.

(f) Retail Order Designation. A Retail Member Organization can designate how a Retail Order will interact with available contra-side interest as provided in Rule 4702.

(g) Priority and Order Allocation.

RPI Orders in the same security shall be ranked and allocated according to price then time of entry into the Systems. Executions shall occur in price/time priority in accordance with Rule 4757. Any remaining unexecuted RPI interest will remain available to interact with other incoming Retail Orders. Any remaining unexecuted portion of the Retail Order will cancel or execute in accordance with paragraph (f) above.

Examples of priority and order allocation are as follows:

Protected NBBO for security ABC is \$10.00 — \$10.05

Member 1 enters a RPI Order to buy ABC at \$10.015 for 500

Member 2 then enters a RPI Order to buy ABC at \$10.02 for 500

Member 3 then enters a RPI Order to buy ABC at \$10.035 for 500

An incoming Retail Order to sell ABC for 1,000 executes first against Member 3's bid for 500 at \$10.035, because it is the best priced bid, then against Member 2's bid for 500 at \$10.02, because it is the next best priced bid. Member 1 is not filled because the entire size of the Retail Order to sell 1,000 is depleted. The Retail Order executes against RPI Orders in price/time priority.

However, assume the same facts above, except that Member 2's RPI Order to buy ABC at \$10.020 is for 100. The incoming Retail Order to sell 1,000 executes first against Member 3's bid for 500 at \$10.035, because it is the best priced bid, then against Member 2's bid for 100 at \$10.02, because it is the next best priced bid. Member 1 then receives

an execution for 400 of its bid for 500 at \$10.015, at which point the entire size of the Retail Order to sell 1,000 is depleted.

As a final example, assume the same facts as above, except that Member 3's order was not a RPI Order to buy ABC at \$10.035, but rather, a Non-Displayed Order to buy ABC at \$10.03. The result would be similar to the result immediately above, in that the incoming Retail Order to sell 1,000 executes first against Member 3's bid for 500 at \$10.03, because it is the best priced bid, then against Member 2's bid for 100 at \$10.02, because it is the next best priced bid. Member 1 then receives an execution for 400 of its bid for 500 at \$10.015, at which point the entire size of the Retail Order to sell 1,000 is depleted.

(h) The pilot period, the Program will be limited to securities whose Bid Price on the Exchange is greater than or equal to \$1.00 per share.

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## **5000. BX VENTURE MARKET LISTING RULES**

### **5001. The Qualification, Listing, and Delisting of Companies**

This Rule 5000 Series (consisting of Rules 5000-5999) contains rules related to the qualification, listing and delisting of Companies on the Nasdaq BX listing platform called the "BX Venture Market" . Companies listed on the BX Venture Market do not qualify, as a result of such listing, for any exemption to the application of the penny stock rules or state securities registration requirements. The Exchange will take action, pursuant to the Rule 5100 Series, to delist any Company listed on the BX Venture Market that attempts to rely on an exemption from state securities registration which may otherwise be available to Companies listed on the Exchange.

The Rule 5100 Series (consisting of Rules 5100-5199) discusses the Exchange's general regulatory authority. The Rule 5200 Series (consisting of Rules 5200-5299) sets forth the procedures and prerequisites for gaining a listing on the Exchange, as well as the disclosure obligations of listed Companies. The Rule 5500 Series (consisting of Rules 5500-5599) contains the specific quantitative listing requirements for listing on the Exchange. The corporate governance requirements applicable to Companies listed on the Exchange are contained in the Rule 5600 Series (consisting of Rules 5600-5699). The consequences of a failure to meet the Exchange's listing standards are contained in the Rule 5800 Series (consisting of Rules 5800-5899). Finally, Company listing fees are described in the Rule 5900 Series (consisting of Rules 5900-5999).

The Exchange exercises other authorities important to listed Companies discussed in other Rules Series in the Marketplace Rules. For example, the Exchange may close markets upon request of the SEC (see Rule 4121). It may also halt the trading of a Company's securities under certain circumstances and pursuant to established procedures (See Rule 4120 and IM-5250-1). These authorities are exercised primarily by the MarketWatch Department and are contained in the Rule 4000 Series.

The Exchange is a party to a regulatory contract with the Financial Industry Regulatory Authority, Inc. ("FINRA") and a separate regulatory contract with The Nasdaq Stock Market LLC ("Nasdaq") pursuant to which FINRA and Nasdaq have agreed to perform certain functions described in the Rules on behalf of the Exchange. Notwithstanding the fact that the Exchange has entered into these regulatory contracts to perform some of the

Exchange's functions, the Exchange shall retain ultimate legal responsibility for, and control of, such functions.

### **5005. Definitions**

(a) The following is a list of definitions used throughout the Listing Rules. This section also lists various terms together with references to other rules where they are specifically defined. Unless otherwise specified by the Rules, these terms shall have the meanings set forth below. Defined terms are capitalized throughout the Listing Rules.

(1) "Act" means the Securities Exchange Act of 1934.

(2) "Bid Price" means the closing bid price.

(3) "Commission" or "SEC" means the United States Securities and Exchange Commission.

(4) "Company" means the issuer of a security listed or applying to list on the Exchange. For purposes of the Rule 5000 Series, the term "Company" includes an issuer that is not incorporated, such as, for example, a limited partnership.

(5) "Country of Domicile" means the country under whose laws a Company is organized or incorporated.

(6) "Direct Registration Program" means any program by a Company, directly or through its transfer agent, whereby a Shareholder may have securities registered in the Shareholder's name on the books of the Company or its transfer agent without the need for a physical certificate to evidence ownership.

(7) "EDGAR System" means the SEC's Electronic Data Gathering, Analysis, and Retrieval system.

(8) "ESOP" means employee stock option plan.

(9) "Executive Officer" is defined in Rule 5605(a)(1).

(10) "Filed with the Exchange" means submitted to the Exchange directly or filed with the Commission through the EDGAR System.

(11) "Family Member" is defined in Rule 5605(a)(2).

(12) "Foreign Private Issuer" shall have the same meaning as under Rule 3b-4 under the Act.

(13) "Independent Director" is defined in Rule 5605(a)(2).

- (14) "Listed Securities" means securities listed on the Exchange or another national securities exchange.
- (15) "Market Value" means the consolidated closing bid price multiplied by the measure to be valued (e.g., a Company's Market Value of Listed Securities is equal to the consolidated closing bid price multiplied by the number of the Company's Listed Securities).
- (16) "Member" means a broker or dealer admitted to membership on the Exchange.
- (17) "Market Maker" means a dealer that, with respect to a security, holds itself out (by entering quotations in the Exchange) as being willing to buy and sell such security for its own account on a regular and continuous basis and that is registered as such.
- (18) "Other Regulatory Authority" means, in the case of a bank or savings authority identified in Section 12(i) of the Act, the agency vested with authority to enforce the provisions of Section 12 of the Act.
- (19) "Primary Equity Security" means a Company's first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests, American Depositary Receipts (ADR) or American Depositary Shares (ADS).
- (20) "Publicly Held Shares" means shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding. Determinations of beneficial ownership in calculating publicly held shares shall be made in accordance with Rule 13d-3 under the Act.
- (21) "Public Holders" means holders of a Security that includes both beneficial holders and holders of record, but does not include any holder who is, either directly or indirectly, an Executive Officer, director, or the beneficial holder of more than 10% of the total shares outstanding.
- (22) "Round Lot" or "Normal Unit of Trading" means 100 shares of a Security unless, with respect to a particular Security, the Exchange determines that a normal unit of trading shall constitute other than 100 shares. If a normal unit of trading is other than 100 shares, a special identifier shall be appended to the Company's Exchange symbol.
- (23) "Round Lot Holder" means a holder of a Normal Unit of Trading. The number of beneficial holders will be considered in addition to holders of record.
- (24) "Sarbanes-Oxley Act" means the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212).
- (25) "Security" means a Company's Common Stock, Preferred Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests,

American Depositary Receipts (ADR), American Depositary Shares (ADS), Units, Rights or Warrants.

(26) "Shareholder" means a record or beneficial owner of a Security listed or applying to list. For purposes of the Rule 5000 Series, the term "Shareholder" includes, for example, a limited partner, the owner of a depository receipt, or unit.

(27) "Substitution Listing Event" means: a reverse stock split, re-incorporation or a change in the Company's place of organization, the formation of a holding company that replaces a listed Company, reclassification or exchange of a Company's listed shares for another Security, the listing of a new class of securities in substitution for a previously-listed class of securities, or any technical change whereby the Shareholders of the original Company receive a share-for-share interest in the new Company without any change in their equity position or rights.

## **5100. The Exchange's Regulatory Authority**

### **5101. Preamble to the Rule 5100 Series**

The Exchange is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. The Exchange stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy and supporting the capital formation process. The Exchange's Companies are publicly recognized as sharing these important objectives.

Consistent with these goals, and mindful of the smaller size and liquidity characteristics of certain of the Companies that may list on the Exchange, the Exchange will provide expert surveillance of market activity in listed companies by experienced market regulators, as described in Rule 5105. It has also adopted rules to ensure that investors may clearly distinguish BX Venture Market listed securities from those listed on Nasdaq or other national securities exchanges, as described in Rule 5106. In addition, the Exchange require that companies undergo a rigorous review process before being approved for listing, and are subject to heightened regulatory oversight thereafter. The additional listing procedures and requirements will be enforced by the highly qualified, experienced listing staff in Nasdaq's Listing Qualifications Department, as described in Rule 5102. This staff also has discretionary authority to deny listing to otherwise qualified companies where necessary to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. This authority is described in Rule 5104 and IM-5104-1- 4.

### **5102. Experienced Listing Qualifications Staff**

The Exchange will employ the staff in Nasdaq's Listing Qualifications Department to apply and enforce its listing standards pursuant to a regulatory contract. Notwithstanding this contractual arrangement, the Exchange retains ultimate legal responsibility for and control of these functions. Staff in the Nasdaq Listing Qualifications Department have substantial experience in regulating listed companies. In addition to the review of companies seeking a listing as described in Rule 5205, the Department will monitor compliance with all listing standards on an on-going basis through the regular review of public filings, Form 8-K disclosures, press releases, market data, and closing bid price.

The Department also includes within it a group dedicated to the investigation of companies and the screening for potential public interest concerns. The investigative group will be supervised by at least one individual with substantial prior regulatory experience at a national securities exchange or experience with the SEC's Enforcement Division, FINRA, or another organization with responsibilities for enforcing the federal securities laws. Oversight of the listings program will similarly include at all times at least one individual with substantial prior experience in supervising a listing program at a national securities exchange that currently has an active listing program. In addition, the Chief Regulatory Officer of the Exchange will be required to have substantial prior regulatory experience with a national securities exchange or equivalent experience.

### **5103. Automatic Bars to Listing**

(a) Regulatory History. The Exchange will not approve for listing or allow the continued listing of a Company if any executive officer, director, promoter, or control person was involved in any event that occurred during the prior five years described in Item 401(f)(2) - (8) of Regulation S-K under the Act. In addition, as discussed more fully in Rule 5104 and IM-5104-1, the Exchange will ordinarily exercise its discretion to deny listing when it determines that an executive officer, director, promoter, or control person of the Company has a history of regulatory misconduct that does not implicate this automatic bar. Any determination to list or allow the continued listing of such a Company will only be made after consideration of factors set forth in IM-5104-1 and with the written approval of the Chief Regulatory Officer of the Exchange.

(b) Public Shells. The Exchange will not approve for listing or allow the continued listing of "shell" Companies. In determining whether a Company is a shell, the Exchange will look to a number of factors, including but not limited to: whether the Company is considered a "shell company" as defined in Rule 12b-2 under the Act; what percentage of the Company's assets are active versus passive; whether the Company generates revenues, and if so, whether the revenues are passively or actively generated; whether the Company's expenses are reasonably related to the revenues being generated; how many employees support the Company's revenue-generating business operations; how long the Company has been without material business operations; and whether the Company has

publicly announced a plan to begin operating activities or generate revenues, including through a near-term acquisition or transaction.

(c) Impermissible Claims of Exemptions. Companies listed on the BX Venture Market do not qualify, as a result of such listing, for any exemption from the application of the penny stock rules contained in Rules 15g-1 through 15g-100 under the Act or state securities registration requirements. The Exchange will not list any Company, and will delist any listed Company that attempts to rely on an exemption from state securities registration which otherwise may be available under state law to Companies listed on the Exchange.

#### **5104. Discretionary Authority**

The Exchange, in addition to applying the enumerated criteria set forth in the Rule 5000 Series, has broad discretionary authority over the initial and continued listing of securities in the BX Venture Market in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. The Exchange may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on the BX Venture Market inadvisable or unwarranted in the opinion of the Exchange, even though the securities meet all enumerated criteria for initial or continued listing on the BX Venture Market. In all circumstances where the Listing Qualifications Department (as defined in Rule 5805) exercises its discretionary authority under this Rule, the Listing Qualifications Department shall issue a Staff Delisting Determination under Rule 5810(c)(1), and in all circumstances where an Adjudicatory Body (as defined in Rule 5805) exercises such authority, the use of the authority shall be described in the written decision of the Adjudicatory Body.

Although the Exchange has broad discretion under this Rule to impose additional or more stringent criteria, the Rule does not provide a basis for the Exchange to grant exemptions or exceptions from the enumerated criteria for initial or continued listing, which may be granted solely pursuant to rules explicitly providing such authority.

#### **IM-5104-1. Use of Discretionary Authority in the Case of a Regulatory History That Does Not Implicate the Automatic Bar.**

The Exchange ordinarily will use its discretionary authority to deny initial or continued listing to a Company when an individual with a history of regulatory misconduct is associated with the Company even though that history does not lead to the automatic bar described in Rule 5103(a). However, in limited circumstances, it may determine to allow

the listing of such Company, provided it obtains the written approval of the Chief Regulatory Officer of the Exchange. In determining whether to list such a Company, the Exchange will consider the totality of information in its possession, including the information provided by a an independent qualified third party investigator as described in Rule 5205(d), as well the following factors:

- the nature and severity of the conduct, taken in conjunction with the length of time since the conduct occurred;
- whether the conduct involved fraud or dishonesty;
- whether the conduct was securities-related;
- whether the investing public was involved;
- whether the conduct demonstrates a propensity for financial mismanagement;
- how the individual has been employed since the violative conduct;
- whether there are continuing sanctions (either criminal or civil) against the individual;
- whether the individual made restitution;
- whether the Company has taken effective remedial action; and
- the totality of the individual's relationship to the Company, giving consideration to:
  - the individual's current or proposed position;
  - the individual's current or proposed scope of authority;
  - the extent to which the individual has responsibility for financial accounting or reporting; and
  - the individual's equity interest.

The Exchange may determine that the regulatory history rises to the level of a public interest concern, but may also consider whether remedial measures proposed by the Company, if taken, would allay that concern. Examples of such remedial measures could include any or all of the following, as appropriate:

- the individual's resignation from officer, director or promoter positions, and/or other employment with the Company;
- divestiture of stock holdings;
- terminations of contractual arrangements between the Company and the individual; or

- the establishment of a voting trust surrounding the individual's shares.

The Exchange Staff is willing to discuss with Companies, on a case-by-case basis, what remedial measures may be appropriate to address public interest concerns, and for how long such remedial measures would be required. Alternatively, the Exchange may conclude that a public interest concern is so serious that no remedial measure would be sufficient to alleviate it. In the event that the Exchange Staff denies initial or continued listing based on such public interest considerations, the Company may seek review of that determination through the procedures set forth in the Rule 5800 Series. On consideration of such appeal, a Hearings Panel comprised of persons independent of the Exchange may accept, reject or modify the Staff's recommendations by imposing conditions.

#### **IM-5104-2. Use of Discretionary Authority Based on Financial Disclosures**

The Exchange may use its discretionary authority to delist a Company when a Company files for protection under any provision of the federal bankruptcy laws or comparable foreign laws, when a Company's independent accountants issue a disclaimer opinion on financial statements required to be audited, or when financial statements do not contain a required certification.

#### **IM-5104-3. Use of Discretionary Authority Based on Past Corporate Governance Issues**

The Exchange will review the Company's past corporate governance activities. This review may include activities taking place while the Company is listed on the Exchange or an exchange that imposes corporate governance requirements, as well as activities taking place after a formerly listed company is no longer listed on the Exchange or such an exchange. Based on such review, and in accordance with the Rule 5800 Series, the Exchange may take any appropriate action, including placing restrictions on or additional requirements for listing, or denying listing of a Security, if the Exchange determines that there have been violations or evasions of such corporate governance standards. Such determinations will be made on a case-by-case basis as necessary to protect investors and the public interest. Whenever Staff has identified a past violation or evasion of a corporate governance standard pursuant to its review of a Company's past corporate governance activities, but decides not to exercise its discretionary authority to deny listing, the listing must be approved in writing by the Chief Regulatory Officer.

#### **IM-5104-4. Use of Discretionary Authority Based on Publicly Held Shares or Shareholder Count**

The Exchange may apply its authority described in the Rule 5100 Series to deny listing to or delist a Security that meets all applicable listing requirements if the Exchange determines that there are an insufficient number of Publicly Held Shares or Shareholders

that are not subject to trading restrictions, such that denial of listing or delisting is necessary to maintain the quality of and public confidence in the market, to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest.

#### **5105. Oversight of Market Activity**

FINRA will regulate market activity on the BX Venture Market pursuant to a regulatory contract that will be in place before the Market is operational. Notwithstanding the regulatory contract, the Exchange retains ultimate legal responsibility for and control of these functions.

A regulatory review will utilize electronic surveillance patterns calibrated to detect potential issues that may arise in low-priced, less liquid stocks. In addition, a regulatory program will include review of trading that takes place on the over-the-counter market in securities listed on the BX Venture Market; the activity of firms on the BX Venture Market; "focused exams" concentrated on sales practices and firm oversight and any other activities required to effectively regulate the Market.

Staff of the Exchange will monitor real-time trading of securities listed on the BX Venture Market. The Exchange will provide a monthly report to the Directors of the Division of Trading and Markets and the Office of Compliance, Inspections, and Examinations describing significant developments on the BX Venture Market. The Exchange's Chief Regulatory Officer will provide quarterly reports to the Directors of the Division of Trading and Markets and the Office of Compliance, Inspections, and Examinations describing the regulatory activities of the Exchange and FINRA during the prior quarter.

#### **5106. Market Data Display Requirements**

To avoid any confusion on the part of the investing public, the Exchange will refer to this listing venue as the BX Venture Market and not as Nasdaq BX. Its communications and marketing literature will include a prominent explanation that the BX Venture Market is separate from and not a tier of The Nasdaq Stock Market. It will include prominent information on its website describing the differences between the BX Venture Market and other national securities exchanges.

Further, the Exchange is committed to ensuring that BX Venture Market securities are clearly distinguished, and distinguishable, from securities listed on the traditional exchanges on its data products and to end-users of the data. To that end, the Exchange will require, through its distribution agreements and global market data policy documents, that market data distributors prominently identify the BX Venture Market as the listing market and, where display of text is not consistent with the display

methodology and user needs of the distributor, to use the Market Center identifier "B" to prominently display the listing market with quotation and last sale information for BX Venture Market-listed securities. Every market data vendor that distributes BX Venture Market data to users must have a signed data distribution agreement that will bind the data vendor to these display requirements, backed by contractual sanctions including termination of distribution. The Exchange will have these agreements in place before the BX Venture Market begins operations, and the market center identifier will be distributed and required to be displayed upon the launch of the market. The Exchange will, in connection with the launch, review the displays of data distributors and require immediate compliance if any displays fail to meet the requirements of the market data agreements. Thereafter, the Exchange will conduct periodic audits of all market data vendors to ensure compliance. If a market data vendor does not satisfy the Exchange's display requirements, the Exchange will take action against the vendor, up to and including terminating the vendor's ability to receive data from the Exchange.

#### **5110. Business Combinations with Entities not Listed on the Exchange that Result in a Change of Control**

A Company will not be allowed to remain listed in connection with a transaction whereby the Company combines with an entity not listed on the Exchange, resulting in a change of control of the Company and potentially allowing the non-listed entity to obtain an Exchange listing. The new entity will be subject to all initial listing requirements, application procedures, and public interest reviews. In determining whether a change of control has occurred, the Exchange shall consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the Company. The Exchange shall also consider the nature of the businesses and the relative size of the listed Company and the non-listed entity. The Company must submit an application for the post-transaction entity with sufficient time to allow the Exchange to complete its review before the transaction is completed. The review will include the background checks associated with the review of any initial listing application, including the potential use of third party firms, as discussed in Rule 5205(d). If the Company's application for initial listing has not been approved prior to consummation of the transaction, the Exchange will issue a Staff Delisting Determination and begin delisting proceedings pursuant to the Rule 5800 Series.

#### **5200. General Procedures and Prerequisites for Initial and Continued Listing on the Exchange**

##### **5205. The Applications and Qualifications Process**

###### **(a) Overview**

The Exchange may approve a Company for listing after determining that it is not disqualified based on an automatic bar pursuant to Rule 5103; that it meets the Prerequisites to Listing in Rule 5210, the initial Listing Requirements in the Rule 5500 Series, and the Corporate Governance Requirements in the Rule 5600 Series; and that the public interest review has not identified any concerns that call for disapproval pursuant to the Exchange's discretionary authority as set forth in Rule 5104 and IM-5104-1 - 4. In making its determination, the Exchange will consider the totality of information in its possession, including any information provided by an independent qualified third party investigator pursuant to Rule 5205(d).

(b) Application

To apply for listing on the Exchange, a Company shall execute a Listing Agreement and submit a Listing Application on the forms designated by the Exchange providing the information required by Section 12(b) of the Act.

All forms and applications relating to listing of securities on the Exchange referenced in the Rule 5000 Series are available on [www.bxventure.com](http://www.bxventure.com). The Listing Application and process requires the applicant Company to, among other things:

(1) provide detailed descriptions and supporting documentation of all pending or prior inquiries, investigations, lawsuits, litigation, arbitration, hearings or any other legal or administrative proceedings involving current executive officers, directors, promoters, and ten percent or greater shareholders of the Company; all inquiries, investigations, lawsuits, litigation, arbitration, hearings or any other legal or administrative proceedings commenced within the past 10 years involving the Company, its predecessors and subsidiaries; any events described under Item 401(f) of Regulation S-K involving officers, directors, promoters or control persons; all bridge financings, shelf registrations, Regulation S offerings or private placements consummated in the prior six months; and copies of any blue sky memoranda;

(2) file with the Exchange all reports and other documents filed or required to be filed with the Commission or Other Regulatory Authority. This requirement is satisfied by publicly filing documents through the EDGAR System. All required reports must be filed with the Exchange on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with the Exchange shall contain audited financial statements. A Company's compliance with Rule 5500 Series qualifications will be based on its most recent filings and on financial statements that are either: (i) prepared in accordance with U.S. generally accepted accounting principles; (ii) reconciled to U.S. generally accepted accounting principles as required by the Commission's rules; or (iii) prepared in accordance with International Financial Reporting Standards, as issued by the International Accounting Standards Board, for

Companies that are permitted to file financial statements using those standards consistent with the Commission's rules.

(3) provide to the Exchange any information or documentation, public or non-public, deemed necessary to make a determination regarding a Security's initial listing, including, but not limited to, any material provided to or received from the Commission or Other Regulatory Authority. A Company's Security may be denied listing if the Company fails to provide such information within a reasonable period of time or if any communication to the Exchange contains a material misrepresentation or omits material information necessary to make the communication to the Exchange not misleading.

(4) certify that all applicable listing criteria are satisfied; that it is not relying on an exemption from state registration or "blue sky" requirements for companies listed on the Boston Stock Exchange; and to the veracity of all information provided.

(c) Staff Review

(1) In considering a Company's application for listing, Staff shall review all information provided by the Company on its application and pursue additional clarifying documentation from the Company if necessary. In addition, Staff shall:

(A) review the Company's public filings, including the management's discussion and analysis, the stated risk factors, related party transactions, litigation, and the auditor's opinion;

(B) review proxy disclosures to screen for events described under Item 401(f) of Regulation S-K under the Act;

(C) conduct background checks of the Company and affiliated individuals with the use of publicly available databases and other public resources, such as Lexis-Nexis, the Web-CRD regulatory database, and web-based search engines;

(D) refer review of a Company to a qualified independent third party investigative firm in appropriate circumstances, as described below in Section 5205(d).

(2) If the Exchange identifies as a result of its internal review a regulatory issue that triggers an automatic bar under Rule 5103 or another regulatory issue that Staff determines calls for the exercise of discretionary authority to deny listing under Rule 5104 and the Interpretive Materials thereunder, the application will be disapproved.

(3) If the Exchange identifies as a result of its internal review:

(A) a regulatory event described under Item 401(f)(2)-(8) of Regulation S-K about an officer, director, promoter, or control person that occurred more than five years prior; or

(B) a history of regulatory misconduct by a person that is not an officer, director, promoter, or control person of the Company but who has significant influence on or importance to the Company;

it will ordinarily exercise its discretionary authority to deny listing. However, if the Exchange determines that the information identified may not rise to the level requiring denial of the listing, or if it identifies any issue that raises potential public interest concerns about which it seeks additional information (such as, for example, media accounts of criminal allegations or improper business practices, or indication of financial impropriety) it will refer the Company to an independent qualified third party investigative firm for review, as described in Rule 5205(d) below. A decision to list a Company that has been referred to an outside review pursuant to this paragraph must be approved in writing by the Chief Regulatory Officer of the Exchange. The CRO must also approve the listing of any Company with an officer, director, promoter, or control person that has described a bankruptcy under Item 401(f)(1) of Regulation S-K, and any Company for which Staff has identified a past violation or evasion of a corporate governance standard under IM-5104-3, but decided not to exercise its discretionary authority to deny listing.

(d) Independent Qualified Third-Party Investigative Review

The Exchange will retain an independent qualified third party investigative firm to assist in its public interest review process. Staff will make random, regular referrals to such a firm of at least 10% of applicant companies that were not previously listed on a national securities exchange. In addition, Staff will utilize a third party firm when it would be impractical to research a regulatory history occurring outside the United States. Finally, Staff will seek review of a Company when, as described in paragraph 5205(c)(3) above, the internal review has uncovered a regulatory issue or potential public interest concern that does not trigger an automatic bar and Staff has not made a determination to disapprove the application. While the scope of investigations will vary based on the reasons for review, they generally will focus on criminal history, government sanctions and watchlists, and will also include online and onsite checks of court records, searches of relevant state and country criminal databases, and searches of global risk compliance databases covering government prohibited and barred persons. In appropriate circumstances, the outside firm would be asked to make inquiries with respect to the applicant issuer's business practices, customers, suppliers, or whistle blower complaints.

(e) The procedures and determinations described in this Rule 5205 shall be followed, as applicable, whenever a listed Company names a new officer, director, promoter, or control person or makes a disclosure of an event described under Item 401(f) of Regulation S-K under the Act, and whenever Staff, in the course of its on-going monitoring of listed Companies, identifies a potential public interest concern.

**5210. Prerequisites for Applying to List on the Exchange**

All Companies applying to list on the Exchange must meet the following prerequisites:

(a) Registration under 12(b) of the Act

A Security shall be eligible for listing on the Exchange provided that it is:

(1) registered pursuant to Section 12(b) of the Act; or

(2) subject to an exemption issued by the Commission that permits the listing of the Security notwithstanding its failure to be registered pursuant to Section 12(b).

(b) Auditor Registration

Each Company applying for initial listing must be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act.

(c) Direct Registration Program

All securities initially listing on the Exchange must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act. This provision does not extend to non-equity securities that are book-entry only. A Foreign Private Issuer may follow its home country practice in lieu of this requirement by utilizing the process described in Rule 5615(a)(3).

(d) Fees

The Company is required to pay all applicable fees as described in the Rule 5900 Series. The Exchange will not list the Security of any Company that has an outstanding balance with the Exchange or with The Nasdaq Stock Market.

(e) Good Standing

No Security shall be approved for listing that is delinquent in its filing obligation with the Commission or Other Regulatory Authority or suspended from trading by the Commission pursuant to Section 12(k) of the Act or by the appropriate regulatory authorities of the Company's Country of Domicile.

(f) Certification

Upon approval of a listing application, the Exchange shall certify to the Commission, pursuant to Section 12(d) of the Act and the rules thereunder, that it has approved the Security for listing and registration. Listing can commence only upon effectiveness of the Security's registration pursuant to Section 12(d).

(g) Security Depository

(1) "Securities Depository" means a securities depository registered as a clearing agency under Section 17A of the Act.

(2) For initial listing, a Security shall have a CUSIP number or foreign equivalent identifying the securities included in the file of eligible issues maintained by a Securities Depository in accordance with the rules and procedures of such securities depository. This subparagraph shall not apply to a Security if the terms of the Security do not and cannot be reasonably modified to meet the criteria for depository eligibility at all Securities Depositories.

(3) A Security Depository's inclusion of a CUSIP number or foreign equivalent identifying a security in its file of eligible issues does not render the security "depository eligible" under Rule 11310 until:

(A) in the case of any new issue distributed by an underwriting syndicate on or after the date a Securities Depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available, the date of the commencement of trading in such security on the Exchange; or

(B) in the case of any new issue distributed by an underwriting syndicate prior to the date a Securities Depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available where the managing underwriter elects not to deposit the securities on the date of the commencement of trading in such security on the Exchange, such later date designated by the managing underwriter in a notification submitted to the Securities Depository; but in no event more than three (3) months after the commencement of trading in such security on the Exchange.

(h) Limited Partnerships

No security issued in a limited partnership rollup transaction (as defined by Section 14(h) of the Act), shall be eligible for listing unless:

(i) the rollup transaction was conducted in accordance with procedures designed to protect the rights of limited partners as provided in Section 6(b)(9) of the Act, as it may from time to time be amended, and

(ii) a broker-dealer that is a member of a national securities association subject to Section 15A(b)(12) of the Act participates in the rollup transaction.

The Company shall further provide an opinion of counsel stating that such broker-dealer's participation in the rollup transaction was conducted in compliance with the rules of a

national securities association designed to protect the rights of limited partners, as specified in the Limited Partnership Rollup Reform Act of 1993.

In addition to any other applicable requirements, each limited partnership listed on the Exchange shall have a corporate general partner or co-general partner that satisfies the audit committee requirements set forth in the Rule 5600 Series.

Note: The only currently existing national securities association subject to Section 15A(b)(12) of the Act is FINRA. Its rules designed to protect the rights of limited partners, pursuant to the Limited Partnership Rollup Reform Act of 1993, are specified in FINRA Rule 2310.

(i) Ineligibility of Certain Securities

No Security shall be approved for listing on the Exchange if the Security satisfies the quantitative requirements for initial listing on any tier of The Nasdaq Stock Market LLC.

(j) Ticker Symbols

The assignment of symbols for companies listed on the BX Venture Market is governed by the National Market System Plan for the Selection and Reservation of Securities Symbols, pursuant to which securities listed on the BX Venture Market are eligible to have a trading symbol of from one to five characters. Notwithstanding, Companies not previously listed on a national securities exchange must adopt a four or five character ticker symbol as a prerequisite to listing on the BX Venture Market. Companies listing on the BX Venture Market following a delisting from another national securities exchange and that traded on that exchange with a one, two, or three-character symbol will be permitted to retain the ticker symbol, provided that the Company must, prior to listing on the BX Venture Market, issue a press release announcing its delisting from the other exchange and comply with the disclosure requirements of Item 3.01 of Form 8-K.

## **5215. American Depositary Receipts**

(a) Eligibility

American Depositary Receipts can be listed on the Exchange provided they represent shares in a non-Canadian foreign Company.

(b) Computations

In the case of American Depositary Receipts, stockholders' equity and total assets shall relate to the foreign issuer and not to any depositary or any other person deemed to be an issuer for purposes of Form S-12 under the Securities Act of 1933. The underlying security will be considered when determining Publicly Held Shares, stockholders' equity,

Round Lot or Public Holders, total assets, operating history and Market Value of Listed Securities.

### **5225. Listing Requirements for Units**

- (a) All component parts of a Unit shall meet the requirements for initial and continued listing.
- (b) For initial and continued listing, a unit must have at least two registered and active Market Makers.
- (c) The minimum period for listing units shall be 30 days from the first day of listing, except the period may be shortened if the units are suspended or withdrawn for regulatory purposes. Companies and underwriters seeking to withdraw units from listing must provide the Exchange with notice of such intent at least 15 days prior to withdrawal.
- (d) The issuer of units shall include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed with the Commission under the federal securities law and the rules and regulations thereunder a statement regarding any intention to delist the units immediately after the minimum listing period.

### **5250. Obligations for Companies Listed on the Exchange**

#### **(a) Obligation to Provide Information to the Exchange**

(1) The Exchange may request any additional information or documentation, public or non-public, deemed necessary to make a determination regarding a Company's continued listing, including, but not limited to, any material provided to or received from the Commission or Other Regulatory Authority. A Company may be denied continued listing if it fails to provide such information within a reasonable period of time or if any communication to the Exchange contains a material misrepresentation or omits material information necessary to make the communication to the Exchange not misleading. The Company shall provide full and prompt responses to requests by the Exchange or by FINRA acting on behalf of the Exchange for information related to unusual market activity or to events that may have a material impact on trading of its securities in the Exchange.

(2) As set forth in Rule 5625, a Company must provide the Exchange with prompt notification after an Executive Officer of the Company becomes aware of any noncompliance by the Company with the requirements of the Rule 5600 Series.

#### **(b) Obligation to Make Public Disclosure**

(1) Disclosure of Material Information

Except in unusual circumstances as described in IM-5250-1, a Company shall make prompt disclosure to the public through any Regulation FD compliant method (or combination of methods) of disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions. The Company shall, prior to the release of the information, provide notice of such disclosure to the MarketWatch Department at least ten minutes prior to public announcement if the information involves any of the events set forth in IM-5250-1 and the public release of the material information is made during market hours. If the public release of the material information is made outside of market hours, Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET. As described in IM-5250-1, prior notice to the MarketWatch Department must be made through the electronic disclosure submission system available at a website designated by the Exchange for that purpose, except in emergency situations.

#### (2) Disclosure of Notification of Deficiency

As set forth in Rule 5810(b), a Company that receives a notification of deficiency from the Exchange is required to make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing receipt of the notification and the Rule(s) upon which the deficiency is based. However, note that in the case of a deficiency related to the requirement to file a periodic report contained in Rule 5250(c)(1) or (2), the Company is required to make the public announcement by issuing a press release. As described in Rule 5250(b)(1) and IM-5250-1, the Company must notify the Exchange's MarketWatch Department about the announcement through the electronic disclosure submission system available at a website designated by the Exchange for that purpose, except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during market hours, the Company must notify MarketWatch at least ten minutes prior to the announcement. If the public announcement is made outside of market hours, the Company must notify MarketWatch of the announcement prior to 6:50 a.m. ET.

#### (3) Requirement to Disseminate Press Releases over National Newswire

A Company that issues a press release in satisfaction of its disclosure obligations as described in paragraphs (1) and (2) above is required to disseminate the press release over a national newswire service acceptable to the Exchange.

#### (4) References to Listing on the Exchange

To avoid investor confusion, Companies listed on the Exchange must refer to themselves as being listed on the "BX Venture Market", unless otherwise required by applicable rules or regulations, and must not in any way, whether in press releases, public statements or otherwise, represent that they are listed on The Nasdaq Stock Market. A Company that

represents itself as listed on The Nasdaq Stock Market or that refers to itself as a Nasdaq listed company will be subject to immediate delisting pursuant to procedures in the Rule 5800 Series.

(c) Obligation to File Periodic Financial Reports

(1) A Company shall timely file all required periodic financial reports with the Commission through the EDGAR System or with the Other Regulatory Authority. A Company that does not file through the EDGAR System shall supply to the Exchange two (2) copies of all reports required to be filed with the Other Regulatory Authority or email an electronic version of the report to the Exchange. All required reports must be filed with the Exchange on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with the Exchange shall contain audited financial statements.

(2) Foreign Private Issuer Interim Reports

Each Foreign Private Issuer shall submit on a Form 6-K an interim balance sheet and income statement as of the end of its second quarter. This information, which must be presented in English, but does not have to be reconciled to U.S. GAAP, must be provided no later than six months following the end of the Company's second quarter. In the case of a Foreign Private Issuer that is a limited partnership, such information shall be distributed to limited partners if required by statute or regulation in the jurisdiction in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement.

(3) Auditor Registration

Each listed Company shall be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act.

(d) Distribution of Annual and Interim Reports

(1) Distribution of Annual Reports

Each Company (including a limited partnership) shall make available to Shareholders an annual report containing audited financial statements of the Company and its subsidiaries (which, for example, may be on Form 10-K, 20-F, 40-F or N-CSR) within a reasonable period of time following the filing of the annual report with the Commission. A Company may comply with this requirement either:

(A) by mailing the report to Shareholders;

(B) by satisfying the requirements for furnishing an annual report contained in Rule 14a-16 under the Act; or

(C) by posting the annual report to Shareholders on or through the Company's website (or, in the case of a Company that is an investment company that does not maintain its own website, on a website that the Company is allowed to use to satisfy the website posting requirement in Rule 16a-3(k) under the Act), along with a prominent undertaking in the English language to provide Shareholders, upon request, a hard copy of the Company's annual report free of charge. A Company that chooses to satisfy this requirement pursuant to this paragraph (C) must, simultaneous with this posting, issue a press release stating that its annual report has been filed with the Commission (or Other Regulatory Authority). This press release shall also state that the annual report is available on the Company's website and include the website address and that Shareholders may receive a hard copy free of charge upon request. A Company must provide such hard copies within a reasonable period of time following the request.

## (2) Distribution of Interim Reports

Companies that distribute interim reports to Shareholders should distribute such reports to both registered and beneficial Shareholders. Companies are also encouraged to consider additional technological methods to communicate such information to Shareholders in a timely and less costly manner as such technology becomes available.

## (3) Access to Quarterly Reports

(A) Each Company that is not a limited partnership (limited partnerships are governed by paragraph (B) below) and is subject to Rule 13a-13 under the Act shall make available copies of quarterly reports including statements of operating results to Shareholders either prior to or as soon as practicable following the Company's filing of its Form 10-Q with the Commission. If the form of such quarterly report differs from the Form 10-Q, the Company shall file one copy of the report with the Exchange in addition to filing its Form 10-Q pursuant to Rule 5250(c)(1). The statement of operations contained in quarterly reports shall disclose, at a minimum, any substantial items of an unusual or non-recurrent nature and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.

(B) Each Company that is limited partnership and is subject to Rule 13a-13 under the Act shall make available copies of quarterly reports including statements of operating results to limited partners either prior to or as soon as practicable following the partnership's filing of its Form 10-Q with the Commission. Such reports shall be distributed to limited partners if required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. If the form of such quarterly report differs from the Form 10-Q, the Company

shall file one copy of the report with the Exchange in addition to filing its Form 10-Q pursuant to Rule 5250(c)(1). The statement of operations contained in quarterly reports shall disclose, at a minimum, any substantial items of an unusual or non-recurrent nature and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.

(4) Access to Interim Reports

(A) Each Company that is not a limited partnership and is not subject to Rule 13a-13 under the Act and that is required to file with the Commission, or Other Regulatory Authority, interim reports relating primarily to operations and financial position, shall make available to Shareholders reports which reflect the information contained in those interim reports. Such reports shall be made available to Shareholders either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report provided to Shareholders differs from that filed with the regulatory authority, the Company shall file one copy of the report to Shareholders with the Exchange in addition to the report to the regulatory authority that is filed with the Exchange pursuant to Rule 5250(c)(1).

(B) Each Company that is a limited partnership that is not subject to Rule 13a-13 under the Act and is required to file with the Commission, or Other Regulatory Authority, interim reports relating primarily to operations and financial position, shall make available to limited partners reports which reflect the information contained in those interim reports. Such reports shall be distributed to limited partners if required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. Such reports shall be distributed to limited partners either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report provided to limited partners differs from that filed with the regulatory authority, the Company shall file one copy of the report to limited partners with the Exchange in addition to the report to the regulatory authority that is filed with the Exchange pursuant to Rule 5250(c)(1).

(5) A Foreign Private Issuer may follow its home country practice in lieu of the requirements of Rule 5250(d)(1), (2), (3) or (4) by utilizing the process described in Rule 5615(a)(3).

(6) The Company shall comply with any obligation of any person regarding filing or disclosure of information material to the Company or the Security, whether such obligation arises under the securities laws of the United States or the Company's Country of Domicile, or other applicable federal or state statutes or rules.

(e) Exchange Notification Requirements

Various corporate events resulting in material changes will trigger the requirement for Companies to submit certain forms and applicable fees to the Exchange as specified below.

(1) Change in Number of Shares Outstanding

The Company shall file, on a form designated by the Exchange no later than 10 days after the occurrence, any aggregate increase or decrease of any class of securities listed on the Exchange that exceeds 5% of the amount of securities of the class outstanding.

(2) Listing of Additional Shares

A Company shall be required to notify the Exchange, except for a Company solely listing American Depositary Receipts, at least 15 calendar days prior to establishing or materially amending a stock option plan, purchase plan or other equity compensation arrangement pursuant to which stock may be acquired by officers, directors, employees, or consultants without shareholder approval. The Exchange recognizes that when a Company makes an equity grant to induce an individual to accept employment, as permitted by the exception contained in Rule 5635(a)(4), it may not be practical to provide the advance notice otherwise required by this Rule. Therefore, when a Company relies on that exception to make such an inducement grant without shareholder approval, it is sufficient to notify the Exchange about the grant and the use of the exception no later than the earlier of: (x) five calendar days after entering into the agreement to issue the securities; or (y) the date of the public announcement of the award required by Rule 5635(a)(4).

The notifications required by this paragraph must be made on the Notification: Listing of Additional Shares and the Exchange encourages Companies to file this form as soon as practicable, even if all of the relevant terms are not yet known. The Exchange reviews these forms to determine compliance with applicable Exchange rules, including the shareholder approval requirements. Therefore, if a Company fails to file timely the form required by this paragraph, the Exchange may issue either a Public Reprimand Letter or a Delisting Determination (pursuant to the Rule 5800 Series).

(3) Record Keeping Change

(A) The Company shall file on a form designated by the Exchange notification of any corporate name change, or other change requiring payment of a record-keeping fee, no later than 10 days after the change. The Company shall also pay the appropriate Record-Keeping Fee as referenced in the Rule 5900 Series.

(B) The Company shall also notify the Exchange promptly in writing, absent any fees, of any change in the general character or nature of its business and any change in the address of its principal executive offices.

#### (4) Substitution Listing

The Company shall notify the Exchange of a Substitution Listing Event (other than a reincorporation or a change to a Company's place of organization) no later than 15 calendar days prior to the implementation of such event by filing the appropriate form as designated by the Exchange. For a re-incorporation or change to a Company's place of organization, a Company shall notify the Exchange as soon as practicable after such event has been implemented by filing the appropriate form as designated by the Exchange. The Company shall also pay the appropriate Substitution Listing Fee as referenced in the Rule 5900 Series.

#### (5) Transfer Agent, Registrar, ADR Bank Changes

The issuer of any class of securities listed on the Exchange, except for American Depositary Receipts, shall notify the Exchange promptly in writing of any change in the Company's transfer agent or registrar.

#### (6) Dividend Action or Stock Distribution

In the case of any dividend action or action relating to a stock distribution of a listed stock the Company shall, no later than 10 calendar days prior to the record date of such action:

- (i) notify the Exchange by filing the appropriate form as designated by the Exchange; and
- (ii) provide public notice using a Regulation FD compliant method.

Notice to the Exchange should be given as soon as possible after declaration and, in any event, no later than simultaneously with the public notice.

#### (7) Securities Issuance

(i) A Company must notify the Exchange prior to any issuance of securities in a capital raising transaction and represent that it is not relying on an exemption from state registration or "blue sky" requirements for companies listed on the Boston Stock Exchange. This notice must be provided on the appropriate form as designated by the Exchange.

(ii) A Company must also provide the Exchange with copies of any "blue sky memorandum" and other documents discussing the treatment of a securities issuance under the blue-sky laws of the various states no later than five days after the issuance of

the securities. These documents must be provided even where they are prepared for a third party, such as the underwriter of the securities offering.

(f) Obligation to Pay Fees

The Company is required to pay all applicable fees as described in the Rule 5900 Series.

**IM-5250-1. Disclosure of Material Information**

Rule 5250(b)(1) requires that, except in unusual circumstances, Companies must disclose promptly to the public through any Regulation FD compliant method (or combination of methods) of disclosure any material information that would reasonably be expected to affect the value of their securities or influence investors' decisions. Companies must notify the Exchange at least ten minutes prior to the release to the public of material information that involves any of the events set forth below when the public release of the information is made during market hours (7:00 a.m. to 8:00 p.m. ET). If the public release of the material information is made outside of market hours, Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET. Under unusual circumstances Companies may not be required to make public disclosure of material events; for example, where it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the Company to pursue its legitimate corporate objectives. However, Companies remain obligated to disclose this information to the Exchange upon request pursuant to Rule 5250(a)(1).

Whenever unusual market activity takes place in a Company's securities, the Company normally should determine whether there is material information or news which should be disclosed. If rumors or unusual market activity indicate that information on impending developments has become known to the investing public, or if information from a source other than the Company becomes known to the investing public, a clear public announcement may be required as to the state of negotiations or development of Company plans. Such an announcement may be required, even though the Company may not have previously been advised of such information or the matter has not yet been presented to the Company's Board of Directors for consideration. In certain circumstances, it may also be appropriate to publicly deny false or inaccurate rumors, which are likely to have, or have had, an effect on the trading in its securities or would likely have an influence on investment decisions.

Notification to the MarketWatch Department

Companies must notify the MarketWatch Department prior to the distribution of certain material news at least ten minutes prior to public announcement of the news when the public release of the information is made during market hours (7:00 a.m. to 8:00 p.m. ET). If the public release of the material information is made outside of market hours,

Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET. Except in emergency situations, this notification must be made through the Exchange's electronic disclosure submission system available at a website designated by the Exchange for that purpose. In emergency situations, Companies may instead provide notification by telephone or facsimile. Examples of an emergency situation include: lack of computer or internet access; technical problems on either the Company or the Exchange system or an incompatibility between those systems; and a material development such that no draft disclosure document exists, but immediate notification to the MarketWatch Department is important based on the material event.

If a Company repeatedly fails to notify the Exchange at least ten minutes prior to the distribution of material news during market hours or prior to 6:50 a.m. ET for material news distributed outside of market hours, or repeatedly fails to use the electronic disclosure submission system when the Exchange finds no emergency situation existed, the Exchange may issue a Public Reprimand Letter (as defined in Rule 5805(j)) or, in extreme cases, a Staff Delisting Determination (as defined in Rule 5805(h)). In determining whether to issue a Public Reprimand Letter, the Exchange will consider whether the Company has demonstrated a pattern of failures, whether the Company has been contacted concerning previous violations, and whether the Company has taken steps to assure that future violations will not occur.

#### Trading Halts

A trading halt benefits current and potential Shareholders by halting all trading in any Exchange securities until there has been an opportunity for the information to be disseminated to the public. This decreases the possibility of some investors acting on information known only to them. A trading halt provides the public with an opportunity to evaluate the information and consider it in making investment decisions. It also alerts the marketplace to the fact that news has been released.

The MarketWatch Department monitors real time trading in all Exchange securities during the trading day for price and volume activity. In the event of certain price and volume movements, the MarketWatch Department may contact a Company and its Market Makers in order to ascertain the cause of the unusual market activity. The MarketWatch Department treats the information provided by the Company and other sources in a highly confidential manner, and uses it to assess market activity and assist in maintaining fair and orderly markets. An Exchange listing includes an obligation to disclose to the MarketWatch Department information that the Company is not otherwise disclosing to the investing public or the financial community. On, occasion, changes in market activity prior to the Company's release of material information may indicate that the information has become known to the investing public. Changes in market activity also may occur when there is a release of material information by a source other than the

Company, such as when a Company is subject to an unsolicited take-over bid by another company. Depending on the nature of the event and the Company's views regarding the business advisability of disclosing the information, the Exchange's MarketWatch Department may work with the Company to accomplish a timely release of the information. Furthermore, depending on the materiality of the information and the anticipated affect of the information on the price of the Company's securities, the Exchange's MarketWatch Department may advise the Company that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The institution of a temporary trading halt pending the release of information is not a reflection on the value of the securities halted. Such trading halts are instituted, among other reasons, to insure that material information is fairly and adequately disseminated to the investing public and the marketplace, and to provide investors with the opportunity to evaluate the information in making investment decisions. A trading halt normally lasts one half hour but may last longer if a determination is made that news has not been adequately disseminated or that the original or an additional basis under Rule 4120 exists for continuing the trading halt.

The MarketWatch Department is required to keep non-public information, confidential and to use such information only for regulatory purposes.

Companies are required to notify the MarketWatch Department of the release of material information included in the following list of events at least ten minutes prior to the release of such information to the public when the public release of the information is made during market hours (7:00 a.m. to 8:00 p.m. ET). If the public release of the material information is made outside of market hours, Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET. It should also be noted that every development that might be reported to the Exchange in these areas would not necessarily be deemed to warrant a trading halt. In addition to the following list of events, the Exchange encourages Companies to avail themselves of the opportunity for advance notification to the MarketWatch Department in situations where they believe, based upon their knowledge of the significance of the information, that a temporary trading halt may be necessary or appropriate.

- (a) Financial-related disclosures, including quarterly or yearly earnings, earnings restatements, pre-announcements or "guidance."
- (b) Corporate reorganizations and acquisitions, including mergers, tender offers, asset transactions and bankruptcies or receiverships.
- (c) New products or discoveries, or developments regarding customers or suppliers (e.g., significant developments in clinical or customer trials, and receipt or cancellation of a material contract or order).

- (d) Senior management changes of a material nature or a change in control.
- (e) Resignation or termination of independent auditors, or withdrawal of a previously issued audit report.
- (f) Events regarding the Company's securities e.g., defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, or public or private sales of additional securities.
- (g) Significant legal or regulatory developments.
- (h) Any event requiring the filing of a Form 8-K.

#### Use of Regulation FD Compliant Methods in the Disclosure of Material Information

Regardless of the method of disclosure that a Company chooses to use, Companies are required to notify the MarketWatch Department of the release of material information that involves any of the events set forth above at least ten minutes prior to its release to the public when the public release of the information is made during market hours (7:00 a.m. to 8:00 p.m. ET). If the public release of the material information is made outside of market hours, Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET. When a Company chooses to utilize a Regulation FD compliant method for disclosure other than a press release or Form 8-K, the Company will be required to provide prior notice the MarketWatch Department of: 1) the press release announcing the logistics of the future disclosure event; and 2) a descriptive summary of the material information to be announced during the disclosure event if the press release does not contain such a summary.

Depending on the materiality of the information and the anticipated effect of the information on the price of the Company's securities, the MarketWatch Department may advise the Company that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The MarketWatch Department will assess with Companies using methods of disclosure other than a press release or Form 8-K the timing within the disclosure event when the Company will cover the material information so that the halt can be commenced accordingly. Companies will be responsible for promptly alerting the MarketWatch Department of any significant changes to the previously outlined disclosure timeline. Companies are reminded that the posting of information on the Company's website may not by itself be considered a sufficient method of public disclosure under Regulation FD and SEC guidance and releases thereunder, and as a result, under the Exchange's rules.

#### **5255. Direct Registration Program**

(a) Except as indicated in paragraph (c) below, all securities listed on the Exchange (except securities which are book-entry only) must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act.

(b) If a Company establishes or maintains a Direct Registration Program for its Shareholders, the Company shall, directly or through its transfer agent, participate in an electronic link with a clearing agency registered under Section 17A of the Act to facilitate the electronic transfer of securities held pursuant to such program.

(c) Exemption

A Foreign Private Issuer must be eligible to participate in a Direct Registration Program, as required by Rule 5255, unless prohibited from complying by a law or regulation in its home country. In such case, a Foreign Private Issuer may follow its home country practice in lieu of this requirement by using the process described in Rule 5615(a)(3) and IM-5615-3.

**5300. RESERVED.**

**5400. RESERVED.**

**5500. Listing Requirements**

**5501. Preamble to the Exchange's Listing Requirements**

This section contains the initial and continued listing requirements for listing a Company's Security on the Exchange.

In addition to meeting the quantitative requirements in this section, a Company must meet the requirements of the Rule 5100 Series, the disclosure obligations set forth in the Rule 5200 Series, the Corporate Governance requirements set forth in the Rule 5600 Series, and pay any applicable fees in the Rule 5900 Series. A Company's failure to meet any of the continued listing requirements will be processed in accordance with the provisions set forth in the Rule 5800 Series.

**5505. Initial Listing of Securities Not Previously Listed on a National Securities Exchange**

(a) In order to be listed on the Exchange, a Security, other than a Security described in Rule 5506, must meet all of the following requirements:

- (1) \$1 million of stockholders' equity or \$5 million total assets;
- (2) 200,000 Publicly Held Shares;
- (3) 200 Public Holders, at least 100 of which must be Round Lot Holders;

- (4) \$2 million Market Value of Listed Securities;
- (5) \$1.00 minimum bid price per share;
- (6) One year operating history; and
- (7) Two registered and active Market Makers.

(b) In addition to satisfying the quantitative requirements above, the Company must also demonstrate that it has a plan to maintain sufficient working capital for its planned business for at least twelve months after the first day of listing. The Company's plan may include estimates on cash-flow statements, planned and available measures for financing, descriptions of the planned business and investments, and well-founded assessments of the future prospects of the Company. It is important that the basis for all assumptions be made clear.

#### **5506. Initial Listing of Securities Previously Listed on a National Securities Exchange**

(a) In lieu of the requirements of Rule 5505, a Security may be listed on the Exchange if the Security was previously listed on a national securities exchange and meets all of the following requirements:

- (1) 200,000 Publicly Held Shares;
- (2) 200 Public Holders, at least 100 of which must be Round Lot Holders;
- (3) \$2 million Market Value of Listed Securities;
- (4) \$0.25 minimum bid price per share; and
- (5) Two registered and active Market Makers.

(b) For purposes of this Rule 5506, a Company will be considered to have been previously listed on another national securities exchange:

- (1) if it was listed on such an exchange at any time during the three months before its listing on the Exchange; or
- (2) in the case of a Company that applies to list prior to September 30, 2011, if it was listed on another national securities exchange at any time between January 1, 2010 and September 30, 2011.

#### **5507. Rights and Warrants**

The Exchange will only initially list a right or warrant if the security underlying the right or warrant is listed on the Exchange or a covered security, as described in Section 18(b) of the Securities Act of 1933.

### **5550. Continued Listing of Securities**

In order to remain listed on the Exchange, a Security must continue to meet all of the following requirements. Failure to meet any of the continued listing requirements will be processed in accordance with the provisions set forth in the Rule 5800 Series.

- (a) At least 200,000 Publicly Held Shares;
- (b) At least 200 Public Holders;
- (c) Market Value of Listed Securities of at least \$1 million;
- (d) Minimum bid price of at least \$0.25 per share; and
- (e) At least two registered and active Market Makers.

### **5551. Rights and Warrants**

In order for a right or warrant to remain listed on the Exchange, the security underlying the right or warrant must remain listed on the Exchange or be a covered security, as described in Section 18(b) of the Securities Act of 1933.

### **5600. Corporate Governance Requirements**

#### **5601. Preamble to the Corporate Governance Requirements**

In addition to meeting the quantitative requirements in the Rule 5200 and 5500 Series, Companies applying to list and listed on the Exchange must meet the qualitative requirements outlined in this Rule 5600 Series. These requirements include rules relating to a Company's board of directors, including audit committees and Independent Director oversight of executive officer compensation; code of conduct; shareholder meetings, including proxy solicitation and quorum; review of related party transactions; shareholder approval; and voting rights. Exemptions to these rules, including phase-in schedules, are set forth in Rule 5615.

The Exchange maintains a website that provides guidance on the applicability of the corporate governance requirements by FAQs and published summaries of anonymous versions of previously issued staff interpretative letters. Companies are encouraged to contact Listing Qualifications to discuss any complex issues or transactions. Companies can also submit a request for a written interpretation pursuant to Rule 5602.

#### **5602. Written Interpretations of Exchange Listing Rules**

(a) A Company listed on the Exchange may request from the Exchange a written interpretation of the Rules contained in the 5000 through 5900 Series. In connection with such a request, the Company must submit to the Exchange a non-refundable fee of \$15,000.

(b) A response to a request for a written interpretation generally will be provided within four weeks from the date the Exchange receives all information necessary to respond to the request, although if a Company requires a response by a specific date it should state the date in its request for the written interpretation and the Exchange will attempt to respond by that date.

(c) An applicant to the Exchange that has submitted the applicable application fee under Rule 5910(a) will not also be required to submit a fee in connection with a request for a written interpretation involving the applicant's initial listing on the Exchange.

(d) The Exchange's Board of Directors or its designee may, in its discretion, defer or waive all or any part of the written interpretation fee prescribed herein.

(e) The Exchange shall publish on its website a summary of each interpretation within 90 days from the date such interpretation is issued.

(f) A Company is eligible to request a written interpretation from the Exchange pursuant to paragraphs (a) or (b), subject to payment of the appropriate fee, if it has a class of securities that has been suspended or delisted from the Exchange, but the suspension or delisting decision is under review pursuant to the Rule 5800 Series.

### **5605. Independent Directors and Audit Committees**

#### **(a) Definitions**

(1) "Executive Officer" means those officers covered in Rule 16a-1(f) under the Act.

(2) "Independent Director" means a person other than an Executive Officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. For purposes of this rule, "Family Member" means a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home. The following persons shall not be considered independent:

(A) a director who is, or at any time during the past three years was, employed by the Company;

(B) a director who accepted or who has a Family Member who accepted any compensation from the Company in excess of \$120,000 during any period of twelve

consecutive months within the three years preceding the determination of independence, other than the following:

- (i) compensation for board or board committee service;
- (ii) compensation paid to a Family Member who is an employee (other than an Executive Officer) of the Company; or
- (iii) benefits under a tax-qualified retirement plan, or non-discretionary compensation.

Provided, however, that in addition to the requirements contained in this paragraph (B), audit committee members are also subject to additional, more stringent requirements under Rule 5605(c)(2).

(C) a director who is a Family Member of an individual who is, or at any time during the past three years was, employed by the Company as an Executive Officer;

(D) a director who is, or has a Family Member who is, a partner in, or a controlling Shareholder or an Executive Officer of, any organization to which the Company made, or from which the Company received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year, or \$200,000, whichever is more, other than the following:

- (i) payments arising solely from investments in the Company's securities; or
- (ii) payments under non-discretionary charitable contribution matching programs.

(E) a director of the Company who is, or has a Family Member who is, employed as an Executive Officer of another entity where at any time during the past three years any of the Executive Officers of the Company serve on the compensation committee of such other entity; or

(F) a director who is, or has a Family Member who is, a current partner of the Company's outside auditor, or was a partner or employee of the Company's outside auditor who worked on the Company's audit at any time during any of the past three years.

(G) in the case of an investment company, in lieu of paragraphs (A)-(F), a director who is an "interested person" of the Company as defined in Section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee.

#### **IM-5605-1. Definition of Independence Rule 5605(a)(2)**

It is important for investors to have confidence that individuals serving as Independent Directors do not have a relationship with the listed Company that would impair their

independence. The board has a responsibility to make an affirmative determination that no such relationships exist through the application of Rule 5605(a)(2). Rule 5605(a)(2) also provides a list of certain relationships that preclude a board finding of independence. These objective measures provide transparency to investors and Companies, facilitate uniform application of the rules, and ease administration. Because the Exchange does not believe that ownership of Company stock by itself would preclude a board finding of independence, it is not included in the aforementioned objective factors. It should be noted that there are additional, more stringent requirements that apply to directors serving on audit committees, as specified in Rule 5605(c).

The Rule's reference to the "Company" includes any parent or subsidiary of the Company. The term "parent or subsidiary" is intended to cover entities the Company controls and consolidates with the Company's financial statements as filed with the Commission (but not if the Company reflects such entity solely as an investment in its financial statements). The reference to Executive Officer means those officers covered in Rule 16a-1(f) under the Act. In the context of the definition of Family Member under Rule 5605(a)(2), the reference to marriage is intended to capture relationships specified in the Rule (parents, children and siblings) that arise as a result of marriage, such as "in-law" relationships.

The three year look-back periods referenced in paragraphs (A), (C), (E) and (F) of the Rule commence on the date the relationship ceases. For example, a director employed by the Company is not independent until three years after such employment terminates.

For purposes of paragraph (A) of the Rule, employment by a director as an Executive Officer on an interim basis shall not disqualify that director from being considered independent following such employment, provided the interim employment did not last longer than one year. A director would not be considered independent while serving as an interim officer. Similarly, for purposes of paragraph (B) of the Rule, compensation received by a director for former service as an interim Executive Officer need not be considered as compensation in determining independence after such service, provided such interim employment did not last longer than one year. Nonetheless, the Company's board of directors still must consider whether such former employment and any compensation received would interfere with the director's exercise of independent judgment in carrying out the responsibilities of a director. In addition, if the director participated in the preparation of the Company's financial statements while serving as an interim Executive Officer, Rule 5605(c)(2)(A)(iii) would preclude service on the audit committee for three years.

Paragraph (B) of the Rule is generally intended to capture situations where a compensation is made directly to (or for the benefit of) the director or a Family Member of the director. For example, consulting or personal service contracts with a director or

Family Member of the director would be analyzed under paragraph (B) of the Rule. In addition, political contributions to the campaign of a director or a Family Member of the director would be considered indirect compensation under paragraph (B). Non-preferential payments made in the ordinary course of providing business services (such as payments of interest or proceeds related to banking services or loans by a Company that is a financial institution or payment of claims on a policy by a Company that is an insurance company), payments arising solely from investments in the Company's securities and loans permitted under Section 13(k) of the Act will not preclude a finding of director independence as long as the payments are non-compensatory in nature. Depending on the circumstances, a loan or payment could be compensatory if, for example, it is not on terms generally available to the public.

Paragraph (D) of the Rule is generally intended to capture payments to an entity with which the director or Family Member of the director is affiliated by serving as a partner, controlling Shareholder or Executive Officer of such entity. Under exceptional circumstances, such as where a director has direct, significant business holdings, it may be appropriate to apply the corporate measurements in paragraph (D), rather than the individual measurements of paragraph (B). Issuers should contact the Exchange if they wish to apply the Rule in this manner. The reference to a partner in paragraph (D) is not intended to include limited partners. It should be noted that the independence requirements of paragraph (D) of the Rule are broader than Rule 10A-3(e)(8) under the Act.

Under paragraph (D), a director who is, or who has a Family Member who is, an Executive Officer of a charitable organization may not be considered independent if the Company makes payments to the charity in excess of the greater of 5% of the charity's revenues or \$200,000. However, the Exchange encourages Companies to consider other situations where a director or their Family Member and the Company each have a relationship with the same charity when assessing director independence.

For purposes of determining whether a lawyer is eligible to serve on an audit committee, Rule 10A-3 under the Act generally provides that any partner in a law firm that receives payments from the issuer is ineligible to serve on that issuer's audit committee. In determining whether a director may be considered independent for purposes other than the audit committee, payments to a law firm would generally be considered under Rule 5605(a)(2), which looks to whether the payment exceeds the greater of 5% of the recipient's gross revenues or \$200,000; however, if the firm is a sole proprietorship, Rule 5605(a)(2)(B), which looks to whether the payment exceeds \$120,000, applies.

Paragraph (G) of the Rule provides a different measurement for independence for investment companies in order to harmonize with the Investment Company Act of 1940. In particular, in lieu of paragraphs (A)-(F), a director who is an "interested person" of the

Company as defined in Section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee, shall not be considered independent.

(b) Executive Sessions

Independent Directors must have regularly scheduled meetings at which only Independent Directors are present ("executive sessions").

**IM-5605-2. Executive Sessions of Independent Directors**

Regularly scheduled executive sessions encourage and enhance communication among Independent Directors. It is contemplated that executive sessions will occur at least twice a year, and perhaps more frequently, in conjunction with regularly scheduled board meetings.

(c) Audit Committee Requirements

(1) Audit Committee Charter

Each Company must certify that it has adopted a formal written audit committee charter and that the audit committee will review and reassess the adequacy of the formal written charter on an annual basis. The charter must specify:

- (A) the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes and membership requirements;
- (B) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the Company, actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to oversee the independence of the outside auditor;
- (C) the committee's purpose of overseeing the accounting and financial reporting processes of the Company and the audits of the financial statements of the Company; and
- (D) the specific audit committee responsibilities and authority set forth in Rule 5605(c)(3).

**IM-5605-3. Audit Committee Charter**

Each Company is required to adopt a formal written charter that specifies the scope of its responsibilities and the means by which it carries out those responsibilities; the outside auditor's accountability to the audit committee; and the audit committee's responsibility to

ensure the independence of the outside auditor. Consistent with this, the charter must specify all audit committee responsibilities set forth in Rule 10A-3(b)(2), (3), (4) and (5) under the Act. Rule 10A-3(b)(3)(ii) under the Act requires that each audit committee must establish procedures for the confidential, anonymous submission by employees of the listed Company of concerns regarding questionable accounting or auditing matters. The rights and responsibilities as articulated in the audit committee charter empower the audit committee and enhance its effectiveness in carrying out its responsibilities.

Rule 5605(c)(3) imposes additional requirements for investment company audit committees that must also be set forth in audit committee charters for these Companies.

## (2) Audit Committee Composition

(A) Each Company must have, and certify that it has and will continue to have, an audit committee of at least three members, each of whom must: (i) be an Independent Director as defined under Rule 5605(a)(2); (ii) meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act); (iii) not have participated in the preparation of the financial statements of the Company or any current subsidiary of the Company at any time during the past three years; and (iv) be able to read and understand fundamental financial statements, including a Company's balance sheet, income statement, and cash flow statement. Additionally, each Company must certify that it has, and will continue to have, at least one member of the audit committee who has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

## (B) Non-Independent Director for Exceptional and Limited Circumstances

Notwithstanding paragraph (2)(A)(i), one director who: (i) is not an Independent Director as defined in Rule 5605(a)(2); (ii) meets the criteria set forth in Section 10A(m)(3) under the Act and the rules thereunder; and (iii) is not currently an Executive Officer or employee or a Family Member of an Executive Officer, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the Company and its Shareholders. A Company, other than a Foreign Private Issuer, that relies on this exception must comply with the disclosure requirements set forth in Item 407(d)(2) of Regulation S-K. A Foreign Private Issuer that relies on this exception must disclose in its next annual report (e.g., Form 20-F or 40-F) the nature of the relationship that makes the individual not independent and the reasons for the board's determination.

A member appointed under this exception may not serve longer than two years and may not chair the audit committee.

#### **IM-5605-4. Audit Committee Composition**

Audit committees are required to have a minimum of three members and be comprised only of Independent Directors. In addition to satisfying the Independent Director requirements under Rule 5605(a)(2), audit committee members must meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act): they must not accept any consulting, advisory, or other compensatory fee from the Company other than for board service, and they must not be an affiliated person of the Company. As described in Rule 10A-3(d)(1) and (2), a Company must disclose reliance on certain exceptions from Rule 10A-3 and disclose an assessment of whether, and if so, how, such reliance would materially adversely affect the ability of the audit committee to act independently and to satisfy the other requirements of Rule 10A-3. It is recommended also that a Company disclose in its annual proxy (or, if the Company does not file a proxy, in its Form 10-K or 20-F) if any director is deemed eligible to serve on the audit committee but falls outside the safe harbor provisions of Rule 10A-3(e)(1)(ii) under the Act. A director who qualifies as an audit committee financial expert under Item 407(d)(5)(ii) and (iii) of Regulation S-K is presumed to qualify as a financially sophisticated audit committee member under Rule 5605(c)(2)(A).

#### **(3) Audit Committee Responsibilities and Authority**

The audit committee must have the specific audit committee responsibilities and authority necessary to comply with Rule 10A-3(b)(2), (3), (4) and (5) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act), concerning responsibilities relating to: (i) registered public accounting firms, (ii) complaints relating to accounting, internal accounting controls or auditing matters, (iii) authority to engage advisers, and (iv) funding as determined by the audit committee. Audit committees for investment companies must also establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

#### **(4) Cure Periods for Audit Committee**

(A) If a Company fails to comply with the audit committee composition requirement under Rule 10A-3(b)(1) under the Act and Rule 5605(c)(2)(A) because an audit committee member ceases to be independent for reasons outside the member's reasonable control, the audit committee member may remain on the audit committee until the earlier

of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement. A Company relying on this provision must provide notice to the Exchange immediately upon learning of the event or circumstance that caused the noncompliance.

(B) If a Company fails to comply with the audit committee composition requirement under Rule 5605(c)(2)(A) due to one vacancy on the audit committee, and the cure period in paragraph (A) is not otherwise being relied upon for another member, the Company will have until the earlier of the next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the vacancy, the Company shall instead have 180 days from such event to regain compliance. A Company relying on this provision must provide notice to the Exchange immediately upon learning of the event or circumstance that caused the noncompliance.

#### (5) Exception

At any time when a Company has a class of common equity securities (or similar securities) that is listed on another national securities exchange or national securities association subject to the requirements of Rule 10A-3 under the Act, the listing of classes of securities of a direct or indirect consolidated subsidiary or an at least 50% beneficially owned subsidiary of the Company (except classes of equity securities, other than non-convertible, non-participating preferred securities, of such subsidiary) shall not be subject to the requirements of Rule 5605(c).

#### (d) Compensation Committee Requirements

The provisions of this Rule 5605(d) and IM-5605-6 are operative only subject to the effective dates outlined in Rule 5605(d)(6). During the transition period until a Company is required to comply with a particular provision, the Company must continue to comply with the corresponding provision, if any, of Rule 5605A(d) and IM-5605A-6.

#### (1) Compensation Committee Charter

Each Company must certify that it has adopted a formal written compensation committee charter and that the compensation committee will review and reassess the adequacy of the formal written charter on an annual basis. The charter must specify:

(A) the scope of the compensation committee's responsibilities, and how it carries out those responsibilities, including structure, processes and membership requirements;

(B) the compensation committee's responsibility for determining, or recommending to the board for determination, the compensation of the chief executive officer and all other Executive Officers of the Company;

(C) that the chief executive officer may not be present during voting or deliberations on his or her compensation; and

(D) the specific compensation committee responsibilities and authority set forth in Rule 5605(d)(3).

## (2) Compensation Committee Composition

(A) Each Company must have, and certify that it has and will continue to have, a compensation committee of at least two members, each of whom must: (i) be an Independent Director as defined under Rule 5605(a)(2); and (ii) not accept directly or indirectly any consulting, advisory or other compensatory fee from the Company or any subsidiary thereof. Compensatory fees shall not include: (i) fees received as a member of the compensation committee, the board of directors or any other board committee; or (ii) the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the Company (provided that such compensation is not contingent in any way on continued service). In determining whether a director is eligible to serve on the compensation committee, a Company's board also must consider whether the director is affiliated with the Company, a subsidiary of the Company or an affiliate of a subsidiary of the Company to determine whether such affiliation would impair the director's judgment as a member of the compensation committee.

## (B) Non-Independent Committee Member under Exceptional and Limited Circumstances

Notwithstanding paragraph 5605(d)(2)(A) above, if the compensation committee is comprised of at least three members, one director who does not meet the requirements of paragraph 5605(d)(2)(A) and is not currently an Executive Officer or employee or a Family Member of an Executive Officer, may be appointed to the compensation committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the Company and its Shareholders. A Company that relies on this exception must disclose either on or through the Company's website or in the proxy statement for the next annual meeting subsequent to such determination (or, if the Company does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. In addition, the Company must provide any disclosure required by Instruction 1 to Item 407(a) of Regulation S-K regarding its reliance on this exception. A member appointed under this exception may not serve longer than two years.

## (3) Compensation Committee Responsibilities and Authority

As required by Rule 10C-1(b)(2), (3) and (4)(i)-(vi) under the Act, the compensation committee must have the following specific responsibilities and authority.

(A) The compensation committee may, in its sole discretion, retain or obtain the advice of a compensation consultant, legal counsel or other adviser.

(B) The compensation committee shall be directly responsible for the appointment, compensation and oversight of the work of any compensation consultant, legal counsel and other adviser retained by the compensation committee.

(C) The Company must provide for appropriate funding, as determined by the compensation committee, for payment of reasonable compensation to a compensation consultant, legal counsel or any other adviser retained by the compensation committee.

(D) The compensation committee may select, or receive advice from, a compensation consultant, legal counsel or other adviser to the compensation committee, other than in-house legal counsel, only after taking into consideration the following factors:

(i) the provision of other services to the Company by the person that employs the compensation consultant, legal counsel or other adviser;

(ii) the amount of fees received from the Company by the person that employs the compensation consultant, legal counsel or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel or other adviser;

(iii) the policies and procedures of the person that employs the compensation consultant, legal counsel or other adviser that are designed to prevent conflicts of interest;

(iv) any business or personal relationship of the compensation consultant, legal counsel or other adviser with a member of the compensation committee;

(v) any stock of the Company owned by the compensation consultant, legal counsel or other adviser; and

(vi) any business or personal relationship of the compensation consultant, legal counsel, other adviser or the person employing the adviser with an Executive Officer of the Company.

Nothing in this Rule shall be construed: (i) to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant, legal counsel or other adviser to the compensation committee; or (ii) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

The compensation committee is required to conduct the independence assessment outlined in this Rule with respect to any compensation consultant, legal counsel or other adviser that provides advice to the compensation committee, other than in-house legal counsel. However, nothing in this Rule requires a compensation consultant, legal counsel or other compensation adviser to be independent, only that the compensation committee consider the enumerated independence factors before selecting, or receiving advice from, a compensation adviser. Compensation committees may select, or receive advice from, any compensation adviser they prefer, including ones that are not independent, after considering the six independence factors outlined above.

For purposes of this Rule, the compensation committee is not required to conduct an independence assessment for a compensation adviser that acts in a role limited to the following activities for which no disclosure is required under Item 407(e)(3)(iii) of Regulation S-K: (a) consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of Executive Officers or directors of the Company, and that is available generally to all salaried employees; and/or (b) providing information that either is not customized for a particular issuer or that is customized based on parameters that are not developed by the adviser, and about which the adviser does not provide advice.

#### (4) Cure Period for Compensation Committee

If a Company fails to comply with the compensation committee composition requirement under Rule 5605(d)(2)(A) due to one vacancy, or one compensation committee member ceases to be independent due to circumstances beyond the member's reasonable control, the Company shall regain compliance with the requirement by the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the failure to comply with this requirement, the Company shall instead have 180 days from such event to regain compliance. A Company relying on this provision shall provide notice to the Exchange immediately upon learning of the event or circumstance that caused the noncompliance.

#### (5) Smaller Reporting Companies

A Smaller Reporting Company, as defined in Rule 12b-2 under the Act, is not subject to the requirements of Rule 5605(d), except that a Smaller Reporting Company must have, and certify that it has and will continue to have, a compensation committee of at least two members, each of whom must be an Independent Director as defined under Rule 5605(a)(2). A Smaller Reporting Company may rely on the exception in Rule 5605(d)(2)(B) and the cure period in Rule 5605(d)(4). In addition, a Smaller Reporting

Company must certify that it has adopted a formal written compensation committee charter or board resolution that specifies the content set forth in Rule 5605(d)(1)(A)-(C). A Smaller Reporting Company does not need to include in its formal written compensation committee charter or board resolution the specific compensation committee responsibilities and authority set forth in Rule 5605(d)(3).

(6) Effective Dates of Rule 5605(d) and IM-5605-6; Transition for Companies Listed On the Exchange as of the Effective Dates

The provisions of Rule 5605(d)(3) shall be effective on July 1, 2013; to the extent a Company does not have a compensation committee in the period before the final implementation deadline applicable to it as outlined in the paragraph below, the provisions of Rule 5605(d)(3) shall apply to the Independent Directors who determine, or recommend to the board for determination, the compensation of the chief executive officer and all other Executive Officers of the Company. Companies should consider under state corporate law whether to grant the specific responsibilities and authority referenced in Rule 5605(d)(3) through a charter, resolution or other board action; however, the Exchange requires only that a compensation committee, or Independent Directors acting in lieu of a compensation committee, have the responsibilities and authority referenced in Rule 5605(d)(3) on July 1, 2013. Companies must have a written compensation committee charter that includes, among others, the responsibilities and authority referenced in Rule 5605(d)(3) by the implementation deadline set forth in the paragraph below.

In order to allow Companies to make necessary adjustments in the course of their regular annual meeting schedule, Companies will have until the earlier of their first annual meeting after January 15, 2014, or October 31, 2014, to comply with the remaining provisions of Rule 5605(d) and IM- 5605-6. A Company must certify to the Exchange, no later than 30 days after the final implementation deadline applicable to it, that it has complied with Rule 5605(d). During the transition period, Companies that are not yet required to comply with a particular provision of revised Rule 5605(d) and IM-5605-6 must continue to comply with the corresponding provision, if any, of Rule 5605A(d) and IM-5605A-6.

**IM-5605-6. Independent Director Oversight of Executive Compensation**

Independent oversight of executive officer compensation helps assure that appropriate incentives are in place, consistent with the board's responsibility to act in the best interests of the corporation. Compensation committees are required to have a minimum of two members and be comprised only of Independent Directors.

In addition to satisfying the Independent Director requirements under Rule 5605(a)(2), compensation committee members must not accept any consulting, advisory or other

compensatory fee from the Company, other than fees received for board or committee service or fixed amounts of compensation received under a retirement plan (including deferred compensation) for prior service with the Company (provided that such compensation is not contingent in any way on continued service). In addition, a Company's board must consider, in determining whether a director is eligible to serve on the compensation committee, whether the director is affiliated with the Company, a subsidiary of the Company or an affiliate of a subsidiary of the Company to determine whether such affiliation would impair the director's judgment as a member of the compensation committee. In that regard, while a board may conclude differently with respect to individual facts and circumstances, the Exchange does not believe that ownership of Company stock by itself, or possession of a controlling interest through ownership of Company stock by itself, precludes a board finding that it is appropriate for a director to serve on the compensation committee. In fact, it may be appropriate for certain affiliates, such as representatives of significant stockholders, to serve on compensation committees since their interests are likely aligned with those of other stockholders in seeking an appropriate executive compensation program.

A Smaller Reporting Company must have a compensation committee with a minimum of two members who are Independent Directors as defined under Rule 5605(a)(2) and a formal written compensation committee charter or board resolution that specifies the committee's responsibilities and authority set forth in Rule 5605(d)(1)(A)-(C). However, in recognition of the fact that Smaller Reporting Companies may have fewer resources than larger Companies, Smaller Reporting Companies are not required to adhere to the additional compensation committee eligibility requirements in Rule 5605(d)(2)(A), or to incorporate into their formal written compensation committee charter or board resolution the specific compensation committee responsibilities and authority set forth in Rule 5605(d)(3).

#### **5610. Code of Conduct**

Each Company shall adopt a code of conduct applicable to all directors, officers and employees, which shall be publicly available. A code of conduct satisfying this rule must comply with the definition of a "code of ethics" set out in Section 406(c) of the Sarbanes-Oxley Act and any regulations promulgated thereunder by the Commission. See 17 C.F.R. 228.406 and 17 C.F.R. 229.406. In addition, the code must provide for an enforcement mechanism. Any waivers of the code for directors or Executive Officers must be approved by the Board. Companies, other than Foreign Private Issuers, shall disclose such waivers within four business days by filing a current report on Form 8-K with the Commission or, in cases where a Form 8-K is not required, by distributing a press release. Foreign Private Issuers shall disclose such waivers either by distributing a press release or including disclosure in a Form 6-K or in the next Form 20-F or 40-F. Alternatively, a Company, including a Foreign Private Issuer, may disclose waivers on

the Company's website in a manner that satisfies the requirements of Item 5.05(c) of Form 8-K.

### **IM-5610. Code of Conduct**

Ethical behavior is required and expected of every corporate director, officer and employee whether or not a formal code of conduct exists. The requirement of a publicly available code of conduct applicable to all directors, officers and employees of a Company is intended to demonstrate to investors that the board and management of Companies have carefully considered the requirement of ethical dealing and have put in place a system to ensure that they become aware of and take prompt action against any questionable behavior. For Company personnel, a code of conduct with enforcement provisions provides assurance that reporting of questionable behavior is protected and encouraged, and fosters an atmosphere of self-awareness and prudent conduct.

Rule 5610 requires Companies to adopt a code of conduct complying with the definition of a "code of ethics" under Section 406(c) of the Sarbanes-Oxley Act and any regulations promulgated thereunder by the Commission. See 17 C.F.R. 228.406 and 17 C.F.R. 229.406. Thus, the code must include such standards as are reasonably necessary to promote the ethical handling of conflicts of interest, full and fair disclosure, and compliance with laws, rules and regulations, as specified by the Sarbanes-Oxley Act. However, the code of conduct required by Rule 5610 must apply to all directors, officers, and employees. Companies can satisfy this obligation by adopting one or more codes of conduct, such that all directors, officers and employees are subject to a code that satisfies the definition of a "code of ethics."

As the Sarbanes-Oxley Act recognizes, investors are harmed when the real or perceived private interest of a director, officer or employee is in conflict with the interests of the Company, as when the individual receives improper personal benefits as a result of his or her position with the Company, or when the individual has other duties, responsibilities or obligations that run counter to his or her duty to the Company. Also, the disclosures a Company makes to the Commission are the essential source of information about the Company for regulators and investors there can be no question about the duty to make them fairly, accurately and timely. Finally, illegal action must be dealt with swiftly and the violators reported to the appropriate authorities. Each code of conduct must require that any waiver of the code for Executive Officers or directors may be made only by the board and must be disclosed to Shareholders, along with the reasons for the waiver. All Companies, other than Foreign Private Issuers, must disclose such waivers within four business days by filing a current report on Form 8-K with the Commission, providing website disclosure that satisfies the requirements of Item 5.05(c) of Form 8-K, or, in cases where a Form 8-K is not required, by distributing a press release. Foreign Private Issuers must disclose such waivers either by providing website disclosure that satisfies

the requirements of Item 5.05(c) of Form 8-K, by including disclosure in a Form 6-K or in the next Form 20-F or 40-F or by distributing a press release. This disclosure requirement provides investors the comfort that waivers are not granted except where they are truly necessary and warranted, and that they are limited and qualified so as to protect the Company and its Shareholders to the greatest extent possible.

Each code of conduct must also contain an enforcement mechanism that ensures prompt and consistent enforcement of the code, protection for persons reporting questionable behavior, clear and objective standards for compliance, and a fair process by which to determine violations.

### **5615. Exemptions from Certain Corporate Governance Requirements**

This rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, and sets forth the phase-in schedules for initial public offerings, Companies emerging from bankruptcy, Companies transferring from other markets and Companies ceasing to be Smaller Reporting Companies. This rule also describes the applicability of the corporate governance rules to Controlled Companies and sets forth the phase-in schedule afforded to Companies ceasing to be Controlled Companies. During the transition period before Companies are subject to revised Rule 5605(d) and IM-5605-6, a reference in this Rule 5615 to Rule 5605(d) or IM-5605-6 shall be deemed to refer to Rule 5605A(d) or IM-5605A-6..

#### **(a) Exemptions to the Corporate Governance Requirements**

##### **(1) Asset-backed Issuers and Other Passive Issuers**

The following are exempt from the requirements relating to Audit Committees (Rule 5605(c)), Compensation Committees (Rule 5605(d)) and Codes of Conduct (Rule 5610):

(A) asset-backed issuers; and

(B) issuers, such as unit investment trusts, that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

#### **IM-5615-1. Asset-backed Issuers and Other Passive Issuers**

Because of their unique attributes, Rules 5605(c), 5605(d) and 5610 do not apply to asset-backed issuers and issuers, such as unit investment trusts, that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as

well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

## (2) Cooperatives

Cooperative entities, such as agricultural cooperatives, that are structured to comply with relevant state law and federal tax law and that do not have a publicly traded class of common stock are exempt from Rule 5605(d). However, such entities must comply with all federal securities laws, including without limitation those rules required by Section 10A(m) of the Act and Rule 10A-3 thereunder.

### **IM-5615-2.**

Certain member-owned cooperatives that list their preferred stock are required to have their common stock owned by their members. Because of their unique structure and the fact that they do not have a publicly traded class of common stock, such entities are exempt from Rule 5605(d).

## (3) Foreign Private Issuers

(A) A Foreign Private Issuer may follow its home country practice in lieu of the requirements of the Rule 5600 Series, the requirement to distribute annual and interim reports set forth in Rule 5250(d), and the Direct Registration Program requirement set forth in Rules 5210(c) and 5255, provided, however, that such a Company shall: comply with the Notification of Noncompliance requirement (Rule 5625), the Voting Rights requirement (Rule 5640), have an audit committee that satisfies Rule 5605(c)(3), and ensure that such audit committee's members meet the independence requirement in Rule 5605(c)(2)(A)(ii). Except as provided in this paragraph, a Foreign Private Issuer must comply with the requirements of the Rule 5000 Series, including the listing agreement requirement in Rule 5205(a).

## (B) Disclosure Requirements

(i) A Foreign Private Issuer that follows a home country practice in lieu of one or more provisions of Rule 5600 and the Direct Registration Program requirement set forth in 5210(c) and 5255 shall disclose in its annual reports filed with the Commission each requirement that it does not follow and describe the home country practice followed by the issuer in lieu of such requirements. Alternatively, a Foreign Private Issuer that is not required to file its annual report with the Commission on Form 20-F may make this disclosure only on its website. A Foreign Private Issuer that follows a home country practice in lieu of the requirement in Rule 5605(d)(2) to have an independent compensation committee must disclose in its annual reports filed with the Commission the reasons why it does not have such an independent committee.

(ii) A Foreign Private Issuer making its initial public offering or first U.S. listing on the Exchange shall disclose in its registration statement or on its website each requirement that it does not follow and describe the home country practice followed by the Company in lieu of such requirements.

### **IM-5615-3. Foreign Private Issuers**

A Foreign Private Issuer (as defined in Rule 5005) listed on the Exchange may follow the practice in such Company's home country (as defined in General Instruction F of Form 20-F) in lieu of the provisions of the Rule 5600 Series, Rule 5250(d), and Rules 5210(c) and 5255, subject to several important exceptions. First, such an issuer shall comply with Rule 5625 (Notification of Noncompliance). Second, such a Company shall have an audit committee that satisfies Rule 5605(c)(3). Third, members of such audit committee shall meet the criteria for independence referenced in Rule 5605(c)(2)(A)(i) (the criteria set forth in Rule 10A-3(b)(1) under the Act, subject to the exemptions provided in Rule 10A-3(c) under the Act). Fourth, a Foreign Private Issuer must comply with Rules 5210(b) and 5255 (Direct Registration Program) unless prohibited from complying by a law or regulation in its home country. Finally, a Foreign Private Issuer that elects to follow home country practice in lieu of a requirement of the Rules 5600 Series or Rules 5250(d), 5210(c) or 5255 shall submit to the Exchange a written statement from an independent counsel in such Company's home country certifying that the Company's practices are not prohibited by the home country's laws and, in the case of a Company prohibited from complying with Rules 5210(c) and 5255, certifying that a law or regulation in the home country prohibits such compliance. In the case of new listings, this certification is required at the time of listing. For existing Companies, the certification is required at the time the Company seeks to adopt its first noncompliant practice. In the interest of transparency, the rule requires a Foreign Private Issuer to make appropriate disclosures in the Company's annual filings with the Commission (typically Form 20-F or 40-F), and at the time of the Company's original listing in the United States, if that listing is on the Exchange, in its registration statement (typically Form F-1, 20-F, or 40-F); alternatively, a Company that is not required to file an annual report on Form 20-F may provide these disclosures in English on its website in addition to, or instead of, providing these disclosures on its registration statement or annual report. The Company shall disclose each requirement that it does not follow and include a brief statement of the home country practice the Company follows in lieu of these corporate governance requirement(s). If the disclosure is only available on the website, the annual report and registration statement should so state and provide the web address at which the information may be obtained. Companies that must file annual reports on Form 20-F are encouraged to provide these disclosures on their websites, in addition to the required Form 20-F disclosures, to provide maximum transparency about their practices.

(4) Limited Partnerships

A limited partnership is not subject to the requirements of the Rule 5600 Series, except as provided in this Rule 5615(a)(4). A limited partnership may request a written interpretation pursuant to Rule 5602.

(A) No provision of this Rule shall be construed to require any foreign Company that is a partnership to do any act that is contrary to a law, rule or regulation of any public authority exercising jurisdiction over such Company or that is contrary to generally accepted business practices in the Company's Country of Domicile. The Exchange shall have the ability to provide exemptions from applicability of these provisions as may be necessary or appropriate to carry out this intent.

(B) Corporate General Partner

Each Company that is a limited partnership shall maintain a corporate general partner or co-general partner, which shall have the authority to manage the day-to-day affairs of the partnership.

(C) Independent Directors/Audit Committee

The corporate general partner or co-general partner shall maintain a sufficient number of Independent Directors on its board to satisfy the audit committee requirements set forth in Rule 5605(b).

(D) Partner Meetings

A Company that is a limited partnership shall not be required to hold an annual meeting of limited partners unless required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement.

(E) Quorum

In the event that a meeting of limited partners is required pursuant to paragraph (D), the quorum for such meeting shall be not less than 33-1/3 percent of the limited partnership interests outstanding.

(F) Solicitation of Proxies

In the event that a meeting of limited partners is required pursuant to paragraph (D), the Company shall provide all limited partners with proxy or information statements and if a vote is required, shall solicit proxies thereon.

(G) Review of Related Party Transactions

Each Company that is a limited partnership shall conduct an appropriate review of all related party transactions on an ongoing basis and shall utilize the Audit Committee or a comparable body of the Board of Directors for the review of potential material conflict of interest situations where appropriate.

(H) Shareholder Approval

Each Company that is a limited partnership must obtain shareholder approval when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which stock may be acquired by officers, directors, employees, or consultants, as would be required under Rule 5635 and IM-5635.

(I) Auditor Registration

Each Company that is a limited partnership must be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act.

(J) Notification of Noncompliance.

Each Company that is a limited partnership must provide the Exchange with prompt notification after an Executive Officer of the Company, or a person performing an equivalent role, becomes aware of any noncompliance by the Company with the requirements of this Rule 5600 Series.

(5) Management Investment Companies

Management investment companies (including business development companies) are subject to all the requirements of the Rule 5600 Series, except that management investment companies registered under the Investment Company Act of 1940 are exempt from the Compensation Committee requirement set forth in Rule 5605(d) and the Code of Conduct requirement set forth in Rule 5610.

**IM-5615-4. Management Investment Companies**

Management investment companies registered under the Investment Company Act of 1940 are already subject to a pervasive system of federal regulation in certain areas of corporate governance covered by 5600. In light of this, the Exchange exempts from Rule 5605(d) and 5610 management investment companies registered under the Investment Company Act of 1940. Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that Act, are required to comply with all of the provisions of the Rule 5600 Series.

(b) Phase-In Schedules

(1) Initial Public Offerings

(A)

(i) A Company listing in connection with its initial public offering shall be permitted to phase in its compliance with the independent audit committee requirement pursuant to Rule 10A-3(b)(1)(iv)(A) under the Act as follows: (1) one independent member at the time of listing; (2) a majority of independent members within 90 days of the date of effectiveness of the Company's registration statement; and (3) all independent members within one year of the date of effectiveness of the Company's registration statement. It should be noted, however, that pursuant to Rule 10A-3(b)(1)(iii) under the Act investment companies are not afforded the exemptions under Rule 10A-3(b)(1)(iv) under the Act.

(ii) For purposes of this Rule 5615(b)(1)(A), a Company shall be considered to be listing in conjunction with an initial public offering only if it meets the conditions in Rule 10A-3(b)(1)(iv)(A) under the Act, namely, that the Company was not, immediately prior to the effective date of a registration statement, required to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Act.

(B)

(i) A Company listing in connection with its initial public offering shall be permitted to phase in its compliance with the compensation committee composition requirement set forth in Rule 5605(d)(2) as follows: (1) one member must satisfy the requirement at the time of listing; (2) a majority of members must satisfy the requirement within 90 days of listing; and (3) all members must satisfy the requirement within one year of listing.

(ii) For purposes of this Rule 5615(b)(1)(B), a Company shall be considered to be listing in conjunction with an initial public offering if, immediately prior to listing, it does not have a class of common stock registered under the Act.

(2) Companies Emerging from Bankruptcy

A Company that is listing upon emerging from bankruptcy shall be permitted to phase-in the independent compensation committee requirement of Rule 5605(d) on the same schedule as a Company listing in conjunction with its initial public offering.

(3) Transfers from other Markets

(A) A Company transferring from another national securities exchange with a substantially similar requirement shall be immediately subject to the requirements of Rule 5605(c) and (d), provided that the Company will be afforded the balance of any

grace period afforded by the other market. This transition period is not intended to supplant any applicable requirements of Rule 10A-3 under the Act.

(B) A Company that is not subject to a substantially similar requirement at the time of its listing on the Exchange, such as a company currently quoted solely in the over-the-counter market, must comply with the audit committee requirement of Rule 5605(c) at the time of listing, subject to any applicable phase-in period allowed by Rule 10A-3 under the Act. Such a Company shall be permitted to phase in its compliance with the compensation committee composition requirement set forth in Rule 5605(d)(2) as follows: (1) one member must satisfy the requirement at the time of listing; (2) a majority of members must satisfy the requirement within 90 days of listing; and (3) all members must satisfy the requirement within one year of listing.

#### (4) Phase-In Schedule for a Company Ceasing to be a Smaller Reporting Company

Pursuant to Rule 12b-2 under the Act, a Company tests its status as a Smaller Reporting Company on an annual basis as of the last business day of its most recently completed second fiscal quarter (for purposes of this Rule, the "Determination Date"). A Company with a public float of \$75 million or more as of the Determination Date will cease to be a Smaller Reporting Company as of the beginning of the fiscal year following the Determination Date (the "Start Date").

By six months from the Start Date, a Company must comply with Rule 5605(d)(3) and certify to the Exchange that: (i) it has complied with the requirement in Rule 5605(d)(1) to adopt a formal written compensation committee charter including the content specified in Rule 5605(d)(1)(A)-(D); and (ii) it has complied, or within the applicable phase-in schedule will comply, with the additional requirements in Rule 5605(d)(2)(A) regarding compensation committee composition.

A Company shall be permitted to phase in its compliance with the additional compensation committee eligibility requirements of Rule 5605(d)(2)(A) relating to compensatory fees and affiliation as follows: (i) one member must satisfy the requirements by six months from the Start Date; (ii) a majority of members must satisfy the requirements by nine months from the Start Date; and (iii) all members must satisfy the requirements by one year from the Start Date.

Since a Smaller Reporting Company is required to have a compensation committee comprised of at least two Independent Directors, a Company that has ceased to be a Smaller Reporting Company may not use the phase-in schedule for the requirements of Rule 5605(d)(2)(A) relating to minimum committee size or that the committee consist only of Independent Directors as defined under Rule 5605(a)(2).

During this phase-in schedule, a Company that has ceased to be a Smaller Reporting Company must continue to comply with Rule 5605(d)(5).

(c) How the Rules Apply to a Controlled Company

(1) Definition

A Controlled Company is a Company of which more than 50% of the voting power for the election of directors is held by an individual, a group or another company.

(2) Exemptions Afforded to a Controlled Company

A Controlled Company is exempt from the requirements of Rule 5605(d). A Controlled Company, other than a Foreign Private Issuer, relying upon this exemption must comply with the disclosure requirements set forth in Instruction 1 to Item 407(a) of Regulation S-K. A Foreign Private Issuer must disclose in its next annual report (e.g., Form 20-F or 40-F) that it is a Controlled Company and the basis for that determination.

(3) Phase-In Schedule for a Company Ceasing to be a Controlled Company

A Company that has ceased to be a Controlled Company within the meaning of Rule 5615(c)(1) shall be permitted to phase-in its independent compensation committee on the same schedule as Companies listing in conjunction with their initial public offering. It should be noted, however, that a Company that has ceased to be a Controlled Company within the meaning of Rule 5615(c)(1) must comply with the audit committee requirements of Rule 5605(c) as of the date it ceased to be a Controlled Company. Furthermore, the executive sessions requirement of Rule 5605(b) applies to a Controlled Company as of the date of listing and continues to apply after it ceases to be controlled.

**IM-5615-5 Controlled Company Exemption**

This exemption recognizes that majority Shareholders, including parent companies, have the right to select directors and control certain key decisions, such as executive officer compensation, by virtue of their ownership rights. In order for a group to exist for purposes of this rule, the Shareholders must have publicly filed a notice that they are acting as a group (e.g., a Schedule 13D). A Controlled Company not relying upon this exemption need not provide any special disclosures about its controlled status. It should be emphasized that this controlled company exemption does not extend to the audit committee requirements under Rule 5605(c) or the requirement for executive sessions of Independent Directors under Rule 5605(b).

**5620. Meetings of Shareholders**

(a) Each Company listing common stock or voting preferred stock, and their equivalents, shall hold an annual meeting of Shareholders no later than one year after the end of the

Company's fiscal year-end, unless such Company is a limited partnership that meets the requirements of Rule 5615(a)(4)(D).

### **IM-5620. Meetings of Shareholders or Partners**

Rule 5620 requires that each Company listing common stock or voting preferred stock, and their equivalents, hold an annual meeting of Shareholders within one year of the end of each fiscal year. At each such meeting, Shareholders must be afforded the opportunity to discuss Company affairs with management and, if required by the Company's governing documents, to elect directors. A new listing that was not previously subject to a requirement to hold an annual meeting is required to hold its first meeting within one-year after its first fiscal year-end following listing. Of course, the Exchange's meeting requirement does not supplant any applicable state or federal securities laws concerning annual meetings.

#### **(b) Proxy Solicitation**

Each Company that is not a limited partnership shall solicit proxies and provide proxy statements for all meetings of Shareholders and shall provide copies of such proxy solicitation to the Exchange. Limited partnerships that are required to hold an annual meeting of partners are subject to the requirements of Rule 5615(a)(4)(F).

#### **(c) Quorum**

Each Company that is not a limited partnership shall provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33 1/3 % of the outstanding shares of the Company's common voting stock. Limited partnerships that are required to hold an annual meeting of partners are subject to the requirements of Rule 5615(a)(4)(E).

### **5625. Notification of Noncompliance**

A Company must provide the Exchange with prompt notification after an Executive Officer of the Company becomes aware of any noncompliance by the Company with the requirements of this Rule 5600 Series.

### **5630. Review of Related Party Transactions**

(a) Each Company that is not a limited partnership shall conduct an appropriate review and oversight of all related party transactions for potential conflict of interest situations on an ongoing basis by the Company's audit committee or another independent body of the board of directors. For purposes of this rule, the term "related party transaction" shall refer to transactions required to be disclosed pursuant to Item 404 of Regulation S-K under the Act. However, in the case of non-U.S. issuers, the term "related party

transactions" shall refer to transactions required to be disclosed pursuant to Form 20-F, Item 7.B.

(b) Limited partnerships shall comply with the requirements of Rule 5615(a)(4)(G).

### **5635. Shareholder Approval for Equity Compensation**

(a) Shareholder approval is required prior to the issuance of securities when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which stock may be acquired by officers, directors, employees, or consultants, except for:

(1) warrants or rights issued generally to all security holders of the Company or stock purchase plans available on equal terms to all security holders of the Company (such as a typical dividend reinvestment plan);

(2) tax qualified, non-discriminatory employee benefit plans (e.g., plans that meet the requirements of Section 401(a) or 423 of the Internal Revenue Code) or parallel nonqualified plans, provided such plans are approved by the Company's independent compensation committee or a majority of the Company's Independent Directors; or plans that merely provide a convenient way to purchase shares on the open market or from the Company at Market Value;

(3) plans or arrangements relating to an acquisition or merger as permitted under IM-5635; or

(4) issuances to a person not previously an employee or director of the Company, or following a bona fide period of non-employment, as an inducement material to the individual's entering into employment with the Company, provided such issuances are approved by either the Company's independent compensation committee or a majority of the Company's Independent Directors. Promptly following an issuance of any employment inducement grant in reliance on this exception, a Company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

(b) Exchange-listed Companies and their representatives are encouraged to use the interpretative letter process described in Rule 5602.

### **IM-5635. Shareholder Approval for Stock Option Plans or Other Equity Compensation Arrangements**

Employee ownership of Company stock can be an effective tool to align employee interests with those of other Shareholders. Stock option plans or other equity compensation arrangements can also assist in the recruitment and retention of employees,

which is especially critical to young, growing Companies, or Companies with insufficient cash resources to attract and retain highly qualified employees. However, these plans can potentially dilute shareholder interests. Rule 5635(a) ensures that Shareholders have a voice in these situations, given this potential for dilution.

Rule 5635(a) requires shareholder approval when a plan or other equity compensation arrangement is established or materially amended. For these purposes, a material amendment would include, but not be limited to, the following:

- (1) any material increase in the number of shares to be issued under the plan (other than to reflect a reorganization, stock split, merger, spinoff or similar transaction);
- (2) any material increase in benefits to participants, including any material change to: (i) permit a repricing (or decrease in exercise price) of outstanding options, (ii) reduce the price at which shares or options to purchase shares may be offered, or (iii) extend the duration of a plan;
- (3) any material expansion of the class of participants eligible to participate in the plan; and
- (4) any expansion in the types of options or awards provided under the plan.

While general authority to amend a plan would not obviate the need for shareholder approval, if a plan permits a specific action without further shareholder approval, then no such approval would generally be required. However, if a plan contains a formula for automatic increases in the shares available (sometimes called an "evergreen formula"), or for automatic grants pursuant to a dollar-based formula (such as annual grants based on a certain dollar value, or matching contributions based upon the amount of compensation the participant elects to defer), such plans cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. However, plans that do not contain a formula and do not impose a limit on the number of shares available for grant would require shareholder approval of each grant under the plan. A requirement that grants be made out of treasury shares or repurchased shares will not alleviate these additional shareholder approval requirements.

As a general matter, when preparing plans and presenting them for shareholder approval, Companies should strive to make plan terms easy to understand. In that regard, it is recommended that plans meant to permit repricing use explicit terminology to make this clear.

Rule 5635(a) provides an exception to the requirement for shareholder approval for warrants or rights offered generally to all Shareholders. In addition, an exception is provided for tax qualified, non-discriminatory employee benefit plans as well as parallel

nonqualified plans as these plans are regulated under the Internal Revenue Code and Treasury Department regulations. An equity compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable tax qualified, non-discriminatory employee benefit plan or parallel nonqualified plan that the Company provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law, is also exempt from shareholder approval under this section.

Further, the rule provides an exception for inducement grants to new employees because in these cases a Company has an arm's length relationship with the new employees. Inducement grants for these purposes include grants of options or stock to new employees in connection with a merger or acquisition. The rule requires that such issuances be approved by the Company's independent compensation committee or a majority of the Company's Independent Directors. The rule further requires that promptly following an issuance of any employment inducement grant in reliance on this exception, a Company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

In addition, plans or arrangements involving a merger or acquisition do not require shareholder approval in two situations. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that meet the requirements of this Rule 5635(a). These shares may be used for post-transaction grants of options and other equity awards by the listed Company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or arrangement or another plan or arrangement, without further shareholder approval, provided: (1) the time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company or its subsidiaries at the time the merger or acquisition was consummated. The Exchange would view a plan or arrangement adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. This exception is appropriate because it will not result in any increase in the aggregate potential dilution of the combined enterprise. In this regard, any additional shares available for issuance under a plan or arrangement acquired in connection with a merger or acquisition would be counted by the Exchange in determining whether the transaction involved the issuance of 20% or more of the Company's outstanding common stock, thus triggering the shareholder approval requirements under Rule 5635(a).

Inducement grants, tax qualified non-discriminatory benefit plans, and parallel nonqualified plans are subject to approval by either the Company's independent compensation committee or a majority of the Company's Independent Directors. It should also be noted that a Company would not be permitted to use repurchased shares to fund option plans or grants without prior shareholder approval.

For purposes of Rule 5635(a) and IM-5635, the term "parallel nonqualified plan" means a plan that is a "pension plan" within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §1002 (1999), that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may thereafter be enacted. However, a plan will not be considered a parallel nonqualified plan unless: (i) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitation that may hereafter be enacted); (ii) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limitations described in the preceding sentence; and, (iii) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.

#### **5640. Voting Rights**

Voting rights of existing Shareholders of publicly traded common stock registered under Section 12 of the Act cannot be disparately reduced or restricted through any corporate action or issuance. Examples of such corporate action or issuance include, but are not limited to, the adoption of time-phased voting plans, the adoption of capped voting rights plans, the issuance of super-voting stock, or the issuance of stock with voting rights less than the per share voting rights of the existing common stock through an exchange offer.

#### **IM-5640. Voting Rights Policy**

The following Voting Rights Policy is based upon, but more flexible than, former Rule 19c-4 under the Act. Accordingly, the Exchange will permit corporate actions or issuances by Companies that would have been permitted under former Rule 19c-4, as well as other actions or issuances that are not inconsistent with this policy. In evaluating such other actions or issuances, the Exchange will consider, among other things, the economics of such actions or issuances and the voting rights being granted. The

Exchange's interpretations under the policy will be flexible, recognizing that both the capital markets and the circumstances and needs of Companies change over time. The text of the Exchange Voting Rights Policy is as follows:

#### Companies with Dual Class Structures

The restriction against the issuance of super voting stock is primarily intended to apply to the issuance of a new class of stock, and Companies with existing dual class capital structures would generally be permitted to issue additional shares of the existing super voting stock without conflict with this policy.

#### Consultation with the Exchange

Violation of the Exchange Voting Rights Policy could result in the loss of a Company's Exchange or public trading market. The policy can apply to a variety of corporate actions and securities issuances, not just super voting or so-called "time phase" voting common stock. While the policy will continue to permit actions previously permitted under former Rule 19c-4, it is extremely important that Companies communicate their intentions to their Exchange representatives as early as possible before taking any action or committing to take any action that may be inconsistent with the policy. The Exchange urges Companies listed on the Exchange not to assume, without first discussing the matter with the Exchange Staff, that a particular issuance of common or preferred stock or the taking of some other corporate action will necessarily be consistent with the policy. It is suggested that copies of preliminary proxy or other material concerning matters subject to the policy be furnished to the Exchange for review prior to formal filing.

#### Review of Past Voting Rights Activities

In reviewing an application for initial qualification for listing of a Security on the Exchange, the Exchange will review the Company's past corporate actions to determine whether another self-regulatory organization (SRO) has found any of the Company's actions to have been a violation or evasion of the SRO's voting rights policy. Based on such review, the Exchange may take any appropriate action, including the denial of the application or the placing of restrictions on such listing. The Exchange will also review whether a Company seeking initial listing of a Security in the Exchange has requested a ruling or interpretation from another SRO regarding the application of that SRO's voting rights policy with respect to a proposed transaction. If so, the Exchange will consider that fact in determining its response to any ruling or interpretation that the Company may request on the same or similar transaction.

#### Non-U.S. Companies

The Exchange will accept any action or issuance relating to the voting rights structure of a non-U.S. Company that is in compliance with the Exchange's requirements for domestic Companies or that is not prohibited by the Company's home country law.

**5700. Additional Requirements for Securities Listed on the Exchange Issued by Nasdaq or its Affiliates**

**5701. Additional Requirements for Securities Listed on the Exchange Issued by Nasdaq or its Affiliates**

(a) For purposes of this Rule 5701, the terms below are defined as follows:

(1) "Nasdaq Affiliate" means Nasdaq, Inc. and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Nasdaq, Inc., where "control" means that the one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity.

(2) "Affiliate Security" means any security issued by a Nasdaq Affiliate or any Exchange-listed option on any such security, with the exception of Portfolio Depository Receipts as defined in Rule 4420(i)(1)(A) and Index Fund Shares as defined in Rule 4420(j)(1)(A).

(b) Upon initial and throughout continued listing and trading of the Affiliate Security on the Exchange, the Exchange shall:

(1) provide a quarterly report to the Exchange's Regulatory Oversight Committee detailing the Exchange's monitoring of:

(A) the Nasdaq Affiliate's compliance with the listing requirements contained in the Rule 5000, 5100, 5200, 5500, and 5600 Series; and

(B) the trading of the Affiliate Security, which shall include summaries of all related surveillance alerts, complaints, regulatory referrals, trades cancelled or adjusted pursuant to Rule 11890, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data of such security.

(2) engage an independent accounting firm once a year to review and prepare a report on the Affiliate Security to ensure that the Nasdaq Affiliate is in compliance with the listing requirements contained in the Rule 5000, 5100, 5200, 5500 and 5600 Series and promptly provide BX's Regulatory Oversight Committee with a copy of the report prepared by the independent accounting firm.

(c) In the event that the Exchange determines that the Nasdaq Affiliate is not in compliance with any of the listing requirements contained in the Rule 5000, 5100, 5200,

5500 and 5600 Series, the Exchange shall file a report with the Commission within five business days of providing notice to the Nasdaq Affiliate of its non-compliance. The report shall identify the date of non-compliance, type of non-compliance and any other material information conveyed to the Nasdaq Affiliate in the notice of noncompliance. Within five business days of receipt of a plan of compliance from the Nasdaq Affiliate, the Exchange shall notify the Commission of such receipt, whether the plan of compliance was accepted by the Exchange or what other action was taken with respect to the plan and the time period provided to regain compliance with the Rule 5000, 5100, 5200, 5500 and 5600 Series, if any.

## **5800. Failure to Meet Listing Standards**

### **5801. Preamble to the Rules and Procedures When a Company Fails to Meet a Listing Standard**

Securities of a Company that does not meet the listing standards set forth in the Rule 5000 Series are subject to delisting from, or denial of initial listing on the Exchange. This Section sets forth procedures for the independent review, suspension, and delisting of Companies that fail to satisfy one or more standards for initial or continued listing, and thus are "deficient" with respect to the listing standards.

The Listings Qualifications Department is responsible for identifying deficiencies that may lead to delisting or denial of a listing application; notifying the Company of the deficiency or denial; and issuing Staff Delisting Determinations and Public Reprimand Letters. Rule 5810 contains provisions regarding the Listing Qualifications Department's process for notifying Companies of different types of deficiencies and their corresponding consequences.

The Hearings Panel, upon timely request by a Company, will review a Staff Delisting Determination, denial of a listing application, or Public Reprimand Letter at an oral or written hearing, and issue a Decision that may, among other things, grant an "exception" to the Exchange's listing standards or affirm a delisting. Rule 5815 contains provisions relating to the hearings process.

The Listing and Hearings Review Council, upon timely appeal by a Company or on its own initiative, may review the Decisions of the Hearings Panel. Rule 5820 contains provisions relating to the Listing Council review process.

Finally, the Exchange's Board of Directors may exercise discretion to call for review a Listing Council Decision. Rule 5825 contains provisions related to that process.

Procedures related to SEC notification of the Exchange's final Delisting Determinations are discussed in Rule 5830. Rules applicable to Adjudicators and Advisors are provided

in Rule 5835 and general information relating to the adjudicatory process is provided in Rule 5840.

A Company's failure to maintain compliance with the applicable provisions of the Rule 5000 Series will result in the termination of the listing unless an exception is granted to the Company, as described below. The termination of the Company's listing will become effective in accordance with the procedures set forth herein, including Rule 5830.

#### **5805. Definitions**

(a) "Adjudicatory Body" or "Adjudicator" means the Hearings Panel, the Listing Council, the Board or a member thereof.

(b) "Advisor" means an individual employed by the Exchange who is advising an Adjudicatory Body with respect to a proceeding under this section.

(c) "Hearings Department" means the Hearings Department of the Exchange's Office of General Counsel.

(d) The "Hearings Panel" is an independent panel made up of at least two persons who are not employees or otherwise affiliated with the Exchange or its affiliates, and who have been authorized by the Exchange's Board of Directors.

(e) "Listing Council" means the Exchange's Listing and Hearing Review Council.

(f) The "Listing Qualifications Department" is the department of the Exchange responsible for evaluating Company compliance with quantitative and qualitative listing standards and determining eligibility for initial and continued listing of a Company's securities.

(g) "Staff" refers to employees of the Listing Qualifications Department.

(h) "Staff Delisting Determination" or "Delisting Determination" is a written determination by the Listing Qualifications Department to delist a listed Company's securities for failure to meet a continued listing standard.

(i) "Decision" means a written decision of an Adjudicatory Body.

(j) "Public Reprimand Letter" means a letter issued by Staff or a Decision of an Adjudicatory Body in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 under the Act) and Staff or the Adjudicatory Body determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, Staff or the Adjudicatory Body will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has

been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.

(k) "Office of Appeals and Review" means the Office of Appeals and Review of the Exchange's Office of General Counsel.

(l) "Board" or "Exchange Board" means the Board of Directors of Nasdaq BX, Inc.

#### **5810. Notification of Deficiency by the Listing Qualifications Department**

When the Listing Qualifications Department determines that a Company does not meet a listing standard set forth in the Rule 5000 Series, it will immediately notify the Company of the deficiency. As explained in more detail below, deficiency notifications are of four types:

- (1) Staff Delisting Determinations, which are notifications of deficiencies that, unless appealed, subject the Company to immediate suspension and delisting;
- (2) notifications of deficiencies for which a Company may submit a plan of compliance for Staff review;
- (3) notifications of deficiencies for which a Company is entitled to an automatic cure or compliance period; and
- (4) Public Reprimand Letters.

Notifications of deficiencies that allow for submission of a compliance plan or an automatic cure or compliance period may result, after review of the compliance plan or expiration of the cure or compliance period, in issuance of a Staff Delisting Determination or a Public Reprimand Letter.

##### **(a) Information Contained in Deficiency Notification and Delisting Determination**

Deficiency notifications and Delisting Determinations will:

- (1) inform the Company of the factual bases for Staff's determination of deficiency or delisting, and the quantitative or qualitative standard the Company has failed to satisfy;
- (2) provide the Company with instructions regarding its obligations to disclose the deficiency under the Exchange's Listing Rules; and
- (3) inform the Company:

(A) in the case of a Staff Delisting Determination, that the Company's securities will be suspended as of a date certain; the Company has a right to request review of the Delisting

Determination by a Hearings Panel; and that a request for review within seven days (as set forth in Rule 5815(a)(1)) will stay the suspension;

(B) in the case of a deficiency for which the Company may submit a plan of compliance for review by Staff, the deadline by which a plan must be submitted;

(C) in the case of a deficiency for which the Company is entitled to an automatic cure or compliance period, the expiration date of the cure or compliance period; and

(D) in the case of a Public Reprimand Letter, an explanation of why Staff concluded the letter is appropriate and the Company's right to request review of the Letter by a Hearings Panel.

(b) Company Disclosure Obligations

A Company that receives a notification of deficiency, Staff Delisting Determination, or Public Reprimand Letter is required to make a public announcement through the news media disclosing receipt of the notification and the Rule(s) upon which the deficiency is based. A Company that receives a notification of deficiency or Staff Delisting Determination related to the requirement to file a periodic report contained in Rule 5250(c)(1) or (2) is required to make the public announcement by issuing a press release disclosing receipt of the notification and the Rule(s) upon which the deficiency is based, in addition to filing any Form 8-K required by SEC rules. In all other cases, the Company may make the public announcement either by filing a Form 8-K, where required by SEC rules, or by issuing a press release. As described in Rule 5250(b)(1) and IM-5250-1, the Company must notify the MarketWatch Department about the announcement through the electronic disclosure submission system available at a website designated by the Exchange for that purpose, except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during market hours, the Company must notify MarketWatch at least ten minutes prior to the announcement. If the public announcement is made outside of market hours, the Company must notify MarketWatch of the announcement prior to 6:50 a.m. ET. The Company should make the public announcement as promptly as possible but not more than four business days following receipt of the notification.

**IM-5810-1. Disclosure of Written Notice of Staff Determination**

Rule 5810(b) requires that a Company make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing the receipt of (i) a notice that the Company does not meet a listing standard set forth in the Rule 5000 Series, (ii) a Staff Delisting Determination to limit or prohibit continued listing of the Company's securities under Rule 5810 as a result of the Company's failure to comply with the continued listing requirements, or (iii) a Public Reprimand Letter; provided

however, that if the notification relates to a failure to meet the requirements of Rules 5250(c)(1) or (2), the Company must make the public announcement by issuing a press release. Such public announcement shall be made as promptly as possible, but not more than four business days following the receipt of the notification, Staff Delisting Determination, or Public Reprimand Letter, as applicable. If the public announcement is not made by the Company within the time allotted, trading of its securities shall be halted, even if the Company appeals the Staff Delisting Determination or Public Reprimand Letter as set forth in Rule 5815. If the Company fails to make the public announcement by the time that the Hearings Panel issues its Decision, that Decision will also determine whether to delist the Company's securities for failure to make the public announcement.

Rule 5810(b) does not relieve a Company of its disclosure obligation under the federal securities laws, nor should it be construed as providing a safe harbor under the federal securities laws. It is suggested that the Company consult with corporate/securities counsel in assessing its disclosure obligations under the federal securities laws.

#### (c) Types of Deficiencies and Notifications

The type of deficiency at issue determines whether the Company will be immediately suspended and delisted, or whether it may submit a compliance plan for review or is entitled to an automatic cure or compliance period before a Staff Delisting Determination is issued. In the case of a deficiency not specified below, Staff will issue the Company a Staff Delisting Determination or a Public Reprimand Letter.

##### (1) Deficiencies that Immediately Result in a Staff Delisting Determination

Staff's notice will inform the Company that its securities are immediately subject to suspension and delisting when:

(A) a Company fails to timely solicit proxies and hold its annual shareholders' meeting;

(B) Staff has determined, under its discretionary authority in the Rule 5100 Series, that the Company's continued listing raises a public interest concern;

(C) the Security fails to meet the \$0.25 per share bid price requirement of Rule 5550(d). A failure to meet this requirement shall be determined to exist only if the deficiency continues for 20 consecutive business days

(D) the Company represents itself as listed on The Nasdaq Stock Market or refers to itself as a Nasdaq listed Company; or

(E) the Company attempts to rely on an exemption from state securities registration which otherwise may be available under state law to Companies listed on the Exchange.

(2) Deficiencies for which a Company may Submit a Plan of Compliance for Staff Review

(A) Unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination, the Listing Qualifications Department may accept and review a plan to regain compliance when a Company is deficient with respect to one of the standards listed in subsections (i) through (iv) below. In accordance with Rule 5810(c)(2)(C), plans provided pursuant to subsections (i) through (iii) below must be provided generally within 30 calendar days, and in accordance with Rule 5810(c)(2)(E), plans provided pursuant to subsection (iv) must be provided generally within 45 calendar days.

(i) all quantitative deficiencies from standards that do not provide a compliance period;

(ii) deficiencies from the standards of Rules 5605 (Independent Directors, Audit Committees and Independent Director Oversight of Executive Officer Compensation) or 5615(a)(4)(C) (Independent Directors/Audit Committee of Limited Partnerships) where the cure period of the Rule is not applicable;

(iii) deficiencies from the standards of Rules 5620(c) (Quorum), 5630 (Review or Related Party Transactions), 5635 (Shareholder Approval), 5250(c)(3) (Auditor Registration), 5255(a) (Direct Registration Program), 5610 (Code of Conduct), 5615(a)(4)(E) (Quorum of Limited Partnerships), 5615(a)(4)(G) (Related Party Transactions of Limited Partnerships), or 5640 (Voting Rights); or

(iv) failure to file periodic reports as required by Rules 5250(c)(1) or (2).

**IM-5810-2 Staff Review of Deficiencies**

As provided in Rule 5810(c)(2)(A)(i), the Staff may accept a plan to regain compliance with respect to quantitative deficiencies from standards that do not themselves provide a compliance period. Such standards are included in Rules 5505 (Initial Listing of Securities) and Rule 5550 (Continued Listing of Securities).

(B) Staff Alternatives Upon Review of Plan

Staff may request such additional information from the Company as is necessary to make a determination, as described below. In cases other than filing delinquencies, which are governed by Rule 5810(c)(2)(E) below, upon review of a plan of compliance, Staff may either:

(i) grant an extension of time to regain compliance not greater than 90 calendar days from the date of Staff's initial notification, unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination. If Staff grants an extension, it

will inform the Company in writing of the basis for granting the extension and the terms of the extension;

(ii) issue a Staff Delisting Determination letter that includes a description of the basis for denying the extension; or

(iii) issue a Public Reprimand Letter, as defined in Rule 5805(j).

#### (C) Timeline for Submission of Compliance Plans

Except for deficiencies from the standards of Rule 5250(c)(1) or (2), Staff's notification of deficiencies that allow for compliance plan review will inform the Company that it has 30 calendar days to submit a plan to regain compliance with the Exchange's listing standard(s). Staff may extend this deadline for up to an additional 5 calendar days upon good cause shown and may request such additional information from the Company as is necessary to make a determination regarding whether to grant such an extension.

#### (D) Failure to Meet the Terms of a Staff Extension

If the Company does not regain compliance within the time period provided by all applicable Staff extensions, Staff will immediately issue a Staff Delisting Determination indicating the date on which the Company's securities will be suspended unless it requests review by a Hearings Panel.

#### (E) Filing Delinquencies

In the case of deficiencies from the standards of Rule 5250(c)(1) or (2):

(i) Staff's notice shall provide the Company with 45 calendar days to submit a plan to regain compliance with the listing standard; provided, however, that the Company shall not be provided with an opportunity to submit such a plan if review under the Rule 5800 Series of a prior Staff Delisting Determination with respect to the Company is already pending. Staff may extend this deadline for up to an additional 5 calendar days upon good cause shown and may request such additional information from the Company as is necessary to make a determination regarding whether to grant such an extension.

(ii) The maximum additional time provided by all exceptions granted by Staff for a deficiency described in paragraph (i) above is 90 calendar days from the due date of the first late periodic report (as extended by Rule 12b-25 under the Act, if applicable). In determining whether to grant an exception, and the length of any such exception, Staff will consider, and the Company should address in its plan of compliance, the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general

financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

(3) Deficiencies for which the Rules Provide a Specified Cure or Compliance Period

With respect to deficiencies related to the standards listed in (A) - (C) below, Staff's notification will inform the Company of the applicable cure or compliance period provided by these Rules and discussed below. If the Company does not regain compliance within the specified cure or compliance period, the Listing Qualifications Department will immediately issue a Staff Delisting Determination letter.

(A) Market Makers

A failure to meet the continued listing requirement for a number of Market Makers shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.

(B) Market Value of Listed Securities

A failure to meet the continued listing requirements for Market Value of Listed Securities shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 90 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 90 day compliance period.

(C) Audit Committee Rules

If a Company fails to meet the audit committee composition requirements in Rule 5605(c)(2) because an audit committee member ceases to be independent for reasons outside his/her control, the Listing Qualifications Department will promptly notify the Company and inform it that has until the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure, to cure the deficiency. If the Company fails to meet the audit committee composition requirement due to one vacancy on the audit committee, and the Company is not relying upon a cure period for another member, the Listing Qualifications Department will promptly notify the Company and inform it that it has until the earlier of its next annual shareholders meeting or one year from the event that caused the failure to cure the deficiency. However, if the Company's next annual shareholders' meeting is held sooner than 180

days after the event that caused the deficiency, then the Company has 180 days from the event that caused the deficiency to cure it.

(D) Director, Promoter, or Control Person with a Regulatory History

If an executive officer, director, promoter, or control person of a Company was involved in any event that occurred during the prior described in Item 401(f)(2) - (8) of Regulation S-K under the Act, the Listing Qualifications Department will promptly notify the Company and inform it that it has thirty calendar days to remove the individual from that position at the Company.

(4) Public Reprimand Letter

Staff's notification may be in the form of a Public Reprimand Letter in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 under the Act) and Staff determines that delisting is an inappropriate sanction. In determining whether to issue a public reprimand letter, the Listing Qualifications Department will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.

(d) Additional Deficiencies

The Listing Qualifications Department continues to evaluate the compliance of Companies while they are under review by Adjudicatory Bodies and may identify additional deficiencies. Upon identification of an additional deficiency, Staff will issue an additional notification of deficiency to the Company and send a copy to the appropriate Adjudicatory Body.

(1) Staff's notification of the additional deficiency will conform to the requirements set forth in Rule 5810(a) if:

- (A) the matter under review by an Adjudicatory Body is a Public Reprimand Letter; or
- (B) the additional deficiency identified is one that has an automatic cure or compliance period.

(2) If the additional deficiency is one that would in the normal course result in immediate suspension and delisting, or one for which the Company may submit a compliance plan to Staff for review, Staff's notification will instruct the Company to address the issue to the Hearings Panel at its hearing, unless the hearing for the original deficiency has already taken place. If the hearing has already taken place, Staff's notification will instruct the Company to provide in writing, within a specified time period, a submission

that addresses the deficiency to the Adjudicatory Body before which its matter is pending.

### **5815. Review of Staff Determinations by Hearings Panel**

When a Company receives a Staff Delisting Determination or a Public Reprimand Letter issued by the Listing Qualifications Department, or when its application for initial listing is denied, it may request in writing that the Hearings Panel review the matter in a written or an oral hearing. This section sets forth the procedures for requesting a hearing before a Hearings Panel, describes the Hearings Panel and the possible outcomes of a hearing, and sets forth Hearings Panel procedures.

#### **(a) Procedures for Requesting and Preparing for a Hearing**

##### **(1) Timely Request Stays Delisting**

(A) A Company may, within seven calendar days of the date of the Staff Delisting Determination notification, Public Reprimand Letter, or denial of a listing application, request a written or oral hearing before a Hearings Panel to review the Staff Delisting Determination. Subject to the limitations in paragraphs (B) and (C) below, a timely request for a hearing will stay the suspension and delisting action pending the issuance of a written Panel Decision. Requests for hearings should be submitted in writing to the Hearings Department.

(B) If the Staff Delisting Determination relates to deficiencies from the standards of Rule 5250(c)(1) or (2), which require a Company to timely file its periodic reports with the Commission, the delisting action will only be stayed for 15 calendar days from the deadline to request a hearing unless the Company specifically requests and the Hearings Panel grants a further stay. A request for a further stay must include an explanation of why such a stay would be appropriate and should be included in the Company's request for a hearing. Based on that submission and any recommendation provided by Staff, the Hearings Panel will determine whether to grant the Company a further stay. In determining whether to grant the stay, the Hearings Panel will consider the Company's specific circumstances, including the likelihood that the filing can be made within any exception period that could subsequently be granted, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. The Hearings Panel will notify the Company of its conclusion as soon as is practicable, but in no event more than 15 calendar days following the deadline to request the hearing. In the event the Hearings Panel determines not to grant the Company a stay, the Company's securities will be immediately suspended and will remain suspended unless the Panel Decision issued after the hearing determines to reinstate the securities.

(C) If the Staff Delisting Determination relates to a deficiency from the standard of Rule 5550(d), which requires a Company to maintain a minimum bid price of \$0.25 per share, a timely request for a hearing will stay delisting pending the issuance of a written Panel Decision. However, notwithstanding the request for a hearing, the security will be suspended from trading on the Exchange pursuant to Rule 4120(a)(12).

#### (2) Failure to Request Results in Immediate Delisting

If a Company fails to request in writing a hearing within seven calendar days, it waives its right to request review of a Delisting Determination. In that event, the Hearings Department will take action to suspend trading of the securities and follow procedures to delist the securities.

#### (3) Fees

Within 15 calendar days of the date of the Staff Delisting Determination the Company must submit a hearing fee to the Exchange to cover the cost of the hearing, as follows:

(A) when the Company has requested a written hearing, \$4,000; or

(B) when the Company has requested an oral hearing, whether in person or by telephone, \$5,000.

#### (4) Scheduling of Hearings

The Hearings Department will schedule hearings to take place, to the extent practicable, within 45 days of the request for a hearing, at a location determined by the Hearings Department. The Hearings Department will send written acknowledgment of the Company's hearing request and inform the Company of the date, time, and location of the hearing, and deadlines for written submissions to the Hearings Panel. The Company will be provided at least ten calendar days notice of the hearing unless the Company waives such notice.

#### (5) Submissions from Company

The Company may submit to the Hearings Department a written plan of compliance and request that the Hearings Panel grant an exception to the listing standards for a limited time period, as permitted by Rule 5815(c)(1)(A) or may set forth specific grounds for the Company's contention that the issuance of a Staff Delisting Determination, Public Reprimand Letter, or denial of a listing application, was in error, and may also submit public documents or other written material in support of its position, including any information not available at the time of the Staff Determination. The Hearings Panel will review the written record, as described in Rule 5840(a), before the hearing.

#### (6) Presentation at Hearing

At an oral hearing, the Company may make such presentation as it deems appropriate, including the appearance by its officers, directors, accountants, counsel, investment bankers, or other persons, and the Hearings Panel may question any representative appearing at the hearing. Hearings are generally scheduled to last one hour, but the Hearings Panel may extend the time. The Hearings Department will arrange for and keep on file a transcript of oral hearings.

(b) Composition of the Hearings Panel

Each Hearing is presided over by at least two Hearings Panel members, except as provided in Rule 5815(d)(3).

(c) Scope of the Hearings Panel's Discretion

(1) When the Hearings Panel review is of a deficiency related to continued listing standards, the Hearings Panel may, where it deems appropriate:

(A) grant an exception to the continued listing standards for a period not to exceed 90 days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted;

(B) Reserved;

(C) suspend and delist the Company's securities;

(D) issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 under the Act) and the Hearings Panel determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Hearings Panel will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations;

(E) find the Company in compliance with all applicable listing standards;

(F) in the case of a Company that received a Staff Delisting Determination because its Security is not in compliance with the minimum price requirement of Rule 5550(d), determine that the Company has regained compliance if the Security maintains a closing bid price of \$0.25 per share or more for at least 10 consecutive trading days prior to Panel's Decision. However, if the Company has received three or more Staff Delisting Determinations for failure to comply with minimum price requirement of Rule 5550(d) in the prior 12 months, the Panel shall only determine that the Company has regained compliance if the Security maintains a closing bid price of \$0.25 per share or more for at

least 20 consecutive trading days prior to the Panel's Decision. The Panel may make a compliance determination at any time, including prior to the Hearing; but must issue its Decision no later than 90 days after the date of the Staff Delisting Determination; or

(G) in the case of a Company that fails to file a periodic report (e.g., Form 10-K, 10-Q, 20-F, 40-F, or N-CSR), the Hearings Panel may grant an exception for a period not to exceed 180 days from the due date of the first such late periodic report. The Company can regain compliance with the requirement by filing that periodic report and any other delinquent reports with due dates falling before the end of the exception period. In determining whether to grant an exception, and the length of any such exception, the Hearings Panel will consider the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

(2) When the Hearings Panel's review is of a Staff denial of an initial listing application, the Hearings Panel may, where it deems appropriate:

(A) affirm Staff's denial of the application;

(B) conditionally approve initial listing subject to an exception to the listing standards not to exceed 90 calendar days from the date of the Panel Decision; or

(C) approve initial listing on a finding that the Company meets all initial listing requirements.

(3) A Hearings Panel may consider any failure to meet any quantitative or qualitative standard for initial or continued listing, including failures previously not considered by Staff. The Company will be given written notice of such consideration and an opportunity to respond.

(4) Under the authority described in the Rule 5100 Series, the Hearings Panel may subject the Company to additional or more stringent criteria for the initial or continued listing of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities inadvisable or unwarranted in its opinion, even though the securities meet all enumerated criteria for initial or continued listing on the Exchange.

(d) Hearings Panel Procedures

(1) Panel Decision

After the hearing, the Hearings Department, on behalf of the Hearings Panel, will issue a Panel Decision that meets the requirements of Rule 5840(c) and has been approved by each member of the Hearings Panel. The Panel Decision shall be promptly provided to the Company, and is effective immediately upon issuance, unless it specifies to the contrary. The Panel Decision will provide notice that the Company may appeal the Panel Decision to the Listing Council within 15 calendar days of the date of the Decision and that the Decision may be called for review by the Listing Council within 45 calendar days from the date of the Decision.

#### (2) Form 25 Notification of Delisting

If the Panel issues a Decision to delist the Company's securities, the Hearings Department will immediately take action to suspend trading of the securities, unless the Decision specifies to the contrary. If the Company does not appeal a Decision to delist and the Listing Council does not call the decision for review or withdraws its call for review, the Exchange will follow the procedures described in Rule 5830 to submit an application on Form 25 to the SEC to strike the Security from listing.

#### (3) Hearings Panel Deadlock

If, following the hearing, the Hearings Panel cannot reach a unanimous decision, the Hearings Department will notify the Company of this circumstance. The Company will be provided an additional hearing before a Hearings Panel composed of three members who did not participate in the previous hearing. The Company may decide whether the hearing will be written or oral, in person or by telephone. The Company may submit any documents or other written material in support of its request for review, including information not available at the time of the initial hearing. There will be no fee for the new hearing. After review by a Hearings Panel convened pursuant to this paragraph, the Hearings Department on behalf of the Hearings Panel will issue a Decision that meets the requirements of Rule 5840(c) and that has been approved by at least a majority of the Hearings Panel.

#### (4) Procedures Applicable for Recurring Deficiencies

##### (A) Hearings Panel Monitor

A Hearings Panel may, after a Company regains compliance with all applicable listing standards, monitor the Company's continued compliance for up to one year after the compliance date, if the Hearings Panel concludes that there is a likelihood that the issuer will fail to maintain compliance with one or more listing standards during that period. If the Hearings Panel or the Listing Qualifications Department determines that a Company under Hearings Panel monitor fails any listing standard during the monitor period, the Staff will issue a Staff Delisting Determination and the Hearings Department will

promptly schedule a new hearing, with the initial Hearings Panel or a newly convened Hearings Panel if the initial Hearings Panel is unavailable. The hearing may be oral or written, at the Company's election. Notwithstanding Rule 5810(c)(2), the Company will not be permitted to provide the Listing Qualifications Department with a plan of compliance with respect to any deficiency that arises during the monitor period, and the Listing Qualifications Department will not be permitted to grant additional time for the Company to regain compliance with respect to any deficiency. The Hearings Panel will consider the Company's compliance history when rendering its Decision.

(B) No Hearings Panel Monitor

If a Hearings Panel has not opted to monitor a Company that has regained compliance with the listing standards requiring the Company to timely file periodic reports, and within one year of the date the Company regained compliance with such listing standard, the Listing Qualifications Department finds the Company again out of compliance with that requirement, then, notwithstanding Rule 5810(c)(2), the Listing Qualifications Department will not allow the Company to provide it with a plan of compliance or grant additional time for the Company to regain compliance. Rather, the Listing Qualifications Department will promptly issue a Staff Delisting Determination, and the Company may request review by a Hearings Panel. The Hearings Panel will consider the Company's compliance history when rendering its Decision.

(5) Request for Hearings Panel Reconsideration

A Company may request, in writing, that the Hearings Panel reconsider a Panel Decision only upon the basis that a mistake of material fact existed at the time of the Panel Decision. The Company's request for reconsideration shall be made within seven calendar days of the date of issuance of the Panel Decision. A Company's request for reconsideration will not stay a delisting determination or suspension of trading of the Company's securities, unless the Hearings Panel, before the scheduled date for suspension, issues a written determination staying the suspension and/or reversing the determination to delist. A Company's request for reconsideration will not extend the time for the Company to initiate the Listing Council's review of the Panel Decision.

If the Hearings Panel grants a Company's reconsideration request, it will issue a modified Decision meeting the requirements of Rule 5840(c) within 15 calendar days of the date of the original Panel Decision, or lose jurisdiction over the matter. If the Listing Council calls a Panel Decision for review on the same issue that the Company has requested reconsideration by the Hearings Panel, the Listing Council may assert jurisdiction over the initial Panel Decision or permit the Hearings Panel to proceed with the reconsideration and issue a new Decision.

**5820. Exchange Listing and Hearing Review Council**

A Company may appeal a Panel Decision to the Listing Council. The Listing Council may also call for review a Panel Decision on its own initiative. This Rule 5820 describes the procedures applicable to appeals and calls for review.

(a) Procedure for Requesting Appeal

A Company may appeal any Panel Decision to the Listing Council by submitting a written request for appeal and a fee of \$4,000 to the Exchange's Office of Appeals and Review within 15 calendar days of the date of the Panel Decision. An appeal will not operate as a stay of the Panel Decision. Upon receipt of the appeal request and the applicable fee, the Office of Appeals and Review will acknowledge the Company's request and provide deadlines for the Company to provide written submissions.

(b) Procedures for Initiating Call for Review

The Listing Council may also call for review any Panel Decision upon the request of one or more members of the Listing Council within 45 calendar days of the date of the Panel Decision. The Office of Appeals and Review will promptly inform the Company of the reasons for the review and provide a deadline for written submissions. A call for review by the Listing Council will not operate as a stay of the Panel Decision, unless the call for review specifies to the contrary. The Listing Council may withdraw the call for review of a Panel Decision at any time.

(c) Composition of Listing Council

The Listing Council is a committee appointed by the Exchange Board of Directors pursuant to the Exchange By-Laws whose responsibilities include the review of Panel Decisions by a Hearings Panel.

(d) Scope of Listing Council's Discretion

(1) The Listing Council may, where it deems appropriate, affirm, modify, or reverse the Panel Decision, or remand the matter to the Listing Qualifications Department or to the Hearings Panel for further consideration. The Listing Council may grant an exception for a period not longer than 180 calendar days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted. The Listing Council also may issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 under the Act) and the Listing Council determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Listing Council will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied

on an independent advisor and whether the Company has demonstrated a pattern of violations.

(2) The Listing Council may consider any failure to meet any quantitative standard or qualitative consideration for initial or continued listing, including failures previously not considered by the Hearings Panel. The Listing Council may also consider any action taken by a Company during the review process that would have constituted a violation of the Exchange's corporate governance requirements had the Company's securities been trading on the Exchange at the time. The Company will be afforded written notice of such consideration and an opportunity to respond.

(3) Under the authority described in the Rule 5100 Series, the Listing Council may subject the Company to additional or more stringent criteria for the initial or continued listing of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities inadvisable or unwarranted in its opinion, even though the securities meet all enumerated criteria for initial or continued listing on the Exchange.

(4) In the case of a Company that fails to file a periodic report (e.g., Form 10-K, 10-Q, 20-F, 40-F, or N-CSR), the Listing Council may grant an exception for a period not to exceed 180 days from the due date of the first such late periodic report. The Company can regain compliance with the requirement by filing that periodic report and any other delinquent reports with due dates falling before the end of the exception period. In determining whether to grant an exception, and the length of any such exception, the Listing Council will consider the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

(5) The Listing Council may also recommend that the Exchange Board consider the matter.

#### (e) Listing Council Review Process

##### (1) Review Generally on Written Record

For each matter before the Listing Council, whether on appeal for call for review, a subcommittee consisting of at least two members of the Listing Council will review the written record, as described in Rule 5840(a). Members of the Listing Council who are not on a subcommittee will be provided with a written summary of the record prepared by an

Advisor, and may, but will not be required to, review the written record. The Listing Council shall consider the written record and, at its discretion, may request additional written materials and/or hold additional hearings. If an oral hearing is scheduled, it will take place, to the extent practicable, within 45 days of the date the appeal was submitted or the call for review was initiated.

(2) Record of Proceedings Maintained

A record of the documents considered by the Listing Council will be kept by the Office of Appeals and Review.

(3) Written Decision Issued

A written Listing Council Decision meeting the requirements of Rule 5840(c) will be issued after approval by at least a majority of the Listing Council. The Listing Council Decision will be promptly provided to the Company and will take immediate effect unless it specifies to the contrary. If the Listing Council determines to delist the Company, the securities of the Company will be immediately suspended, unless the Listing Council Decision specifies to the contrary.

(4) Reconsideration of a Listing Council Decision

A Company may request, in writing, that the Listing Council reconsider a Listing Council Decision only upon the basis that a mistake of material fact existed at the time of the Listing Council Decision. The Company's request must be made within seven calendar days of the date of the Listing Council Decision. A Company's request for reconsideration will not stay a Listing Council Decision unless the Listing Council issues a written determination staying the Decision. If the Listing Council grants a Company's reconsideration request, the Listing Council will issue a modified Decision meeting the requirements of Rule 5840(c) within 15 calendar days of the date of the original Listing Council Decision, or lose jurisdiction over the matter.

(5) Notice of Board Right to Call

The Listing Council Decision will provide notice that the Exchange Board may call the Listing Council Decision for review pursuant to provisions in Rule 5825.

(6) Form 25 Notification of Delisting

If the Listing Council determines to delist the Company and the Exchange Board does not call the matter for review or withdraws its call for review, the Exchange will follow the procedures described in Rule 5830 to submit an application on Form 25 to the Securities and Exchange Commission to delist the Security.

**5825. Discretionary Review by Exchange Board**

(a) Review at Discretion of Board

A Panel Decision, in a matter where the Hearings Panel has granted the maximum exception period and the Listing Council is precluded from granting additional time under Rules 5815(c)(1)(G) and 5820(d)(4), or a Listing Council Decision may be called for review by the Exchange Board solely upon the request of one or more Board members not later than the next Board meeting that is 15 calendar days or more following the date of the Panel or Listing Council Decision. This review will be undertaken solely at the discretion of the Board and will not operate as a stay of the Panel or Listing Council Decision, unless the Board's call for review specifies to the contrary. At the sole discretion of the Board, it may withdraw its call for review of a Panel or Listing Council Decision at any time before issuance of a Decision.

(b) Scope of Discretion of Board

The Board may consider any failure to meet any quantitative standard or qualitative consideration for initial or continued listing, including failures previously not considered by the Listing Council. It may also consider any action taken by a Company during the review process that would have constituted a violation of the Exchange's corporate governance requirements had the Company's securities been trading on the Exchange at the time. The Company will be afforded written notice of such consideration and an opportunity to respond. Pursuant to the Rule 5100 Series, the Board may subject the Company to additional or more stringent criteria for the initial or continued listing of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities inadvisable or unwarranted in its opinion, even though the securities meet all enumerated criteria for initial or continued listing on the Exchange.

(c) Review on Written Record

If the Board conducts a discretionary review, the review generally will be based on the written record considered by the Hearings Panel or Listing Council. However, the Board may, at its discretion, request and consider additional information from the Company and/or from Staff. If the Board considers additional information, a record of the documents reviewed by the Board will be kept by the Office of Appeals and Review.

(d) Board Decision

If the Board conducts a discretionary review, the Company will be provided a written Decision that meets the requirements of Rule 5840(c). The Board may affirm, modify or reverse the Panel or Listing Council Decision and may remand the matter to the Listing Council, Hearings Panel, or staff of the Listing Qualifications Department with appropriate instructions. The Board also may issue a Decision that serves as a Public

Reprimand Letter in cases where the Company has violated a corporate governance or notification listing standard (other than one required by Rule 10A-3 of the Act) and the Board determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Board will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations. The Decision of the Board will take immediate effect, unless it specifies to the contrary, and represents the final action of the Exchange. If the Board determines to delist the Company, the securities of the Company will be immediately suspended, unless the Board specifies to the contrary, and the Exchange will follow the procedures contained in Rule 5830 and submit an application on Form 25 to the Commission to strike the security from listing.

### **5830. Finality of Delisting Determination**

When the Exchange has made a final determination to delist a Company's securities, it will follow procedures consistent with the Act to strike the Security from listing. The Exchange's determination to delist a Company's securities is final when, after a Delisting Determination has been issued, all available review and appeal procedures and periods available under these Rules have expired.

The Exchange will issue a press release and post a notice on its website announcing its final determination to remove a Security from listing, consistent with Rule 12d2-2 under the Act. Under Rule 12d2-2, the Exchange must disseminate this public notice not less than 10 days before the delisting becomes effective and maintain the website notice until the delisting is effective. Following the public notification, the Exchange will file an application on Form 25 with the Commission to delist the Security, and will promptly provide a copy of that Form 25 to the Company. The delisting of the Security becomes effective 10 days after the Form 25 is filed pursuant to Rule 12d2-2(d)(1) under the Act, unless the Commission postpones the delisting pursuant to Rule 12d2-2(d)(3).

### **5835. Rules Applicable to Adjudicators and Advisors**

#### **(a) Ex Parte Communications**

##### **(1) No Ex parte Communications**

No member of the Staff of the Listing Qualifications Department or its counsel, and no Company representative will make or knowingly cause to be made an ex parte communication relevant to the merits of a proceeding under this Section to an Adjudicator or any Advisor.

Similarly, no Adjudicator who is participating in a Decision with respect to a proceeding under this Section, and no Advisor with respect to such a proceeding, will make or knowingly cause to be made an ex parte communication relevant to the merits of that proceeding to a Company representative, a member of the Staff of the Listing Qualifications Department or its counsel.

(2) An Adjudicator or Advisor who is participating in or advising with respect to a proceeding who receives, makes, or knowingly causes to be made an ex parte communication relevant to the merits of a proceeding will place a copy of it, or its substance if it is an oral communication, in the record of the proceeding. Staff of the Listing Qualifications Department or the Company, as applicable, will be permitted to respond to the ex parte communication, and any response will be placed in the record of the proceeding.

(b) No Communications Between Adjudicatory Bodies

(1) Members of a Hearings Panel and their Advisors who are participating in a proceeding under this Section are prohibited from making communications relevant to the merits of such proceeding to members of the Listing Council or the Board or their respective Advisors.

(2) Members of the Listing Council and their Advisors are prohibited from making communications relevant to the merits of a proceeding under this Rule 5800 Series to members of a Hearings Panel who are participating in such proceeding or their Advisors or members of the Board or their Advisors.

(3) Members of the Board and their Advisors are prohibited from making communications relevant to the merits of a proceeding under this Rule 5800 Series to members of a Hearings Panel who are participating in such proceeding or their Advisors, or members of the Listing Council or their Advisors.

(4) An Adjudicator or Advisor who is participating in or advising with respect to a proceeding who receives, makes, or knowingly causes to be made a communication prohibited by paragraphs (1) - (2) above will place a copy of it, or its substance if it is an oral communication, in the record of the proceeding. Staff of the Listing Qualifications Department and the Company will be permitted to respond to the communication, and any such response will be placed in the record of the proceeding.

(c) Recusal or Disqualification

No person will serve as a member of a Hearings Panel, or participate as a member of the Listing Council, the Board, the Staff of the Listing Qualifications Department or Advisor to an Adjudicator, in a matter as to which he or she has a conflict of interest or bias, or

circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the person will recuse himself or herself, or will be disqualified.

#### (1) Exchange of Biographical Information

To facilitate the process for recusal and disqualification, at least five days before any proceeding under this Section, the Company will provide the Hearings Department or the Advisor to the Listing Council or the Board, as applicable, with names and biographical information of each person who will appear on behalf of the Company at the proceeding, and the Hearings Department or Advisor, as applicable, will provide the Company and the Staff with names and biographical information of the Adjudicators for the proceeding; provided, however, that with respect to proceedings before the Listing Council or the Board, the Advisor may post names and biographical information of each Adjudicator on a publicly available website in lieu of providing them directly to the Company.

#### (2) Disqualification Procedures

A Company or the Staff of the Listing Qualifications Department may file a request to disqualify an Adjudicator. A request to disqualify will be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Adjudicator's fairness might reasonably be questioned, and will be accompanied by a statement setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the party learned of those facts. A request to disqualify must be filed (A) not later than two business days after the party was provided with the name and biographical information of the Adjudicator, or (B) if the name and biographical information of the Adjudicator was posted on a website, not later than two business days after the Company requested Listing Council review or received notice of discretionary review by the Listing Council or the Board. A request for disqualification of an Adjudicator will be decided by the party with authority to order disqualification of such Adjudicator, as detailed below, who will promptly investigate whether disqualification is required and issue a written response to the request.

##### (A) Exchange Board

The Chair of the Board will have authority to order the disqualification of a Director, and a majority of the Board excluding the Chair of the Board will have authority to order the disqualification of the Chair.

##### (B) Listing Council

A Chair of the Listing Council will have authority to order the disqualification of a member of the Listing Council, and a majority of the Listing Council excluding any

Chairs of the Listing Council will have authority to order the disqualification of a Chair of the Listing Council.

(C) Staff of Listing Qualifications Department; Panelist of Hearings Panel

The General Counsel of the Exchange will have authority to order the disqualification of (i) a member of the Staff of the Listing Qualifications Department reviewing the qualifications of a Company, (ii) a member of a Hearings Panel, or (iii) an Advisor to an Adjudicatory Body.

**5840. Adjudicatory Process: General Information**

(a) Record on Review

At each level of a proceeding under this Section, the written record may consist of the following items, as applicable: correspondence between the Exchange and the Company; the Company's public filings; information released to the public by the Company; written submissions, exhibits, or requests submitted by either the Company or the Listing Qualifications Department and responses thereto; and any additional information considered by the Adjudicatory Body as part of the review process. The written record will be supplemented by the transcript of any hearings held during the review process and all Decisions issued.

At each level of review under this Section, the Company will be informed of the contents of the written record. The Company will be provided a copy of any documents in the record that were not provided by the Company or are not publicly available, at least three calendar days before the deadline for Company submissions, unless the Company waives this production.

If additional issues arising under the Rule 5000 Series are considered, as permitted by the Rule 5800 Series, the notice of such consideration and any response to such notice shall be made a part of the record.

(b) Additional Information Requested or Considered

At each level of a proceeding under this Section, the Adjudicatory Body, as part of its review:

(1) may request additional information from the Company or the Listing Qualifications Department; and

(2) may consider additional information available from other sources it deems relevant. The Company and the Listing Qualifications Department will be afforded written notice and an opportunity to address the significance of any information requested or

considered, and the notice, responses to the notice, and the information considered will be made part of the record.

(c) Contents of Decisions

Each Adjudicatory Body's written Decision will include:

- (1) a statement describing the procedural history of the proceeding, including investigations or reviews undertaken by the Listing Qualifications Department;
- (2) the quantitative or qualitative standard that the Company is alleged to have failed to satisfy;
- (3) a statement setting forth the findings of fact with respect to the Company;
- (4) the conclusions of the Adjudicatory Body as to whether the Company has failed to satisfy the quantitative or qualitative standards for initial or continued listing; and
- (5) a statement of the Adjudicatory Body in support of its disposition of the matter, and, if applicable, the rationale for any exception to the initial or continued listing requirements granted.

(d) Correction of Clerical Errors

The Hearings Panel and the Listing Council may correct clerical or other non-substantive errors in their respective Decisions either on their own motion or at the request of a Company. A copy of any such corrected Decision will be provided to the Company.

(e) Computation and Adjustment of Time

- (1) Except as described in paragraph (2) below, in counting any time under this Section, the day of the act, event, or default from which the period of time begins to run, is not to be included. The last day of the period is included, unless it is a Saturday, Sunday, federal holiday, or Exchange holiday in which case the period runs until the end of the next day that is not a Saturday, Sunday, federal holiday or Exchange holiday.
- (2) When Staff determines whether a deficiency has occurred with respect to bid price or market value of listed securities, the first trading day that the market value is below the required standard is included in computing the total number of consecutive trading days of default. Similarly, when Staff determines whether a Company has regained compliance with the bid price or market value of listed securities requirement, the first trading day that the market value is at or above required standard is included in computing the total number of consecutive trading days.

(3) If the Office of General Counsel determines that notice required to be provided under this Section was not properly given or that other extenuating circumstances exist, the Hearings Department may adjust the periods of time provided by the rules for the filing of written submissions, the scheduling of hearings, or the performance of other procedural actions by the Company or an Adjudicator, as applicable, to allow the Company or the Adjudicator the time contemplated by these rules.

(4) A Company may waive any notice period specified in this Section.

(f) Delivery of Documents

Delivery of any document under this Section may be made by electronic delivery, hand delivery, facsimile, regular mail or overnight courier. Delivery will be considered timely if the electronic delivery, hand delivery, fax, or overnight courier is received on or before the relevant deadline. If a Company has not specified a facsimile number, e-mail address, or street address, delivery will be made to the last known facsimile number, e-mail address, and street address. If a Company is represented by counsel or a representative, delivery may be made to the counsel or representative.

(g) Document Retention Procedures

Any document submitted to the Exchange in connection with a proceeding under this Section will be retained in accordance with applicable record retention policies.

(h) Documentation of Decisions

The Listing Qualifications Department or the Advisor to an Adjudicatory Body, as applicable, shall document the date on which a Decision with respect to a Company is implemented.

(i) Re-Listing of a Company

A Company that has been the subject of a Decision by an Adjudicatory Body to delist such Company shall be required, prior to re-listing, to comply with the requirements for initial listing. A Company that has been suspended but that has not been the subject of such a Decision shall be required, prior to re-listing, to comply with requirements for continued listing.

(j) Voluntary Delisting

(1) A Company may voluntarily terminate its listing upon compliance with all requirements of Rule 12d2-2(c) under the Act. In part, Rule 12d2-2(c) requires that the Company may delist by filing an application on Form 25 with the Commission, provided that the Company: (i) complies with all applicable laws in effect in the state in which it is incorporated and with the applicable Exchange Rules; (ii) provides notice to the

Exchange no fewer than 10 days before the Company files the Form 25 with the Commission, including a statement of the material facts relating to the reasons for delisting; and (iii) contemporaneous with providing notice to the Exchange, publishes notice of its intent to delist, along with its reasons therefore, via a press release and on its web site, if it has one. Any notice provided on the Company's web site pursuant to Rule 12d2-2(c) must remain available until the delisting has become effective. The Company must also provide a copy of the Form 25 to the Exchange simultaneously with its filing with the Commission. The Exchange will provide notice on its web site of the Company's intent to delist as required by Rule 12d2-2(c)(3).

(2) A Company that seeks to voluntarily delist a class of securities pursuant to Rule 5840(j)(1) that has received notice from the Exchange, pursuant to the Rule 5800 Series or otherwise, that it fails to comply with one or more requirements for continued listing, or that is aware that it is below such continued listing requirements notwithstanding that it has not received such notice from the Exchange, must disclose this fact (including the specific continued listing requirement that it is below) in: (i) its statement of all material facts relating to the reasons for withdrawal from listing provided to the Exchange along with written notice of its determination to withdraw from listing required by Rule 12d2-2(c)(2)(ii) under the Act; and (ii) its press release and web site notice required by Rule 12d2-2(c)(2)(iii) under the Act.

(k) Disclosure of Public Reprimand Letter

A Company that receives an Adjudicatory Body Decision that serves as a Public Reprimand Letter must make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing the receipt of the Decision, including the Rule(s) upon which the Decision was based. As described in Rule 5250(b)(1) and IM-5250-1, the Company must notify the Exchange's MarketWatch Department about the announcement through the electronic disclosure submission system available at a website designated by the Exchange for that purpose, except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during market hours, the Company must notify MarketWatch at least ten minutes prior to the announcement. If the public announcement is made outside of market hours, the Company must notify MarketWatch of the announcement prior to 6:50 a.m. ET. The Company should make the public announcement as promptly as possible but not more than four business days following receipt of the Decision.

**5900. Company Listing Fees**

**5901. Preamble to the Company Listing Fees**

This section sets forth the required fees for Companies both seeking listing and currently listed on the Exchange pursuant to the Rule 5000 Series. With certain exceptions, Companies seeking to list on the Exchange must pay a non-refundable application fee. Listed Companies are required to pay annual fees and fees for certain corporate changes, such as a change in name or a substitution listing. Please note that the fees related to written interpretations of the Exchange's listing rules can be found in Rule 5602.

### **5910. Listing Fees**

#### **(a) Application Fee**

A Company that submits an application to list any class of its securities on the Exchange, shall pay to the Exchange a non-refundable application fee of \$10,000, which must be submitted with the Company's application. However, if a Company is listed on another national securities exchange and has received notice that it is subject to being delisted from that exchange for failure to comply with a quantitative listing requirement, the application fee does not have to be paid to the Exchange until the other exchange issues a final decision to delist the Company's securities or the Company is listed on the Exchange, whichever occurs first.

#### **(b) Annual Fee**

(1) Each issuer shall pay an annual fee of \$20,000 for the first class of securities listed on the Exchange and \$5,000 for each additional class of securities listed on the Exchange.

(2) The Annual Fee will be pro-rated during a Company's first year of listing on the Exchange based on the month of listing. For example, a Company initially listing in April would be charged 9/12 of the Annual Fee for the first year of listing.

(3) If a class of securities is delisted or voluntarily removed from The Nasdaq Stock Market, the Company shall receive a credit for that portion of the annual fees for such class of securities attributable to the months following the date of removal, which will be applied only to offset the Exchange's Annual fees for that calendar year. For example, a Company that is delisted from Nasdaq on April 5th and immediately lists on the Exchange will receive a credit of 8/12 of the annual fee paid to Nasdaq for the year, which will be used to offset the applicable Annual Fee owed to the Exchange for that year only. Any amounts paid to Nasdaq in excess of the Annual Fees owed to the Exchange for that year shall not be refunded nor applied against fees in future years.

#### **(4) Mergers**

(i) A Company that completes a merger with another Company listed on the Exchange during the first calendar quarter will receive a credit or waiver, as applicable, for 75% of the Annual Fee assessed to the acquired Exchange-listed Company.

(ii) A Company not listed on the Exchange that completes a merger with a Company listed on the Exchange and that is the surviving entity will, upon listing on the Exchange, receive a credit or waiver, as applicable, of the Annual Fee previously paid by the listed Company, pro-rated for the months remaining in the calendar year. If the fee was not paid, the credit will go to the non-surviving entity.

(c) Record-Keeping Fee

A Company that makes a change such as a change to its name, the par value or title of its Security, or its symbol shall pay a fee of \$2,500 to the Exchange and submit the appropriate form as designated by the Exchange.

(d) Substitution Listing Fee

A Company that implements a Substitution Listing Event shall pay a fee of \$7,500 to the Exchange and submit the appropriate form as designated by the Exchange.

**5920. Fee Waivers**

The Exchange's Board of Directors or its designee may defer or waive all or any part of any of the fees prescribed herein. A deferral or waiver will only be granted in rare circumstances where in the opinion of the Exchange, charging the fee would be inequitable and the factual circumstances are unlikely to be frequently replicated. Requests for a deferral or waiver should be sent by e-mail to [billing@bxventure.com](mailto:billing@bxventure.com), and must include the bases for the request.

**6000. OTHER SYSTEMS AND PROGRAMS**

**6800. Reserved**

**7000A. ORDER AUDIT TRAIL SERIES**

**7400A. Order Audit Trail System**

**7410A. Definitions**

For purposes of the Rule 7000A Series:

- (a) Terms shall have the same meaning as those defined in the Exchange By-Laws and rules, unless otherwise specified.
- (b) "Bunched Order" shall mean two or more orders that are aggregated prior to execution.
- (c) "Customer" shall mean a person other than a broker or dealer.

- (d) "Nasdaq BX Equities Market" shall mean the service provided by the Exchange that provides for the automated execution and reporting of transactions in securities listed on the Exchange and other exchanges.
- (e) "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.
- (f) "Electronic Order" shall mean an order captured by a member in an electronic order-routing or execution system.
- (g) "Index Arbitrage Trade" shall have the same meaning as the term "Index Arbitrage" in New York Stock Exchange Rule 7410.
- (h) "Intermarket sweep order" shall have the same meaning as contained in Rule 600 of SEC Regulation NMS.
- (i) "Manual Order" shall mean an order that is captured by a member other than in an electronic order-routing or execution system.
- (j) "Order" shall mean any oral, written, or electronic instruction to effect a transaction in an equity security listed on the Exchange or Nasdaq that is received by a member from another person for handling or execution, or that is originated by a department of a member for execution by the same or another member, other than any such instruction to effect (1) a proprietary transaction originated by a trading desk in the ordinary course of a member's market making activities in an Exchange- or Nasdaq-listed equity security or (2) effect a bona fide hedge transaction involving an Exchange- or Nasdaq-listed equity security originated by a trading desk in the ordinary course of the member's options market making activities.
- (k) "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 Nasdaq reported by members for integration with trade and quotation information to provide FINRA with an accurate time sequenced record of orders and transactions.
- (l) "Program Trade" shall have the same meaning as the term "Program Trading" in New York Stock Exchange Rule 7410.
- (m) "Reporting Agent" shall mean a third party that enters into any agreement with a member pursuant to which the Reporting Agent agrees to fulfill such member's obligations under Equity Rule 7450A.
- (n) "Reporting Member" shall mean a member that receives or originates an order and has an obligation to record and report information under Equity Rules 7440A and

7450A. A member shall not be considered a Reporting Member in connection with an order, if the following conditions are met:

(1) the member 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) a single receiving Reporting Member; or

(B) two receiving Reporting Members, provided:

(i) orders are routed by the member to each receiving Reporting Member on a pre-determined schedule approved by FINRA; and

(ii) orders are routed to two receiving Reporting Members pursuant to the schedule for a time period not to exceed one year; and

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

(3) the receiving Reporting Member records and reports all information required under Equity Rules 7440A and 7450A with respect to the order; and

(4) the member has a written agreement with the receiving Reporting Member specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of Equity Rules 7440A and 7450A.

(o) "Proprietary Trading Firm" shall mean an Exchange member that trades its own capital and that does not have "customers," as that term is defined in Equity Rule 0210(g), 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.

#### **7420A. Applicability**

(a) Unless otherwise indicated, the requirements of the Equity Rule 7400A Series are in addition to the requirements contained elsewhere in the Rules of the Exchange.

(b) Unless otherwise indicated, the requirements of the Equity Rules 7400A Series shall apply to all Exchange Members and to their associated persons.

(c) Unless otherwise indicated, the requirements of the Equity Rules 7400A Series shall apply to all executed or unexecuted orders for equity securities listed on the Exchange or on Nasdaq.

#### **7430A. Synchronization of Member Business Clocks**

(a) Exchange members shall comply with FINRA Rule 4590 as if such Rule were part of the Exchange's rules.

(b) For purposes of this Rule, references to "the FINRA By-Laws or other FINRA rules" shall be construed as references to the Exchange Rules.

#### **7440A. Recording of Order Information**

(a) With respect to orders for securities listed on Nasdaq, Exchange members and persons associated with a member shall comply with FINRA Rule 7440 as if such Rule were part of the Rules of the Exchange. The Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Equity Rule 7440A are being performed by FINRA on behalf of the Exchange.

(b) With respect to orders for securities listed on the Exchange, Exchange members and persons associated with a member shall comply with FINRA Rule 7440 as if such Rule applied to orders for securities listed on the Exchange and such Rule were part of the Rules of the Exchange.

(c) For purposes of this Rule:

(1) references to FINRA Rules 7420 through 7460 shall be construed as references to Equity Rules 7420A through 7460A;

(2) references to FINRA Rules 5320, 7440, and 7450 shall be construed as references to Equity Rules IM-2110-2, 7440A, and 7450A, respectively.

(d) Exchange members shall assign and enter a unique order identifier, in the form prescribed by the Exchange, to all orders that are electronically transmitted to Nasdaq BX Equities Market. An order identifier shall not be required for orders that are manually transmitted.

#### **7450A. Order Data Transmission Requirements**

(a) Except as provided in paragraph (b), with respect to orders for securities listed on Nasdaq, Exchange members and persons associated with a member shall comply with FINRA Rule 7450 as if such Rule were part of the Rules of the Exchange. The Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Equity Rule 7450A are being performed by FINRA on behalf of the Exchange.

(b) Proprietary Trading Firms and their associated persons shall be required to comply with FINRA Rule 7450 as if such Rule were part of the Exchange's rules only when

they receive a request from the Exchange's Regulation Department 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 Equity Rule of the 7400A Series, including but not limited to, Equity Rule 7440A.

(c) With respect to orders for securities listed on the Exchange, Exchange members and their associated persons shall be required to comply with FINRA Rule 7450 as if such Rule applied to orders for securities listed on the Exchange and such Rule were part of the Rules of the Exchange, but only when they receive a request from the Exchange's Regulation Department 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 members and their associated persons under any other Equity Rule of the 7400A Series, including but not limited to, Equity Rule 7440A.

(d) For purposes of this Rule, references to FINRA Rule 7440 shall be construed as references to Equity Rule 7440A.

#### **7460A. Violation of Order Audit Trail System Rules**

Failure of a member or person associated with a member to comply with any of the requirements of Equity Rule 7410A through Equity Rule 7460A may be considered conduct that is inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Equity Rule 2110.

#### **7470A. Reserved]**

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### **[11000. UNIFORM PRACTICE CODE**

#### **11100. Scope of Uniform Practice Code**

(a) Transactions executed through the facilities of the Nasdaq BX Equities Market, including the rights and liabilities of the members participating in the transaction, and those operational procedures that affect the day-to-day business of members shall be subject to the provisions of this Code. However, the provisions of this Code shall not apply to transactions between members that are compared, cleared or settled through the facilities of a registered clearing agency (except to the extent that the rules of the clearing agency provide that rules of other organizations shall apply). Accordingly, because Equity Rule 4618 contemplates that Nasdaq BX Equities Market transactions will be settled through the facilities of a registered clearing agency using a continuous net settlement system, the provisions of the Code relating to clearance and settlement will apply to Nasdaq BX Equities Market transactions only in unusual circumstances in which trades are settled "ex-clearing".

(b) The scope of coverage contained in paragraph (a) above may be expanded or limited in any Rule of this Code if specifically provided therein.

(c) With respect to transactions executed on the Exchange, failure to deliver the securities sold, or failure to pay for securities as delivered, on or after the settlement date, does not effect a cancellation of the contract. The remedy for the buyer or seller is provided for by Rules 11810 and 11820 respectively unless the parties mutually consent to cancel the trade. In every such case of nondelivery of securities, the party in default shall be liable for any damages which may accrue thereby. All claims for such damages shall be made promptly.

(d) The CUSIP number must be used on the Uniform Transfer Instruction Form, Uniform Delivery Ticket and the Uniform Comparison or Confirmation.

### **11110. The Exchange's Regulation Department**

The Exchange's Regulation Department shall have the power to issue interpretations or rulings with respect to the applicability of this Code to situations in which there is no substantial disagreement as to the facts involved in order to make custom, practice, usage, and trading technique in the investment banking and securities business uniform, to simplify and facilitate day-to-day business of members and to remove causes for business disputes and misunderstandings which arise from uncertainty and lack of uniformity, including rulings in connection with "when, as and if issued" trading and "when, as and if distributed" trading, and whether a security tendered is a good delivery in settlement of such contracts.

### **IM-11110. Refusal to Abide by Rulings of the Exchange's Regulation Department Staff**

It shall be considered conduct inconsistent with just and equitable principles of trade for any member to refuse to abide by an official ruling of the Exchange's Regulation Department, acting within its appropriate sphere, with respect to any transaction which was consummated within the provisions and purview of the Uniform Practice Code.

### **11120. Definitions**

(a) The Exchange's Regulation Department

The term "the Exchange's Regulation Department" as used in this Code, unless the context otherwise requires, shall mean the Department of the Exchange that administers this Code.

(b) Delivery Date

The term "delivery date" as used in this Code shall be used interchangeably with "settlement date" and shall mean the date designated for the delivery of securities.

(c) Ex-Date

The term "ex-date" as used in this Code shall mean the date on and after which the security is traded without a specific dividend or distribution.

(d) Immediate Return Receipt

The term "immediate return receipt" as used in this Code, shall mean the acknowledgement by the receiving member of a written notice and which shall be issued, upon receipt, via the media in which such notice is received.

(e) Record Date

The term "record date" as used in this Code means the date fixed by the trustee, registrar, paying agent or issuer for the purpose of determining the holders of equity securities, bonds, similar evidences of indebtedness or unit investment trust securities entitled to receive dividends, interest or principal payments or any other distributions.

(f) Reserved

(g) Written Notices

The term "written notice," as used in this Code, shall include a notice delivered by hand, by letter, teletype, telegraph, TWX, facsimile ("FAX") transmission or other comparable media.

**11130. When, As and If Issued/Distributed Contracts**

(a) Confirmations or Comparisons

(1) Each party to the transaction shall send a written "when, as and if issued" or "when as and if distributed" confirmation or comparison in the same form as set forth in the Sample Form appearing after this Rule 11130 and pursuant to the requirements of Rules 11210(a), 11220, and 11860.

(2) Each confirmation or comparison covering a contract in a "when, as and if issued" or "when, as and if distributed" security shall, at a minimum, contain:

(A) an adequate description of the security and the plan, if any, under which the security is proposed to be issued or distributed;

(B) designation of the Exchange as the authority which shall rule upon the performance of the contract; and

(C) provision for marking the contract to the market.

(3) the Exchange's Regulation Department will furnish, upon written request therefor, an adequate description of any particular issue of securities and of the plan under which the securities are proposed to be issued for the purpose of inclusion in all contracts or confirmations covering transactions on a "when, as and if issued" or "when, as and if distributed" basis in the particular securities.

(b) Accrued Interest

(1) Unless the parties agree otherwise, "when, as and if issued" or "when, as and if distributed" transactions between members in fixed obligations of new or reorganized companies shall be "and accrued interest" to date of settlement. Interest shall be computed on the basis of the expired portion of the coupon current at the time of settlement, and all due and past due coupons shall be detached.

(2) "When, as and if issued" or "when, as and if distributed" transactions between members in income or contingent interest securities of such companies shall be traded "flat" and shall carry all payments that may be made or declared in connection with such new securities from the effective date of the plan; except that, if any payment is made or declared directly or indirectly in connection with such securities, prior to the settlement date, transactions made on and after the "ex" date for such payment shall carry only payments made or declared in connection with such securities from such "ex" date.

(3) Securities of such companies which bear a fixed rate of interest, plus contingent additional payment, are to be traded "and accrued interest" at the rate of the fixed interest, and traded "flat" in respect to the contingent payments.

(c) Marks to the Market

In case of "when, as and if issued" or "when, as and if distributed" contracts, the time of issuance or distribution of the securities is indefinite and may be long delayed. Therefore, such contracts should be marked to the market pursuant to the provisions of Rule 11740 of the Code.

(d) Contracts on Margin

All "when, as and if issued" or "when, as and if distributed" contracts shall be in compliance with Sections 220.4 and 220.5 of Regulation T of the Board of Governors of the Federal Reserve System.

(e) Request for Deposits

A member may require a customer to deposit cash or collateral to secure a "when, as and if issued" or "when, as and if distributed" contract even though Section 220.8(b)(1) of

Regulation T of the Board of Governors of the Federal Reserve System may not require such deposit.

(f) Segregation of Funds

(1) Deposits against "when, as and if issued" or "when, as and if distributed" transactions should be segregated on the books of the firm in order to present a true picture of the firm's position and its commitment in transactions of this kind. It may be appropriate to segregate such deposits from the firm's general cash balances by depositing them in a bank other than those containing the general deposits, loans or other obligations of the firm. Whether or not such physical segregation is made, no member should permit any part of deposits against "when, as and if issued" or "when, as and if distributed" contracts to be used for any purpose whatsoever other than to secure such contracts.

(2) As a minimum, every member doing business in "when, as and if issued" or "when, as and if distributed" securities shall ensure that the sum of the cash balances and any deposits with banks, clearing houses, or other brokers against "when, as and if issued" or "when, as and if distributed" contracts always exceeds the aggregates of all free credits and deposits against "when, as and if issued" or "when, as and if distributed" contracts by an amount fully ample to conduct his business without employing any part of such deposits.

(g) Settlement of Contracts

(1) A date for the settlement of "when, as and if issued" and "when, as and if distributed" contracts shall be determined by the Exchange's Regulation Department when a sufficient percentage of the issue is outstanding.

(2) In connection with a transaction in a security "when, as and if issued," delivery shall be made at the office of the purchaser on the date declared by the Exchange's Regulation Department; except that if no delivery date shall be declared by the Exchange's Regulation Department:

(A) delivery may be made by the seller on the business day following the day upon which the seller has delivered at the office of the purchaser written notice of intention to deliver, and

(B) open market "when, as and if issued" contracts in securities currently being publicly offered through a syndicate or selling group shall be settled on the date such syndicate or selling group contracts are settled; provided, however, delivery of securities in accordance with this paragraph shall be made during the normal delivery hours in the community where the buyer is located.

(3) In connection with a transaction in a security "when, as and if distributed," delivery shall be made at the office of the purchaser on the date declared by the Exchange's Regulation Department; except that if no delivery date shall be declared by the Exchange's Regulation Department, delivery may be made by the seller on the business day following the day upon which the seller has delivered at the office of the purchaser written notice of intention to deliver.

(h) Cancellation of Contracts

(1) Pursuant to Rule 11110, the Exchange's Regulation Department may cancel or terminate "when, as and if issued" and "when, as and if distributed" contracts as necessary to resolve conflicts over the settlement of such contracts.

(2) Contracts will be canceled if the securities are not to be issued or distributed.

(3) Contracts will generally be canceled if the securities which are to be issued or distributed are not substantially the same as those contemplated in the contract. Material changes which will generally result in cancellation include, but are not limited to, changes to the redemption schedule, dividend payments, interest rates, maturity, yield, and exercise price.

(4) Notwithstanding paragraph (h)(3), contracts will not generally be canceled as a result of changes that do not constitute material changes to the terms of the security called for under the contract. Changes which will not generally result in cancellation include, but are not limited to:

(A) changes in the dollar value of securities to be issued or distributed;

(B) restructuring of financing arrangements previously announced by the issuer of the securities; or

(C) settlement of any legal action or the occurrence of any other event which has or will have a material effect on the financial condition of the issuer of the securities.

IM-11130. Standard Forms of "When, As and If Issued" or "When, As and If Distributed" Contract

(a) For use by dealers and brokers in confirming transactions with other dealers and brokers

"When, as and if Issued" or "When, as and if Distributed" Contract

(Firm Name)

Date

Sold to — Quantity.etc. Table Here

If this contract was made on a national securities exchange other than the Exchange, the contract shall be subject to and governed by the requirements of such other exchange, its constitution, rules, practices and interpretations thereof, relating to contracts between members of such exchange, as the same may be amended or modified from time to time.

If this contract was made elsewhere than on a national securities exchange, it shall be subject to and governed by the requirements of FINRA, its By-Laws, Rules, Uniform Practice Code and interpretations thereof as the same may be amended or modified from time to time.

This contract shall be settled and payment therefor made at such time and place, in such manner, and by the delivery of such securities and/or other property as the exchange or association to whose requirements this contract is subject in its sole discretion may determine, or shall be canceled and thereafter shall be null and void if such exchange or association determines in its sole discretion that the securities which are to be issued or distributed are not substantially the same as those contemplated in the contract. During the pendency of this contract either party shall have the right to call for a mark to the market, and upon failure of the other party to comply therewith the party not in default may close this contract in accordance with the requirements of the exchange or association to whose requirements this contract is subject.

(b) For use by a dealer (principal) and his customer covering transactions on a principal basis

Date

"When, as and if Issued" or "When, as and if Distributed" Contract

TO

I/we have sold to you/purchased from you shares/par value at These securities shall be payable and deliverable "when, as and if issued" or "when, as and if distributed," or this contract shall be cancelable in accordance with the requirements of the Rules of the Nasdaq BX, Uniform Practice Code and interpretations thereof.

I/we shall have the right to demand deposits according to such requirements. On your failure to comply therewith, we may close the contract in accordance with such requirements.

(Firm Signature)

Accepted:

(Signature of Customer)

### **11140. Transactions in Securities "Ex-Dividend," "Ex-Rights" or "Ex-Warrants"**

#### (a) Designation of Ex-Date

All transactions in securities, except "cash" transactions, shall be "ex-dividend," "ex-rights" or "ex-warrants": (1) on the day specifically designated by the Exchange's Regulation Department after definitive information concerning the declaration and payment of a dividend or the issuance of rights or warrants has been received at the office of the Exchange's Regulation Department; or (2) on the day specified as such by the appropriate national securities exchange which has received definitive information in accordance with the provisions of SEC Rule 10b-17 concerning the declaration and payment of a dividend or the issuance of rights or warrants.

#### (b) Normal Ex-Dividend, Ex-Warrants Dates

(1) In respect to cash dividends or distributions, or stock dividends, and the issuance or distribution of warrants, which are less than 25% of the value of the subject security, if the definitive information is received sufficiently in advance of the record date, the date designated as the "ex-dividend date" shall be the first business day preceding the record date if the record date falls on a business day, or the second business day preceding the record date if the record date falls on a day designated by the Exchange's Regulation Department as a non-delivery date.

(2) In respect to cash dividends or distributions, stock dividends and/or splits, and the distribution of warrants, which are 25% or greater of the value of the subject security, the ex-dividend date shall be the first business day following the payable date.

(3) In respect to stock dividends and/or splits relating to American Depository Receipts (ADRs) and foreign securities, the ex-dividend or ex-warrants date shall be designated by the Exchange's Regulation Department.

#### (c) Late Information Re: Ex-Dividend, Ex-Warrants Dates

If definitive information is not received sufficiently in advance of the record date to permit designation of an ex-dividend or ex-warrants date in accordance with paragraph

(b)(1) hereof, the date designated shall be the first business day which, in the opinion of the Exchange's Regulation Department, shall be practical having regard to the circumstances pertaining.

(d) Normal Ex-Rights Dates

In respect to transferable rights subscription offerings, if definitive information is received sufficiently in advance of the effective date of the registration statement, the date designated as the ex-rights date shall be the first business day after the effective date of the registration statement.

(e) Late Information Re: Ex-Rights

If definitive information is not received sufficiently in advance of the effective date of the registration statement to permit designation of an ex-rights date in accordance with the paragraph (d) hereof, the date designated shall be the first business day which in the opinion of the Exchange's Regulation Department shall be practical having regard to the circumstances pertaining.

**11150. Transactions "Ex-Interest" in Bonds Which Are Dealt in "Flat"**

(a) Normal Ex-Interest Dates

All transactions, except "cash" transactions, in bonds or similar evidences of indebtedness which are traded "flat" shall be "ex-interest" as prescribed by the following provisions:

- (1) On the first business day preceding the record date if the record date falls on a business day.
- (2) On the second business day preceding the record date if the record date falls on a day other than a business day.
- (3) On the second business day preceding the date on which an interest payment is to be made if no record date has been fixed.

(b) Late Information Re: Ex-Interest Dates

If notice of payment of interest is not made public sufficiently in advance of the record date or the payment date, as the case may be, to permit the security to be dealt in "ex-interest" in accordance with paragraph (a) hereof such security shall be dealt in "ex-interest" on the first business day which, in the opinion of the Exchange's Regulation Department, shall be practical having regard to the circumstances pertaining.

**11160. "Ex" Liquidating Payments**

All transactions except "cash" transactions in stocks, bonds or similar evidences of indebtedness shall be "ex" liquidating payments or payments on account of principal in accordance with the formula set forth in Rules 11140 and 11150.

#### **11170. Transactions in "Part-Redeemed" Bonds**

In transactions in bonds which have been redeemed or paid in part, such bonds shall be designated as "part-redeemed" bonds. The settlement price of contracts in "part-redeemed" bonds shall be determined by multiplying the contract price by the original principal amount thereof and contracts shall be made on the same basis.

#### **11180. Reserved**

#### **11190. Reconfirmation and Pricing Service Participants**

(a) Each member or its agent that is a participant in a registered clearing agency, for purposes of clearing transactions executed on the Exchange, shall participate in fail reconfirmation and pricing services when offered.

(b)

(1) A contract submitted to a reconfirmation and repricing service ("service") which has been DK'd ("Don't Know") by the contra-party or is otherwise deemed a DK under the rules of the service may be closed-out by the party who submitted the contract to the service without notice during normal trading hours promptly after the completion of the reconfirmation and pricing cycle of the service for the account and liability of the non-confirming member.

(2) Notice of any execution pursuant to this paragraph (b), shall be made as promptly as possible on the day of execution, as provided in Rules 11810(g) and 11820(b).

#### **11200. Comparisons or Confirmations and "Don't Know Notices"**

#### **11210. Sent by Each Party**

(a) Comparisons or Confirmations

(1) Each party to a transaction, other than a cash transaction, shall send a Uniform Comparison or Confirmation of same on or before the first business day following the date of the transaction.

(2) Comparisons or confirmations of cash transactions shall be exchanged on the day of the trade.

(3) Comparisons or confirmations shall be compared upon receipt to ascertain whether any discrepancies exist. If discrepancies do exist, a corrected Uniform Comparison or Confirmation shall be sent by the party in error.

(4) This Rule shall not be applicable to transactions which clear through the National Securities Clearing Corporation or other clearing organizations registered under the Act.

(b) Uniform Comparison or Confirmation

A properly executed Uniform Comparison or Confirmation must be used for each transaction. 1

(c) "DK" Procedures Using "Don't Know Notices" (FINRA Form No. 101)

When a party to a transaction sends a comparison or confirmation of a trade, but does not receive a comparison or confirmation or a signed DK, from the contra-member by the close of one business day following the trade date of the transaction, the following procedure may be utilized.

(1) The confirming member shall send by certified mail, return receipt requested, or messenger, a "Don't Know Notice" on the form prescribed by FINRA Rule 11210 to the contra-member in accordance with the directions contained thereon. If the notice is sent by certified mail the returned, signed receipt therefor must be retained by the confirming member and attached to the fourth copy of the "Don't Know Notice." If delivered by messenger, the fourth copy must immediately be dated and manually receipted by, and imprinted with the firm stamp of, the contra-member pursuant to the provisions of paragraph (c)(4) of this Rule, returned to the messenger and thereafter be retained by the confirming member.

(2)

(A) After receipt of the "Don't Know Notice" as specified in paragraph (c)(1) of this Rule, the contra-member shall have two business days after the notice is received to either confirm or DK the transaction in accordance with the provisions of paragraph (c)(2)(B) or (c)(2)(C) below.

(B) If the contra-member desires to respond by mail, the second copy of the "Don't Know Notice" previously received shall be executed in accordance with the provisions of paragraph (c)(4) of this Rule and sent to the confirming broker by certified mail, return receipt requested. The notice so returned shall indicate clearly whether the contra-member desires to confirm or DK the transaction. The returned, signed receipt must thereafter be retained by the contra-member.

(C) If the contra-member desires to respond by messenger, it shall return to the confirming member the second and third copies of the notice which shall indicate clearly whether the contra-member desires to confirm or DK the transaction. The third copy shall be dated and manually receipted by the confirming broker pursuant to the provisions of paragraph (c)(4) of this Rule and immediately be returned to the messenger and thereafter be retained by the contra-member.

(3) If the confirming member does not receive a response from the contra-member by the close of two business days after receipt by the confirming member of the fourth copy of the "Don't Know Notice" if delivered by messenger, or the post office receipt if delivered by mail, as specified in paragraph (c)(1) of this Rule, such shall constitute a DK and the confirming member shall have no further liability for the trade.

(4) All "Don't Know Notices" sent by any party pursuant to the provisions of this paragraph (c) must be manually signed by a person authorized to pursue further discussions in respect to the transaction on behalf of the signing member. In addition to the manual signature receipt on the third and fourth copies, as required by paragraphs (c)(1) and (c)(2)(C) hereof, if delivered by hand, the firm stamp of the contra-member must be imprinted thereon to signify receipt.

(5) The "Don't Know Notice" form to be used for purposes of complying with this section, may be ordered through any office of FINRA. If the official form is not used, the form which is used must conform in every respect to the official form.

(d) "DK" Procedure Using Other Forms of Notice

When a party to a transaction sends comparison or confirmation of a trade, but does not receive a comparison or confirmation or a signed DK, from the contra-member by the close of one business day following the date of the transaction, the following procedure may be utilized in place of that provided in the preceding paragraph (c).

(1) The confirming member shall provide notice to the contra-member identifying the trade in question by providing the information described in Rule 11220. The notice shall, in addition, contain a request for the contra-member to confirm or "DK" the trade and the name of the individual issuing the notice.

(2) The confirming member shall record and retain verification of delivery to the contra-member of each notice issued in accordance with paragraph (d)(1) of this Rule.

(3) The contra-member, on receipt of the notice from the confirming member, shall research the trade in question.

(4) The contra-member shall then send notice to the confirming member to either confirm or "DK" the trade and shall include the name of the individual issuing the notice.

(5) If the confirming member does not receive a response in the form of a notice from the contra-member by the close of two business days after receipt of the confirming member's notice, such shall constitute a DK and the confirming member shall have no further liability.

(6) Both the confirming member and the contra-member shall record and retain verification of the delivery and receipt of each notice issued pursuant to paragraph (d)(4) of this Rule.

(7) If the trade in question is confirmed by the contra-member pursuant to paragraph (d)(4) of this Rule, settlement shall be completed in the normal manner.

(8) Notices under this paragraph (d) may be delivered through any communications medium which provides verification of delivery and receipt as required under paragraphs (d)(2) and (d)(6).

1 Specifications for use of the Uniform Comparison are contained in the Final Report of the Banking and Securities Industry Committee entitled "Four Uniform Forms," dated December 22, 1971.

#### **IM-11210. Uniform Comparison Form**

NO. COMPARISON	Firm Name	TELEPHONE		
	CODES			
ORIGINATOR NO.	TRANS. NO	TR CAP SETT	TRADE DATE	SETTLEMENT DATE
IDENTIFICATION NO.	CONTRA PARTY	C.H. NUMBER	SPECIAL DELIVERY INSTRUCTIONS	
WE	QUANTITY	CUSIP NUMBER	SECURITY DESCRIPTION	NET AMOUNT
PRICE				

RESERVED FOR USER'S MONEY DETAIL

#### **11220. Description of Securities**

Confirmations or comparisons shall include, in addition to an adequate description of the security (which shall include payment options on a unit investment trust series), the price at which the transaction was made and any other information deemed necessary to insure

that the buyer and seller agree as to details of the transaction. Such "other information" should include, if applicable, but need not be limited to, such phrases as "ex-warrants," "ex-stock," "registered," "flat," "part-redeemed," "Canadian funds," "with proxy," etc.

### **11300. Delivery of Securities**

#### **11310. Book-Entry Settlement**

(a) A member shall use the facilities of a securities depository for the book-entry settlement of all transactions in depository eligible securities with another member or a member of a national securities exchange or a registered securities association.

(b) A member shall not effect a delivery-versus-payment or receipt-versus payment transaction in a depository eligible security with a customer unless the transaction is settled by book-entry using the facilities of a securities depository.

(c) For purposes of this Rule, the term "securities depository" shall mean a securities depository registered as a clearing agency under Section 17A of the Act.

(d)

(1) The term "depository eligible securities" shall mean securities that (A) are part of an issue of securities that is eligible for deposit at a securities depository and (B) with respect to a particular transaction, are eligible for book-entry transfer at the depository at the time of settlement of the transaction.

(2) A determination under Rule 4310(c)(23) or under the corresponding rule of another national securities exchange that a security depository has included a CUSIP number identifying a security in its file of eligible issues does not render the security "depository eligible" under this Rule until:

(A) in the case of any new issue distributed by an underwriting syndicate on or after the date a securities depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available, the date of the commencement of trading in such security on the Exchange; or

(B) in the case of any new issue distributed by an underwriting syndicate prior to the date a securities depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available where the managing underwriter elects not to deposit the securities on the date of the commencement of trading in such security on the Exchange, such later date designated by the managing underwriter in a notification submitted to the securities depository; but in no event more than three (3) months after the commencement of trading in such security on the Exchange.

(e) This Rule shall not apply to transactions settled outside of the United States.

(f) The requirements of this Rule shall supersede any inconsistent requirements under other Rules in the Code.

(g) This Rule shall not apply to any transactions where the securities to be delivered in settlement of the transaction are not on deposit at a securities depository and:

(1) if the transaction is for same-day settlement, the deliverer is unable to deposit the securities in a securities depository prior to the cut-off time established by the depository for same-day crediting of deposited securities, or

(2) the deliverer is unable to deposit the securities in a depository prior to the cut-off date established by the depository for that issue of securities.

### **11320. Dates of Delivery**

(a) For "Cash"

In connection with a transaction for "cash," delivery shall be made at the office of the purchaser on the day of the transaction.

(b) "Regular Way"

In connection with a transaction "regular way," delivery shall be made at the office of the purchaser on, but not before, the second business day following the date of the transaction.

(c) "Seller's Option"

In connection with a transaction "seller's option," delivery shall be made at the office of the purchaser on the date on which the option expires; except that delivery may be made by the seller on any business day after the second business day following the date of the transaction and prior to the expiration of the option, provided the seller delivers at the office of purchaser, on a business day preceding the day of delivery, written notice of intention to deliver.

(d) "Buyer's Option"

In connection with a transaction "buyer's option," delivery shall be made at the office of the purchaser on the date on which the option expires.

(e) Contracts Due on Holidays or Saturdays

Contracts due on a day other than a business day shall mature on the next business day.

(f) "Delayed-Delivery"

In connection with a transaction made for "delayed-delivery," delivery shall be at the office of the purchaser on the date agreed upon at the time for the transaction.

(g) Prior to Delivery Date

If in contracts executed pursuant to paragraphs (b), (d) and (h) of this Rule, the seller tenders delivery before the stated time, acceptance shall be at the election of the purchaser, and rejection of such delivery by the purchaser shall be without prejudice to his rights.

(h) Time and Place of Delivery

Delivery shall be made at the office of the purchaser between the hours established by rule or practice in the community where such office is located. If the purchaser maintains more than one office, delivery shall be made at the office with which the transaction was effected, unless delivery instructions are provided at the time of the transaction.

**11330. Payment**

The party making delivery shall have the right to require the purchase money to be paid upon delivery by certified check, cashier's check, bank draft or cash.

**11340. Stamp Taxes**

(a) Members shall, as required by the rules and regulations of jurisdictions imposing taxes on sales, purchases or other transfers of securities, furnish tax stamps or pay the tax through securities clearing organizations.

(b) In the event that taxes are due pursuant to state stock transfer taxes, the seller shall furnish to the buyer at the time of delivery a sale memorandum ticket to which shall be affixed and canceled sufficient state transfer stamps as are required by the state in which the sale occurs, or the tax may be paid by the seller through securities clearing organizations.

(c) Additional stamps. If any stamps in addition to those required by paragraph (a) hereof are desired by the buyer, the furnishing of such additional stamps by the seller may be made a part of the transaction.

(d) Seller's failure to furnish stamps. If the buyer has requested the additional state stamps provided by paragraph (c) and at the time of delivery of the security the seller does not furnish or has not made adequate provision for such stamps, the buyer may furnish and cancel such additional state transfer stamps and deduct the cost thereof from the purchase price.

**11350. Part Delivery**

The purchaser shall be required to accept a part delivery on any contract due provided the portion remaining undelivered is not an amount which includes an odd-lot which was not a part of the original transaction.

**11360. Units of Delivery**

**IM-11360. Uniform Delivery Ticket Form**

NO. DELIVERY TICKET      Firm Name      TELEPHONE

THE ATTACHED SECURITIES ARE DELIVERED AGAINST PAYMENT

CODES

ORIGINATOR NO.	TRANS. NO	SETT	TRADE DATE	SETTLEMENT DATE	DELIVERY DATE
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560

IDENTIFICATION NO.	ACCOUNT NAME	C.H. NUMBER	SPECIAL DELIVERY INSTRUCTIONS
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QUANTITY	CUSIP NUMBER	SECURITY DESCRIPTION	NET AMOUNT
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11361. Units of Delivery — Stocks

(a) Stock certificates delivered in settlement of contracts:

(1) in which the transaction is for 100 shares may be in one certificate for the exact number of shares or certificates totaling 100 shares.

(2) in which the transaction is greater than 100 shares and a multiple of 100 shall be in the exact amount of the contract, or in multiples of 100 shares, or in amounts from which units of 100 shares can be made, or a combination thereof equaling the amount of the contract.

(3) in which the transaction is for more than 100 shares but not in a multiple of 100 shall be in multiples of 100 shares, or in amounts from which units of 100 shares can be made, or a combination thereof, plus either the exact amount for the odd lot or smaller amounts equaling the odd lot.

(4) in which the transaction is for less than 100 shares shall be in the exact amount of the contract or for smaller units aggregating the amount of the contract.

(b) Uniform Delivery Ticket

A properly executed Uniform Delivery Ticket must accompany the delivery of securities.

1

1 Specifications for use of the Uniform Delivery Ticket are contained in the Final Report of the Banking and Securities Industry Committee entitled "Four Uniform Forms" dated December 22, 1971.

**11362. Units of Delivery — Bonds**

(a) Coupon Bonds

Each delivery of bonds or similar evidences of indebtedness in coupon bearer form shall be made in denominations of \$1,000 or in denominations of \$100 or multiples thereof aggregating \$1,000.

(b) Registered Bonds

Each delivery of bonds or similar evidences of indebtedness in fully registered bond issues shall be made in denominations of \$1,000 or multiples thereof or in amounts of \$100 or multiples aggregating \$1,000 but in no event in denominations larger than \$100,000.

(c) Bonds Issued in Both Coupon and Registered Form

Unless otherwise specified at the time of execution, contracts in bonds that are issuable in either coupon or registered form, shall be settled by delivery of bonds in either form pursuant to the denominations in paragraphs (a) and (b) above, notwithstanding that there may be a charge for interchanging one form with the other.

(d) Units of Delivery by Agreement

When a contract relating to paragraphs (a), (b) and (c) above is for a principal amount which is not a multiple of \$100, the parties shall agree, at the time of entering into the contract, as to the proper units of delivery.

**11363. Units of Delivery — Unit Investment Trust Securities**

The minimum unit of delivery for Unit Investment Trust Securities shall be a single unit of the trust.

**11364. Units of Delivery — Certificates of Deposit for Bonds**

The units of delivery for certificates of deposit for bonds, shall be the same as prescribed for bonds in Rule 11362.

#### **IM-11364. Trading Securities As "Units" or Bonds "With Stock"**

Where securities are physically separate instruments, transferable independently of one another, and not subject to any legal or technical condition which requires that they be kept together, good practice requires that they be quoted and dealt in separately and not as units.

Where, for some special reason, members enter into a contract calling for a group of securities, they are cautioned to make adequate specification both at the time of trade and in their confirmation or comparison, so that uncertainty or misunderstanding in the settlement of the contract may be eliminated.

#### **11400. Delivery of Securities with Draft Attached**

##### **(a) Time of Presentation**

Drafts accompanying the shipment of securities need be accepted only on a business day between the hours established by rule or practice in the community where the draft is presented. Acceptance of a draft at other times shall be at the option of the drawee, and the drawee shall not be liable for any expense arising out of his refusal of the draft when presented on a Saturday or half-holiday.

Note: For his own protection, the seller should instruct his bank or collecting agent that if the draft is received on a Saturday or half-holiday, it need not be presented to the drawee until the following business day.

##### **(b) Prior to Settlement Date**

The acceptance of a draft prior to the settlement date shall be at the option of the drawee.

##### **(c) With Irregularities**

The acceptance of a draft which contains irregularities shall be at the option of the drawee.

##### **(d) Expense Due to Shipment**

Expenses of shipment, including insurance, postage, draft, and collection charges, shall be paid by the seller.

##### **(e) Expenses Due to Delay**

Failure to accept a draft in which no irregularities exist, when duly presented on a business day, shall make the drawee liable for the payment of interest to the date the draft is paid and for other incidental expenses incurred because of the delay, including protest fees, if any, and wire charges.

(f) Claims for Irregularities

Claims with respect to such items as price, interest, protest fees or wire charges and items of similar nature, arising from the acceptance of draft shipments in which irregularities exist, shall be presented not later than ten days after payment. This limitation shall not apply to matters covered hereinafter under "Reclamations," in Rules 11710 to 11730.

**11500. Delivery of Securities with Restrictions**

**11510. Delivery of Temporary Certificates**

A temporary certificate shall not be a good delivery when permanent certificates are available.

**11520. Delivery of Mutilated Securities**

(a) A mutilated security shall not be a good delivery until appropriately authenticated by the trustee, registrar, transfer agent, or issuer.

(b) The delivery of a bond which bears a coupon which has been mutilated as to the bond number or signature or which bears a coupon which has been canceled in error shall not be good delivery unless an appropriate endorsement by an official authorized by paragraph (c) hereof shall have been placed on the reverse of the coupon.

(c) The endorsement shall be signed on behalf of the obligor by an officer thereof or, under authorization from the obligor, on behalf of the corporate trustee or paying agent by a duly authorized officer thereof or other person authorized to sign on behalf thereof.

**11530. Delivery of Securities Called for Redemption or Which Are Deemed Worthless**

(a) Securities Called for Redemption

A certificate of stock or a bond shall cease to be a good delivery upon publication of notice of call for redemption, except when an entire issue is called for redemption and except against transactions in "called stock" or "called bonds" dealt in specifically as such.

(b) Securities Deemed Worthless

(1) In contracts for securities where a public announcement or publication of general circulation discloses that the securities have been deemed worthless, deliveries shall consist of (A) the worthless securities or (B) a Letter of Indemnity which shall grant the purchaser any rights and privileges which might accrue to the holders of the physical securities.

(2) Deliveries effected pursuant to paragraph (b)(1) shall operate to close-out the contract and must be accompanied by documentation evidencing that the security was deemed worthless after the original execution date of the contracts. Such contracts shall be settled at the existing contract price.

(3) For purposes of this paragraph (b), securities deemed worthless shall be those instruments which have no known market value.

#### **11540. Delivery Under Government Regulations**

##### **(a) Documents Required**

When the laws, regulations, rulings, instructions or orders of any government, government instrumentality or agency, or official thereof having jurisdiction, require a license, clearance certificate, affidavit of ownership or any similar document in connection with the acquisition, disposition, transfer or redemption of, or other dealing in or with respect to, any security, such security shall not be a good delivery unless accompanied by the document or documents so required.

##### **(b) Certificate Subject to Stoppage**

If a specific certificate tendered in settlement of a contract in foreign securities is on a black list, blocked list, or subject to similar stoppage, from which an innocent holder in due course cannot have it removed by simple request, such certificate is not a good delivery, and reclamation may be made without limit of time.

#### **11550. Assignments and Powers of Substitution; Delivery of Registered Securities**

##### **(a) General Requirements**

Any registered security to be a good delivery must be accompanied by an assignment and a power of substitution (when such power of substitution is required under paragraph (g) of this Rule) conforming to the requirements set forth in Rule 11550 to 11574, inclusive. Any expense incurred through failure of a seller to meet these requirements shall be paid by the seller.

##### **(b) Assignment**

An assignment shall be executed on the certificate itself or on a separate paper, in which latter case there shall be a separate assignment for each certificate.

(c) Signature Requirements

The signature to an assignment or power of substitution shall be technically correct; i.e., it shall correspond with the name as written upon the certificate in every particular without alteration or enlargement, or any change whatever, except that "and" or "&" "Company" or "Co." may be written either way.

(d) Detached Assignment Requirements

A separate (detached) assignment shall contain provision for the irrevocable appointment of an attorney, with power of substitution, and a full description of the security, including name of issuer, issue, certificate number, and amount (expressed in words and numerals).

(e) Two or More Names

A certificate registered in the names of two or more individuals or firms shall be a good delivery only if signed by all the registered owners.

(f) Alteration or Correction

Any alteration or correction in an assignment or power of substitution shall be accompanied by an explanation on the original instrument signed by the person or firm executing the same.

(g) Power of Substitution

When the name of an individual or firm has been inserted in an assignment, as attorney, a power of substitution shall be executed in blank by such individual or firm. When the name of an individual or firm has been inserted in a power of substitution as substitute attorney, a new power of substitution shall be executed in blank by such substitute attorney.

(h) Guarantee

Each assignment, endorsement, alteration and erasure shall bear a guarantee acceptable to the transfer agent or registrar. It is not the intent of this paragraph that a "New York," national securities exchange member or other specific guarantee is required; rather, it is the intent only that the guarantee be acceptable to the transfer agent.

(i) Foreign Internal Securities

Except for Canadian Securities, American Depositary Receipts, American Shares, New York Shares and similar securities, the provisions of paragraphs (b) through (g),

inclusive, and Rule 11572 shall not apply to Foreign Internal Securities in registered form. In default of specific Rules in this Code, the usual conditions of delivery and transfer of Foreign Internal Securities in registered form in the foreign market where principally traded shall apply.

(j) Uniform Transfer Instruction Form

A properly executed Uniform Transfer Instruction Form must accompany securities presented for transfer. 1

1 Specifications for use of the Uniform Transfer Instruction Form are contained in the Final Report of the Banking and Securities Industry Committee entitled "Four Uniform Forms" dated December 22, 1971.

**IM-11550. Uniform Transfer Instructions Form**

TO TRANSFER AGENT:

Firm Name I.D. #

PLEASE TRANSFER THE ATTACHED  
SECURITIES AS SHOWN BELOW

SECURITY DESCRIPTION

CERTIFICATION PRESENTED TO  
TRANSFER

QUANTITY DENOMINATIONS	TAX PAYER NO.	CUSIP NUMBER	CONTROL PRESENTOR DATE
------------------------	---------------------	-----------------	------------------------

TO BE REGISTERED IN THE NAME OF

**11560. Certificate of Company Whose Transfer Books Are Closed**

General Requirements

A certificate of a company whose transfer books are closed indefinitely for any reason shall be good delivery only if the required ownership transfer indemnification is affixed to or recorded upon the certificate. The indemnification acknowledges the assignor(s)' ultimate responsibility for the ownership of the certificate as of the date of the

indemnification and shall be affixed or recorded only once during the lifetime of the certificate. Certificates delivered pursuant to this Rule must conform with all the applicable delivery requirements set forth in Rule 11550 of this Code.

### **IM-11560. Sample Ownership Transfer Indemnification Stamp**

Date:

The undersigned owner of this certificate (number) representing Shares of hereby certifies the transfer of all ownership therewith to the bearer hereby. We acknowledge that the transfer books of the herein named corporation are closed and agree to accept responsibility in accordance with the provisions of Rule 11560 of Nasdaq BX's Uniform Practice Code.

\_\_\_\_\_ NAME OF MEMBER

\_\_\_\_\_ AUTHORIZED SIGNATURE

Amended Oct. 18, 2017 (SR-BX-2017-045).

### **11570. Certificates in Various Names**

#### **11571. Certificate in Name of Corporation**

##### **(a) Transfer Books Open**

A certificate in the name of a corporation or an institution, or in a name with official designation shall be a good delivery only if the statement "Proper papers for transfer filed by assignor" is placed on the assignment and signed by the transfer agent.

##### **(b) Transfer Books Closed**

Where a certificate, an assignment or a power of attorney is in the name of a corporation and the transfer books of the issuing company are closed indefinitely for any reason, the certificate shall be a good delivery if the assignment or other instrument effecting transfer on the corporation's behalf is executed by an officer of such corporation, other than the secretary, and is accompanied by (1) a guarantee of such officer's signature executed by a person with the authority to make such a guarantee; (2) a copy of a corporate resolution and a completed and executed certificate of incumbency; and (3) the ownership transfer indemnification, as provided in Rule 11560, affixed to or recorded on the certificate.

##### **(c) Foreign Internal Securities**

The foregoing requirements shall not apply to foreign internal securities when the requirements do not correspond to the laws or customs of the country concerned; but instead such laws and customs shall govern such securities.

**IM-11571. Sample Certificate and Authorizing Resolution/Certificate of Incumbency**

I hereby certify that a meeting of the Board of Directors of , a corporation organized under the laws of the State of , held the day of , 19, at which a quorum was present and acting throughout, the following resolution was duly adopted and is now in full force and effect:

RESOLVED, that any one of the following officers of this Corporation, viz: the President, Vice President, Treasurer or Secretary, be and is hereby fully authorized and empowered to sell, assign, transfer and deliver any and all shares of stock, bonds, debentures, notes, evidences of indebtedness, or other securities now or hereafter standing in the name of or owned by this Corporation, and to make, execute, and deliver, any and all written instruments necessary or proper to effectuate the authority hereby conferred.

I further certify that the authority thereby conferred is not inconsistent with the Charter or By-Laws of this Corporation, and that the following is a true and correct list of the officers of this Corporation authorized to act.

Signing Officers:

In witness, whereof, I have hereunto set my hand and the seal of said Corporation this day of , 19

(Affix Corporate Seal)

Secretary

(The foregoing certification and the assignment of the securities should be executed by different officers.)

**11572. Certificate in Name of Firm**

Unless the endorsement specifies otherwise, there shall be a presumption that stock registered in a firm or business name is registered in the name of a partnership and not a corporation.

**11573. Certificate in Name of Dissolved Firm Succeeded by New Firm**

A certificate with an assignment or a power of substitution executed in the name of a firm that has since dissolved and is succeeded by a firm or firms having as general partners one or more of the general partners of the dissolved firm shall be a good delivery only if

the new firm or one of the new firms shall have signed the statement "Execution Guaranteed" under a date subsequent to the formation of the new firm so signing.

**11574. Certificate in Name of Deceased Person, Trustee, Etc.**

(a) A certificate shall not be a good delivery with an assignment or power of substitution executed by a: (1) person since deceased; (2) trustee or trustees, except as provided in paragraph (b) below, or except for trustees acting in the capacity of a board of directors of a corporation or association, in which case Rule 11561(a) shall apply; (3) guardian, except as provided in paragraph (b) below; (4) infant; (5) executor, except as provided in paragraph (b) below; (6) administrator, except as provided in paragraph (b) below; (7) receiver in bankruptcy; (8) agent; (9) attorney; (10) or with a qualification, restriction or special designation.

(b) A certificate shall be a good delivery with an assignment or a power of substitution executed by a: (1) domestic individual executor(s) or administrator(s); (2) domestic individual trustee(s) under an inter vivos or testamentary trust; or (3) domestic guardian(s) including committees, conservators and curators. These exceptions to paragraph (a) above are to cover transfers that will be effected by transfer agents without additional documentation. This paragraph (b) shall apply only to securities of a domestic issuer (organized under the laws of any state in the United States or District of Columbia) which are registered in the name(s) of (1), (2) or (3) of this paragraph (b). Certificates delivered pursuant to this paragraph (b) must be properly assigned, and the signature(s) to the assignment be guaranteed pursuant to Rule 11550(h).

(c) This Rule does not apply to certificates registered under a Statutory Gifts to Minors Act.

**IM-11574. Sample Limited Partnership Change of Trustee Form**

Limited Partnership Change of Trustee Form

FBO (Investor's Name)                      Partnership Name

Assignor (Present Trustee's Name)                      Assignor's Address

Customer's A/C Number with Assignor                      This hereby constitutes and appoints the said Partnership to transfer the said interests on the books of the Partnership with full power of substitution in the premises.

The Assignor hereby assigns to the Assignee 100% of the Assignor's right, title and interest in the Limited Partnership(s) described herein.

ASSIGNOR'S

RELEASE:

Authorized Signature (DATE)

X

Designee (New

Trustee's Name) (Assignee's Address)

(Customer's A/C

Number with

Assignee) (Assignee's Tax ID Number)

New Trustee's (Assignee's) Instructions:

Partnership Information:

ASSIGNEE'S

ACCEPTANCE

Authorized Signature

X (DATE)

Assignee: Upon receipt, forward this form and the original certificate (if available) to the General Partner for re-registration.

General Partner:

### **11600. Delivery of Bonds and Other Evidences of Indebtedness**

#### **11610. Liability for Expenses**

Failure of the seller to meet the requirements of good delivery relating to bonds and similar evidences of indebtedness, as set forth in paragraphs (a) through (h) of this Rule inclusive, shall make the seller liable for any expense incurred as a result of such failure.

##### **(a) Coupon Bonds**

A coupon bond shall have securely attached in the correct place proper coupons, warrants, etc., of the same serial number as the bond. Acceptance of cash or check in lieu of missing coupons shall be at the option of the purchaser.

(b) Endorsed Bonds

A coupon bond bearing an endorsement of a definite name of a person, firm, corporation, association, etc., in conjunction with words of condition, qualification, direction, or restriction, not properly pertaining thereto as a security, shall not be a good delivery unless sold specifically as an "endorsed bond." This shall also apply to bonds with coupons bearing such endorsements.

(c) Interest in Default

A bond upon which interest is in default shall carry all unpaid coupons.

(d) Registerable as to Principal

A coupon bond registerable as to principal shall be a good delivery only if registered to bearer.

(e) Endorsements for Banking or Insurance Requirements

A coupon bond bearing an endorsement indicating that the bond was deposited in accordance with a governmental requirement pertaining to banking institutions or insurance companies shall not be a good delivery. If released, with such release acknowledged before an officer authorized to take acknowledgments, it shall be a good delivery if sold specifically as a "released endorsed bond."

(f) Coupon Detached Prior to Delivery

(1) A bond dealt in "and interest," for delivery on or after the date on which interest is due and payable, shall be delivered without the coupon payable on such date.

(2) Late delivery. In the settlement of contracts in bonds dealt in "and interest" where delivery is due prior to the interest payment date but is made on or after the interest payment date, bonds may be delivered without coupons payable on such date, and the seller may present such detached, unpaid coupons to the buyer for payment, the buyer bearing the risk of non-payment.

(g) Stamped Bonds

(1) If a plan of reorganization which has been declared operative, or an amendment or supplement to an indenture provides that the bonds covered thereby shall be stamped to reflect the adoption of such plan or the amendment or supplement to the indenture, bonds so stamped shall be a good delivery and bonds not so stamped shall not be a good delivery.

(2) The fact that a bond has been stamped "Tax Paid" by any authority vested with the power to tax, if the stamp does not indicate ownership, shall not prevent such bond from being a good delivery.

(h) Certificates of Deposit

Certificates of deposit issued by committees or depositaries other than those specified at time of trade shall not be a good delivery.

**11620. Computation of Interest**

(a) Interest to be Added to the Dollar Price

In the settlement of contracts in interest-paying securities other than for "cash," there shall be added to the dollar price interest at the rate specified in the security, which shall be computed up to but not including the second business day following the date of the transaction. In transactions for "cash," interest shall be added to the dollar price at the rate specified in the security up to but not including the date of transaction.

(b) Basis of Interest

Interest shall be computed on the basis of a 360-day year, i.e., every calendar month shall be considered to be 1/12 of 360 days; every period from a date in one month to the same date in the following month shall be considered to be 30 days.

Note: The number of elapsed days should be computed in accordance with the examples given in the following table:

From 1st to 30th of the same month to be figured as 29 days;

From 1st to 31st of the same month to be figured as 30 days;

From 1st to 1st of the following month to be figured as 30 days;

From 1st to 28th of February to be figured as 27 days;

From the 23rd of February to the 3rd of March is to be figured as 10 days;

From the 15th of May to the 6th of June is to be figured as 21 days.

Where interest is payable on 30th or 31st of the month:

From 30th or 31st to 1st of the following month to be figured as 1 day;

From 30th or 31st to 30th of the following month to be figured as 30 days;

From 30th or 31st to 31st of the following month to be figured as 30 days;

From 30th or 31st to 1st of second following month to be figured as 1 month, 1 day.

(c) Securities Traded "and interest"

When delivery of a security traded "and interest" is made between the record date fixed for the purpose of determining the holder entitled to receive interest and the interest payment date, a deduction equivalent to the full amount of the interest to be paid shall be made on settlement.

(d) Securities Traded "flat"

When delivery of a security traded "flat" is made after the record date fixed for the purpose of determining the holder entitled to receive interest, in the settlement of a contract made prior to the date on which the security was traded "ex-interest," a due-bill check for the full amount of the interest to be paid shall accompany the delivery.

(e) Income Bonds

Income bonds shall be dealt in "flat" even though such bonds are paying interest, except that where a certain fixed rate is guaranteed in the indenture and provision is made for additional contingent payment, they shall be dealt in "and interest" at the fixed rate guaranteed in the indenture (so long as interest payments at such fixed rate are not in default and no announcement of intention to default has been made).

(f) Fractions of a Cent

In all transactions involving the payment of interest, fractions of a cent equaling or exceeding five mills shall be regarded as one cent; fractions of a cent less than five mills shall be disregarded.

### **11630. Due-Bills and Due-Bill Checks**

(a) Definition of Due-Bills

The term "due-bill" as used in this Rule means an instrument employed for the purpose of evidencing the transfer of title to any security or rights pertaining to any security contracted for or evidencing the obligation of a seller to deliver such to a subsequent purchaser. A due-bill shall not be transferable or assignable by the purchaser.

(b) Definition of Due-Bill Checks

The term "due-bill checks" as used in this Rule means a due-bill in the form of a check payable on the date of payment of a cash dividend, interest on registered bonds or interest on unit investment trust securities, which prior to such date shall be considered as a due-bill, as defined in paragraph (a) above, for the amount of such dividend or interest.

(c) Due-bills for Stock Dividends and Rights

A security sold before it trades "ex-dividend" (for stock and scrip dividends) or "ex-rights" and delivered too late for transfer on or before the record date, shall be accompanied by a due-bill for the distribution to be made. When a due-bill accompanying a delivery evidences the obligation of the seller to deliver stock, the purchaser shall prorate the value of the contract, and shall make payment of the balance upon redemption of the due-bill. The requirement to pro-rate the value of the contract as described above shall not apply to stock dividends less than ten percent (10%) or to "spinoffs" or rights.

(d) Due-bill Checks for Cash Distribution and Interest

Due-bill checks for a cash distribution, interest on registered bonds or interest on unit investment trust securities shall accompany securities delivered too late for transfer on or before the record date.

(e) Redemption of Due-Bills

Due-bills for any security or rights pertaining to any security shall be redeemable on the date on which the security or rights are issued by the corporation or as soon thereafter as the signer or guarantor of the due-bill can obtain transfer of the security or rights into denominations necessary to effect the redemption of the due-bills.

(f) Default Upon Redemption of Due-Bills

A due-bill for any security or rights pertaining to any security issued pursuant to paragraph (c) of this Rule and presented for redemption pursuant to the terms of paragraph (e), and not honored by the seller may, at the option of the buyer, be treated as a "fail to receive" from the seller, and the distribution evidenced by such due-bill may be bought-in for the account and risk of the seller pursuant to the terms of Rule 11810. However, buy-ins executed in accordance with this paragraph must be executed after the payable date of such securities as determined by the issuing corporation.

**IM-11630. Sample Due-Bill Forms**

(a) Due-Bill for Stock Dividend or Stock Distribution

For value received, the undersigned hereby assigns, transfers and sets over to the stock distribution of ( ) shares of stock to be issued onto the registered holder of ( ) shares of stock represented by certificate number, to which the undersigned is entitled as a stock dividend, and hereby irrevocably constitutes and appoints attorney to transfer the shares representing said stock dividend on the books of said corporation, with full power of substitution in the premises.

Dated

(Official Signature)

\_\_\_\_\_

(b) Due-Bill for Rights

For value received, the undersigned hereby assigns, transfers, and sets over to the warrant and/or fractional warrant to which the undersigned is entitled, evidencing the rights to subscribe for, which warrant and/or fractional warrant is to be issued to the holder of record at the close of business of ( ) shares of stock of represented by certificate No

Dated

(Official Signature)

\_\_\_\_\_

(c) Due-Bill for Interest on When Issued Contract

This is to certify that, upon issuance of in accordance with the plan approved by, the undersigned will pay to \$ representing (contingent)(income) interest for on \$ principal amount of said bonds sold to him when, as, and if issued on 19

This due-bill shall become null and void if the contract for sale of said bonds cannot be completed in accordance with the plan approved by, on

Dated

(Official Signature)

\_\_\_\_\_

(d) Due-Bill for Dividend on When Issued Contract

This is to certify that, upon issuance of in accordance with the plan approved by, the undersigned will pay to \$, representing the dividend of \$ per share declared for the period ending 19, on shares of stock of sold to him when, as, and if issued on 19

This due-bill shall become null and void if the contract for sale of said stock cannot be completed in accordance with the plan approved by, on

Dated

(Official Signature)

\_\_\_\_\_

(e) Due-Bill Check

\_\_\_\_\_

Consider this check as due-bill until payable date as shown below

\_\_\_\_\_

NEW YORK, 19 . . . No. 1999

\_\_\_\_\_

XYZ BANK

\_\_\_\_\_

Pay To The Order Of

\$

\_\_\_\_\_

DOLLARS

\_\_\_\_\_

In Payment of Dividend or Interest

Dividend  
Account

\_\_\_\_\_

On

Interest  
Account

\_\_\_\_\_

NOT PAYABLE BEFORE

\_\_\_\_\_

Record Date

**11640. Claims for Dividends, Rights, Interest, etc.**

(a) Dividends or Rights

A buyer of stock who has the certificate in his possession in time to enable him to effect transfer prior to the closing of the books or to the record date shall have no claim upon the seller (unless the seller is the registered holder) for the dividend or rights pertaining to such certificate, but the seller, upon request of the buyer, shall use his best efforts to collect the same for the buyer.

(b) Substantiating Claims

When a buyer of stock who has failed to have said stock transferred in time requests the seller to collect the dividends or rights pertaining thereto, the seller may require from the buyer the presentation of the certificate or a letter from the transfer agent substantiating the claim, or the buyer's written statement that he or his customer was the holder on the record date, and a guarantee of indemnity for liability arising out of any further demand for said dividend or rights.

(c) Interest or Rights

The provisions of paragraphs (a) and (b) of this Rule shall be equally applicable to interest or rights pertaining to registered bonds and unit investment trust securities.

**11650. Transfer Fees**

The party at whose instance a transfer of securities is made shall pay all service charges of the transfer agent.

**11700. Reclamations and Rejections**

**11710. General Provisions**

(a) Definition

The term "reclamation" as used in this Code shall mean a claim for the right to return or the right to demand the return of a security which has been previously accepted. Securities which have been presented for delivery on a transaction and which for a valid reason have been refused shall within the meaning of Rules 11710 and 11720, inclusive, be deemed a rejection for the purposes of these Rules.

(b) Uniform Reclamation Form

(1) Form Must Accompany Securities

A properly executed Uniform Reclamation Form must accompany securities on reclamation or return. 1

(2) Absence of Form Permits Sell-Out

Any security reclaimed or returned on a transaction without a properly executed Uniform Reclamation Form as prescribed within this Rule may, at the option of the receiving broker, be "sold-out" pursuant to Rule 11820 of this Code, however, in no event later than three business days after receipt of the receiving broker or his agent.

(c) Time for Delivery of Reclamation and Manner of Settlement

(1) A security with an irregularity having been delivered may be returned or reclaimed between the hours established by rule or practice in the community where the delivery or reclamation is to be made.

(2) When a security is returned or reclaimed, the party who originally delivered it shall immediately give the party returning it either the security in proper form for delivery in exchange for the security originally delivered, or the money amount of the contract. In the latter case, unless otherwise agreed, the party to whom the security is returned shall be deemed to be failing to deliver the security until such time as a proper delivery is made.

(d) Minor Irregularities

Reclamation for an irregularity which affects only the currency of the security in the market shall be made within fifteen days from the day of original delivery, except that, if the security is issued under the jurisdiction of a foreign country, the period for reclamation under this section shall be forty-five days from the day of original delivery.

(e) Wrong Form of Certificate

Reclamation, by reason of the fact that a form of certificate was delivered which was not a good delivery, but which is exchangeable without charge for a certificate which is a good delivery, shall be made within fifteen days from the day of original delivery.

1 Specifications for use of the Uniform Reclamation Form are contained in the Final Report of the Banking and Securities Industry Committee entitled "Four Uniform Forms" dated December 22, 1971.

**IM-11710. Uniform Reclamation Form**

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To Accompany Reclamations  
Subject to Rules & Regulations of

NSCC  
FINRA — Uniform Practice Code  
Nasdaq BX — Uniform Practice Code

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RECLAIMED TO	Rec No.	Name of Receiver	Date Securities Below Received
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RECLAIMED BY	Del. No.	Name of Deliverer	Date of Return
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Quantity	Security Description (certificate's can be applied to reverse side of copy #1	Amount
	Wrong Security _____ Should Be	Wrong Money _____ Our Money
	Carries Due Bill	Duplicates Delivery _____ You Delivered On
	Needs Signature Guarantee	Wrong Settlement Date _____ Our S/D
	Needs Tax Stamp	No Instructions
	Release Power of Attorney	Needs Legal Opinion

Coupon Missing	Needs Better Account Date
----------------	------------------------------

Other — Explanation

_____	_____	_____
Name of Person making	Telephone Number	Extension

Reclamation (Print)

ATTACH COPIES 1 & 2 TO CERTIFICATE — COPIES 3 & 4 ARE  
RETAINED BY DELIVERER

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### **11720. Irregular Delivery — Transfer Refused — Lost or Stolen Securities**

#### (a) Irregular Delivery

Reclamation, by reason of the fact of an irregularity in the delivery of a security, shall be within 30 months after the settlement date of the contract. For purposes of this paragraph, the term "irregular delivery" shall include, among other things, wrong, duplicate, misdirected or over-deliveries and delivery of unit investment trust securities having the incorrect payment option.

#### (b) Transfer Refused

Reclamation, by reason of the fact that a specific certificate tendered in settlement of a contract has been presented for transfer and transfer thereof has been refused by the transfer agent, shall be within 30 months after the settlement date of the contract.

#### (c) Lost or Stolen or Confiscated Securities

Reclamation, by reason of the fact that a security is lost or stolen or confiscated shall be within 30 months after the settlement date of the contract.

#### (d) Running of 30 Month Period

The running of the 30-month period described in this Rule shall not be deemed to foreclose a member's rights to pursue its claim via other open avenues, including but not limited to arbitration.

### **IM-11720. Obligations of Members Who Discover Securities in Their Possession to Which They Are Not Entitled**

Any member who discovers securities in its possession to which it is not entitled is required to make reasonable attempts to ascertain and to promptly notify the true owner of such securities and to take affirmative steps to correct the situation. Failure to abide by this requirement may result in a violation of Rule 2110.

### **11730. Called Securities**

Reclamation by reason of the fact that a security was delivered after publication of notice of call for its redemption, may be made without limit of time and such security may be

returned to the party who held it at the time of such publication; except that this Rule shall not apply when an entire issue is called for redemption or when the security involved was dealt in specifically as a "called" security.

#### **11740. Marking to the Market**

##### **(a) Demand for Deposit**

The party who is partially unsecured by reason of a change in the market value of the subject of a contract in securities may demand from the other party a deposit equal to the difference between the contract price and the market price, without being required to make a mutual deposit. Such deposit shall be made either with the member demanding same or with a mutually agreed-on depository or, on failure to agree on a depository, with any member of the Federal Reserve System with an office in the financial district of the city where the unsecured party maintains its office.

##### **(b) Assignment of Contract**

Either party to a contract in securities may assign the contract, either at the time the transaction is effected or at the time a request is made for funds to "mark to the market," provided the other party to the contract assents to the assignment.

##### **(c) Refund of Deposit**

If the market value of the subject of the contract changes so as to permit a total or partial refund of any deposits which have been made in accordance with paragraph (a) of this Rule, such refunds shall be made on demand.

##### **(d) Delivery of Demand for Deposit or Refund**

All demands for deposits or refunds shall be in writing and shall be delivered at the office of the party upon whom the demand is made during the business hours of member banks of the Federal Reserve System located in the community where such party maintains his office, and such demands shall be complied with immediately.

##### **(e) Failure to Comply with Demand**

Failure of a party to comply with a demand for a deposit or refund made in accordance with paragraphs (a), (c) and (d) of this Rule shall entitle the party making the demand to close the contract without notice, by making offsetting purchase or sale contracts in the best available market for the account and liability of the party failing to comply with said demand.

##### **(f) Contract Closure**

No contract shall be closed pursuant to paragraph (e) of this Rule prior to the expiration of regular delivery time in the community where the party making the demand maintains his office, on the next business day following the day when notice of such demand was received by the other party.

(g) Notice of Offsetting Purchase or Sale

The party making such offsetting purchase or sale contracts shall as promptly as possible on the day on which they are made (1) notify the other party via telegram, TWX, or other comparable written media, and (2) mail or deliver formal confirmation of same to the other party and a copy of said confirmation to the Exchange's Regulation Department.

**11800. Close-Out Procedures**

**11810. Buying-In**

A contract which has not been completed by the seller according to its terms may be closed by the buyer not sooner than the third business day following the date delivery was due, in accordance with the following procedure:

(a) Notice of "Buy-In"

(1) Written notice of "buy-in" shall be delivered to the seller at his office not later than 12:00 noon, his time, two business days preceding the execution of the proposed "buy-in."

(2) For purposes of this Rule written notice shall include an electronic notice through a medium that provides for an immediate return receipt capability. Such electronic media shall include but not be limited to facsimile transmission, a computerized network facility, etc.

(b) Information Contained in "Buy-in" Notice

(1) Every notice of "buy-in" shall state the date of the contract to be closed, the quantity and contract price of the securities covered by said contract, the settlement date of said contract and any other information deemed necessary to properly identify the contract to be closed. Such notice shall state further that unless delivery is effected at or before a certain specified time, which may not be prior to 11:30 a.m. local time in the community where the buyer maintains his office, the security may be "bought-in" on the date specified for the account of the seller. If the originator of a "buy-in" in a depository eligible security is a participant in a registered securities depository, the specified delivery time may not be prior to 3:00 p.m. Eastern Time and the "buy-in" may not be executed prior to 3:00 p.m., Eastern Time. Each "buy-in" notice shall also state the name

and telephone number of the individual authorized to pursue further discussions concerning the buy-in.

(2) Notice may be redelivered immediately to another broker/dealer from whom the securities involved are due in the form of a re-transmitted notice (re-transmit). A re-transmitted notice of buy-in must be delivered to subsequent broker/dealers not later than 12 noon, recipient's local time, on the business day preceding the time and date of execution of the proposed buy-in, and the time specified for delivery may not be prior to the time specified in the original notice.

### **IM-11810. Sample Buy-In Forms**

#### (a) Notice of Buy-In

(Member's Name)

(Locality and Date)

TO

RE:

(Quantity and description of Security)

which is due from you to the undersigned on a contract made onatfor settlement

(Date of Contract) (Contract Price)

(Settlement Date)

\*\*\*

We hereby notify you that unless you make delivery of the foregoing security at or before (Time and Date) the security will be bought in for your account and risk pursuant to Rule 11810 in the Uniform Practice Code.

Note: If some or all of the foregoing securities are due you by another member of the Nasdaq BX, Rule 11810(b) permits the use of the re-transmitted buy- in.

Buy-In Dept.

By:

Phone:

(b) Notice of Re-transmitted Buy-In

(Member's Name)

(Locality and Date)

TO

RE:

(Quantity and Description of Security)

which is due from you to the undersigned on a contract made on at settlement on

(Date of Contract) (Contract Price)

(Settlement Date)

\*\*\*

We hereby inform you that a notice of buy-in has been issued with respect to the aforesaid securities and stated that unless delivery was made at or before (Time and date on original buy-in) the securities may be bought in pursuant to Rule 11810 in the Uniform Practice Code.

Note: If some or all of the foregoing securities are due you by another member of the Nasdaq BX, Rule 11810(b) permits the use of the re-transmitted buy- in.

Buy-In Dept.

By:

Phone:

(c) Seller's Failure to Deliver After Receipt of Notice

(1)

(A) On failure of the seller to effect delivery in accordance with the "buy-in" notice, or to obtain a stay as hereinafter provided, the buyer may close the contract by purchasing all or part of the securities necessary to satisfy the amount requested in the "buy-in" notice. Securities delivered subsequent to the receipt of the "buy-in" notice should be considered as delivered pursuant to the "buy-in" notice. Delivery of the requisite number of shares, as stated in the "buy-in" notice, or execution will also operate to close-out all contracts covered under re-transmitted notices of buy-ins issued pursuant to the original notice of buy-in. A "buy-in" may be executed by a member from its long position and/or from customers' accounts maintained with such member.

(B) For transactions where the buyer is a customer (other than another member), upon failure of a clearing corporation to effect delivery in accordance with a buy-in notice, the contract must be closed by purchasing for "cash" in the best available market, or at the option of the buyer for guaranteed delivery, for the account and liability of the party in default all or any part of the securities necessary to complete the contract.

(C) As provided in paragraph (c)(1)(A) and (B) hereof, members must be prepared to defend the price at which the "buy-in" is executed relative to the current market at the time of the "buy-in."

(2) Buy-in for unit investment trust securities. Buy-in execution options, in addition to those contained in paragraph (c)(1), may be available when the purchaser wishes to buy-in contracts made for unit investment trust securities. The purchaser may:

(A) by mutual agreement, accept from the seller in lieu of the seller's obligation under the original contract (which shall be concurrently canceled) the delivery of unit investment trust securities which are comparable to those originally bought in quantity, quality, yield or price and maturity, with any additional expenses or any additional cost of acquiring such substituted securities being borne by the seller;

(B) if the purchaser's options in paragraph (c)(1) are not available and the purchaser and seller cannot agree upon option (A), above, require the seller, for the account and liability of the seller, to repurchase the unit investment trust securities on terms which provide that the seller pay an amount which requires the seller to bear the burden of any change in the market price from the original contract price, with accrued interest. Bearing the burden of any change in the market price from the original contract price means that if the current market price is higher than the original contract price, the purchaser may require the seller to repurchase the unit investment trust securities at the current market price and conversely means that if the current market price is lower than the original contract price, the purchaser may require the seller to repurchase the unit investment trust securities at the original contract price, with accrued interest.

(d) "Buy-in" Not Completed

(1) In the event that a "buy-in" is not completed pursuant to the provisions of paragraph (b) hereof on the day specified in the notice of "buy-in," or as such date may be extended pursuant to the provisions of paragraph (f) or (g) hereof, said notice shall expire at the close of business on the day specified in the notice of buy-in.

(2) When a "buy-in" notice is pending during a reconfirmation and pricing period and one or more members are participating in a reconfirmation and pricing service, such "buy-in" notice shall be canceled. Written notice of cancellation must be received by the non-participating member prior to the original or extended date of execution. Failure to provide such notification may result in an execution. New notice of "buy-in" may be issued no earlier than the first business day following the final reconfirmation and pricing settlement date.

(e) Partial Delivery by Seller

Prior to the closing of a contract on which a "buy-in" notice has been given, the buyer shall accept any portion of the securities called for by the contract, provided the portion remaining undelivered at the time the buyer proposes to execute the "buy-in" is not an amount which includes an odd-lot which was not part of the original transaction.

(f) Securities in Transit

If prior to the closing of a contract on which a "buy-in" notice has been given, the buyer receives from the seller written or comparable electronic notice stating that the securities are (1) in transfer; (2) in transit; (3) are being shipped that day; or (4) are due from a depository and giving the certificate numbers, except for those securities due from a depository, then the buyer must extend the execution date of the "buy-in" for a period of seven (7) calendar days from the date delivery was due under the "buy-in." Upon request of the seller, an additional extension of seven (7) calendar days may be granted by the Exchange's Regulation Department due to the circumstances involved.

(g) Notice of Executed "Buy-In"

The party executing the "buy-in" shall immediately upon execution, but no later than the close of business, local time, where the seller maintains his office, notify the broker/dealer for whose account the securities were bought as to the quantity purchased and the price paid. Such notification should be in written or electronic form having immediate receipt capabilities. If this written media is not available the telephone shall be used for the purpose of same day notification, and written or similar electronic notification having next day receipt capabilities must also be sent out simultaneously. In either case formal confirmation of purchase along with a billing or payment, (depending upon which is applicable), should be forwarded as promptly as possible after the execution of the "buy-in." Notification of the execution of a "buy-in" shall be given to

succeeding broker/dealers to whom a re-transmitted notice was issued pursuant to paragraph (b) using the same procedures stated herein. If a re-transmitted "buy-in" is executed, it will operate to close out all contracts covered under the re-transmitted notice.

(h) "Close-Out" Under the Exchange's Regulation Department, Securities Association or Other Exchange Rulings

(1) When a national securities association or another exchange makes a ruling that all open contracts with a particular member, who is also a member of the Exchange, should be closed-out immediately (or any similar ruling), members may close-out contracts as directed by the securities association or exchange.

(2) Whenever the Exchange's Regulation Department ascertains that a court has appointed a receiver for any member because of its insolvency or failure to meet its obligations, or whenever the Exchange's Regulation Department ascertains, based upon evidence before it, that a member cannot meet its obligations as they become due and that such action will be in the public interest, the Exchange's Regulation Department may, in its discretion, issue notification that all open contracts with the member in question may be closed-out immediately.

(3) Within the meaning of this paragraph (b), to close-out immediately shall mean that (A) "buy-ins" may be executed without prior notice of intent to "buy-in" and (B) "sell-outs" may be executed without making prior delivery of the securities called for.

(4) All close-outs executed pursuant to the provisions of this paragraph shall be executed for the account and liability of the member in question. Notification of all close-outs shall immediately be sent to such member pursuant to the confirmation provisions of the Rule 11200 Series.

(i) Failure to Deliver and Liability Notice Procedures

(1)

(A) If a contract is for warrants, rights, convertible securities or other securities which (i) have been called for redemption; (ii) are due to expire by their terms; (iii) are the subject of a tender or exchange offer; or (iv) are subject to other expiring events such as a record date for the underlying security and the last day on which the securities must be delivered or surrendered (the expiration date) is the settlement date of the contract or later the receiving member may deliver a Liability Notice to the delivering member as an alternative to the close-out procedures set forth in paragraphs (a) through (g). When the parties to a contract are both participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, the transmission of the liability notice must be accomplished through

the use of said automated notification service. When the parties to a contract are not both participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, such notice must be issued using written or comparable electronic media having immediate receipt capabilities and must be sent as soon as practicable but not later than two hours prior to the cutoff time set forth in the instructions on a specific offer or other event to obtain the protection provided by this Rule.

(B) If the contract is for a deliverable instrument with an exercise provision and the exercise may be accomplished on a daily basis, and the settlement date of the contract to purchase the instrument is on or before the requested exercise date, the receiving member may deliver a Liability Notice to the delivering member no later than 11:00 a.m. on the day the exercise is to be effected. Notice may be redelivered immediately to another member but no later than noon on the same day. When the parties to a contract are both participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, the transmission of the liability notice must be accomplished through the use of said automated notification service. When the parties to a contract are not both participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, such notice must be issued using written or comparable electronic media having immediate receipt capabilities. If the contract remains undelivered at expiration, and has not been canceled by mutual consent, the receiving member shall notify the defaulting member of the exact amount of the liability on the next business day.

(C) In all cases, members must be prepared to document requests for which a Liability Notice is initiated.

(2) If the delivering member fails to deliver the securities on the expiration date, the delivering member shall be liable for any damages which may accrue thereby. A Liability Notice delivered in accordance with the provisions of this Rule shall serve as notification by the receiving member of the existence of a claim for damages. All claims for such damages shall be made promptly.

(3) For the purposes of this Rule, the term "expiration date" shall be defined as the latest time and date on which securities must be delivered or surrendered, up to and including the last day of the protect period, if any.

(4) If the above procedures are not utilized as provided under this Rule, contracts may be "bought-in" without prior notice, after normal delivery hours established in the community where the buyer maintains his office, on the expiration date. Such buy-in execution shall be for the account and risk of the defaulting member.

(j) Contracts Made for Cash

Contracts made for "cash," or made for or amended to include guaranteed delivery on a specified date may be "bought-in" without notice during the normal trading hours on the day following the date delivery is due on the contract; otherwise, the procedures set forth in paragraphs (a) through (f) of this Rule shall apply. In all cases, notification of executed "buy-in" must be provided pursuant to paragraph (g) of this Rule. "Buy-ins" executed in accordance with this paragraph shall be for the account and risk of the defaulting broker/dealer.

(k) Information on Notices

Notices of "buy-in" and "re-transmitted buy-in" shall include all information contained in the sample forms prescribed by the Exchange.

(l) "Buy-In" Desk Required

Members shall have a "buy-in" section or desk adequately staffed to process and research all "buy-ins" during normal business hours.

(m) Buy-In of Accrued Securities

Securities in the form of stock, rights or warrants which accrue to a purchaser shall be deemed due and deliverable to the purchaser on the payable date. Any such securities remaining undelivered at that time shall be subject to the "buy-in" procedures as provided under this Rule.

## **11820. Selling-Out**

(a) Conditions Permitting "Sell-Out"

Upon failure of the buyer to accept delivery in accordance with the terms of the contract, and lacking a properly executed Uniform Reclamation Form or the equivalent depository generated advice for depository eligible securities meeting the requirements prescribed in Rule 11710(b), the seller may, without notice, "sell-out" in the best available market and for the account and liability of the party in default all or any part of the securities due or deliverable under the contract.

(b) Notice of "Sell-Out"

The party executing a "sell-out" as prescribed above shall, as promptly as possible on the day of execution, but no later than the close of business, local time, where the buyer maintains his office, notify the broker/dealer for whose account and risk such securities were sold of the quantity sold and the price received. Such notification should be in written or electronic form having immediate receipt capabilities. A formal confirmation

of such sale should be forwarded as promptly as possible after the execution of the "sell-out."

### **11830. Reserved**

#### **11840. Rights and Warrants**

##### **(a) Definition — "Rights"**

The term "rights" or "rights to subscribe," as used in this Rule is the privilege offered to holders of record of issued securities to subscribe (usually on a pro rata basis) for additional securities of the same class, of a different class, or of a different issuer as the case may be.

##### **(b) Definition — "Warrants"**

The term "warrants" or "stock purchase warrants" as used in this Rule is an instrument issued separately or accompanying other securities, but not necessarily issued to stockholders of record as of a specific date; i.e., warrants issued with or attached to bonds, common stock, preferred stocks, etc. The instrument represents the privilege to purchase securities at a stipulated price or prices and is usually valid for several years.

##### **(c) Basis and Unit of Trading — Rights**

Except as otherwise designated by the Exchange's Regulation Department, transactions in rights to subscribe shall be on the basis of one right accruing to each share of issued stock and the unit of trading in rights shall be 100 rights (unless otherwise specified).

##### **(d) Basis and Unit of Trading — Warrants**

Except as otherwise agreed or designated by the Exchange's Regulation Department, transactions in stock purchase warrants shall be on the basis of one warrant representing the right of the purchaser to receive one warrant in settlement of such transaction and the unit of trading shall be 100 warrants. Members must ascertain how many warrants they have to sell, what each warrant entitles the holder to purchase, the purchase price, and the current price of the warrant relative to the price of the underlying security which may be purchased. Trades in warrants should be properly described on comparisons and confirmations.

##### **(e) Securities Which Have Expired by Their Terms**

(1) In contracts for warrants, rights or other securities which have expired by their terms, deliveries effected more than thirty (30) days after expiration shall consist of (A) the expired securities; or (B) a Letter of Indemnity in lieu of the expired instrument.

(2) In the case of units or other securities of which one or more of the integral parts of the instrument has expired by its terms, after expiration, the instrument shall cease to be a unit as originally contemplated in the contract. Deliveries effected after expiration shall consist of the unexpired security and (A) the expired instrument; or (B) a Letter of Indemnity in lieu of the expired instrument.

(3) Deliveries effected pursuant to paragraphs (e)(1) and (2) of this Rule shall be settled at the existing contract price.

**IM-11840. Sample Letter of Indemnity**

DATE \_\_\_\_\_

TO: \_\_\_\_\_

RE: \_\_\_\_\_

(Quantity and Description)

CUSIP # \_\_\_\_\_

For value received the undersigned hereby assigns, transfers and sets over to you all rights and privileges which may accrue on the above contract made on (Date of Contract) ----- at (Contract Price)----- for settlement (Settlement Date).

Upon acceptance of this delivery in lieu of physical certificates, we agree, for ourselves, our successors, assigns, heirs, executors and administrators, to at all times indemnify and hold harmless from and against any and all claims, liabilities, damages, taxes, charges and expense sustained or incurred by reason of this action. Acceptance of this delivery shall operate to close- out the above stated contract in accordance with the provisions of Nasdaq BX's Uniform Practice Code.

(Member Firm)

(Official Signature)

If any questions, please contact at (telephone Number)

**11850. Reserved**

**11860. Acceptance and Settlement of COD Orders**

(a) Exchange members shall comply with FINRA Rule 11860 as if such Rule were part of the Rules of the Exchange.

(b) The Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. Therefore, Exchange members are complying with Equity Rule 11860 by complying with FINRA Rule 11860 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Equity Rule 11860 are being performed by FINRA on behalf of the Exchange.

**11870. Customer Account Transfer Contracts**

(a) Exchange members shall comply with FINRA Rule 11870 as if such Rule were part of the Rules of the Exchange.

(b) The Exchange and FINRA are parties to the Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. Therefore, Exchange members are complying with Equity Rule 11870 by complying with FINRA Rule 11870 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Equity Rule 11870 are being performed by FINRA on behalf of the Exchange.

(c) Pursuant to the Rule 9600 Series, the Exchange may exempt from the provisions of this Rule, either unconditionally or on specified terms and conditions, (A) any member, or (B) any type of account, security or financial instrument.

**IM-11870. Sample Transfer Instruction Forms**

(a) Customer Account Transfer

**CUSTOMER SECURITIES ACCOUNT TRANSFER INSTRUCTION**

.....

(Date)

RECEIVING FIRM .....

CARRYING FIRM .....

RECEIVING FIRM ACCOUNT  
NUMBER .....

CARRYING FIRM ACCOUNT  
NUMBER .....

ACCOUNT TITLE

.....

.....

ACCOUNT TYPE ..... (C = CASH, M = MARGIN)

TAX ID OR SS NUMBER

.....

TO

.....

(Receiving Firm Name and Address)

Please receive my entire securities account from the below indicated carrying firm and remit to it the debit balance or accept from it the credit balance in my securities account.

TO .....

(Carrying Firm Name and Address)

Please transfer my entire securities account to the above indicated receiving firm, which has been authorized by me to make payment to you of the debit balance or to receive payment of the credit balance in my securities account. I understand that to the extent any assets or instruments in my securities account are not readily transferable, with or without penalties, such assets or instruments may not be transferred within the time frames required by Rule 11870 of Nasdaq BX's Uniform Practice Code.

I understand that you will contact me with respect to the disposition of any assets in my securities account that are nontransferable. If certificates or other instruments in my securities account are in your physical possession, I instruct you to transfer them in good deliverable form, including affixing any necessary tax waivers, to enable such receiving firm to transfer them in its name for the purpose of sale, when and as directed by me. I further instruct you to cancel all open orders for my securities account on your books.

I affirm that I have destroyed or returned to you any credit/debit cards and/or unused checks issued to me in connection with my securities account.

.....  
(Customer's Signature) (Date)

.....  
(Customer's Signature if Joint Account) (Date)

[It is suggested that a copy of the customer's most recent account statement be attached.]

Receiving Firm Contact:

Name ..... Phone Number .....

For Broker Use Only:

Mutual Fund Registration Instructions:

Registration Name

.....

Address .....

Tax ID # .....

Dividend and Capital Gains Options:

Reinvest ( ) Dividend Cash/Capital Gains Reinvest ( )

All Cash ( ) Deposit to New Plan ( )

Issue Certificate ( ) Deposit to Existing Plan ... ( )

Broker Instructions (if broker agreement exists):

Name .....

Address .....

RR Name/Number/Branch .....

(b) Customer Retirement Account Transfer

CUSTOMER RETIREMENT PLAN SECURITIES ACCOUNT  
TRANSFER INSTRUCTION

RECEIVING FIRM ..... CARRYING FIRM  
.....

RECEIVING FIRM ACCOUNT NUMBER ..... CARRYING FIRM  
ACCOUNT NUMBER  
.....

ACCOUNT TITLE

.....

.....

ACCOUNT TYPE ..... (I = IRA, Q = QUALIFIED)

TAX ID OR SS NUMBER

.....

TO .....

(Prior Custodian/Trustee Name, Address and Tax ID Number)

You are the custodian/trustee for my  
retirement plan securities account with

.....

(Carrying Firm Name and Address)

as my broker. Please be advised that I have amended my retirement plan and have adopted a new retirement plan with the below indicated as successor custodian/trustee and

.....as broker

(Receiving Firm Name and Address)

Pursuant to said amendment, please transfer all assets in my securities account to such successor custodian/trustee. I understand that to the extent any assets in my account are not readily transferable, with or without penalties, such assets may not be transferred within the time frames required by Rule 11870 of Nasdaq BX's Uniform Practice Code.

I understand that the above indicated carrying firm will contact me with respect to the disposition of any assets in my account that are nontransferable. I authorize you to deduct any outstanding fees due you from the credit balance in my account. If my account does not contain a credit balance, or if the credit balance in the account is insufficient to satisfy any outstanding fees due you, I authorize you to liquidate the assets in my account to the extent necessary to satisfy any outstanding fees due you. If certificates or other instruments in my account are in your physical possession, I instruct you to transfer them in good deliverable form, including affixing any necessary tax waivers, to enable the successor custodian/trustee to transfer them in its name for the purpose of sale, when and as directed by me. Upon receiving a copy of this transfer instruction, the carrying firm will cancel all open orders for my account on its books.

.....

.....

(Customer's Signature)

(Date)

Please be advised that

.....

(Successor Custodian/Trustee Name, Address and Tax ID Number)

will accept the above captioned account as successor custodian/trustee.

Please send all checks to

..... and non-DTC eligible items to

.....

.....

.....

(Successor Custodian/Trustee Authorized  
Signature)

(Date)

.....

.....

(Tax ID Number)

(Date of Trust)

[It is suggested that a copy of the customer's most recent account statement  
be attached.]

Receiving Firm Contact:

Name .....

Phone Number .....

For Broker Use Only:

Mutual Fund Registration Instructions:

Registration Name

.....

Address .....

Tax ID # .....

Dividend and Capital Gains Options:

Reinvest ( )

Dividend Cash/Capital Gains  
Reinvest ( )

All Cash ( )

Deposit to New Plan ( )

Issue Certificate ( )

Deposit to Existing Plan ... ( )

Broker Instructions (if broker agreement exists):

Name .....

Address .....

RR Name/Number/Branch .....

(c) Mutual Fund Re-Registration

MUTUAL FUND RE-REGISTRATION INSTRUCTIONS USED FOR  
BROKER-TO-BROKER TRANSFERS

(1) TO: ..... Date: .....

Transfer Agent: .....

Address: .....

Name of Fund:

(2) Present Account Information

Fund A/C #: .....

Certificate # (if in physical form)

[Certificate attached must be in negotiable form.]

Account Registration: .....

(3)(A) Broker Identification

Old Firm Name and In-house A/C# .....

(3)(B)

New Firm Name and In-house A/C# .....

Registration Instructions

Please transfer ..... shares from the above-referenced

account and register as follows:

Name .....

Address .....

(4) Tax ID # .....

Dividend and Capital Gains Option:

Reinvest ( )

Dividend Cash/Capital Gains Reinvest ( )

All Cash ( )

Deposit to New Plan ( )

Issue Certificate ( )

Deposit to Existing Plan .... ( )

If a Broker/Dealer Agreement exists:

Name .....

Address .....

(5) Broker/Dealer Instructions

Address

RR Name/Number/Branch

(6) Release

In consideration for your complying with the above request, we hereby agree to indemnify the:

..... (fund)

and

..... (agent)

against any and all losses incurred hereof.

Thank you in advance for your cooperation in this matter.

Sincerely,

(Signature Guarantee Stamp)

Authorized Signature

If there are any questions call:

.....

.....

(Signature of Delivering Broker)

(Phone Number)

.....

.....

(Signature of Receiving Broker)

(Phone Number)

Items 1, 2, 3a are completed by the delivering broker.

Items 3b, 4 and 5 are completed by the receiving broker.

**11880. Settlement of Syndicate Accounts**

(a) Definitions

(1) "Selling syndicate" means any syndicate formed in connection with a public offering to distribute all or part of an issue of corporate securities by sales made directly to the public by or through participants in such syndicate.

(2) "Syndicate account" means an account formed by members of the selling syndicate for the purpose of purchasing and distributing the corporate securities of a public offering.

(3) "Syndicate manager" means the member of the selling syndicate that is responsible for maintenance of syndicate account records.

(4) "Syndicate settlement date" means the date upon which corporate securities of a public offering are delivered by the issuer to or for the account of the syndicate members.

(b) Final settlement of syndicate accounts shall be effected by the syndicate manager within 90 days following the syndicate settlement date.

(c) No later than the date of final settlement of the syndicate account, the syndicate manager shall provide to each member of the selling syndicate an itemized statement of syndicate expenses that shall include, where applicable, the following categories of expenses: legal fees; advertising; travel and entertainment; closing expenses; loss on oversales; telephone; postage; communications; co-manager's expenses; computer, data processing charges; interest expense; and miscellaneous. The amount under "miscellaneous" should not be disproportionately large in relation to other items and should include only minor items that cannot be easily categorized elsewhere in the statement. Any other major items not included in the above categories shall be itemized separately.

(d) Settlement of Underwritten Public Offerings

The syndicate manager of a public offering underwritten on a "firm-commitment" basis shall, immediately, but in no event later than the scheduled closing date, notify the Exchange's Uniform Practice Department of any anticipated delay in the closing of such offering beyond the closing date in the offering document or any subsequent delays in the closing date previously reported pursuant to this Rule.

**11890. Clearly Erroneous Transactions**

The provisions of paragraphs (a)(2)(C), (c)(1), (b)(i), and (b)(ii) of this Rule, as amended on September 10, 2010, and the provisions of paragraphs (g) through (i), shall be in effect during a pilot period that expires at the close of business on April 20, 2021. If the pilot period is not either extended or approved as permanent, the prior versions of paragraphs (a)(2)(C), (c)(1), and (b) shall be in effect, and the provisions of paragraphs (g) through (i) shall be null and void.

(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 the Exchange 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 that receives an execution on an order that was submitted erroneously to the Exchange 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 a Notice to Members or Head 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 or person associated with a member that seeks to have a transaction reviewed pursuant to paragraph (a) hereof shall submit a written complaint to the Exchange's MarketWatch Department within 30 minutes of the execution time.

(ii) Routed executions to 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 the Exchange from that market center and executed on the Exchange.

(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 Regular Trading Hours (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 made as follows:

(1) Numerical Guidelines. Subject to the provisions of paragraph (C)(3) below, a transaction executed shall 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 threshold is Regular Trading Hours or Pre-Opening and After Hours Trading Hours (which occurs before and after the Regular Trading Hours). The Reference Price will be equal to the consolidated last sale immediately prior to the execution(s) under review except for: (A) Multi-Stock Events involving twenty or more securities, as described in subparagraph (C)(2) below; and (B) in other circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest .

---

Reference Price, Circumstance or Product	Regular Trading Hours Numerical Guidelines (Subject transaction's % difference from the Reference Price):	Pre-Opening and After Hours Trading Session Numerical Guidelines (Subject transaction's % difference from the Reference Price):
--	---	--

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Greater than \$0.00 up to 10%

20%

and including \$25.00

---

Greater than \$25.00 up to and including \$50.00	5%	10%
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Greater than \$50.00	3%	6%
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Multi-Stock Event - Filings involving five or more, but less than twenty, securities whose executions occurred within a period of five minutes or less	10%	10%
--	-----	-----

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Multi-Stock Event - Filings involving twenty or more securities whose executions occurred within a period of five minutes or less	30%, subject to the terms of paragraph (C)(2) below	30%, subject to the terms of paragraph (C)(2) below
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Leveraged ETF/ETN securities	Regular Trading Hours Numerical Guidelines multiplied by the leverage multiplier (ie. 2x)	Regular Trading Hours Numerical Guidelines multiplied by the leverage multiplier (ie. 2x)
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(2) Multi-Stock Events Involving Twenty or More Securities. During Multi-Stock Events involving twenty or more securities the number of affected transactions is such that immediate finality may be necessary to maintain a fair and orderly market and to protect

investors and the public interest. In such circumstances, the Exchange may use a Reference Price other than consolidated last sale. To ensure consistent application across market centers when this paragraph is invoked, the Exchange will promptly coordinate with the other market centers to determine the appropriate review period, which may be greater than the period of five minutes or less that triggered application of this paragraph, as well as select one or more specific points in time prior to the transactions in question and use transaction prices at or immediately prior to the one or more specific points in time selected as the Reference Price. The Exchange will nullify as clearly erroneous all transactions that are at prices equal to or greater than 30% away from the Reference Price in each affected security during the review period selected by the Exchange and other markets consistent with this paragraph.

(3) Additional Factors. Except in the context of a Multi-Stock Event involving five or more securities, 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, Pre-Opening and After Hours Trading 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.

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

(i) System Disruption or Malfunctions. In the event of any disruption or a malfunction in the operation of any electronic communications and trading facilities of the Exchange in which the nullification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest exist, the President of the Exchange or any designated officer of the Exchange or senior level employee pursuant to the Regulatory Services Agreement ("Senior Official") may, on his or her own motion, may review such transactions and declare such transactions arising out of the operation of such facilities during such period null and void. In such events, the Senior Official will rely on the provisions of paragraph (a)(2)(C)(1)-(3) of this Rule, but in extraordinary circumstances may also use a lower Numerical Guideline 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 pursuant to this paragraph (i) shall be taken within thirty (30) minutes of 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 Regular Trading Hours on the trading day following the date of execution(s) under review. Each Member involved in the transaction shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (c)(1) below.

(ii) Senior Official Acting on Own Motion. A Senior Official, acting on his or her own motion, may review potentially erroneous executions and declare trades null and void or shall decline to take any action in connection with the completed trade(s). In such events, the Senior Official will rely on the provisions of paragraph (a)(2)(C)(1)-(3) of this Rule. Absent extraordinary circumstances, any such action of the Senior Official shall be taken in a timely fashion, generally within thirty (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 Regular Trading Hours on the trading day following the date of execution(s) under review. When such action is taken independently, each party involved in the transaction shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (c)(1) below.

(c) Review by the Exchange Review Council

(1) A member or person associated with a member may appeal a determination made under paragraph (a) to the Exchange Review Council. A member or person associated with a member may appeal a determination made under paragraph (b) to the Exchange Review Council 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, and further provided that with respect to rulings made by the Exchange in conjunction with one or more additional market centers, the number of affected transactions is similarly such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest and, hence, are also non-appealable. 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 Exchange Review Council. Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal to the Exchange Review Council shall not operate as a stay of the determination being appealed, and the scope of the appeal shall be limited to trades to which the person making the appeal is a party.

Once a party has appealed a determination to the Exchange Review Council, 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 Exchange Review Council, or (ii) the party filing the appeal withdraws its appeal prior to the notification of counterparties. The Exchange Review Council 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 Exchange Review Council, 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 Exchange Review Council, 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 firm whose revenues from market making activity exceed ten percent of its total revenues. In no case shall an Exchange Review Council Panel include a person affiliated with a party to the trade in question.

(3) The decision of the Exchange Review Council 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 Exchange action on the matter in issue. Any determination by an Exchange official pursuant to paragraph (a) or (b) or any decision by the Exchange Review Council 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 Exchange Review Council 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 Notice to Members or Head 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 a Notice to Members or Head Trader Alert.

(e) Fees

(1) Filing Fees

No fee shall be assessed to a member for filing two or fewer unsuccessful clearly erroneous complaints pursuant to paragraph (a)(2) during a calendar month. A member 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 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 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 for purposes of this paragraph (e)(1) is defined by each unique broker Web CRD Number. All MPIDs associated with that Web CRD Number shall be included when calculating the number of unsuccessful clearly erroneous complaints for that member 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, (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 11890(b).

(2) Appeal Fees

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

(3) Fees Charged By Another Market Center

In instances where the Exchange, on behalf of a member, 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.

(f) Refusal to Abide by Rulings of a the Exchange Official or the Exchange Review Council

It shall be considered conduct inconsistent with just and equitable principles of trade for any member to refuse to take any action that is necessary to effectuate a final decision of an Exchange official or the Exchange Review Council under Rule 11890.

(g) Securities Subject to Limit Up-Limit Down Plan. For purposes of this paragraph, the phrase "Limit Up-Limit Down Plan" or "Plan" shall mean the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act. The provisions of paragraphs (a) through (f) above and (h) through (i) below shall govern all Exchange transactions, including transactions in securities subject to the Plan, other than as set forth in this paragraph (g). If as a result of an Exchange technology or systems issue any transaction occurs outside of the applicable price bands disseminated pursuant to the Plan, a Senior Official of the Exchange, acting on his or her own motion or at the request of a third party, shall review and declare any such trades null and void. Absent extraordinary circumstances, any such action of the Senior Official of the Exchange shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Senior Official of the Exchange must be taken by no later than the start of Regular Trading Hours on the trading day following the date on which the execution(s) under review occurred. Each Member involved in the transaction shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (c) above. In the event that a single plan processor experiences a technology or systems issue that prevents the dissemination of price bands, the Exchange will make the determination of whether to nullify transactions based on paragraphs (a) through (f) above and (h) through (i) below.

(h) Multi-Day Event . A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions (the "Event"). An Officer of the Exchange or senior level employee designee, acting on his or her own motion, shall take action to declare all transactions that occurred during the Event null and void not later than the start of trading on the day following the last transaction in the Event. If trading in the security is halted before the valuation error is corrected, an Officer of the Exchange or senior level employee designee shall take action to declare all transactions that occurred during the Event null and void prior to the resumption of trading. Notwithstanding the foregoing, no action can be taken pursuant to this paragraph with respect to any transactions that have reached settlement date or that result from an initial public offering of a security. To the extent transactions related to an Event occur on one or more other market centers, the Exchange will promptly coordinate with such other market center(s)

to ensure consistent treatment of the transactions related to the Event, if practicable. Any action taken in connection with this paragraph will be taken without regard to the Numerical Guidelines set forth in this Rule. Each Member involved in a transaction subject to this paragraph shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (c) above.

(i) Trading Halts . In the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a regulatory trading halt, suspension or pause, an Officer of the Exchange or senior level employee designee, acting on his or her own motion, shall nullify any transaction in a security that occurs after the primary listing market for such security declares a regulatory trading halt, suspension or pause with respect to such security and before such regulatory trading halt, suspension or pause with respect to such security has officially ended according to the primary listing market. In addition, in the event a regulatory trading halt, suspension or pause is declared, then prematurely lifted in error and is then re-instituted, an Officer of the Exchange or senior level employee designee shall nullify transactions that occur before the official, final end of the halt, suspension or pause according to the primary listing market. Any action taken in connection with this paragraph shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction and in no circumstances later than the start of the Regular Market Session on the trading day following the date of execution(s) under review. Any action taken in connection with this paragraph will be taken without regard to the Numerical Guidelines set forth in this Rule. Each Member involved in a transaction subject to this paragraph shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (c) above.]

\* \* \* \* \*

**EXHIBIT 5B**  
**Shell Rulebook of Nasdaq BX, Inc.**

*New text is underlined; deleted text is in brackets.*

**Nasdaq BX, Inc. Rules**

\* \* \* \* \*

**General 1 General Provisions**

**[General]Section 1 [General Provisions]Definitions**

(a) – (b) No change.

\* \* \* \* \*

(10) The term "Exchange Review Council" means the committee authorized and directed to act for the Board of Directors of the Exchange in a manner consistent with the Equity Rules with respect to (1) an appeal or review of a disciplinary proceeding; (2) a statutory disqualification decision; (3) a review of a membership proceeding; (4) a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; (5) the exercise of exemptive authority; (6) an appeal of proceedings involving Exchange [Rules 4612, 4619, 4620,] Equity 2, Sections 4, 10, and 11, Equity 11, Rule 11890 and Options 3, Section 20; and (7) such other proceedings or actions authorized by the Equity Rules.

\* \* \* \* \*

**General 2 Organization and Administration**

\* \* \* \* \*

**Section 22. [Reserved]Sponsored Participants**

(a) The Exchange shall be available for entry and execution of orders by Sponsored Participants with authorized access. Sponsored Access shall mean an arrangement whereby a member permits its customers to enter orders into the System that bypass the member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third party technology provider.

(b) Sponsored Participants. A Sponsored Participant may obtain authorized access to the BX Market only if such access is authorized in advance by one or more Exchange members as follows:

(i) Sponsored Participants must enter into and maintain customer agreements with one or more Sponsoring Members establishing proper relationship(s) and account(s) through which the Sponsored Participant may trade on the BX Market

("Customer Agreement"). Such Customer Agreement(s) must incorporate the Sponsorship Provisions set forth in paragraph (ii) below.

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

(A) The authorized access must comply with Rule 15c3-5 under the Securities Exchange Act of 1934.

(B) Sponsoring Member acknowledges and agrees that

(1) 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 and

(2) Sponsoring Member 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 shall comply with the Exchange's Certificate of Incorporation, By-Laws, Rules and procedures with regard to the BX Market and Sponsored Participant shall comply with the Exchange's Certificate of Incorporation, Bylaws, Rules and procedures with regard to the BX Market, as if Sponsored Participant were an Exchange Member.

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

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

(G) Sponsored Participant shall take reasonable security precautions to prevent unauthorized use or access to the BX Market, including unauthorized entry of information into the BX Market, 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 the BX Market for compliance with the terms of this agreement.

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

### **General 3 Membership and Access**

#### **Section 1. Membership, Registration and Qualification Requirements**

\* \* \* \* \*

Additionally, cross references in the Nasdaq General 3, Rule 1000 Series to [“Rule 0120”]“Nasdaq General 1” shall refer to Nasdaq BX [Rule 0120]General 1, cross references in the Nasdaq General 3, Rule 1000 Series to [Rule 3010]General 9, Section 20 shall refer to Nasdaq BX [Rule 3010]General 9, Section 20; cross references in the Nasdaq General 3, Rule 1000 Series to [Rule 3011]General 9, Section 37 shall refer to Nasdaq BX [Rule 3011]General 9, Section 37; and cross references to “General 4, [Section 1.]Rule 1200 Series” shall be read to refer to the Nasdaq BX [Rule] General 4, Section 1200 Series.

\* \* \* \* \*

### **General 9 Regulation**

\* \* \* \* \*

#### **Section 12. Customer Account Statements**

\* \* \* \* \*

(b) For purposes of this Rule, references to Rule 2310, Rule 4512, and Rule 11860 shall be construed as references to [Rule 2310A,]Equity 10, Section 1, General 9, Section 45, and Rule 11860.

\* \* \* \* \*

### **Section 18. Payments for Market Making**

\* \* \* \* \*

(c) For purposes of this Rule, the following terms shall have the stated meanings:

(1) "affiliate"

\* \* \* \* \*

(C) The provisions of subparagraphs (A) and (B) hereof notwithstanding, none of the following shall be presumed to be an affiliate of a member for purposes of this Rule:

(i) an investment company registered with the Commission pursuant to the Investment Company Act of 1940, as amended;

(ii) a "separate account" as defined in Section 2(a)(37) of the Investment Company Act of 1940, as amended;

(iii) a "real estate investment trust" as defined in Section 856 of the Internal Revenue Code;

(iv) a "direct participation program" as defined in [Rule 2310A]Equity 10, Section 1; and

(v) a corporation, trust, partnership or other entity issuing financing instrument-backed securities which are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories.

\* \* \* \* \*

## Section 20. Supervision

\* \* \* \* \*

(b) For purposes of this Rule:

(1) references to "FINRA Rules", "rules of FINRA", or "Rules of the Financial Industry Regulatory Authority" shall be construed as references to "Rules of the Exchange",

(2) the term "registered person" in FINRA Rule 3170(a)(1) shall be defined as "any person registered with the Exchange as a representative or principal pursuant to the General 4, [Section 1.]Rule 1200 Series of the General Equity and Options Rules",

(3) references to Article V, Section 3 of FINRA's By-Laws shall be construed as references to General 4, Rule[Section 1.]1210,

(4) references to Rule 2210 and Rule 3110 shall be construed as references to General 9, Sections 3 and 30, and

(5) references to registration with FINRA or the Financial Industry Regulatory Authority shall be construed as references to registration with the Exchange.

\* \* \* \* \*

**Section 52. Reserved.**

**Section 53. Disruptive Quoting and Trading Activity Prohibited**

(a) No Member shall engage in or facilitate disruptive quoting and trading activity on the Exchange, as described in subsections (1) and (2) of this Rule, including acting in concert with other persons to effect such activity.

(1) For purposes of this Rule, disruptive quoting and trading activity shall include a frequent pattern in which the following facts are present:

(A) Disruptive Quoting and Trading Activity Type 1:

(i) a party enters multiple limit orders on one side of the market at various price levels (the "Displayed Orders"); and

(ii) following the entry of the Displayed Orders, the level of supply and demand for the security changes; and

(iii) the party enters one or more orders on the opposite side of the market of the Displayed Orders (the "Contra-Side Orders") that are subsequently executed; and

(iv) following the execution of the Contra-Side Orders, the party cancels the Displayed Orders.

(B) Disruptive Quoting and Trading Activity Type 2:

(i) a party narrows the spread for a security by placing an order inside the NBBO; and

(ii) the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the order described in paragraph (B)(i).

(2) Applicability. For purposes of this Rule, disruptive quoting and trading activity shall include a frequent pattern in which the facts listed above are present. Unless otherwise indicated, the order of the events indicating the pattern does not modify the applicability of the Rule. Further, disruptive quoting and trading activity includes a pattern or practice in which of the quoting and trading activity is conducted on the Exchange as well as a pattern or practice in which some portion of the quoting or trading activity is conducted on the Exchange and the other portions of the quoting or trading activity are conducted on one or more other exchanges.

**Section 54. Reserved.****Section 55. Reserved.****Section 56. Reserved.****Section 57. Reserved.****Section 58. Reserved.****Section 59. Reserved.****Section 60. Reserved.****Section 61. Reserved.****Section 62. Reserved.****Section 63. Reserved.****Section 64. Account Approval**

(a) No member or person associated with a member shall accept an order from a customer to purchase or sell an index warrant, currency index warrant, or currency warrant unless the customer's account has been approved for options trading pursuant to FINRA Rule 2360(b)(16). To the extent that it is made applicable to index warrants, currency index warrants, and currency warrants by FINRA Rule 2352, Exchange Members and their associated persons shall comply with FINRA Rule 2360(b)(16) as if such Rule were part of the Rules of the Exchange.

(b) For purposes of this Rule, references to "FINRA Rules" shall be construed as references to "the Rules of the Exchange", and references to "FINRA" shall be construed as references to the Exchange.

**Section 65. Reserved.****Section 66. Reserved.****Section 67. Reserved.****Section 68. Reserved.****Section 69. Reserved.****Section 70. Reserved.****Section 71. Custodian of Books and Records**

A member who files a Form BDW shall designate on the Form BDW, as the custodian of the member's books and records, a person associated with the member at the time that the Form BDW is filed.

\* \* \* \* \*

**EQUITY RULES****Equity 1 Equity Definitions**

**[Equity]Section 1. Equity Definitions**

(a) When used in the Equity Rules, unless the context otherwise requires:

- (1) **"Customer"** The term "customer" shall not include a broker or dealer.
- (2) **"Delegation Agreement"** The term "Delegation Agreement" shall mean the Delegation Agreement dated \_\_, 2008, between the Exchange and BX Equities LLC, as such Delegation Agreement may from time to time be amended with the approval of the Commission pursuant to Section 19 of the Act and the rules promulgated thereunder.
- (3) **"Equity Rules"** The term "Equity Rules" means the rules, as adopted by the Exchange Board of Directors pursuant to the By-Laws of the Exchange, as hereafter amended or supplemented, and also includes the General Equity and Options Rules, Certificate of Incorporation and the By-Laws of the Exchange, the Operating Agreement of NASDAQ OMX BX Equities LLC, and the Delegation Agreement between the Exchange and NASDAQ OMX BX Equities LLC.
- (4) **"Grandfathered Rules"** The term "Grandfathered Rules" means the Rules of Board of Governors of the Boston Stock Exchange as in effect on the date of the closing of the acquisition of the Exchange by Nasdaq, Inc. and as such rules may be subsequently amended, including the Grandfathered BOX Trading Rules, to the extent that such rules are applicable to BOX and to former BOX Options Participants and associated persons for activities that occurred during the time that BOX was a facility of the Exchange. The Grandfathered Rules shall also apply to activities of members, members organizations, persons associated with members, and other persons subject to the jurisdiction of the Exchange that occurred prior to the adoption of the Equity Rules.
- (5) **"Nasdaq BX Equities LLC" or "BX Equities LLC"** The terms "Nasdaq BX Equities LLC" or "BX Equities LLC" means Nasdaq BX Equities LLC, a subsidiary of the Exchange which operates the Nasdaq BX Equities Market pursuant to the Operating Agreement of Nasdaq BX Equities LLC and the Delegation Agreement.
- (6) **"Nasdaq BX Equities Market" or "System"** The terms **"Nasdaq BX Equities Market"** or **"System"** shall mean the automated system for order execution and trade reporting owned and operated by the Exchange through BX Equities LLC as a facility of the Exchange[, and which is described fully in the Equity Rule 4750 Series]. The System comprises:
  - (1) a montage for Quotes and Orders, referred to herein as the "Exchange Book", that collects and ranks all Quotes and Orders submitted by Participants;

(2) 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;

(3) 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

(4) data feeds that can be used to display with attribution to Participants' MPIDs all Quotes and displayed Orders on both the bid and offer side of the market for all price levels then within the Nasdaq BX Equities Market, and that disseminate such additional information about Quotes, Orders, and transactions within the System as shall be reflected in the Exchange Rules.

(7) **"Security."** Unless the context requires otherwise, the term "security" shall mean a security listed on the Exchange or traded on the Exchange pursuant to unlisted trading privileges.

(8) **"System Securities."** The term "System Securities" shall mean any NMS stock, as defined in SEC Rule 600 except securities specifically excluded from trading via a list of excluded securities posted on [www.nasdaqtrader.com](http://www.nasdaqtrader.com).

(9) **"Participant."** The term "Participant" shall mean an entity that fulfills the obligations contained in Equity 2, Section 3 regarding participation in the System, and shall include:

(1) "Equities ECNs," members that meet all of the requirements of Equity 2, Section 14, and that participates in the System with respect to one or more System Securities.

(2) "Equities Market Makers" or "Market Makers", members that are registered as Equities Market Makers for purposes of participation in the System on a fully automated basis with respect to one or more System Securities.

(3) "Order Entry Firms," members that are registered as Order Entry Firms for purposes of entering orders in System Securities into the System. This term shall also include any Electronic Communications Network or Alternative Trading System (as such terms are defined in Regulation NMS) that fails to meet all the requirements of Equity 2, Section 14.

(10) “Quote.” The term "Quote" means a single bid or offer quotation submitted to the System by a Market Maker or Equities ECN and designated for display (price and size) next to the Participant's MPID in the Exchange Book. Quotes are entered in the form of Orders with Attribution (as defined in Rule 4703). Accordingly, all Quotes are also Orders.

(11) “Order.” The term "Order" means an instruction to trade a specified number of shares in a specified System Security submitted to the System by a Participant. An "Order Type" is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the System. An "Order Attribute" is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the System. The available Order Types and Order Attributes, and the Order Attributes that may be associated with particular Order Types, are described in Rules 4702 and 4703. One or more Order Attributes may be assigned to a single Order; provided, however, that if the use of multiple Order Attributes would provide contradictory instructions to an Order, the System will reject the Order or remove non-conforming Order Attributes.

(12) “E.T.” The term "ET" means Eastern Standard Time or Eastern Daylight Time, as applicable.

(13) “Market Hours.” The term "Market Hours" means the period of time beginning at 9:30 a.m. ET and ending at 4:00 p.m. ET (or such earlier time as may be designated by the Exchange on a day when the Exchange closes early). The term "System Hours" means the period of time beginning at 7:00 a.m. ET and ending at 7:00 p.m. ET (or such earlier time as may be designated by the Exchange on a day when the Exchange closes early). The term "Pre-Market Hours" means the period of time beginning at 7:00 a.m. ET and ending immediately prior to the commencement of Market Hours. The term "Post-Market Hours" means the period of time beginning immediately after the end of Market Hours and ending at 7:00 p.m. ET. The Exchange notes that in certain contexts, times cited in the Exchange Rules may be approximate.

(14) “Marketable.” The term "marketable" with respect to an Order to buy (sell) means that, at the time it is entered into the System, the Order is priced at the current Best Offer or higher (at the current Best Bid or lower).

(15) “Market Participant Identifier” or “MPID.” The term "market participant identifier" or "MPID" means a unique four-letter mnemonic assigned to each Participant in the System. A Participant may have one or more than one MPID.

(16) "Best Bid", "Best Offer", "National Best Bid and National Best Offer", "Protected Bid", "Protected Offer", "Protected Quotation" and "Intermarket Sweep Order." The terms "Best Bid", "Best Offer", "National

Best Bid and National Best Offer", "Protected Bid", "Protected Offer", "Protected Quotation" and "Intermarket Sweep Order" shall have the meanings assigned to them under Rule 600 under SEC Regulation NMS; provided, however, that the terms "Best Bid", "Best Offer", "Protected Bid", "Protected Offer", and "Protected Quotation" shall, unless otherwise stated, refer to the bid, offer, or quotation of a market center other than the Exchange. The term "NBBO" shall mean the "National Best Bid and National Best Offer".

(17) “**Minimum Price Increment.**” The term "minimum price increment" means \$0.01 in the case of a System Security priced at \$1 or more per share, and \$0.0001 in the case of a System Security priced at less than \$1 per share.

(18) “**System Book Feed.**” The term "System Book Feed" shall mean a data feed for System Securities, generally known as the BX TotalView ITCH feed.

## **Equity 2 [Equity] Market Participants**

### **Section 1. Scope**

Unless otherwise specified, the rules set forth in Equity 2 apply only to the quoting and trading of System securities via the Nasdaq BX Equities Market.

### **Section 2. Definitions**

(a) For purposes of Equity 2, unless the context requires otherwise:

(1) "SEC Rule 100," "SEC Rule 101," and "SEC Rule 104" means the rules adopted by the Commission under Regulation M, and any amendments thereto.

(2) "Stabilizing bid" means the terms "stabilizing" or to "stabilize" as defined in SEC Rule 100.

(3) "Underwriting Activity Report" is a report provided by the Corporate Financing Department of FINRA in connection with a distribution of securities subject to SEC Rule 101 pursuant to FINRA Rule 5190 and includes forms that are submitted by members to comply with their notification obligations under Equity 2, Sections 6, 10, and 15.

(b) For purposes of Equity 2, Sections 6, 10, and 15, the following terms shall have the meanings as defined in SEC Rule 100: "affiliated purchaser," "distribution," "distribution participant," "independent bid," "net purchases," "penalty bid," "reference security," "restricted period," "subject security," and "syndicate covering transaction."

### **Section 3. Nasdaq BX Market Participant Registration**

(a) Participation in the Nasdaq BX Market as a BX Market Maker, BX ECN or Order Entry Firm requires current registration as such with the Exchange. Such registration

shall be conditioned upon the 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 Nasdaq BX Market compared trades may be settled;

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

(4) maintenance of the physical security of the equipment located on the premises of the BX Market Maker, BX ECN or Order Entry Firm to prevent the improper use or access to Exchange systems, including unauthorized entry of information into the Nasdaq BX Market; and

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

A member's registration shall become effective upon receipt by the member 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. Such registration shall not be conditioned upon registration in any particular Nasdaq BX Market securities.

(b) Each BX Market Maker, BX ECN or Order Entry Firm 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 BX Market Maker, BX ECN or Order Entry Firm such temporary restrictions upon the automated entry or updating of orders or Quotes/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 BX Market Maker, BX ECN or Order Entry Firm 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 BX Market Maker, BX ECN or Order Entry Firm in writing.

#### **Section 4. Registration as an Equities Market Maker**

(a) Quotations and quotation sizes may be entered into the Nasdaq BX Equities Market only by a member registered as an Equities Market Maker or other entity approved by the Exchange to function in a market making capacity.

(b) An Equities Market Maker may become registered in an issue by entering a registration request via an Exchange-approved electronic interface with the Exchange's systems or by contacting Exchange Market Operations. Registration shall become effective on the day the registration request is entered.

(c) An Equities Market Maker's registration in an issue shall be terminated by the Exchange if the market maker fails to enter quotations in the issue within five (5) business days after the market maker's registration in the issue becomes effective.

### **Section 5. Market Maker Obligations**

A member registered as an Equities Market Maker shall engage in a course of dealings for its own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets in accordance with this Rule.

#### **(a) Quotation Requirements and Obligations**

(1) Two-Sided Quote Obligation. For each security in which a member is registered as an Equities Market Maker, the member shall be willing to buy and sell such security for its own account on a continuous basis during regular market hours and shall enter and maintain a two-sided trading interest ("Two-Sided Obligation") that is identified to the Exchange as the interest meeting the obligation and is displayed in the Exchange's quotation montage at all times. Interest eligible to be considered as part of an Equities Market Maker's Two-Sided Obligation shall have a displayed quotation size of at least one normal unit of trading (or a larger multiple thereof); provided, however, that an Equities Market Maker may augment its Two-Sided Obligation size to display limit orders priced at the same price as the Two-Sided Obligation. Unless otherwise designated, a "normal unit of trading" shall be 100 shares. After an execution against its Two-Sided Obligation, an Equities Market Maker must ensure that additional trading interest exists in the Exchange to satisfy its Two-Sided Obligation either by immediately entering new interest to comply with this obligation to maintain continuous two-sided quotations or by identifying existing interest on the Exchange book that will satisfy this obligation.

(2) Pricing Obligations. For NMS stocks (as defined in Rule 600 under Regulation NMS) a Market Maker shall adhere to the pricing obligations established by this Rule during Regular Trading Hours; provided, however, that such pricing obligations (i) shall not commence during any trading day until after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan processor, and (ii) shall be suspended during a trading halt, suspension, or pause, and shall not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor.

(A) Bid Quotations. At the time of entry of bid interest satisfying the Two-Sided Obligation, the price of the bid interest shall be not more than the Designated Percentage away from the then current National Best Bid, or if no National Best Bid, not more than the Designated Percentage away from the last reported sale from the responsible single plan processor. In the event that the National Best Bid (or if no National Best Bid, the last reported sale) increases to a level that would cause the bid interest of the Two-Sided Obligation to be more than the Defined Limit away from the National Best Bid (or if no National Best Bid, the last reported sale), or if the bid is executed or cancelled, the Equities Market Maker shall enter new bid interest at a price not more than the Designated Percentage away from the then current National Best Bid (or if no National Best Bid, the last reported sale), or identify to the Exchange current resting interest that satisfies the Two-Sided Obligation.

(B) Offer Quotations. At the time of entry of offer interest satisfying the Two-Sided Obligation, the price of the offer interest shall be not more than the Designated Percentage away from the then current National Best Offer, or if no National Best Offer, not more than the Designated Percentage away from the last reported sale received from the responsible single plan processor. In the event that the National Best Offer (or if no National Best Offer, the last reported sale) decreases to a level that would cause the offer interest of the Two-Sided Obligation to be more than the Defined Limit away from the National Best Offer (or if no National Best Offer, the last reported sale), or if the offer is executed or cancelled, the Equities Market Maker shall enter new offer interest at a price not more than the Designated Percentage away from the then current National Best Offer (or if no National Best Offer, the last reported sale), or identify to the Exchange current resting interest that satisfies the Two-Sided Obligation.

(C) The National Best Bid and Offer shall be determined by the Exchange in accordance with its procedures for determining protected quotations under Rule 600 under Regulation NMS.

(D) For purposes of this Rule, the "Designated Percentage" shall be 8% for all Tier 1 NMS Stocks under the LULD Plan, 28% for all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than \$1, and 30% for all Tier 2 NMS Stocks under the LULD Plan with a price less than \$1, except that prior to 9:45 a.m. and between 3:35 p.m. and the close of trading, the Designated Percentage shall be 20% for all Tier 1 NMS Stocks under the LULD Plan, 28% for all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than \$1, and 30% for all Tier 2

NMS Stocks under the LULD Plan with a price less than \$1. The Designated Percentage for rights and warrants shall be 30%.

(E) For purposes of this Rule, the "Defined Limit" shall be 9.5% for Tier 1 NMS Stocks under the LULD Plan, 29.5% for all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than \$1, and 31.5% for all Tier 2 NMS Stocks under the LULD Plan with a price less than \$1, except that prior to 9:45 a.m. and between 3:35 p.m. and the close of trading, the Defined Limit shall be 21.5% for all Tier 1 NMS Stocks under the LULD Plan, 29.5% for all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than \$1, and 31.5% for all Tier 2 NMS Stocks under the LULD Plan with a price less than \$1. The Defined Limit for rights and warrants shall be 31.5%.

(F) Reserved.

(G) Reserved.

(H) Nothing in this Rule shall preclude an Equities Market Maker from quoting at price levels that are closer to the National Best Bid and Offer than the levels required by this Rule.

(I) The minimum quotation increment for quotations of \$1.00 or above in all System Securities shall be \$0.01. The minimum quotation increment in the System for quotations below \$1.00 in System Securities shall be \$0.0001.

(J) The individual Market Participant Identifier ("MPID") assigned to a member to meet its Two-Sided Obligation pursuant to subparagraph (a)(1) of this Rule, or Equity 2, Section 14, shall be referred to as the member's "Primary MPID." Equities Market Makers and ECNs may request the use of additional MPIDs that shall be referred to as "Supplemental MPIDs." An Equities Market Maker may request the use of Supplemental MPIDs for displaying Attributable Quotes/Orders in the Quotation Montage for any security in which it is registered and meets the obligations set forth in subparagraph (1) of this rule. An ECN may request the use of Supplemental MPIDs for displaying Attributable Quotes/Orders in the Quotation Montage for any security in which it meets the obligations set forth in Equity 2, Section 14. An Equities Market Maker or ECN that ceases to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use a Supplemental MPID for any purpose in that security.

(K) Equities Market Makers and ECNs that are permitted the use of Supplemental MPIDs for displaying Attributable Quotes/Orders pursuant

to subparagraph (2) of this rule are subject to the same rules applicable to the members' first quotation, with two exceptions: (a) the continuous two-sided quote requirement and excused withdrawal procedures described in subparagraph (1) above do not apply to Equities Market Makers' Supplemental MPIDs; and (b) Supplemental MPIDs may not be used by Equities Market Makers to engage in passive market making or to enter stabilizing bids pursuant to Equity 2, Section 6.

(b) Firm Quotations

All quotations and orders to buy and sell entered into the System by Equities Market Makers, Equities ECNs, and Order Entry firms are firm and automatically executable for their displayed and non-displayed size in the System.

(c) Impaired Ability to Enter or Update Quotations

In the event that an Equities Market Maker's ability to enter or update quotations is impaired, the market maker shall immediately contact Exchange Market Operations to request the withdrawal of its quotations.

In the event that an Equities Market Maker's ability to enter or update quotations is impaired and the market maker elects to continue quoting in the Exchange, the Equities Market Maker shall execute an offer to buy or sell received from another member at its quotations as disseminated through the Nasdaq BX Equities Market.

(d) Reserved

(e) Locked and Crossed Markets

(1) Locked and Cross Markets within the System: Any quotes or 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 4757, 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 (e)(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 members 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 a member of the Exchange displays a manual quotation that locks or crosses a quotation previously disseminated pursuant to an effective national market system plan, such member of the Exchange 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 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 member of the

Exchange 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.

## **Section 6. Stabilizing Bids**

### **(a) Equities Market Maker Obligation/Identifier**

An Equities Market Maker that intends to stabilize the price of a security that is a subject or reference security under SEC Rule 101 shall submit a request to the Exchange's MarketWatch Department for the entry of a one-sided bid that is identified on the Exchange as a stabilizing bid in compliance with the standards set forth in this Rule and SEC Rules 101 and 104.

### **(b) Eligibility**

Only one Equities Market Maker in a security may enter a stabilizing bid.

### **(c) Limitations on Stabilizing Bids**

(1) A stabilizing bid shall not be entered in the Nasdaq BX Equities Market unless at least one other Equities Market Maker in addition to the market maker entering the stabilizing bid is registered as an Equities Market Maker in the security and entering quotations that are considered an independent bid under SEC Rule 104.

(2) A stabilizing bid must be available for all freely tradable outstanding securities of the same class being offered.

### **(d) Submission of Request to the Exchange**

(1) An Equities Market Maker that wishes to enter a stabilizing bid shall submit a request to the Exchange's MarketWatch Department for entry in the Nasdaq BX Equities Market of a one-sided bid identified as a stabilizing bid. The Equities Market Maker shall confirm its request in writing no later than the close of business the day the stabilizing bid is entered by submitting an Underwriting Activity Report to the Exchange's MarketWatch Department that includes the information required by subparagraph (d)(2).

(2) In lieu of submitting the Underwriting Activity Report as set forth in subparagraph (d)(1), the market maker may provide written confirmation to MarketWatch that shall include:

(A) the identity of the security and its symbol;

(B) the contemplated effective date of the offering and the date when the offering will be priced;

(C) the date and time that an identifier should be included on the Exchange; and

(D) a copy of the cover page of the preliminary or final prospectus or similar offering document, unless the Exchange determines otherwise.

### **Section 7. Reports**

An Equities Market Maker, Equities ECN, or Order Entry Firm shall make such reports to the Exchange as may be prescribed from time to time by the Exchange.

### **Section 8. Normal Business Hours**

The System operates from 7:00 a.m. to 7:00 p.m. Eastern Time on each business day, unless modified by the Exchange. An Equities Market Maker shall be open for business as of 9:30 a.m. Eastern Time and shall close no earlier than 4:00 p.m. Eastern Time. An Equities Market Maker may voluntarily open for business prior to 9:30 a.m. and remain open for business later than 4:00 p.m. Eastern Time. Equities Market Makers whose quotes are open prior to 9:30 a.m. Eastern Time or after 4:00 p.m. Eastern Time shall be obligated to comply, while their quotes are open, with all Rules that are not by their express terms, or by an official interpretation of the Exchange, inapplicable to any part of the 7:00 a.m. to 9:30 a.m. or 4:00 p.m. to 7:00 p.m. Eastern Time period.

### **Section 9. Clearance and Settlement**

(a) All transactions through the facilities of the Nasdaq BX Equities Market 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, by entry into a correspondent clearing arrangement with another member that clears trades through such a clearing agency, or by use of the services of CDS Clearing and Depository Services, Inc. in its capacity as a member of such a clearing agency.

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

### **Section 10. Withdrawal of Quotations**

(a) Except as provided in paragraph (b) of this Rule, a market maker that wishes to withdraw quotations in a security shall contact the Exchange's MarketWatch Department to obtain excused withdrawal status prior to withdrawing its quotations. Withdrawals of quotations shall be granted by MarketWatch only upon satisfying one of the conditions specified in this Rule.

(b) An Equities Market Maker that wishes to obtain excused withdrawal status based on a market maker's systemic equipment problems, such as defects in an Equities Market Maker's software or hardware systems or connectivity problems associated with the circuits connecting Nasdaq BX Equities Market systems with the Equities Market Maker's systems, shall contact Exchange Market Operations. Exchange Market Operations may grant excused withdrawal status based on systemic equipment problems for up to five (5) business days, unless extended by Exchange Market Operations.

(c)

(1) For Nasdaq-listed securities, excused withdrawal status based on circumstances beyond the Equities Market Maker's control, other than systemic equipment problems, may be granted for up to five (5) business days, unless extended by the Exchange's MarketWatch Department. Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon notification, be granted for not more than sixty (60) days (unless such request is required to be made pursuant to paragraph (e) below). Excused withdrawal status based on religious holidays may be granted only if written notice is received by the Exchange one business day in advance and is approved by the Exchange. Excused withdrawal status based on vacation may be granted only if:

(A) The written request for withdrawal is received by the Exchange one business day in advance, and is approved by the Exchange; and

(B) The request includes a list of the securities for which withdrawal is requested.

Excused withdrawal status may be granted to an Equities Market Maker that has withdrawn from an issue prior to the public announcement of a merger or acquisition and wishes to re-register in the issue pursuant to the same-day registration procedures contained in Equity 2, Section 3 above, provided the Equities Market Maker has remained registered in one of the affected issues. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not constitute acceptable reasons for granting excused withdrawal status.

(2) For securities listed on the Exchange or any other exchange other than Nasdaq, an Equities Market Maker that wishes to withdraw quotations shall contact the Exchange's MarketWatch Department to obtain excused withdrawal status prior to withdrawing its quotations. Excused withdrawal status based on illness, vacations or physical circumstances beyond the Equities Market Maker's control may be granted for up to five (5) business days, unless extended by MarketWatch. Excused withdrawal status based on investment activity or advice of legal counsel, accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon written request, be granted for not more than sixty (60) days. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not normally constitute acceptable reasons for granting excused withdrawal status, unless the Exchange has initiated a trading halt for market makers in the security, pursuant to Rule 4120.

(d) Excused withdrawal status may be granted to an Equities Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the trade reporting service of the Nasdaq BX Equities Market, thereby terminating its registration as an Equities Market Maker; provided, however, that if the Exchange finds that the Equities Market Maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Equity 2, Section 11 and the Rule 4700 Series governing the Nasdaq BX Equities Market. Equities Market Makers that fail to maintain a clearing relationship will have their Nasdaq BX Equities Market system status set to "suspend" and be thereby prevented from entering, or executing against, any quotes/orders in the system.

(e) Excused withdrawal status may be granted to an Equities Market Maker that is a distribution participant (or, in the case of excused withdrawal status, an affiliated purchaser) in order to comply with SEC Rule 101 or 104 under the Act on the following conditions:

(1) A member acting as a manager (or in a similar capacity) of a distribution of a security that is a subject security or reference security under SEC Rule 101 and any member that is a distribution participant or an affiliated purchaser in such a distribution that does not have a manager shall provide written notice to the Exchange's MarketWatch Department and the Market Regulation Department of FINRA no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SEC Rule 101, unless later notification is necessary under the specific circumstances.

(A) The notice required by subparagraph (e)(1) of this Rule shall be provided by submitting a completed Underwriting Activity Report that includes a request on behalf of each Equities Market Maker that is a distribution participant or an affiliated purchaser to withdraw the Equities Market Maker's quotations and includes the contemplated date and time of the commencement of the restricted period.

(B) The managing underwriter shall advise each Equities Market Maker that it has been identified as a distribution participant or an affiliated purchaser to MarketWatch and that its quotations will be automatically withdrawn, unless a market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) notifies MarketWatch as required by subparagraph (e)(2), below.

(2) An Equities Market Maker that has been identified to MarketWatch as a distribution participant (or an affiliated purchaser of a distribution participant) shall promptly notify MarketWatch and the manager of its intention not to participate in the prospective distribution in order to avoid having its quotations withdrawn.

(3) If an Equities Market Maker that is a distribution participant withdraws its quotations in order to comply with any provision of SEC Regulation M and promptly notifies MarketWatch of its action, the withdrawal shall be deemed an excused withdrawal. Nothing in this subparagraph shall prohibit the Exchange from taking such action as is necessary under the circumstances against a member and its associated persons for failure to contact MarketWatch to obtain an excused withdrawal as required by subparagraphs (a) and (e) of this Rule.

(4) A member acting as a manager (or in a similar capacity of a distribution subject to subparagraph (e)(1)) of this Rule shall submit a request to MarketWatch and the Market Regulation Department of FINRA to rescind the excused withdrawal status of distribution participants and affiliated purchasers, which request shall include the date and time of the pricing of the offering, the offering price, and the time the offering terminated, and, if not in writing, shall be confirmed in writing no later than the close of business the day the offering terminates. The request by this subparagraph may be submitted on the Underwriting Activity Report.

(f) The Exchange Review Council shall have jurisdiction over proceedings brought by Equities Market Makers seeking review of the denial of an excused withdrawal pursuant to this Equity 2, Section 10, or the conditions imposed on their reentry.

### **Section 11. Voluntary Termination of Registration**

(a) A market maker may voluntarily terminate its registration in a security by withdrawing its two-sided quotation from the Nasdaq BX Equities Market. An Equities Market Maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days in the case of securities listed on the Exchange or for one (1) business day in the case of other securities. Withdrawal from participation as an Equities Market Maker in the Nasdaq BX Equities Market shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that an Equities Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Nasdaq BX Equities Market and thereby terminates its registration as an Equities Market Maker may register as a market maker at any time after a clearing arrangement has been reestablished unless the Exchange finds that the Equities Market Maker's failure to maintain a clearing arrangement is voluntary, in which case the withdrawal of quotations will be considered voluntary and unexcused.

(b) Notwithstanding the above, an Equities Market Maker that accidentally withdraws as an Equities Market Maker may be reinstated if:

(1) the Equities Market Maker notified the Exchange's MarketWatch Department of the accidental withdrawal as soon as practicable under the circumstances, but

- within at least one hour of such withdrawal, and immediately thereafter provided written notification of the withdrawal and reinstatement request;
- (2) it is clear that the withdrawal was inadvertent and the market maker was not attempting to avoid its market making obligations; and
- (3) the Equities Market Maker's firm would not exceed the following reinstatement limitations:
- (A) for firms that simultaneously made markets in less than 250 stocks during the previous calendar year, the firm can receive no more than two (2) reinstatements per year;
- (B) for firms that simultaneously made markets in 250 or more but less than 500 stocks during the previous calendar year, the firm can receive no more than three (3) reinstatements per year; and
- (C) for firms that simultaneously made markets in 500 or more stocks during the previous calendar year, the firm can receive no more than six (6) reinstatements per year.
- (c) Factors that the Exchange will consider in granting a reinstatement under paragraph (b) of this rule include, but are not limited to:
- (1) the number of accidental withdrawals by the Equities Market Maker in the past, as compared with Equities Market Makers making markets in a comparable number of stocks;
- (2) the similarity between the symbol of the stock that the Equities Market Maker intended to withdraw from and the symbol of the stock that the Equities Market Maker actually withdrew from;
- (3) market conditions at the time of the withdrawal;
- (4) whether, given the market conditions at the time of the withdrawal, the withdrawal served to reduce the exposure of the member's position in the security at the time of the withdrawal to market risk; and
- (5) the timeliness with which the Equities Market Maker notified MarketWatch of the error.
- (d) For purposes of paragraph (a) of this Rule, a market maker shall not be deemed to have voluntarily terminated its registration in a security by voluntarily withdrawing its two-sided quotation from the Nasdaq BX Equities Market if the Equities Market Maker's two-sided quotation in the subject security is withdrawn by the Exchange's systems due to issuer corporate action related to a dividend, payment or distribution, or due to a trading halt, and one of the following conditions is satisfied:

- (1) the Equities Market Maker enters a new two-sided quotation prior to the close of the regular market session on the same day when the Exchange's systems withdrew such a quotation;
- (2) the Equities Market Maker enters a new two-sided quotation on the day when trading resumes following a trading halt, or, if the resumption of trading occurs when the market is not in regular session, the Equities Market Maker enters a new two-sided quotation prior to the opening of the next regular market session; or
- (3) upon request from the market maker, MarketWatch authorizes the market maker to enter a new two-sided quotation, provided that MarketWatch receives the market maker's request prior to the close of the regular market session on the next regular trading day after the day on which the market maker became eligible to re-enter a quotation pursuant to subparagraph (d)(1) or (d)(2) hereof and determines that the market maker was not attempting to avoid its market making obligations by failing to re-enter such a quotation earlier.
- (e) The Exchange Review Council shall have jurisdiction over proceedings brought by market makers seeking review of their denial of a reinstatement pursuant to paragraphs (b) or (d) of this Rule.

### **Section 12. Suspension and Termination of Quotations**

The Exchange may, pursuant to the procedures set forth in the General 5, Rule 9000 Series, suspend, condition, limit, prohibit or terminate the authority of an Equities Market Maker, Equities ECN, or Order Entry Firm to enter quotations in one or more authorized securities for violations of applicable requirements or prohibitions.

### **Section 13. Termination of Exchange Service**

The Exchange may, upon notice, terminate service in the event that an Equities Market Maker, Equities ECN, or Order Entry Firm fails to qualify under specified standards of eligibility or fails to pay promptly for services rendered by the Exchange.

### **Section 14. Alternative Trading Systems**

(a) The Exchange may provide a means to permit alternative trading systems ("ATSs"), 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 alternative provided for in SEC Rule 602(b)(5)(ii)(A) and (B) ("ECN display alternatives"); or
- (3) to provide orders to the Exchange 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 the

Exchange, and allows any Exchange member the electronic ability to effect a transaction with such priced orders that is equivalent to the ability to effect a transaction with a market maker quotation in systems operated by the Exchange.

(b) An ATS or ECN that seeks to utilize the Exchange-provided means to comply with SEC Rule 301(b)(3), 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 an Exchange member;

(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 quotation data made available to quotation 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 the Exchange, 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 Exchange Market Operations as an ATS or ECN;

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

### **Section 15. Penalty Bids and Syndicate Covering Transactions**

(a) An Equities Market Maker acting as a manager (or in a similar capacity) of a distribution of a security that is a subject or reference security under SEC Rule 101 shall provide written notice to the Corporate Financing Department of FINRA of its intention to impose a penalty bid on syndicate members or to conduct syndicate covering transactions pursuant to SEC Rule 104 prior to imposing the penalty bid or engaging in the first syndicate covering transaction. An Equities Market Maker that intends to impose a penalty bid on syndicate members may request that its quotation be identified as a penalty bid on the Exchange pursuant to paragraph (c) below.

(b) The notice required by paragraph (a) shall include:

(1) the identity of the security and its symbol;

(2) the date the member is intending to impose the penalty bid and/or conduct syndicate covering transactions.

(c) Notwithstanding paragraph (a), an Equities Market Maker may request that its quotation be identified as a penalty bid on the Exchange by providing notice to the Exchange's MarketWatch Department, which notice shall include the date and time that the penalty bid identifier should be entered on the Exchange and, if not in writing, shall

be confirmed in writing no later than the close of business the day the penalty bid identifier is entered on the Exchange.

(d) The written notice required by this Rule may be submitted on the Underwriting Activity Report.

### **Section 16. Obligation to Provide Information**

(a) An Equities Market Maker, Equities ECN, or Order Entry Firm operating in or participating in the Nasdaq BX Equities Market or other system operated by the Exchange shall provide information orally, in writing, or electronically (if such information is, or is required to be, maintained in electronic form) to the staff of the Exchange when:

(1) the Exchange's MarketWatch 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 MarketWatch is responsible for administering or to other duties and/or obligations imposed on MarketWatch by 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 may possess that may assist in determining whether there is a basis to initiate a trading halt, pursuant to Rule 4120; or

(C) a clearly erroneous transaction, pursuant to Equity 11, Rule 11890; or

(D) a request for an excused withdrawal or reinstatement, pursuant to Equity 2, Sections 10 and 11; or

(E) trade-throughs; or

(F) a request to submit a stabilizing bid, pursuant to Equity 2, Section 6, or a request to have a quotation identified as a penalty bid on the Exchange, pursuant to Equity 2, Section 15.

(2) Exchange Market Operations staff makes an oral, written, or electronically communicated request for information relating to a specific Exchange rule, SEC rule, provision of a joint industry plan (e.g., UTP, CTA, and CQA) (as promulgated and amended from time-to-time) that Exchange Market Operations is responsible for administering or to other duties and/or obligations for which Exchange Market Operations is responsible; this shall include, but not be limited to, 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.

**Section 17. 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 the Nasdaq BX Equities Market, any other Exchange facility, or the use thereof. Any losses, damages, or other claims, related to a failure of the Nasdaq BX Equities Market or any other Exchange facility to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, Quote/Order, message, or other data entered into, or created by, the Nasdaq BX Equities Market or any other Exchange facility shall be absorbed by the member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data.

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

(1) For the aggregate of all claims made by all market participants related to the use of the Nasdaq BX Equities Market 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 the Nasdaq BX Equities Market 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 the Nasdaq BX Equities Market gave rise to such claims. Nothing in this rule shall obligate the Exchange to seek recovery under any applicable insurance policy.

**Section 18. Obligation to Honor System Trades**

(a) If a Participant, or clearing member acting on a Participant's behalf, is reported by the System, or shown by the activity reports generated by the System, 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).

**Section 19. Compliance with Rules and Registration Requirements**

(a) Failure by a Participant to comply with any of the rules or registration requirements applicable to the Nasdaq BX Equities Market identified herein shall subject such Participant to censure, fine, suspension or revocation of its registration as an Equities

Market Maker, Order Entry Firm, and/or Equities ECN or any other fitting penalty under the Equity Rules.

(b)

(1) If a Participant fails to maintain a clearing relationship as required under paragraphs (a)(2) of Equity 2, Section 3, it shall be removed from the Nasdaq BX Equities Market 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 Equity 2, Section 3 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.

### **Section 20. Customer Disclosures**

No member may accept an order from a customer for execution in the premarket 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.

### **Equity 3 BX Venture Market Listing Rules[Equity Trading Rules]**

#### **5001. The Qualification, Listing, and Delisting of Companies**

This Rule 5000 Series (consisting of Rules 5000-5999) contains rules related to the qualification, listing and delisting of Companies on the Nasdaq BX listing platform called the "BX Venture Market". Companies listed on the BX Venture Market do not qualify, as a result of such listing, for any exemption to the application of the penny stock rules or state securities registration requirements. The Exchange will take action, pursuant to the Rule 5100 Series, to delist any Company listed on the BX Venture Market that attempts to rely on an exemption from state securities registration which may otherwise be available to Companies listed on the Exchange.

The Rule 5100 Series (consisting of Rules 5100-5199) discusses the Exchange's general regulatory authority. The Rule 5200 Series (consisting of Rules 5200-5299) sets forth the procedures and prerequisites for gaining a listing on the Exchange, as well as the disclosure obligations of listed Companies. The Rule 5500 Series (consisting of Rules 5500-5599) contains the specific quantitative listing requirements for listing on the

Exchange. The corporate governance requirements applicable to Companies listed on the Exchange are contained in the Rule 5600 Series (consisting of Rules 5600-5699). The consequences of a failure to meet the Exchange's listing standards are contained in the Rule 5800 Series (consisting of Rules 5800-5899). Finally, Company listing fees are described in the Rule 5900 Series (consisting of Rules 5900-5999).

The Exchange exercises other authorities important to listed Companies discussed in other Rules Series in the Marketplace Rules. For example, the Exchange may close markets upon request of the SEC (see Rule 4121). It may also halt the trading of a Company's securities under certain circumstances and pursuant to established procedures (See Rule 4120 and IM-5250-1). These authorities are exercised primarily by the MarketWatch Department and are contained in the Rule 4000 Series.

The Exchange is a party to a regulatory contract with the Financial Industry Regulatory Authority, Inc. ("FINRA") and a separate regulatory contract with The Nasdaq Stock Market LLC ("Nasdaq") pursuant to which FINRA and Nasdaq have agreed to perform certain functions described in the Rules on behalf of the Exchange. Notwithstanding the fact that the Exchange has entered into these regulatory contracts to perform some of the Exchange's functions, the Exchange shall retain ultimate legal responsibility for, and control of, such functions.

#### **5005. Definitions**

(a) The following is a list of definitions used throughout the Listing Rules. This section also lists various terms together with references to other rules where they are specifically defined. Unless otherwise specified by the Rules, these terms shall have the meanings set forth below. Defined terms are capitalized throughout the Listing Rules.

(1) "**Act**" means the Securities Exchange Act of 1934.

(2) "**Bid Price**" means the closing bid price.

(3) "**Commission**" or "**SEC**" means the United States Securities and Exchange Commission.

(4) "**Company**" means the issuer of a security listed or applying to list on the Exchange. For purposes of the Rule 5000 Series, the term "Company" includes an issuer that is not incorporated, such as, for example, a limited partnership.

(5) "**Country of Domicile**" means the country under whose laws a Company is organized or incorporated.

(6) "**Direct Registration Program**" means any program by a Company, directly or through its transfer agent, whereby a Shareholder may have securities registered in the Shareholder's name on the books of the Company or its transfer agent without the need for a physical certificate to evidence ownership.

- (7) "EDGAR System" means the SEC's Electronic Data Gathering, Analysis, and Retrieval system.
- (8) "ESOP" means employee stock option plan.
- (9) "Executive Officer" is defined in Rule 5605(a)(1).
- (10) "Filed with the Exchange" means submitted to the Exchange directly or filed with the Commission through the EDGAR System.
- (11) "Family Member" is defined in Rule 5605(a)(2).
- (12) "Foreign Private Issuer" shall have the same meaning as under Rule 3b-4 under the Act.
- (13) "Independent Director" is defined in Rule 5605(a)(2).
- (14) "Listed Securities" means securities listed on the Exchange or another national securities exchange.
- (15) "Market Value" means the consolidated closing bid price multiplied by the measure to be valued (e.g., a Company's Market Value of Listed Securities is equal to the consolidated closing bid price multiplied by the number of the Company's Listed Securities).
- (16) "Member" means a broker or dealer admitted to membership on the Exchange.
- (17) "Market Maker" means a dealer that, with respect to a security, holds itself out (by entering quotations in the Exchange) as being willing to buy and sell such security for its own account on a regular and continuous basis and that is registered as such.
- (18) "Other Regulatory Authority" means, in the case of a bank or savings authority identified in Section 12(i) of the Act, the agency vested with authority to enforce the provisions of Section 12 of the Act.
- (19) "Primary Equity Security" means a Company's first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests, American Depositary Receipts (ADR) or American Depositary Shares (ADS).
- (20) "Publicly Held Shares" means shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding. Determinations of beneficial ownership in calculating publicly held shares shall be made in accordance with Rule 13d-3 under the Act.
- (21) "Public Holders" means holders of a Security that includes both beneficial holders and holders of record, but does not include any holder who is, either directly or indirectly, an Executive Officer, director, or the beneficial holder of more than 10% of the total shares outstanding.

(22) "Round Lot" or "Normal Unit of Trading" means 100 shares of a Security unless, with respect to a particular Security, the Exchange determines that a normal unit of trading shall constitute other than 100 shares. If a normal unit of trading is other than 100 shares, a special identifier shall be appended to the Company's Exchange symbol.

(23) "Round Lot Holder" means a holder of a Normal Unit of Trading. The number of beneficial holders will be considered in addition to holders of record.

(24) "Sarbanes-Oxley Act" means the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212).

(25) "Security" means a Company's Common Stock, Preferred Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests, American Depositary Receipts (ADR), American Depositary Shares (ADS), Units, Rights or Warrants.

(26) "Shareholder" means a record or beneficial owner of a Security listed or applying to list. For purposes of the Rule 5000 Series, the term "Shareholder" includes, for example, a limited partner, the owner of a depository receipt, or unit.

(27) "Substitution Listing Event" means: a reverse stock split, re-incorporation or a change in the Company's place of organization, the formation of a holding company that replaces a listed Company, reclassification or exchange of a Company's listed shares for another Security, the listing of a new class of securities in substitution for a previously-listed class of securities, or any technical change whereby the Shareholders of the original Company receive a share-for-share interest in the new Company without any change in their equity position or rights.

## **5100. The Exchange's Regulatory Authority**

### **5101. Preamble to the Rule 5100 Series**

The Exchange is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. The Exchange stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy and supporting the capital formation process. The Exchange's Companies are publicly recognized as sharing these important objectives.

Consistent with these goals, and mindful of the smaller size and liquidity characteristics of certain of the Companies that may list on the Exchange, the Exchange will provide expert surveillance of market activity in listed companies by experienced market regulators, as described in Rule 5105. It has also adopted rules to ensure that investors may clearly distinguish BX Venture Market listed securities from those listed on Nasdaq or other national securities exchanges, as described in Rule 5106. In addition, the Exchange require that companies undergo a rigorous review process before being approved for listing, and are subject to heightened regulatory oversight thereafter. The additional listing procedures and requirements will be enforced by the highly qualified, experienced listing staff in Nasdaq's Listing Qualifications Department, as described in

Rule 5102. This staff also has discretionary authority to deny listing to otherwise qualified companies where necessary to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. This authority is described in Rule 5104 and IM-5104-1-4.

### **5102. Experienced Listing Qualifications Staff**

The Exchange will employ the staff in Nasdaq's Listing Qualifications Department to apply and enforce its listing standards pursuant to a regulatory contract. Notwithstanding this contractual arrangement, the Exchange retains ultimate legal responsibility for and control of these functions. Staff in the Nasdaq Listing Qualifications Department have substantial experience in regulating listed companies. In addition to the review of companies seeking a listing as described in Rule 5205, the Department will monitor compliance with all listing standards on an on-going basis through the regular review of public filings, Form 8-K disclosures, press releases, market data, and closing bid price.

The Department also includes within it a group dedicated to the investigation of companies and the screening for potential public interest concerns. The investigative group will be supervised by at least one individual with substantial prior regulatory experience at a national securities exchange or experience with the SEC's Enforcement Division, FINRA, or another organization with responsibilities for enforcing the federal securities laws. Oversight of the listings program will similarly include at all times at least one individual with substantial prior experience in supervising a listing program at a national securities exchange that currently has an active listing program. In addition, the Chief Regulatory Officer of the Exchange will be required to have substantial prior regulatory experience with a national securities exchange or equivalent experience.

### **5103. Automatic Bars to Listing**

(a) Regulatory History. The Exchange will not approve for listing or allow the continued listing of a Company if any executive officer, director, promoter, or control person was involved in any event that occurred during the prior five years described in Item 401(f)(2) - (8) of Regulation S-K under the Act. In addition, as discussed more fully in Rule 5104 and IM-5104-1, the Exchange will ordinarily exercise its discretion to deny listing when it determines that an executive officer, director, promoter, or control person of the Company has a history of regulatory misconduct that does not implicate this automatic bar. Any determination to list or allow the continued listing of such a Company will only be made after consideration of factors set forth in IM-5104-1 and with the written approval of the Chief Regulatory Officer of the Exchange.

(b) Public Shells. The Exchange will not approve for listing or allow the continued listing of "shell" Companies. In determining whether a Company is a shell, the Exchange will look to a number of factors, including but not limited to: whether the Company is considered a "shell company" as defined in Rule 12b-2 under the Act; what percentage of the Company's assets are active versus passive; whether the Company generates

revenues, and if so, whether the revenues are passively or actively generated; whether the Company's expenses are reasonably related to the revenues being generated; how many employees support the Company's revenue-generating business operations; how long the Company has been without material business operations; and whether the Company has publicly announced a plan to begin operating activities or generate revenues, including through a near-term acquisition or transaction.

(c) Impermissible Claims of Exemptions. Companies listed on the BX Venture Market do not qualify, as a result of such listing, for any exemption from the application of the penny stock rules contained in Rules 15g-1 through 15g-100 under the Act or state securities registration requirements. The Exchange will not list any Company, and will delist any listed Company that attempts to rely on an exemption from state securities registration which otherwise may be available under state law to Companies listed on the Exchange.

#### **5104. Discretionary Authority**

The Exchange, in addition to applying the enumerated criteria set forth in the Rule 5000 Series, has broad discretionary authority over the initial and continued listing of securities in the BX Venture Market in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. The Exchange may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on the BX Venture Market inadvisable or unwarranted in the opinion of the Exchange, even though the securities meet all enumerated criteria for initial or continued listing on the BX Venture Market. In all circumstances where the Listing Qualifications Department (as defined in Rule 5805) exercises its discretionary authority under this Rule, the Listing Qualifications Department shall issue a Staff Delisting Determination under Rule 5810(c)(1), and in all circumstances where an Adjudicatory Body (as defined in Rule 5805) exercises such authority, the use of the authority shall be described in the written decision of the Adjudicatory Body.

Although the Exchange has broad discretion under this Rule to impose additional or more stringent criteria, the Rule does not provide a basis for the Exchange to grant exemptions or exceptions from the enumerated criteria for initial or continued listing, which may be granted solely pursuant to rules explicitly providing such authority.

#### **IM-5104-1. Use of Discretionary Authority in the Case of a Regulatory History That Does Not Implicate the Automatic Bar.**

The Exchange ordinarily will use its discretionary authority to deny initial or continued listing to a Company when an individual with a history of regulatory misconduct is associated with the Company even though that history does not lead to the automatic bar

described in Rule 5103(a). However, in limited circumstances, it may determine to allow the listing of such Company, provided it obtains the written approval of the Chief Regulatory Officer of the Exchange. In determining whether to list such a Company, the Exchange will consider the totality of information in its possession, including the information provided by a an independent qualified third party investigator as described in Rule 5205(d), as well the following factors:

- the nature and severity of the conduct, taken in conjunction with the length of time since the conduct occurred;
- whether the conduct involved fraud or dishonesty;
- whether the conduct was securities-related;
- whether the investing public was involved;
- whether the conduct demonstrates a propensity for financial mismanagement;
- how the individual has been employed since the violative conduct;
- whether there are continuing sanctions (either criminal or civil) against the individual;
- whether the individual made restitution;
- whether the Company has taken effective remedial action; and
- the totality of the individual's relationship to the Company, giving consideration to:
  - the individual's current or proposed position;
  - the individual's current or proposed scope of authority;
  - the extent to which the individual has responsibility for financial accounting or reporting; and
  - the individual's equity interest.

The Exchange may determine that the regulatory history rises to the level of a public interest concern, but may also consider whether remedial measures proposed by the Company, if taken, would allay that concern. Examples of such remedial measures could include any or all of the following, as appropriate:

- the individual's resignation from officer, director or promoter positions, and/or other employment with the Company;
- divestiture of stock holdings;
- terminations of contractual arrangements between the Company and the individual; or
- the establishment of a voting trust surrounding the individual's shares.

The Exchange Staff is willing to discuss with Companies, on a case-by-case basis, what remedial measures may be appropriate to address public interest concerns, and for how long such remedial measures would be required. Alternatively, the Exchange may conclude that a public interest concern is so serious that no remedial measure would be sufficient to alleviate it. In the event that the Exchange Staff denies initial or continued listing based on such public interest considerations, the Company may seek review of that determination through the procedures set forth in the Rule 5800 Series. On consideration of such appeal, a Hearings Panel comprised of persons independent of the Exchange may accept, reject or modify the Staff's recommendations by imposing conditions.

#### **IM-5104-2. Use of Discretionary Authority Based on Financial Disclosures**

The Exchange may use its discretionary authority to delist a Company when a Company files for protection under any provision of the federal bankruptcy laws or comparable foreign laws, when a Company's independent accountants issue a disclaimer opinion on financial statements required to be audited, or when financial statements do not contain a required certification.

#### **IM-5104-3. Use of Discretionary Authority Based on Past Corporate Governance Issues**

The Exchange will review the Company's past corporate governance activities. This review may include activities taking place while the Company is listed on the Exchange or an exchange that imposes corporate governance requirements, as well as activities taking place after a formerly listed company is no longer listed on the Exchange or such an exchange. Based on such review, and in accordance with the Rule 5800 Series, the Exchange may take any appropriate action, including placing restrictions on or additional requirements for listing, or denying listing of a Security, if the Exchange determines that there have been violations or evasions of such corporate governance standards. Such determinations will be made on a case-by-case basis as necessary to protect investors and the public interest. Whenever Staff has identified a past violation or evasion of a corporate governance standard pursuant to its review of a Company's past corporate governance activities, but decides not to exercise its discretionary authority to deny listing, the listing must be approved in writing by the Chief Regulatory Officer.

#### **IM-5104-4. Use of Discretionary Authority Based on Publicly Held Shares or Shareholder Count**

The Exchange may apply its authority described in the Rule 5100 Series to deny listing to or delist a Security that meets all applicable listing requirements if the Exchange determines that there are an insufficient number of Publicly Held Shares or Shareholders that are not subject to trading restrictions, such that denial of listing or delisting is necessary to maintain the quality of and public confidence in the market, to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest.

### **5105. Oversight of Market Activity**

FINRA will regulate market activity on the BX Venture Market pursuant to a regulatory contract that will be in place before the Market is operational. Notwithstanding the regulatory contract, the Exchange retains ultimate legal responsibility for and control of these functions.

A regulatory review will utilize electronic surveillance patterns calibrated to detect potential issues that may arise in low-priced, less liquid stocks. In addition, a regulatory program will include review of trading that takes place on the over-the-counter market in securities listed on the BX Venture Market; the activity of firms on the BX Venture Market; "focused exams" concentrated on sales practices and firm oversight and any other activities required to effectively regulate the Market.

Staff of the Exchange will monitor real-time trading of securities listed on the BX Venture Market. The Exchange will provide a monthly report to the Directors of the Division of Trading and Markets and the Office of Compliance, Inspections, and Examinations describing significant developments on the BX Venture Market. The Exchange's Chief Regulatory Officer will provide quarterly reports to the Directors of the Division of Trading and Markets and the Office of Compliance, Inspections, and Examinations describing the regulatory activities of the Exchange and FINRA during the prior quarter.

### **5106. Market Data Display Requirements**

To avoid any confusion on the part of the investing public, the Exchange will refer to this listing venue as the BX Venture Market and not as Nasdaq BX. Its communications and marketing literature will include a prominent explanation that the BX Venture Market is separate from and not a tier of The Nasdaq Stock Market. It will include prominent information on its website describing the differences between the BX Venture Market and other national securities exchanges.

Further, the Exchange is committed to ensuring that BX Venture Market securities are clearly distinguished, and distinguishable, from securities listed on the traditional exchanges on its data products and to end-users of the data. To that end, the Exchange will require, through its distribution agreements and global market data policy documents, that market data distributors prominently identify the BX Venture Market as the listing market and, where display of text is not consistent with the display methodology and user needs of the distributor, to use the Market Center identifier "B" to prominently display the listing market with quotation and last sale information for BX Venture Market-listed securities. Every market data vendor that distributes BX Venture Market data to users must have a signed data distribution agreement that will bind the data vendor to these display requirements, backed by contractual sanctions including termination of distribution. The Exchange will have these agreements in place before the BX Venture Market begins operations, and the market center identifier will be distributed and required to be displayed upon the launch of the market. The Exchange will, in

connection with the launch, review the displays of data distributors and require immediate compliance if any displays fail to meet the requirements of the market data agreements. Thereafter, the Exchange will conduct periodic audits of all market data vendors to ensure compliance. If a market data vendor does not satisfy the Exchange's display requirements, the Exchange will take action against the vendor, up to and including terminating the vendor's ability to receive data from the Exchange.

### **5110. Business Combinations with Entities not Listed on the Exchange that Result in a Change of Control**

A Company will not be allowed to remain listed in connection with a transaction whereby the Company combines with an entity not listed on the Exchange, resulting in a change of control of the Company and potentially allowing the non-listed entity to obtain an Exchange listing. The new entity will be subject to all initial listing requirements, application procedures, and public interest reviews. In determining whether a change of control has occurred, the Exchange shall consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the Company. The Exchange shall also consider the nature of the businesses and the relative size of the listed Company and the non-listed entity. The Company must submit an application for the post-transaction entity with sufficient time to allow the Exchange to complete its review before the transaction is completed. The review will include the background checks associated with the review of any initial listing application, including the potential use of third party firms, as discussed in Rule 5205(d). If the Company's application for initial listing has not been approved prior to consummation of the transaction, the Exchange will issue a Staff Delisting Determination and begin delisting proceedings pursuant to the Rule 5800 Series.

### **5200. General Procedures and Prerequisites for Initial and Continued Listing on the Exchange**

#### **5205. The Applications and Qualifications Process**

##### (a) Overview

The Exchange may approve a Company for listing after determining that it is not disqualified based on an automatic bar pursuant to Rule 5103; that it meets the Prerequisites to Listing in Rule 5210, the initial Listing Requirements in the Rule 5500 Series, and the Corporate Governance Requirements in the Rule 5600 Series; and that the public interest review has not identified any concerns that call for disapproval pursuant to the Exchange's discretionary authority as set forth in Rule 5104 and IM-5104-1 - 4. In making its determination, the Exchange will consider the totality of information in its possession, including any information provided by an independent qualified third party investigator pursuant to Rule 5205(d).

##### (b) Application

To apply for listing on the Exchange, a Company shall execute a Listing Agreement and submit a Listing Application on the forms designated by the Exchange providing the information required by Section 12(b) of the Act.

All forms and applications relating to listing of securities on the Exchange referenced in the Rule 5000 Series are available on [www.bxventure.com](http://www.bxventure.com). The Listing Application and process requires the applicant Company to, among other things:

(1) provide detailed descriptions and supporting documentation of all pending or prior inquiries, investigations, lawsuits, litigation, arbitration, hearings or any other legal or administrative proceedings involving current executive officers, directors, promoters, and ten percent or greater shareholders of the Company; all inquiries, investigations, lawsuits, litigation, arbitration, hearings or any other legal or administrative proceedings commenced within the past 10 years involving the Company, its predecessors and subsidiaries; any events described under Item 401(f) of Regulation S-K involving officers, directors, promoters or control persons; all bridge financings, shelf registrations, Regulation S offerings or private placements consummated in the prior six months; and copies of any blue sky memoranda;

(2) file with the Exchange all reports and other documents filed or required to be filed with the Commission or Other Regulatory Authority. This requirement is satisfied by publicly filing documents through the EDGAR System. All required reports must be filed with the Exchange on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with the Exchange shall contain audited financial statements. A Company's compliance with Rule 5500 Series qualifications will be based on its most recent filings and on financial statements that are either: (i) prepared in accordance with U.S. generally accepted accounting principles; (ii) reconciled to U.S. generally accepted accounting principles as required by the Commission's rules; or (iii) prepared in accordance with International Financial Reporting Standards, as issued by the International Accounting Standards Board, for Companies that are permitted to file financial statements using those standards consistent with the Commission's rules.

(3) provide to the Exchange any information or documentation, public or non-public, deemed necessary to make a determination regarding a Security's initial listing, including, but not limited to, any material provided to or received from the Commission or Other Regulatory Authority. A Company's Security may be denied listing if the Company fails to provide such information within a reasonable period of time or if any communication to the Exchange contains a material misrepresentation or omits material information necessary to make the communication to the Exchange not misleading.

(4) certify that all applicable listing criteria are satisfied; that it is not relying on an exemption from state registration or "blue sky" requirements for companies listed on the Boston Stock Exchange; and to the veracity of all information provided.

(c) Staff Review

(1) In considering a Company's application for listing, Staff shall review all information provided by the Company on its application and pursue additional clarifying documentation from the Company if necessary. In addition, Staff shall:

(A) review the Company's public filings, including the management's discussion and analysis, the stated risk factors, related party transactions, litigation, and the auditor's opinion;

(B) review proxy disclosures to screen for events described under Item 401(f) of Regulation S-K under the Act;

(C) conduct background checks of the Company and affiliated individuals with the use of publicly available databases and other public resources, such as Lexis-Nexis, the Web-CRD regulatory database, and web-based search engines;

(D) refer review of a Company to a qualified independent third party investigative firm in appropriate circumstances, as described below in Section 5205(d).

(2) If the Exchange identifies as a result of its internal review a regulatory issue that triggers an automatic bar under Rule 5103 or another regulatory issue that Staff determines calls for the exercise of discretionary authority to deny listing under Rule 5104 and the Interpretive Materials thereunder, the application will be disapproved.

(3) If the Exchange identifies as a result of its internal review:

(A) a regulatory event described under Item 401(f)(2)-(8) of Regulation S-K about an officer, director, promoter, or control person that occurred more than five years prior; or

(B) a history of regulatory misconduct by a person that is not an officer, director, promoter, or control person of the Company but who has significant influence on or importance to the Company;

it will ordinarily exercise its discretionary authority to deny listing. However, if the Exchange determines that the information identified may not rise to the level requiring denial of the listing, or if it identifies any issue that raises potential public interest concerns about which it seeks additional information (such as, for example, media accounts of criminal allegations or improper business practices, or indication of financial impropriety) it will refer the Company to an independent qualified third party investigative firm for review, as described in Rule 5205(d) below. A decision to list a Company that has been referred to an outside review pursuant to this paragraph must be approved in writing by the Chief Regulatory Officer of the Exchange. The CRO must also approve the listing of any Company with an officer, director, promoter, or control person that has described a bankruptcy under Item 401(f)(1) of Regulation S-K, and any Company for which Staff has identified a past violation or evasion of a corporate governance standard under IM-5104-3, but decided not to exercise its discretionary authority to deny listing.

(d) Independent Qualified Third-Party Investigative Review

The Exchange will retain an independent qualified third party investigative firm to assist in its public interest review process. Staff will make random, regular referrals to such a firm of at least 10% of applicant companies that were not previously listed on a national securities exchange. In addition, Staff will utilize a third party firm when it would be impractical to research a regulatory history occurring outside the United States. Finally, Staff will seek review of a Company when, as described in paragraph 5205(c)(3) above, the internal review has uncovered a regulatory issue or potential public interest concern that does not trigger an automatic bar and Staff has not made a determination to disapprove the application. While the scope of investigations will vary based on the reasons for review, they generally will focus on criminal history, government sanctions and watchlists, and will also include online and onsite checks of court records, searches of relevant state and country criminal databases, and searches of global risk compliance databases covering government prohibited and barred persons. In appropriate circumstances, the outside firm would be asked to make inquiries with respect to the applicant issuer's business practices, customers, suppliers, or whistle blower complaints.

(e) The procedures and determinations described in this Rule 5205 shall be followed, as applicable, whenever a listed Company names a new officer, director, promoter, or control person or makes a disclosure of an event described under Item 401(f) of Regulation S-K under the Act, and whenever Staff, in the course of its on-going monitoring of listed Companies, identifies a potential public interest concern.

#### **5210. Prerequisites for Applying to List on the Exchange**

All Companies applying to list on the Exchange must meet the following prerequisites:

##### (a) Registration under 12(b) of the Act

A Security shall be eligible for listing on the Exchange provided that it is:

(1) registered pursuant to Section 12(b) of the Act; or

(2) subject to an exemption issued by the Commission that permits the listing of the Security notwithstanding its failure to be registered pursuant to Section 12(b).

##### (b) Auditor Registration

Each Company applying for initial listing must be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act.

##### (c) Direct Registration Program

All securities initially listing on the Exchange must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act. This provision does not extend to non-equity securities that are book-entry only. A Foreign Private Issuer may follow its home country practice in lieu of this requirement by utilizing the process described in Rule 5615(a)(3).

(d) Fees

The Company is required to pay all applicable fees as described in the Rule 5900 Series. The Exchange will not list the Security of any Company that has an outstanding balance with the Exchange or with The Nasdaq Stock Market.

(e) Good Standing

No Security shall be approved for listing that is delinquent in its filing obligation with the Commission or Other Regulatory Authority or suspended from trading by the Commission pursuant to Section 12(k) of the Act or by the appropriate regulatory authorities of the Company's Country of Domicile.

(f) Certification

Upon approval of a listing application, the Exchange shall certify to the Commission, pursuant to Section 12(d) of the Act and the rules thereunder, that it has approved the Security for listing and registration. Listing can commence only upon effectiveness of the Security's registration pursuant to Section 12(d).

(g) Security Depository

(1) "Securities Depository" means a securities depository registered as a clearing agency under Section 17A of the Act.

(2) For initial listing, a Security shall have a CUSIP number or foreign equivalent identifying the securities included in the file of eligible issues maintained by a Securities Depository in accordance with the rules and procedures of such securities depository. This subparagraph shall not apply to a Security if the terms of the Security do not and cannot be reasonably modified to meet the criteria for depository eligibility at all Securities Depositories.

(3) A Security Depository's inclusion of a CUSIP number or foreign equivalent identifying a security in its file of eligible issues does not render the security "depository eligible" under Rule 11310 until:

(A) in the case of any new issue distributed by an underwriting syndicate on or after the date a Securities Depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available, the date of the commencement of trading in such security on the Exchange; or

(B) in the case of any new issue distributed by an underwriting syndicate prior to the date a Securities Depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available where the managing underwriter elects not to deposit the securities on the date of the commencement of trading in such security on the Exchange, such later date designated by the managing underwriter in a notification submitted to the Securities Depository; but in no event more than three (3) months after the commencement of trading in such security on the Exchange.

#### (h) Limited Partnerships

No security issued in a limited partnership rollup transaction (as defined by Section 14(h) of the Act), shall be eligible for listing unless:

(i) the rollup transaction was conducted in accordance with procedures designed to protect the rights of limited partners as provided in Section 6(b)(9) of the Act, as it may from time to time be amended, and

(ii) a broker-dealer that is a member of a national securities association subject to Section 15A(b)(12) of the Act participates in the rollup transaction.

The Company shall further provide an opinion of counsel stating that such broker-dealer's participation in the rollup transaction was conducted in compliance with the rules of a national securities association designed to protect the rights of limited partners, as specified in the Limited Partnership Rollup Reform Act of 1993.

In addition to any other applicable requirements, each limited partnership listed on the Exchange shall have a corporate general partner or co-general partner that satisfies the audit committee requirements set forth in the Rule 5600 Series.

Note: The only currently existing national securities association subject to Section 15A(b)(12) of the Act is FINRA. Its rules designed to protect the rights of limited partners, pursuant to the Limited Partnership Rollup Reform Act of 1993, are specified in FINRA Rule 2310.

#### (i) Ineligibility of Certain Securities

No Security shall be approved for listing on the Exchange if the Security satisfies the quantitative requirements for initial listing on any tier of The Nasdaq Stock Market LLC.

#### (j) Ticker Symbols

The assignment of symbols for companies listed on the BX Venture Market is governed by the National Market System Plan for the Selection and Reservation of Securities Symbols, pursuant to which securities listed on the BX Venture Market are eligible to have a trading symbol of from one to five characters. Notwithstanding, Companies not previously listed on a national securities exchange must adopt a four or five character ticker symbol as a prerequisite to listing on the BX Venture Market. Companies listing on the BX Venture Market following a delisting from another national securities exchange and that traded on that exchange with a one, two, or three-character symbol will be permitted to retain the ticker symbol, provided that the Company must, prior to listing on the BX Venture Market, issue a press release announcing its delisting from the other exchange and comply with the disclosure requirements of Item 3.01 of Form 8-K.

### **5215. American Depositary Receipts**

#### (a) Eligibility

American Depositary Receipts can be listed on the Exchange provided they represent shares in a non-Canadian foreign Company.

(b) Computations

In the case of American Depositary Receipts, stockholders' equity and total assets shall relate to the foreign issuer and not to any depositary or any other person deemed to be an issuer for purposes of Form S-12 under the Securities Act of 1933. The underlying security will be considered when determining Publicly Held Shares, stockholders' equity, Round Lot or Public Holders, total assets, operating history and Market Value of Listed Securities.

**5225. Listing Requirements for Units**

(a) All component parts of a Unit shall meet the requirements for initial and continued listing.

(b) For initial and continued listing, a unit must have at least two registered and active Market Makers.

(c) The minimum period for listing units shall be 30 days from the first day of listing, except the period may be shortened if the units are suspended or withdrawn for regulatory purposes. Companies and underwriters seeking to withdraw units from listing must provide the Exchange with notice of such intent at least 15 days prior to withdrawal.

(d) The issuer of units shall include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed with the Commission under the federal securities law and the rules and regulations thereunder a statement regarding any intention to delist the units immediately after the minimum listing period.

**5250. Obligations for Companies Listed on the Exchange**

(a) Obligation to Provide Information to the Exchange

(1) The Exchange may request any additional information or documentation, public or non-public, deemed necessary to make a determination regarding a Company's continued listing, including, but not limited to, any material provided to or received from the Commission or Other Regulatory Authority. A Company may be denied continued listing if it fails to provide such information within a reasonable period of time or if any communication to the Exchange contains a material misrepresentation or omits material information necessary to make the communication to the Exchange not misleading. The Company shall provide full and prompt responses to requests by the Exchange or by FINRA acting on behalf of the Exchange for information related to unusual market activity or to events that may have a material impact on trading of its securities in the Exchange.

(2) As set forth in Rule 5625, a Company must provide the Exchange with prompt notification after an Executive Officer of the Company becomes aware of any noncompliance by the Company with the requirements of the Rule 5600 Series.

(b) Obligation to Make Public Disclosure

(1) Disclosure of Material Information

Except in unusual circumstances as described in IM-5250-1, a Company shall make prompt disclosure to the public through any Regulation FD compliant method (or combination of methods) of disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions. The Company shall, prior to the release of the information, provide notice of such disclosure to the MarketWatch Department at least ten minutes prior to public announcement if the information involves any of the events set forth in IM-5250-1 and the public release of the material information is made during market hours. If the public release of the material information is made outside of market hours, Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET. As described in IM-5250-1, prior notice to the MarketWatch Department must be made through the electronic disclosure submission system available at a website designated by the Exchange for that purpose, except in emergency situations.

(2) Disclosure of Notification of Deficiency

As set forth in Rule 5810(b), a Company that receives a notification of deficiency from the Exchange is required to make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing receipt of the notification and the Rule(s) upon which the deficiency is based. However, note that in the case of a deficiency related to the requirement to file a periodic report contained in Rule 5250(c)(1) or (2), the Company is required to make the public announcement by issuing a press release. As described in Rule 5250(b)(1) and IM-5250-1, the Company must notify the Exchange's MarketWatch Department about the announcement through the electronic disclosure submission system available at a website designated by the Exchange for that purpose, except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during market hours, the Company must notify MarketWatch at least ten minutes prior to the announcement. If the public announcement is made outside of market hours, the Company must notify MarketWatch of the announcement prior to 6:50 a.m. ET.

(3) Requirement to Disseminate Press Releases over National Newswire

A Company that issues a press release in satisfaction of its disclosure obligations as described in paragraphs (1) and (2) above is required to disseminate the press release over a national newswire service acceptable to the Exchange.

(4) References to Listing on the Exchange

To avoid investor confusion, Companies listed on the Exchange must refer to themselves as being listed on the "BX Venture Market", unless otherwise required by applicable rules or regulations, and must not in any way, whether in press releases, public statements or otherwise, represent that they are listed on The Nasdaq Stock Market. A Company that represents itself as listed on The Nasdaq Stock Market or that refers to itself as a Nasdaq listed company will be subject to immediate delisting pursuant to procedures in the Rule 5800 Series.

(c) Obligation to File Periodic Financial Reports

(1) A Company shall timely file all required periodic financial reports with the Commission through the EDGAR System or with the Other Regulatory Authority. A Company that does not file through the EDGAR System shall supply to the Exchange two (2) copies of all reports required to be filed with the Other Regulatory Authority or email an electronic version of the report to the Exchange. All required reports must be filed with the Exchange on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with the Exchange shall contain audited financial statements.

(2) Foreign Private Issuer Interim Reports

Each Foreign Private Issuer shall submit on a Form 6-K an interim balance sheet and income statement as of the end of its second quarter. This information, which must be presented in English, but does not have to be reconciled to U.S. GAAP, must be provided no later than six months following the end of the Company's second quarter. In the case of a Foreign Private Issuer that is a limited partnership, such information shall be distributed to limited partners if required by statute or regulation in the jurisdiction in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement.

(3) Auditor Registration

Each listed Company shall be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act.

(d) Distribution of Annual and Interim Reports

(1) Distribution of Annual Reports

Each Company (including a limited partnership) shall make available to Shareholders an annual report containing audited financial statements of the Company and its subsidiaries (which, for example, may be on Form 10-K, 20-F, 40-F or N-CSR) within a reasonable period of time following the filing of the annual report with the Commission. A Company may comply with this requirement either:

(A) by mailing the report to Shareholders;

(B) by satisfying the requirements for furnishing an annual report contained in Rule 14a-16 under the Act; or

(C) by posting the annual report to Shareholders on or through the Company's website (or, in the case of a Company that is an investment company that does not maintain its own website, on a website that the Company is allowed to use to satisfy the website posting requirement in Rule 16a-3(k) under the Act), along with a prominent undertaking in the English language to provide Shareholders, upon request, a hard copy of the Company's annual report free of charge. A Company that chooses to satisfy this requirement pursuant to this paragraph (C) must, simultaneous with this posting, issue a press release stating that its annual report has been filed with the Commission (or Other Regulatory Authority). This press release shall also state that the annual report is available on the Company's website and include the website address and that Shareholders may receive a hard copy free of charge upon request. A Company must provide such hard copies within a reasonable period of time following the request.

### (2) Distribution of Interim Reports

Companies that distribute interim reports to Shareholders should distribute such reports to both registered and beneficial Shareholders. Companies are also encouraged to consider additional technological methods to communicate such information to Shareholders in a timely and less costly manner as such technology becomes available.

### (3) Access to Quarterly Reports

(A) Each Company that is not a limited partnership (limited partnerships are governed by paragraph (B) below) and is subject to Rule 13a-13 under the Act shall make available copies of quarterly reports including statements of operating results to Shareholders either prior to or as soon as practicable following the Company's filing of its Form 10-Q with the Commission. If the form of such quarterly report differs from the Form 10-Q, the Company shall file one copy of the report with the Exchange in addition to filing its Form 10-Q pursuant to Rule 5250(c)(1). The statement of operations contained in quarterly reports shall disclose, at a minimum, any substantial items of an unusual or non-recurrent nature and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.

(B) Each Company that is limited partnership and is subject to Rule 13a-13 under the Act shall make available copies of quarterly reports including statements of operating results to limited partners either prior to or as soon as practicable following the partnership's filing of its Form 10-Q with the Commission. Such reports shall be distributed to limited partners if required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. If the form of such quarterly report differs from the Form 10-Q, the Company shall file one copy of the report with the Exchange in addition to filing its Form 10-Q pursuant to Rule 5250(c)(1). The statement of operations contained in quarterly reports shall disclose, at a minimum, any substantial items of an unusual or non-recurrent nature

and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.

(4) Access to Interim Reports

(A) Each Company that is not a limited partnership and is not subject to Rule 13a-13 under the Act and that is required to file with the Commission, or Other Regulatory Authority, interim reports relating primarily to operations and financial position, shall make available to Shareholders reports which reflect the information contained in those interim reports. Such reports shall be made available to Shareholders either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report provided to Shareholders differs from that filed with the regulatory authority, the Company shall file one copy of the report to Shareholders with the Exchange in addition to the report to the regulatory authority that is filed with the Exchange pursuant to Rule 5250(c)(1).

(B) Each Company that is a limited partnership that is not subject to Rule 13a-13 under the Act and is required to file with the Commission, or Other Regulatory Authority, interim reports relating primarily to operations and financial position, shall make available to limited partners reports which reflect the information contained in those interim reports. Such reports shall be distributed to limited partners if required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. Such reports shall be distributed to limited partners either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report provided to limited partners differs from that filed with the regulatory authority, the Company shall file one copy of the report to limited partners with the Exchange in addition to the report to the regulatory authority that is filed with the Exchange pursuant to Rule 5250(c)(1).

(5) A Foreign Private Issuer may follow its home country practice in lieu of the requirements of Rule 5250(d)(1), (2), (3) or (4) by utilizing the process described in Rule 5615(a)(3).

(6) The Company shall comply with any obligation of any person regarding filing or disclosure of information material to the Company or the Security, whether such obligation arises under the securities laws of the United States or the Company's Country of Domicile, or other applicable federal or state statutes or rules.

(e) Exchange Notification Requirements

Various corporate events resulting in material changes will trigger the requirement for Companies to submit certain forms and applicable fees to the Exchange as specified below.

(1) Change in Number of Shares Outstanding

The Company shall file, on a form designated by the Exchange no later than 10 days after the occurrence, any aggregate increase or decrease of any class of securities listed on the Exchange that exceeds 5% of the amount of securities of the class outstanding.

#### (2) Listing of Additional Shares

A Company shall be required to notify the Exchange, except for a Company solely listing American Depositary Receipts, at least 15 calendar days prior to establishing or materially amending a stock option plan, purchase plan or other equity compensation arrangement pursuant to which stock may be acquired by officers, directors, employees, or consultants without shareholder approval. The Exchange recognizes that when a Company makes an equity grant to induce an individual to accept employment, as permitted by the exception contained in Rule 5635(a)(4), it may not be practical to provide the advance notice otherwise required by this Rule. Therefore, when a Company relies on that exception to make such an inducement grant without shareholder approval, it is sufficient to notify the Exchange about the grant and the use of the exception no later than the earlier of: (x) five calendar days after entering into the agreement to issue the securities; or (y) the date of the public announcement of the award required by Rule 5635(a)(4).

The notifications required by this paragraph must be made on the Notification: Listing of Additional Shares and the Exchange encourages Companies to file this form as soon as practicable, even if all of the relevant terms are not yet known. The Exchange reviews these forms to determine compliance with applicable Exchange rules, including the shareholder approval requirements. Therefore, if a Company fails to file timely the form required by this paragraph, the Exchange may issue either a Public Reprimand Letter or a Delisting Determination (pursuant to the Rule 5800 Series).

#### (3) Record Keeping Change

(A) The Company shall file on a form designated by the Exchange notification of any corporate name change, or other change requiring payment of a record-keeping fee, no later than 10 days after the change. The Company shall also pay the appropriate Record-Keeping Fee as referenced in the Rule 5900 Series.

(B) The Company shall also notify the Exchange promptly in writing, absent any fees, of any change in the general character or nature of its business and any change in the address of its principal executive offices.

#### (4) Substitution Listing

The Company shall notify the Exchange of a Substitution Listing Event (other than a reincorporation or a change to a Company's place of organization) no later than 15 calendar days prior to the implementation of such event by filing the appropriate form as designated by the Exchange. For a re-incorporation or change to a Company's place of organization, a Company shall notify the Exchange as soon as practicable after such event has been implemented by filing the appropriate form as designated by the

Exchange. The Company shall also pay the appropriate Substitution Listing Fee as referenced in the Rule 5900 Series.

(5) Transfer Agent, Registrar, ADR Bank Changes

The issuer of any class of securities listed on the Exchange, except for American Depositary Receipts, shall notify the Exchange promptly in writing of any change in the Company's transfer agent or registrar.

(6) Dividend Action or Stock Distribution

In the case of any dividend action or action relating to a stock distribution of a listed stock the Company shall, no later than 10 calendar days prior to the record date of such action:

(i) notify the Exchange by filing the appropriate form as designated by the Exchange; and

(ii) provide public notice using a Regulation FD compliant method.

Notice to the Exchange should be given as soon as possible after declaration and, in any event, no later than simultaneously with the public notice.

(7) Securities Issuance

(i) A Company must notify the Exchange prior to any issuance of securities in a capital raising transaction and represent that it is not relying on an exemption from state registration or "blue sky" requirements for companies listed on the Boston Stock Exchange. This notice must be provided on the appropriate form as designated by the Exchange.

(ii) A Company must also provide the Exchange with copies of any "blue sky memorandum" and other documents discussing the treatment of a securities issuance under the blue-sky laws of the various states no later than five days after the issuance of the securities. These documents must be provided even where they are prepared for a third party, such as the underwriter of the securities offering.

(f) Obligation to Pay Fees

The Company is required to pay all applicable fees as described in the Rule 5900 Series.

**IM-5250-1. Disclosure of Material Information**

Rule 5250(b)(1) requires that, except in unusual circumstances, Companies must disclose promptly to the public through any Regulation FD compliant method (or combination of methods) of disclosure any material information that would reasonably be expected to affect the value of their securities or influence investors' decisions. Companies must notify the Exchange at least ten minutes prior to the release to the public of material information that involves any of the events set forth below when the public release of the information is made during market hours (7:00 a.m. to 8:00 p.m. ET). If the public release of the material information is made outside of market hours, Companies must

notify MarketWatch of the material information prior to 6:50 a.m. ET. Under unusual circumstances Companies may not be required to make public disclosure of material events; for example, where it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the Company to pursue its legitimate corporate objectives. However, Companies remain obligated to disclose this information to the Exchange upon request pursuant to Rule 5250(a)(1).

Whenever unusual market activity takes place in a Company's securities, the Company normally should determine whether there is material information or news which should be disclosed. If rumors or unusual market activity indicate that information on impending developments has become known to the investing public, or if information from a source other than the Company becomes known to the investing public, a clear public announcement may be required as to the state of negotiations or development of Company plans. Such an announcement may be required, even though the Company may not have previously been advised of such information or the matter has not yet been presented to the Company's Board of Directors for consideration. In certain circumstances, it may also be appropriate to publicly deny false or inaccurate rumors, which are likely to have, or have had, an effect on the trading in its securities or would likely have an influence on investment decisions.

#### Notification to the MarketWatch Department

Companies must notify the MarketWatch Department prior to the distribution of certain material news at least ten minutes prior to public announcement of the news when the public release of the information is made during market hours (7:00 a.m. to 8:00 p.m. ET). If the public release of the material information is made outside of market hours, Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET. Except in emergency situations, this notification must be made through the Exchange's electronic disclosure submission system available at a website designated by the Exchange for that purpose. In emergency situations, Companies may instead provide notification by telephone or facsimile. Examples of an emergency situation include: lack of computer or internet access; technical problems on either the Company or the Exchange system or an incompatibility between those systems; and a material development such that no draft disclosure document exists, but immediate notification to the MarketWatch Department is important based on the material event.

If a Company repeatedly fails to notify the Exchange at least ten minutes prior to the distribution of material news during market hours or prior to 6:50 a.m. ET for material news distributed outside of market hours, or repeatedly fails to use the electronic disclosure submission system when the Exchange finds no emergency situation existed, the Exchange may issue a Public Reprimand Letter (as defined in Rule 5805(j)) or, in extreme cases, a Staff Delisting Determination (as defined in Rule 5805(h)). In determining whether to issue a Public Reprimand Letter, the Exchange will consider whether the Company has demonstrated a pattern of failures, whether the Company has

been contacted concerning previous violations, and whether the Company has taken steps to assure that future violations will not occur.

### Trading Halts

A trading halt benefits current and potential Shareholders by halting all trading in any Exchange securities until there has been an opportunity for the information to be disseminated to the public. This decreases the possibility of some investors acting on information known only to them. A trading halt provides the public with an opportunity to evaluate the information and consider it in making investment decisions. It also alerts the marketplace to the fact that news has been released.

The MarketWatch Department monitors real time trading in all Exchange securities during the trading day for price and volume activity. In the event of certain price and volume movements, the MarketWatch Department may contact a Company and its Market Makers in order to ascertain the cause of the unusual market activity. The MarketWatch Department treats the information provided by the Company and other sources in a highly confidential manner, and uses it to assess market activity and assist in maintaining fair and orderly markets. An Exchange listing includes an obligation to disclose to the MarketWatch Department information that the Company is not otherwise disclosing to the investing public or the financial community. On, occasion, changes in market activity prior to the Company's release of material information may indicate that the information has become known to the investing public. Changes in market activity also may occur when there is a release of material information by a source other than the Company, such as when a Company is subject to an unsolicited take-over bid by another company. Depending on the nature of the event and the Company's views regarding the business advisability of disclosing the information, the Exchange's MarketWatch Department may work with the Company to accomplish a timely release of the information. Furthermore, depending on the materiality of the information and the anticipated affect of the information on the price of the Company's securities, the Exchange's MarketWatch Department may advise the Company that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The institution of a temporary trading halt pending the release of information is not a reflection on the value of the securities halted. Such trading halts are instituted, among other reasons, to insure that material information is fairly and adequately disseminated to the investing public and the marketplace, and to provide investors with the opportunity to evaluate the information in making investment decisions. A trading halt normally lasts one half hour but may last longer if a determination is made that news has not been adequately disseminated or that the original or an additional basis under Rule 4120 exists for continuing the trading halt.

The MarketWatch Department is required to keep non-public information, confidential and to use such information only for regulatory purposes.

Companies are required to notify the MarketWatch Department of the release of material information included in the following list of events at least ten minutes prior to the release of such information to the public when the public release of the information is made during market hours (7:00 a.m. to 8:00 p.m. ET). If the public release of the material information is made outside of market hours, Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET. It should also be noted that every development that might be reported to the Exchange in these areas would not necessarily be deemed to warrant a trading halt. In addition to the following list of events, the Exchange encourages Companies to avail themselves of the opportunity for advance notification to the MarketWatch Department in situations where they believe, based upon their knowledge of the significance of the information, that a temporary trading halt may be necessary or appropriate.

- (a) Financial-related disclosures, including quarterly or yearly earnings, earnings restatements, pre-announcements or "guidance."
- (b) Corporate reorganizations and acquisitions, including mergers, tender offers, asset transactions and bankruptcies or receiverships.
- (c) New products or discoveries, or developments regarding customers or suppliers (e.g., significant developments in clinical or customer trials, and receipt or cancellation of a material contract or order).
- (d) Senior management changes of a material nature or a change in control.
- (e) Resignation or termination of independent auditors, or withdrawal of a previously issued audit report.
- (f) Events regarding the Company's securities – e.g., defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, or public or private sales of additional securities.
- (g) Significant legal or regulatory developments.
- (h) Any event requiring the filing of a Form 8-K.

#### Use of Regulation FD Compliant Methods in the Disclosure of Material Information

Regardless of the method of disclosure that a Company chooses to use, Companies are required to notify the MarketWatch Department of the release of material information that involves any of the events set forth above at least ten minutes prior to its release to the public when the public release of the information is made during market hours (7:00 a.m. to 8:00 p.m. ET). If the public release of the material information is made outside of market hours, Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET. When a Company chooses to utilize a Regulation FD compliant method for disclosure other than a press release or Form 8-K, the Company will be required to provide prior notice the MarketWatch Department of: 1) the press release announcing the logistics of the future disclosure event; and 2) a descriptive summary of the material

information to be announced during the disclosure event if the press release does not contain such a summary.

Depending on the materiality of the information and the anticipated effect of the information on the price of the Company's securities, the MarketWatch Department may advise the Company that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The MarketWatch Department will assess with Companies using methods of disclosure other than a press release or Form 8-K the timing within the disclosure event when the Company will cover the material information so that the halt can be commenced accordingly. Companies will be responsible for promptly alerting the MarketWatch Department of any significant changes to the previously outlined disclosure timeline. Companies are reminded that the posting of information on the Company's website may not by itself be considered a sufficient method of public disclosure under Regulation FD and SEC guidance and releases thereunder, and as a result, under the Exchange's rules.

### **5255. Direct Registration Program**

(a) Except as indicated in paragraph (c) below, all securities listed on the Exchange (except securities which are book-entry only) must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act.

(b) If a Company establishes or maintains a Direct Registration Program for its Shareholders, the Company shall, directly or through its transfer agent, participate in an electronic link with a clearing agency registered under Section 17A of the Act to facilitate the electronic transfer of securities held pursuant to such program.

(c) Exemption

A Foreign Private Issuer must be eligible to participate in a Direct Registration Program, as required by Rule 5255, unless prohibited from complying by a law or regulation in its home country. In such case, a Foreign Private Issuer may follow its home country practice in lieu of this requirement by using the process described in Rule 5615(a)(3) and IM-5615-3.

### **5500. Listing Requirements**

#### **5501. Preamble to the Exchange's Listing Requirements**

This section contains the initial and continued listing requirements for listing a Company's Security on the Exchange.

In addition to meeting the quantitative requirements in this section, a Company must meet the requirements of the Rule 5100 Series, the disclosure obligations set forth in the Rule 5200 Series, the Corporate Governance requirements set forth in the Rule 5600 Series, and pay any applicable fees in the Rule 5900 Series. A Company's failure to meet any of the continued listing requirements will be processed in accordance with the provisions set forth in the Rule 5800 Series.

**5505. Initial Listing of Securities Not Previously Listed on a National Securities Exchange**

(a) In order to be listed on the Exchange, a Security, other than a Security described in Rule 5506, must meet all of the following requirements:

- (1) \$1 million of stockholders' equity or \$5 million total assets;
- (2) 200,000 Publicly Held Shares;
- (3) 200 Public Holders, at least 100 of which must be Round Lot Holders;
- (4) \$2 million Market Value of Listed Securities;
- (5) \$1.00 minimum bid price per share;
- (6) One year operating history; and
- (7) Two registered and active Market Makers.

(b) In addition to satisfying the quantitative requirements above, the Company must also demonstrate that it has a plan to maintain sufficient working capital for its planned business for at least twelve months after the first day of listing. The Company's plan may include estimates on cash-flow statements, planned and available measures for financing, descriptions of the planned business and investments, and well-founded assessments of the future prospects of the Company. It is important that the basis for all assumptions be made clear.

**5506. Initial Listing of Securities Previously Listed on a National Securities Exchange**

(a) In lieu of the requirements of Rule 5505, a Security may be listed on the Exchange if the Security was previously listed on a national securities exchange and meets all of the following requirements:

- (1) 200,000 Publicly Held Shares;
- (2) 200 Public Holders, at least 100 of which must be Round Lot Holders;
- (3) \$2 million Market Value of Listed Securities;
- (4) \$0.25 minimum bid price per share; and
- (5) Two registered and active Market Makers.

(b) For purposes of this Rule 5506, a Company will be considered to have been previously listed on another national securities exchange:

- (1) if it was listed on such an exchange at any time during the three months before its listing on the Exchange; or

(2) in the case of a Company that applies to list prior to September 30, 2011, if it was listed on another national securities exchange at any time between January 1, 2010 and September 30, 2011.

#### **5507. Rights and Warrants**

The Exchange will only initially list a right or warrant if the security underlying the right or warrant is listed on the Exchange or a covered security, as described in Section 18(b) of the Securities Act of 1933.

#### **5550. Continued Listing of Securities**

In order to remain listed on the Exchange, a Security must continue to meet all of the following requirements. Failure to meet any of the continued listing requirements will be processed in accordance with the provisions set forth in the Rule 5800 Series.

- (a) At least 200,000 Publicly Held Shares;
- (b) At least 200 Public Holders;
- (c) Market Value of Listed Securities of at least \$1 million;
- (d) Minimum bid price of at least \$0.25 per share; and
- (e) At least two registered and active Market Makers.

#### **5551. Rights and Warrants**

In order for a right or warrant to remain listed on the Exchange, the security underlying the right or warrant must remain listed on the Exchange or be a covered security, as described in Section 18(b) of the Securities Act of 1933.

#### **5600. Corporate Governance Requirements**

##### **5601. Preamble to the Corporate Governance Requirements**

In addition to meeting the quantitative requirements in the Rule 5200 and 5500 Series, Companies applying to list and listed on the Exchange must meet the qualitative requirements outlined in this Rule 5600 Series. These requirements include rules relating to a Company's board of directors, including audit committees and Independent Director oversight of executive officer compensation; code of conduct; shareholder meetings, including proxy solicitation and quorum; review of related party transactions; shareholder approval; and voting rights. Exemptions to these rules, including phase-in schedules, are set forth in Rule 5615.

The Exchange maintains a website that provides guidance on the applicability of the corporate governance requirements by FAQs and published summaries of anonymous versions of previously issued staff interpretative letters. Companies are encouraged to contact Listing Qualifications to discuss any complex issues or transactions. Companies can also submit a request for a written interpretation pursuant to Rule 5602.

**5602. Written Interpretations of Exchange Listing Rules**

(a) A Company listed on the Exchange may request from the Exchange a written interpretation of the Rules contained in the 5000 through 5900 Series. In connection with such a request, the Company must submit to the Exchange a non-refundable fee of \$15,000.

(b) A response to a request for a written interpretation generally will be provided within four weeks from the date the Exchange receives all information necessary to respond to the request, although if a Company requires a response by a specific date it should state the date in its request for the written interpretation and the Exchange will attempt to respond by that date.

(c) An applicant to the Exchange that has submitted the applicable application fee under Rule 5910(a) will not also be required to submit a fee in connection with a request for a written interpretation involving the applicant's initial listing on the Exchange.

(d) The Exchange's Board of Directors or its designee may, in its discretion, defer or waive all or any part of the written interpretation fee prescribed herein.

(e) The Exchange shall publish on its website a summary of each interpretation within 90 days from the date such interpretation is issued.

(f) A Company is eligible to request a written interpretation from the Exchange pursuant to paragraphs (a) or (b), subject to payment of the appropriate fee, if it has a class of securities that has been suspended or delisted from the Exchange, but the suspension or delisting decision is under review pursuant to the Rule 5800 Series.

**5605. Independent Directors and Audit Committees****(a) Definitions**

(1) "Executive Officer" means those officers covered in Rule 16a-1(f) under the Act.

(2) "Independent Director" means a person other than an Executive Officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. For purposes of this rule, "Family Member" means a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home. The following persons shall not be considered independent:

(A) a director who is, or at any time during the past three years was, employed by the Company;

(B) a director who accepted or who has a Family Member who accepted any compensation from the Company in excess of \$120,000 during any period of twelve consecutive months within the three years preceding the determination of independence, other than the following:

(i) compensation for board or board committee service;

(ii) compensation paid to a Family Member who is an employee (other than an Executive Officer) of the Company; or

(iii) benefits under a tax-qualified retirement plan, or non-discretionary compensation.

Provided, however, that in addition to the requirements contained in this paragraph (B), audit committee members are also subject to additional, more stringent requirements under Rule 5605(c)(2).

(C) a director who is a Family Member of an individual who is, or at any time during the past three years was, employed by the Company as an Executive Officer;

(D) a director who is, or has a Family Member who is, a partner in, or a controlling Shareholder or an Executive Officer of, any organization to which the Company made, or from which the Company received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year, or \$200,000, whichever is more, other than the following:

(i) payments arising solely from investments in the Company's securities; or

(ii) payments under non-discretionary charitable contribution matching programs.

(E) a director of the Company who is, or has a Family Member who is, employed as an Executive Officer of another entity where at any time during the past three years any of the Executive Officers of the Company serve on the compensation committee of such other entity; or

(F) a director who is, or has a Family Member who is, a current partner of the Company's outside auditor, or was a partner or employee of the Company's outside auditor who worked on the Company's audit at any time during any of the past three years.

(G) in the case of an investment company, in lieu of paragraphs (A)-(F), a director who is an "interested person" of the Company as defined in Section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee.

#### **IM-5605-1. Definition of Independence Rule 5605(a)(2)**

It is important for investors to have confidence that individuals serving as Independent Directors do not have a relationship with the listed Company that would impair their independence. The board has a responsibility to make an affirmative determination that no such relationships exist through the application of Rule 5605(a)(2). Rule 5605(a)(2) also provides a list of certain relationships that preclude a board finding of independence. These objective measures provide transparency to investors and Companies, facilitate uniform application of the rules, and ease administration. Because the Exchange does not believe that ownership of Company stock by itself would preclude a board finding of independence, it is not included in the aforementioned objective factors. It should be

noted that there are additional, more stringent requirements that apply to directors serving on audit committees, as specified in Rule 5605(c).

The Rule's reference to the "Company" includes any parent or subsidiary of the Company. The term "parent or subsidiary" is intended to cover entities the Company controls and consolidates with the Company's financial statements as filed with the Commission (but not if the Company reflects such entity solely as an investment in its financial statements). The reference to Executive Officer means those officers covered in Rule 16a-1(f) under the Act. In the context of the definition of Family Member under Rule 5605(a)(2), the reference to marriage is intended to capture relationships specified in the Rule (parents, children and siblings) that arise as a result of marriage, such as "in-law" relationships.

The three year look-back periods referenced in paragraphs (A), (C), (E) and (F) of the Rule commence on the date the relationship ceases. For example, a director employed by the Company is not independent until three years after such employment terminates.

For purposes of paragraph (A) of the Rule, employment by a director as an Executive Officer on an interim basis shall not disqualify that director from being considered independent following such employment, provided the interim employment did not last longer than one year. A director would not be considered independent while serving as an interim officer. Similarly, for purposes of paragraph (B) of the Rule, compensation received by a director for former service as an interim Executive Officer need not be considered as compensation in determining independence after such service, provided such interim employment did not last longer than one year. Nonetheless, the Company's board of directors still must consider whether such former employment and any compensation received would interfere with the director's exercise of independent judgment in carrying out the responsibilities of a director. In addition, if the director participated in the preparation of the Company's financial statements while serving as an interim Executive Officer, Rule 5605(c)(2)(A)(iii) would preclude service on the audit committee for three years.

Paragraph (B) of the Rule is generally intended to capture situations where a compensation is made directly to (or for the benefit of) the director or a Family Member of the director. For example, consulting or personal service contracts with a director or Family Member of the director would be analyzed under paragraph (B) of the Rule. In addition, political contributions to the campaign of a director or a Family Member of the director would be considered indirect compensation under paragraph (B). Non-preferential payments made in the ordinary course of providing business services (such as payments of interest or proceeds related to banking services or loans by a Company that is a financial institution or payment of claims on a policy by a Company that is an insurance company), payments arising solely from investments in the Company's securities and loans permitted under Section 13(k) of the Act will not preclude a finding of director independence as long as the payments are non-compensatory in nature.

Depending on the circumstances, a loan or payment could be compensatory if, for example, it is not on terms generally available to the public.

Paragraph (D) of the Rule is generally intended to capture payments to an entity with which the director or Family Member of the director is affiliated by serving as a partner, controlling Shareholder or Executive Officer of such entity. Under exceptional circumstances, such as where a director has direct, significant business holdings, it may be appropriate to apply the corporate measurements in paragraph (D), rather than the individual measurements of paragraph (B). Issuers should contact the Exchange if they wish to apply the Rule in this manner. The reference to a partner in paragraph (D) is not intended to include limited partners. It should be noted that the independence requirements of paragraph (D) of the Rule are broader than Rule 10A-3(e)(8) under the Act.

Under paragraph (D), a director who is, or who has a Family Member who is, an Executive Officer of a charitable organization may not be considered independent if the Company makes payments to the charity in excess of the greater of 5% of the charity's revenues or \$200,000. However, the Exchange encourages Companies to consider other situations where a director or their Family Member and the Company each have a relationship with the same charity when assessing director independence.

For purposes of determining whether a lawyer is eligible to serve on an audit committee, Rule 10A-3 under the Act generally provides that any partner in a law firm that receives payments from the issuer is ineligible to serve on that issuer's audit committee. In determining whether a director may be considered independent for purposes other than the audit committee, payments to a law firm would generally be considered under Rule 5605(a)(2), which looks to whether the payment exceeds the greater of 5% of the recipient's gross revenues or \$200,000; however, if the firm is a sole proprietorship, Rule 5605(a)(2)(B), which looks to whether the payment exceeds \$120,000, applies.

Paragraph (G) of the Rule provides a different measurement for independence for investment companies in order to harmonize with the Investment Company Act of 1940. In particular, in lieu of paragraphs (A)-(F), a director who is an "interested person" of the Company as defined in Section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee, shall not be considered independent.

#### (b) Executive Sessions

Independent Directors must have regularly scheduled meetings at which only Independent Directors are present ("executive sessions").

#### **IM-5605-2. Executive Sessions of Independent Directors**

Regularly scheduled executive sessions encourage and enhance communication among Independent Directors. It is contemplated that executive sessions will occur at least twice

a year, and perhaps more frequently, in conjunction with regularly scheduled board meetings.

(c) Audit Committee Requirements

(1) Audit Committee Charter

Each Company must certify that it has adopted a formal written audit committee charter and that the audit committee will review and reassess the adequacy of the formal written charter on an annual basis. The charter must specify:

(A) the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes and membership requirements;

(B) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the Company, actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to oversee the independence of the outside auditor;

(C) the committee's purpose of overseeing the accounting and financial reporting processes of the Company and the audits of the financial statements of the Company; and

(D) the specific audit committee responsibilities and authority set forth in Rule 5605(c)(3).

**IM-5605-3. Audit Committee Charter**

Each Company is required to adopt a formal written charter that specifies the scope of its responsibilities and the means by which it carries out those responsibilities; the outside auditor's accountability to the audit committee; and the audit committee's responsibility to ensure the independence of the outside auditor. Consistent with this, the charter must specify all audit committee responsibilities set forth in Rule 10A-3(b)(2), (3), (4) and (5) under the Act. Rule 10A-3(b)(3)(ii) under the Act requires that each audit committee must establish procedures for the confidential, anonymous submission by employees of the listed Company of concerns regarding questionable accounting or auditing matters. The rights and responsibilities as articulated in the audit committee charter empower the audit committee and enhance its effectiveness in carrying out its responsibilities.

Rule 5605(c)(3) imposes additional requirements for investment company audit committees that must also be set forth in audit committee charters for these Companies.

(2) Audit Committee Composition

(A) Each Company must have, and certify that it has and will continue to have, an audit committee of at least three members, each of whom must: (i) be an Independent Director as defined under Rule 5605(a)(2); (ii) meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act (subject to the exemptions provided in Rule 10A-3(c) under

the Act); (iii) not have participated in the preparation of the financial statements of the Company or any current subsidiary of the Company at any time during the past three years; and (iv) be able to read and understand fundamental financial statements, including a Company's balance sheet, income statement, and cash flow statement. Additionally, each Company must certify that it has, and will continue to have, at least one member of the audit committee who has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

#### (B) Non-Independent Director for Exceptional and Limited Circumstances

Notwithstanding paragraph (2)(A)(i), one director who: (i) is not an Independent Director as defined in Rule 5605(a)(2); (ii) meets the criteria set forth in Section 10A(m)(3) under the Act and the rules thereunder; and (iii) is not currently an Executive Officer or employee or a Family Member of an Executive Officer, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the Company and its Shareholders. A Company, other than a Foreign Private Issuer, that relies on this exception must comply with the disclosure requirements set forth in Item 407(d)(2) of Regulation S-K. A Foreign Private Issuer that relies on this exception must disclose in its next annual report (e.g., Form 20-F or 40-F) the nature of the relationship that makes the individual not independent and the reasons for the board's determination. A member appointed under this exception may not serve longer than two years and may not chair the audit committee.

#### **IM-5605-4. Audit Committee Composition**

Audit committees are required to have a minimum of three members and be comprised only of Independent Directors. In addition to satisfying the Independent Director requirements under Rule 5605(a)(2), audit committee members must meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act): they must not accept any consulting, advisory, or other compensatory fee from the Company other than for board service, and they must not be an affiliated person of the Company. As described in Rule 10A-3(d)(1) and (2), a Company must disclose reliance on certain exceptions from Rule 10A-3 and disclose an assessment of whether, and if so, how, such reliance would materially adversely affect the ability of the audit committee to act independently and to satisfy the other requirements of Rule 10A-3. It is recommended also that a Company disclose in its annual proxy (or, if the Company does not file a proxy, in its Form 10-K or 20-F) if any director is deemed eligible to serve on the audit committee but falls outside the safe harbor provisions of Rule 10A-3(e)(1)(ii) under the Act. A director who qualifies as an audit committee financial expert under Item 407(d)(5)(ii) and (iii) of Regulation S-K is

presumed to qualify as a financially sophisticated audit committee member under Rule 5605(c)(2)(A).

### (3) Audit Committee Responsibilities and Authority

The audit committee must have the specific audit committee responsibilities and authority necessary to comply with Rule 10A-3(b)(2), (3), (4) and (5) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act), concerning responsibilities relating to: (i) registered public accounting firms, (ii) complaints relating to accounting, internal accounting controls or auditing matters, (iii) authority to engage advisers, and (iv) funding as determined by the audit committee. Audit committees for investment companies must also establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

### (4) Cure Periods for Audit Committee

(A) If a Company fails to comply with the audit committee composition requirement under Rule 10A-3(b)(1) under the Act and Rule 5605(c)(2)(A) because an audit committee member ceases to be independent for reasons outside the member's reasonable control, the audit committee member may remain on the audit committee until the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement. A Company relying on this provision must provide notice to the Exchange immediately upon learning of the event or circumstance that caused the noncompliance.

(B) If a Company fails to comply with the audit committee composition requirement under Rule 5605(c)(2)(A) due to one vacancy on the audit committee, and the cure period in paragraph (A) is not otherwise being relied upon for another member, the Company will have until the earlier of the next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the vacancy, the Company shall instead have 180 days from such event to regain compliance. A Company relying on this provision must provide notice to the Exchange immediately upon learning of the event or circumstance that caused the noncompliance.

### (5) Exception

At any time when a Company has a class of common equity securities (or similar securities) that is listed on another national securities exchange or national securities association subject to the requirements of Rule 10A-3 under the Act, the listing of classes of securities of a direct or indirect consolidated subsidiary or an at least 50% beneficially owned subsidiary of the Company (except classes of equity securities, other than non-

convertible, non-participating preferred securities, of such subsidiary) shall not be subject to the requirements of Rule 5605(c).

#### (d) Compensation Committee Requirements

The provisions of this Rule 5605(d) and IM-5605-6 are operative only subject to the effective dates outlined in Rule 5605(d)(6). During the transition period until a Company is required to comply with a particular provision, the Company must continue to comply with the corresponding provision, if any, of Rule 5605A(d) and IM-5605A-6.

##### (1) Compensation Committee Charter

Each Company must certify that it has adopted a formal written compensation committee charter and that the compensation committee will review and reassess the adequacy of the formal written charter on an annual basis. The charter must specify:

(A) the scope of the compensation committee's responsibilities, and how it carries out those responsibilities, including structure, processes and membership requirements;

(B) the compensation committee's responsibility for determining, or recommending to the board for determination, the compensation of the chief executive officer and all other Executive Officers of the Company;

(C) that the chief executive officer may not be present during voting or deliberations on his or her compensation; and

(D) the specific compensation committee responsibilities and authority set forth in Rule 5605(d)(3).

##### (2) Compensation Committee Composition

(A) Each Company must have, and certify that it has and will continue to have, a compensation committee of at least two members, each of whom must: (i) be an Independent Director as defined under Rule 5605(a)(2); and (ii) not accept directly or indirectly any consulting, advisory or other compensatory fee from the Company or any subsidiary thereof. Compensatory fees shall not include: (i) fees received as a member of the compensation committee, the board of directors or any other board committee; or (ii) the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the Company (provided that such compensation is not contingent in any way on continued service). In determining whether a director is eligible to serve on the compensation committee, a Company's board also must consider whether the director is affiliated with the Company, a subsidiary of the Company or an affiliate of a subsidiary of the Company to determine whether such affiliation would impair the director's judgment as a member of the compensation committee.

(B) Non-Independent Committee Member under Exceptional and Limited Circumstances

Notwithstanding paragraph 5605(d)(2)(A) above, if the compensation committee is comprised of at least three members, one director who does not meet the requirements of

paragraph 5605(d)(2)(A) and is not currently an Executive Officer or employee or a Family Member of an Executive Officer, may be appointed to the compensation committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the Company and its Shareholders. A Company that relies on this exception must disclose either on or through the Company's website or in the proxy statement for the next annual meeting subsequent to such determination (or, if the Company does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. In addition, the Company must provide any disclosure required by Instruction 1 to Item 407(a) of Regulation S-K regarding its reliance on this exception. A member appointed under this exception may not serve longer than two years.

### (3) Compensation Committee Responsibilities and Authority

As required by Rule 10C-1(b)(2), (3) and (4)(i)-(vi) under the Act, the compensation committee must have the following specific responsibilities and authority.

(A) The compensation committee may, in its sole discretion, retain or obtain the advice of a compensation consultant, legal counsel or other adviser.

(B) The compensation committee shall be directly responsible for the appointment, compensation and oversight of the work of any compensation consultant, legal counsel and other adviser retained by the compensation committee.

(C) The Company must provide for appropriate funding, as determined by the compensation committee, for payment of reasonable compensation to a compensation consultant, legal counsel or any other adviser retained by the compensation committee.

(D) The compensation committee may select, or receive advice from, a compensation consultant, legal counsel or other adviser to the compensation committee, other than in-house legal counsel, only after taking into consideration the following factors:

(i) the provision of other services to the Company by the person that employs the compensation consultant, legal counsel or other adviser;

(ii) the amount of fees received from the Company by the person that employs the compensation consultant, legal counsel or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel or other adviser;

(iii) the policies and procedures of the person that employs the compensation consultant, legal counsel or other adviser that are designed to prevent conflicts of interest;

(iv) any business or personal relationship of the compensation consultant, legal counsel or other adviser with a member of the compensation committee;

(v) any stock of the Company owned by the compensation consultant, legal counsel or other adviser; and

(vi) any business or personal relationship of the compensation consultant, legal counsel, other adviser or the person employing the adviser with an Executive Officer of the Company.

Nothing in this Rule shall be construed: (i) to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant, legal counsel or other adviser to the compensation committee; or (ii) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

The compensation committee is required to conduct the independence assessment outlined in this Rule with respect to any compensation consultant, legal counsel or other adviser that provides advice to the compensation committee, other than in-house legal counsel. However, nothing in this Rule requires a compensation consultant, legal counsel or other compensation adviser to be independent, only that the compensation committee consider the enumerated independence factors before selecting, or receiving advice from, a compensation adviser. Compensation committees may select, or receive advice from, any compensation adviser they prefer, including ones that are not independent, after considering the six independence factors outlined above.

For purposes of this Rule, the compensation committee is not required to conduct an independence assessment for a compensation adviser that acts in a role limited to the following activities for which no disclosure is required under Item 407(e)(3)(iii) of Regulation S-K: (a) consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of Executive Officers or directors of the Company, and that is available generally to all salaried employees; and/or (b) providing information that either is not customized for a particular issuer or that is customized based on parameters that are not developed by the adviser, and about which the adviser does not provide advice.

#### (4) Cure Period for Compensation Committee

If a Company fails to comply with the compensation committee composition requirement under Rule 5605(d)(2)(A) due to one vacancy, or one compensation committee member ceases to be independent due to circumstances beyond the member's reasonable control, the Company shall regain compliance with the requirement by the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the failure to comply with this requirement, the Company shall instead have 180 days from such event to regain compliance. A Company relying on this provision shall provide notice to the Exchange immediately upon learning of the event or circumstance that caused the noncompliance.

#### (5) Smaller Reporting Companies

A Smaller Reporting Company, as defined in Rule 12b-2 under the Act, is not subject to the requirements of Rule 5605(d), except that a Smaller Reporting Company must have, and certify that it has and will continue to have, a compensation committee of at least two members, each of whom must be an Independent Director as defined under Rule 5605(a)(2). A Smaller Reporting Company may rely on the exception in Rule 5605(d)(2)(B) and the cure period in Rule 5605(d)(4). In addition, a Smaller Reporting Company must certify that it has adopted a formal written compensation committee charter or board resolution that specifies the content set forth in Rule 5605(d)(1)(A)-(C). A Smaller Reporting Company does not need to include in its formal written compensation committee charter or board resolution the specific compensation committee responsibilities and authority set forth in Rule 5605(d)(3).

#### (6) Effective Dates of Rule 5605(d) and IM-5605-6; Transition for Companies Listed On the Exchange as of the Effective Dates

The provisions of Rule 5605(d)(3) shall be effective on July 1, 2013; to the extent a Company does not have a compensation committee in the period before the final implementation deadline applicable to it as outlined in the paragraph below, the provisions of Rule 5605(d)(3) shall apply to the Independent Directors who determine, or recommend to the board for determination, the compensation of the chief executive officer and all other Executive Officers of the Company. Companies should consider under state corporate law whether to grant the specific responsibilities and authority referenced in Rule 5605(d)(3) through a charter, resolution or other board action; however, the Exchange requires only that a compensation committee, or Independent Directors acting in lieu of a compensation committee, have the responsibilities and authority referenced in Rule 5605(d)(3) on July 1, 2013. Companies must have a written compensation committee charter that includes, among others, the responsibilities and authority referenced in Rule 5605(d)(3) by the implementation deadline set forth in the paragraph below.

In order to allow Companies to make necessary adjustments in the course of their regular annual meeting schedule, Companies will have until the earlier of their first annual meeting after January 15, 2014, or October 31, 2014, to comply with the remaining provisions of Rule 5605(d) and IM- 5605-6. A Company must certify to the Exchange, no later than 30 days after the final implementation deadline applicable to it, that it has complied with Rule 5605(d). During the transition period, Companies that are not yet required to comply with a particular provision of revised Rule 5605(d) and IM-5605-6 must continue to comply with the corresponding provision, if any, of Rule 5605A(d) and IM-5605A-6.

#### **IM-5605-6. Independent Director Oversight of Executive Compensation**

Independent oversight of executive officer compensation helps assure that appropriate incentives are in place, consistent with the board's responsibility to act in the best

interests of the corporation. Compensation committees are required to have a minimum of two members and be comprised only of Independent Directors.

In addition to satisfying the Independent Director requirements under Rule 5605(a)(2), compensation committee members must not accept any consulting, advisory or other compensatory fee from the Company, other than fees received for board or committee service or fixed amounts of compensation received under a retirement plan (including deferred compensation) for prior service with the Company (provided that such compensation is not contingent in any way on continued service). In addition, a Company's board must consider, in determining whether a director is eligible to serve on the compensation committee, whether the director is affiliated with the Company, a subsidiary of the Company or an affiliate of a subsidiary of the Company to determine whether such affiliation would impair the director's judgment as a member of the compensation committee. In that regard, while a board may conclude differently with respect to individual facts and circumstances, the Exchange does not believe that ownership of Company stock by itself, or possession of a controlling interest through ownership of Company stock by itself, precludes a board finding that it is appropriate for a director to serve on the compensation committee. In fact, it may be appropriate for certain affiliates, such as representatives of significant stockholders, to serve on compensation committees since their interests are likely aligned with those of other stockholders in seeking an appropriate executive compensation program.

A Smaller Reporting Company must have a compensation committee with a minimum of two members who are Independent Directors as defined under Rule 5605(a)(2) and a formal written compensation committee charter or board resolution that specifies the committee's responsibilities and authority set forth in Rule 5605(d)(1)(A)-(C). However, in recognition of the fact that Smaller Reporting Companies may have fewer resources than larger Companies, Smaller Reporting Companies are not required to adhere to the additional compensation committee eligibility requirements in Rule 5605(d)(2)(A), or to incorporate into their formal written compensation committee charter or board resolution the specific compensation committee responsibilities and authority set forth in Rule 5605(d)(3).

### **5610. Code of Conduct**

Each Company shall adopt a code of conduct applicable to all directors, officers and employees, which shall be publicly available. A code of conduct satisfying this rule must comply with the definition of a "code of ethics" set out in Section 406(c) of the Sarbanes-Oxley Act and any regulations promulgated thereunder by the Commission. See 17 C.F.R. 228.406 and 17 C.F.R. 229.406. In addition, the code must provide for an enforcement mechanism. Any waivers of the code for directors or Executive Officers must be approved by the Board. Companies, other than Foreign Private Issuers, shall disclose such waivers within four business days by filing a current report on Form 8-K with the Commission or, in cases where a Form 8-K is not required, by distributing a press release. Foreign Private Issuers shall disclose such waivers either by distributing a

press release or including disclosure in a Form 6-K or in the next Form 20-F or 40-F. Alternatively, a Company, including a Foreign Private Issuer, may disclose waivers on the Company's website in a manner that satisfies the requirements of Item 5.05(c) of Form 8-K.

### **IM-5610. Code of Conduct**

Ethical behavior is required and expected of every corporate director, officer and employee whether or not a formal code of conduct exists. The requirement of a publicly available code of conduct applicable to all directors, officers and employees of a Company is intended to demonstrate to investors that the board and management of Companies have carefully considered the requirement of ethical dealing and have put in place a system to ensure that they become aware of and take prompt action against any questionable behavior. For Company personnel, a code of conduct with enforcement provisions provides assurance that reporting of questionable behavior is protected and encouraged, and fosters an atmosphere of self-awareness and prudent conduct.

Rule 5610 requires Companies to adopt a code of conduct complying with the definition of a "code of ethics" under Section 406(c) of the Sarbanes-Oxley Act and any regulations promulgated thereunder by the Commission. See 17 C.F.R. 228.406 and 17 C.F.R. 229.406. Thus, the code must include such standards as are reasonably necessary to promote the ethical handling of conflicts of interest, full and fair disclosure, and compliance with laws, rules and regulations, as specified by the Sarbanes-Oxley Act. However, the code of conduct required by Rule 5610 must apply to all directors, officers, and employees. Companies can satisfy this obligation by adopting one or more codes of conduct, such that all directors, officers and employees are subject to a code that satisfies the definition of a "code of ethics."

As the Sarbanes-Oxley Act recognizes, investors are harmed when the real or perceived private interest of a director, officer or employee is in conflict with the interests of the Company, as when the individual receives improper personal benefits as a result of his or her position with the Company, or when the individual has other duties, responsibilities or obligations that run counter to his or her duty to the Company. Also, the disclosures a Company makes to the Commission are the essential source of information about the Company for regulators and investors â€” there can be no question about the duty to make them fairly, accurately and timely. Finally, illegal action must be dealt with swiftly and the violators reported to the appropriate authorities. Each code of conduct must require that any waiver of the code for Executive Officers or directors may be made only by the board and must be disclosed to Shareholders, along with the reasons for the waiver. All Companies, other than Foreign Private Issuers, must disclose such waivers within four business days by filing a current report on Form 8-K with the Commission, providing website disclosure that satisfies the requirements of Item 5.05(c) of Form 8-K, or, in cases where a Form 8-K is not required, by distributing a press release. Foreign Private Issuers must disclose such waivers either by providing website disclosure that satisfies the requirements of Item 5.05(c) of Form 8-K, by including disclosure in a Form

6-K or in the next Form 20-F or 40-F or by distributing a press release. This disclosure requirement provides investors the comfort that waivers are not granted except where they are truly necessary and warranted, and that they are limited and qualified so as to protect the Company and its Shareholders to the greatest extent possible.

Each code of conduct must also contain an enforcement mechanism that ensures prompt and consistent enforcement of the code, protection for persons reporting questionable behavior, clear and objective standards for compliance, and a fair process by which to determine violations.

### **5615. Exemptions from Certain Corporate Governance Requirements**

This rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, and sets forth the phase-in schedules for initial public offerings, Companies emerging from bankruptcy, Companies transferring from other markets and Companies ceasing to be Smaller Reporting Companies. This rule also describes the applicability of the corporate governance rules to Controlled Companies and sets forth the phase-in schedule afforded to Companies ceasing to be Controlled Companies. During the transition period before Companies are subject to revised Rule 5605(d) and IM-5605-6, a reference in this Rule 5615 to Rule 5605(d) or IM-5605-6 shall be deemed to refer to Rule 5605A(d) or IM-5605A-6..

#### (a) Exemptions to the Corporate Governance Requirements

##### (1) Asset-backed Issuers and Other Passive Issuers

The following are exempt from the requirements relating to Audit Committees (Rule 5605(c)), Compensation Committees (Rule 5605(d)) and Codes of Conduct (Rule 5610):

(A) asset-backed issuers; and

(B) issuers, such as unit investment trusts, that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

##### **IM-5615-1. Asset-backed Issuers and Other Passive Issuers**

Because of their unique attributes, Rules 5605(c), 5605(d) and 5610 do not apply to asset-backed issuers and issuers, such as unit investment trusts, that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

##### (2) Cooperatives

Cooperative entities, such as agricultural cooperatives, that are structured to comply with relevant state law and federal tax law and that do not have a publicly traded class of common stock are exempt from Rule 5605(d). However, such entities must comply with all federal securities laws, including without limitation those rules required by Section 10A(m) of the Act and Rule 10A-3 thereunder.

### **IM-5615-2.**

Certain member-owned cooperatives that list their preferred stock are required to have their common stock owned by their members. Because of their unique structure and the fact that they do not have a publicly traded class of common stock, such entities are exempt from Rule 5605(d).

#### (3) Foreign Private Issuers

(A) A Foreign Private Issuer may follow its home country practice in lieu of the requirements of the Rule 5600 Series, the requirement to distribute annual and interim reports set forth in Rule 5250(d), and the Direct Registration Program requirement set forth in Rules 5210(c) and 5255, provided, however, that such a Company shall: comply with the Notification of Noncompliance requirement (Rule 5625), the Voting Rights requirement (Rule 5640), have an audit committee that satisfies Rule 5605(c)(3), and ensure that such audit committee's members meet the independence requirement in Rule 5605(c)(2)(A)(ii). Except as provided in this paragraph, a Foreign Private Issuer must comply with the requirements of the Rule 5000 Series, including the listing agreement requirement in Rule 5205(a).

#### (B) Disclosure Requirements

(i) A Foreign Private Issuer that follows a home country practice in lieu of one or more provisions of Rule 5600 and the Direct Registration Program requirement set forth in 5210(c) and 5255 shall disclose in its annual reports filed with the Commission each requirement that it does not follow and describe the home country practice followed by the issuer in lieu of such requirements. Alternatively, a Foreign Private Issuer that is not required to file its annual report with the Commission on Form 20-F may make this disclosure only on its website. A Foreign Private Issuer that follows a home country practice in lieu of the requirement in Rule 5605(d)(2) to have an independent compensation committee must disclose in its annual reports filed with the Commission the reasons why it does not have such an independent committee.

(ii) A Foreign Private Issuer making its initial public offering or first U.S. listing on the Exchange shall disclose in its registration statement or on its website each requirement that it does not follow and describe the home country practice followed by the Company in lieu of such requirements.

### **IM-5615-3. Foreign Private Issuers**

A Foreign Private Issuer (as defined in Rule 5005) listed on the Exchange may follow the practice in such Company's home country (as defined in General Instruction F of Form 20-F) in lieu of the provisions of the Rule 5600 Series, Rule 5250(d), and Rules 5210(c) and 5255, subject to several important exceptions. First, such an issuer shall comply with Rule 5625 (Notification of Noncompliance). Second, such a Company shall have an audit committee that satisfies Rule 5605(c)(3). Third, members of such audit committee shall meet the criteria for independence referenced in Rule 5605(c)(2)(A)(i) (the criteria set forth in Rule 10A-3(b)(1) under the Act, subject to the exemptions provided in Rule 10A-3(c) under the Act). Fourth, a Foreign Private Issuer must comply with Rules 5210(b) and 5255 (Direct Registration Program) unless prohibited from complying by a law or regulation in its home country. Finally, a Foreign Private Issuer that elects to follow home country practice in lieu of a requirement of the Rules 5600 Series or Rules 5250(d), 5210(c) or 5255 shall submit to the Exchange a written statement from an independent counsel in such Company's home country certifying that the Company's practices are not prohibited by the home country's laws and, in the case of a Company prohibited from complying with Rules 5210(c) and 5255, certifying that a law or regulation in the home country prohibits such compliance. In the case of new listings, this certification is required at the time of listing. For existing Companies, the certification is required at the time the Company seeks to adopt its first noncompliant practice. In the interest of transparency, the rule requires a Foreign Private Issuer to make appropriate disclosures in the Company's annual filings with the Commission (typically Form 20-F or 40-F), and at the time of the Company's original listing in the United States, if that listing is on the Exchange, in its registration statement (typically Form F-1, 20-F, or 40-F); alternatively, a Company that is not required to file an annual report on Form 20-F may provide these disclosures in English on its website in addition to, or instead of, providing these disclosures on its registration statement or annual report. The Company shall disclose each requirement that it does not follow and include a brief statement of the home country practice the Company follows in lieu of these corporate governance requirement(s). If the disclosure is only available on the website, the annual report and registration statement should so state and provide the web address at which the information may be obtained. Companies that must file annual reports on Form 20-F are encouraged to provide these disclosures on their websites, in addition to the required Form 20-F disclosures, to provide maximum transparency about their practices.

#### (4) Limited Partnerships

A limited partnership is not subject to the requirements of the Rule 5600 Series, except as provided in this Rule 5615(a)(4). A limited partnership may request a written interpretation pursuant to Rule 5602.

(A) No provision of this Rule shall be construed to require any foreign Company that is a partnership to do any act that is contrary to a law, rule or regulation of any public authority exercising jurisdiction over such Company or that is contrary to generally accepted business practices in the Company's Country of Domicile. The Exchange shall

have the ability to provide exemptions from applicability of these provisions as may be necessary or appropriate to carry out this intent.

(B) Corporate General Partner

Each Company that is a limited partnership shall maintain a corporate general partner or co-general partner, which shall have the authority to manage the day-to-day affairs of the partnership.

(C) Independent Directors/Audit Committee

The corporate general partner or co-general partner shall maintain a sufficient number of Independent Directors on its board to satisfy the audit committee requirements set forth in Rule 5605(b).

(D) Partner Meetings

A Company that is a limited partnership shall not be required to hold an annual meeting of limited partners unless required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement.

(E) Quorum

In the event that a meeting of limited partners is required pursuant to paragraph (D), the quorum for such meeting shall be not less than 33-1/3 percent of the limited partnership interests outstanding.

(F) Solicitation of Proxies

In the event that a meeting of limited partners is required pursuant to paragraph (D), the Company shall provide all limited partners with proxy or information statements and if a vote is required, shall solicit proxies thereon.

(G) Review of Related Party Transactions

Each Company that is a limited partnership shall conduct an appropriate review of all related party transactions on an ongoing basis and shall utilize the Audit Committee or a comparable body of the Board of Directors for the review of potential material conflict of interest situations where appropriate.

(H) Shareholder Approval

Each Company that is a limited partnership must obtain shareholder approval when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which stock may be acquired by officers, directors, employees, or consultants, as would be required under Rule 5635 and IM-5635.

(I) Auditor Registration

Each Company that is a limited partnership must be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act.

(J) Notification of Noncompliance.

Each Company that is a limited partnership must provide the Exchange with prompt notification after an Executive Officer of the Company, or a person performing an equivalent role, becomes aware of any noncompliance by the Company with the requirements of this Rule 5600 Series.

(5) Management Investment Companies

Management investment companies (including business development companies) are subject to all the requirements of the Rule 5600 Series, except that management investment companies registered under the Investment Company Act of 1940 are exempt from the Compensation Committee requirement set forth in Rule 5605(d) and the Code of Conduct requirement set forth in Rule 5610.

**IM-5615-4. Management Investment Companies**

Management investment companies registered under the Investment Company Act of 1940 are already subject to a pervasive system of federal regulation in certain areas of corporate governance covered by 5600. In light of this, the Exchange exempts from Rule 5605(d) and 5610 management investment companies registered under the Investment Company Act of 1940. Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that Act, are required to comply with all of the provisions of the Rule 5600 Series.

(b) Phase-In Schedules

(1) Initial Public Offerings

(A)

(i) A Company listing in connection with its initial public offering shall be permitted to phase in its compliance with the independent audit committee requirement pursuant to Rule 10A-3(b)(1)(iv)(A) under the Act as follows: (1) one independent member at the time of listing; (2) a majority of independent members within 90 days of the date of effectiveness of the Company's registration statement; and (3) all independent members within one year of the date of effectiveness of the Company's registration statement. It should be noted, however, that pursuant to Rule 10A-3(b)(1)(iii) under the Act investment companies are not afforded the exemptions under Rule 10A-3(b)(1)(iv) under the Act.

(ii) For purposes of this Rule 5615(b)(1)(A), a Company shall be considered to be listing in conjunction with an initial public offering only if it meets the conditions in Rule 10A-

3(b)(1)(iv)(A) under the Act, namely, that the Company was not, immediately prior to the effective date of a registration statement, required to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Act.

(B)

(i) A Company listing in connection with its initial public offering shall be permitted to phase in its compliance with the compensation committee composition requirement set forth in Rule 5605(d)(2) as follows: (1) one member must satisfy the requirement at the time of listing; (2) a majority of members must satisfy the requirement within 90 days of listing; and (3) all members must satisfy the requirement within one year of listing.

(ii) For purposes of this Rule 5615(b)(1)(B), a Company shall be considered to be listing in conjunction with an initial public offering if, immediately prior to listing, it does not have a class of common stock registered under the Act.

(2) Companies Emerging from Bankruptcy

A Company that is listing upon emerging from bankruptcy shall be permitted to phase-in the independent compensation committee requirement of Rule 5605(d) on the same schedule as a Company listing in conjunction with its initial public offering.

(3) Transfers from other Markets

(A) A Company transferring from another national securities exchange with a substantially similar requirement shall be immediately subject to the requirements of Rule 5605(c) and (d), provided that the Company will be afforded the balance of any grace period afforded by the other market. This transition period is not intended to supplant any applicable requirements of Rule 10A-3 under the Act.

(B) A Company that is not subject to a substantially similar requirement at the time of its listing on the Exchange, such as a company currently quoted solely in the over-the-counter market, must comply with the audit committee requirement of Rule 5605(c) at the time of listing, subject to any applicable phase-in period allowed by Rule 10A-3 under the Act. Such a Company shall be permitted to phase in its compliance with the compensation committee composition requirement set forth in Rule 5605(d)(2) as follows: (1) one member must satisfy the requirement at the time of listing; (2) a majority of members must satisfy the requirement within 90 days of listing; and (3) all members must satisfy the requirement within one year of listing.

(4) Phase-In Schedule for a Company Ceasing to be a Smaller Reporting Company

Pursuant to Rule 12b-2 under the Act, a Company tests its status as a Smaller Reporting Company on an annual basis as of the last business day of its most recently completed second fiscal quarter (for purposes of this Rule, the "Determination Date"). A Company with a public float of \$75 million or more as of the Determination Date will cease to be a Smaller Reporting Company as of the beginning of the fiscal year following the Determination Date (the "Start Date").

By six months from the Start Date, a Company must comply with Rule 5605(d)(3) and certify to the Exchange that: (i) it has complied with the requirement in Rule 5605(d)(1) to adopt a formal written compensation committee charter including the content specified in Rule 5605(d)(1)(A)-(D); and (ii) it has complied, or within the applicable phase-in schedule will comply, with the additional requirements in Rule 5605(d)(2)(A) regarding compensation committee composition.

A Company shall be permitted to phase in its compliance with the additional compensation committee eligibility requirements of Rule 5605(d)(2)(A) relating to compensatory fees and affiliation as follows: (i) one member must satisfy the requirements by six months from the Start Date; (ii) a majority of members must satisfy the requirements by nine months from the Start Date; and (iii) all members must satisfy the requirements by one year from the Start Date.

Since a Smaller Reporting Company is required to have a compensation committee comprised of at least two Independent Directors, a Company that has ceased to be a Smaller Reporting Company may not use the phase-in schedule for the requirements of Rule 5605(d)(2)(A) relating to minimum committee size or that the committee consist only of Independent Directors as defined under Rule 5605(a)(2).

During this phase-in schedule, a Company that has ceased to be a Smaller Reporting Company must continue to comply with Rule 5605(d)(5).

### (c) How the Rules Apply to a Controlled Company

#### (1) Definition

A Controlled Company is a Company of which more than 50% of the voting power for the election of directors is held by an individual, a group or another company.

#### (2) Exemptions Afforded to a Controlled Company

A Controlled Company is exempt from the requirements of Rule 5605(d). A Controlled Company, other than a Foreign Private Issuer, relying upon this exemption must comply with the disclosure requirements set forth in Instruction 1 to Item 407(a) of Regulation S-K. A Foreign Private Issuer must disclose in its next annual report (e.g., Form 20-F or 40-F) that it is a Controlled Company and the basis for that determination.

#### (3) Phase-In Schedule for a Company Ceasing to be a Controlled Company

A Company that has ceased to be a Controlled Company within the meaning of Rule 5615(c)(1) shall be permitted to phase-in its independent compensation committee on the same schedule as Companies listing in conjunction with their initial public offering. It should be noted, however, that a Company that has ceased to be a Controlled Company within the meaning of Rule 5615(c)(1) must comply with the audit committee requirements of Rule 5605(c) as of the date it ceased to be a Controlled Company. Furthermore, the executive sessions requirement of Rule 5605(b) applies to a Controlled Company as of the date of listing and continues to apply after it ceases to be controlled.

**IM-5615-5. Controlled Company Exemption**

This exemption recognizes that majority Shareholders, including parent companies, have the right to select directors and control certain key decisions, such as executive officer compensation, by virtue of their ownership rights. In order for a group to exist for purposes of this rule, the Shareholders must have publicly filed a notice that they are acting as a group (e.g., a Schedule 13D). A Controlled Company not relying upon this exemption need not provide any special disclosures about its controlled status. It should be emphasized that this controlled company exemption does not extend to the audit committee requirements under Rule 5605(c) or the requirement for executive sessions of Independent Directors under Rule 5605(b).

**5620. Meetings of Shareholders**

(a) Each Company listing common stock or voting preferred stock, and their equivalents, shall hold an annual meeting of Shareholders no later than one year after the end of the Company's fiscal year-end, unless such Company is a limited partnership that meets the requirements of Rule 5615(a)(4)(D).

**IM-5620. Meetings of Shareholders or Partners**

Rule 5620 requires that each Company listing common stock or voting preferred stock, and their equivalents, hold an annual meeting of Shareholders within one year of the end of each fiscal year. At each such meeting, Shareholders must be afforded the opportunity to discuss Company affairs with management and, if required by the Company's governing documents, to elect directors. A new listing that was not previously subject to a requirement to hold an annual meeting is required to hold its first meeting within one-year after its first fiscal year-end following listing. Of course, the Exchange's meeting requirement does not supplant any applicable state or federal securities laws concerning annual meetings.

**(b) Proxy Solicitation**

Each Company that is not a limited partnership shall solicit proxies and provide proxy statements for all meetings of Shareholders and shall provide copies of such proxy solicitation to the Exchange. Limited partnerships that are required to hold an annual meeting of partners are subject to the requirements of Rule 5615(a)(4)(F).

**(c) Quorum**

Each Company that is not a limited partnership shall provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33 1/3 % of the outstanding shares of the Company's common voting stock. Limited partnerships that are required to hold an annual meeting of partners are subject to the requirements of Rule 5615(a)(4)(E).

**5625. Notification of Noncompliance**

A Company must provide the Exchange with prompt notification after an Executive Officer of the Company becomes aware of any noncompliance by the Company with the requirements of this Rule 5600 Series.

### **5630. Review of Related Party Transactions**

(a) Each Company that is not a limited partnership shall conduct an appropriate review and oversight of all related party transactions for potential conflict of interest situations on an ongoing basis by the Company's audit committee or another independent body of the board of directors. For purposes of this rule, the term "related party transaction" shall refer to transactions required to be disclosed pursuant to Item 404 of Regulation S-K under the Act. However, in the case of non-U.S. issuers, the term "related party transactions" shall refer to transactions required to be disclosed pursuant to Form 20-F, Item 7.B.

(b) Limited partnerships shall comply with the requirements of Rule 5615(a)(4)(G).

### **5635. Shareholder Approval for Equity Compensation**

(a) Shareholder approval is required prior to the issuance of securities when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which stock may be acquired by officers, directors, employees, or consultants, except for:

(1) warrants or rights issued generally to all security holders of the Company or stock purchase plans available on equal terms to all security holders of the Company (such as a typical dividend reinvestment plan);

(2) tax qualified, non-discriminatory employee benefit plans (e.g., plans that meet the requirements of Section 401(a) or 423 of the Internal Revenue Code) or parallel nonqualified plans, provided such plans are approved by the Company's independent compensation committee or a majority of the Company's Independent Directors; or plans that merely provide a convenient way to purchase shares on the open market or from the Company at Market Value;

(3) plans or arrangements relating to an acquisition or merger as permitted under IM-5635; or

(4) issuances to a person not previously an employee or director of the Company, or following a bona fide period of non-employment, as an inducement material to the individual's entering into employment with the Company, provided such issuances are approved by either the Company's independent compensation committee or a majority of the Company's Independent Directors. Promptly following an issuance of any employment inducement grant in reliance on this exception, a Company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

(b) Exchange-listed Companies and their representatives are encouraged to use the interpretative letter process described in Rule 5602.

### **IM-5635. Shareholder Approval for Stock Option Plans or Other Equity Compensation Arrangements**

Employee ownership of Company stock can be an effective tool to align employee interests with those of other Shareholders. Stock option plans or other equity compensation arrangements can also assist in the recruitment and retention of employees, which is especially critical to young, growing Companies, or Companies with insufficient cash resources to attract and retain highly qualified employees. However, these plans can potentially dilute shareholder interests. Rule 5635(a) ensures that Shareholders have a voice in these situations, given this potential for dilution.

Rule 5635(a) requires shareholder approval when a plan or other equity compensation arrangement is established or materially amended. For these purposes, a material amendment would include, but not be limited to, the following:

(1) any material increase in the number of shares to be issued under the plan (other than to reflect a reorganization, stock split, merger, spinoff or similar transaction);

(2) any material increase in benefits to participants, including any material change to: (i) permit a repricing (or decrease in exercise price) of outstanding options, (ii) reduce the price at which shares or options to purchase shares may be offered, or (iii) extend the duration of a plan;

(3) any material expansion of the class of participants eligible to participate in the plan; and

(4) any expansion in the types of options or awards provided under the plan.

While general authority to amend a plan would not obviate the need for shareholder approval, if a plan permits a specific action without further shareholder approval, then no such approval would generally be required. However, if a plan contains a formula for automatic increases in the shares available (sometimes called an "evergreen formula"), or for automatic grants pursuant to a dollar-based formula (such as annual grants based on a certain dollar value, or matching contributions based upon the amount of compensation the participant elects to defer), such plans cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. However, plans that do not contain a formula and do not impose a limit on the number of shares available for grant would require shareholder approval of each grant under the plan. A requirement that grants be made out of treasury shares or repurchased shares will not alleviate these additional shareholder approval requirements.

As a general matter, when preparing plans and presenting them for shareholder approval, Companies should strive to make plan terms easy to understand. In that regard, it is

recommended that plans meant to permit repricing use explicit terminology to make this clear.

Rule 5635(a) provides an exception to the requirement for shareholder approval for warrants or rights offered generally to all Shareholders. In addition, an exception is provided for tax qualified, non-discriminatory employee benefit plans as well as parallel nonqualified plans as these plans are regulated under the Internal Revenue Code and Treasury Department regulations. An equity compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable tax qualified, non-discriminatory employee benefit plan or parallel nonqualified plan that the Company provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law, is also exempt from shareholder approval under this section.

Further, the rule provides an exception for inducement grants to new employees because in these cases a Company has an arm's length relationship with the new employees. Inducement grants for these purposes include grants of options or stock to new employees in connection with a merger or acquisition. The rule requires that such issuances be approved by the Company's independent compensation committee or a majority of the Company's Independent Directors. The rule further requires that promptly following an issuance of any employment inducement grant in reliance on this exception, a Company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

In addition, plans or arrangements involving a merger or acquisition do not require shareholder approval in two situations. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that meet the requirements of this Rule 5635(a). These shares may be used for post-transaction grants of options and other equity awards by the listed Company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or arrangement or another plan or arrangement, without further shareholder approval, provided: (1) the time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company or its subsidiaries at the time the merger or acquisition was consummated. The Exchange would view a plan or arrangement adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. This exception is appropriate because it will not result in any increase in the aggregate potential dilution of the combined enterprise. In this regard, any additional shares available for issuance under a plan or arrangement acquired in connection with a merger or acquisition would be counted by the Exchange in

determining whether the transaction involved the issuance of 20% or more of the Company's outstanding common stock, thus triggering the shareholder approval requirements under Rule 5635(a).

Inducement grants, tax qualified non-discriminatory benefit plans, and parallel nonqualified plans are subject to approval by either the Company's independent compensation committee or a majority of the Company's Independent Directors. It should also be noted that a Company would not be permitted to use repurchased shares to fund option plans or grants without prior shareholder approval.

For purposes of Rule 5635(a) and IM-5635, the term "parallel nonqualified plan" means a plan that is a "pension plan" within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. Â§1002 (1999), that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may thereafter be enacted. However, a plan will not be considered a parallel nonqualified plan unless: (i) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitation that may hereafter be enacted); (ii) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limitations described in the preceding sentence; and, (iii) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.

#### **5640. Voting Rights**

Voting rights of existing Shareholders of publicly traded common stock registered under Section 12 of the Act cannot be disparately reduced or restricted through any corporate action or issuance. Examples of such corporate action or issuance include, but are not limited to, the adoption of time-phased voting plans, the adoption of capped voting rights plans, the issuance of super-voting stock, or the issuance of stock with voting rights less than the per share voting rights of the existing common stock through an exchange offer.

#### **IM-5640. Voting Rights Policy**

The following Voting Rights Policy is based upon, but more flexible than, former Rule 19c-4 under the Act. Accordingly, the Exchange will permit corporate actions or issuances by Companies that would have been permitted under former Rule 19c-4, as well as other actions or issuances that are not inconsistent with this policy. In evaluating such other actions or issuances, the Exchange will consider, among other things, the economics of such actions or issuances and the voting rights being granted. The

Exchange's interpretations under the policy will be flexible, recognizing that both the capital markets and the circumstances and needs of Companies change over time. The text of the Exchange Voting Rights Policy is as follows:

#### Companies with Dual Class Structures

The restriction against the issuance of super voting stock is primarily intended to apply to the issuance of a new class of stock, and Companies with existing dual class capital structures would generally be permitted to issue additional shares of the existing super voting stock without conflict with this policy.

#### Consultation with the Exchange

Violation of the Exchange Voting Rights Policy could result in the loss of a Company's Exchange or public trading market. The policy can apply to a variety of corporate actions and securities issuances, not just super voting or so-called "time phase" voting common stock. While the policy will continue to permit actions previously permitted under former Rule 19c-4, it is extremely important that Companies communicate their intentions to their Exchange representatives as early as possible before taking any action or committing to take any action that may be inconsistent with the policy. The Exchange urges Companies listed on the Exchange not to assume, without first discussing the matter with the Exchange Staff, that a particular issuance of common or preferred stock or the taking of some other corporate action will necessarily be consistent with the policy. It is suggested that copies of preliminary proxy or other material concerning matters subject to the policy be furnished to the Exchange for review prior to formal filing.

#### Review of Past Voting Rights Activities

In reviewing an application for initial qualification for listing of a Security on the Exchange, the Exchange will review the Company's past corporate actions to determine whether another self-regulatory organization (SRO) has found any of the Company's actions to have been a violation or evasion of the SRO's voting rights policy. Based on such review, the Exchange may take any appropriate action, including the denial of the application or the placing of restrictions on such listing. The Exchange will also review whether a Company seeking initial listing of a Security in the Exchange has requested a ruling or interpretation from another SRO regarding the application of that SRO's voting rights policy with respect to a proposed transaction. If so, the Exchange will consider that fact in determining its response to any ruling or interpretation that the Company may request on the same or similar transaction.

#### Non-U.S. Companies

The Exchange will accept any action or issuance relating to the voting rights structure of a non-U.S. Company that is in compliance with the Exchange's requirements for domestic Companies or that is not prohibited by the Company's home country law.

**5700. Additional Requirements for Securities Listed on the Exchange Issued by Nasdaq or its Affiliates**

**5701. Additional Requirements for Securities Listed on the Exchange Issued by Nasdaq or its Affiliates**

(a) For purposes of this Rule 5701, the terms below are defined as follows:

(1) "Nasdaq Affiliate" means Nasdaq, Inc. and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Nasdaq, Inc., where "control" means that the one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity.

(2) "Affiliate Security" means any security issued by a Nasdaq Affiliate or any Exchange-listed option on any such security, with the exception of Portfolio Depository Receipts as defined in Equity 3A, Section 2(e)(1)(A) and Index Fund Shares as defined in Equity 3A, Section 2(f)(1)(A).

(b) Upon initial and throughout continued listing and trading of the Affiliate Security on the Exchange, the Exchange shall:

(1) provide a quarterly report to the Exchange's Regulatory Oversight Committee detailing the Exchange's monitoring of:

(A) the Nasdaq Affiliate's compliance with the listing requirements contained in the Rule 5000, 5100, 5200, 5500, and 5600 Series; and

(B) the trading of the Affiliate Security, which shall include summaries of all related surveillance alerts, complaints, regulatory referrals, trades cancelled or adjusted pursuant to Equity 11, Rule 11890, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data of such security.

(2) engage an independent accounting firm once a year to review and prepare a report on the Affiliate Security to ensure that the Nasdaq Affiliate is in compliance with the listing requirements contained in the Rule 5000, 5100, 5200, 5500 and 5600 Series and promptly provide BX's Regulatory Oversight Committee with a copy of the report prepared by the independent accounting firm.

(c) In the event that the Exchange determines that the Nasdaq Affiliate is not in compliance with any of the listing requirements contained in the Rule 5000, 5100, 5200, 5500 and 5600 Series, the Exchange shall file a report with the Commission within five business days of providing notice to the Nasdaq Affiliate of its non-compliance. The report shall identify the date of non-compliance, type of non-compliance and any other material information conveyed to the Nasdaq Affiliate in the notice of noncompliance. Within five business days of receipt of a plan of compliance from the Nasdaq Affiliate, the Exchange shall notify the Commission of such receipt, whether the plan of

compliance was accepted by the Exchange or what other action was taken with respect to the plan and the time period provided to regain compliance with the Rule 5000, 5100, 5200, 5500 and 5600 Series, if any.

## **5800. Failure to Meet Listing Standards**

### **5801. Preamble to the Rules and Procedures When a Company Fails to Meet a Listing Standard**

Securities of a Company that does not meet the listing standards set forth in the Rule 5000 Series are subject to delisting from, or denial of initial listing on the Exchange. This Section sets forth procedures for the independent review, suspension, and delisting of Companies that fail to satisfy one or more standards for initial or continued listing, and thus are "deficient" with respect to the listing standards.

The Listings Qualifications Department is responsible for identifying deficiencies that may lead to delisting or denial of a listing application; notifying the Company of the deficiency or denial; and issuing Staff Delisting Determinations and Public Reprimand Letters. Rule 5810 contains provisions regarding the Listing Qualifications Department's process for notifying Companies of different types of deficiencies and their corresponding consequences.

The Hearings Panel, upon timely request by a Company, will review a Staff Delisting Determination, denial of a listing application, or Public Reprimand Letter at an oral or written hearing, and issue a Decision that may, among other things, grant an "exception" to the Exchange's listing standards or affirm a delisting. Rule 5815 contains provisions relating to the hearings process.

The Listing and Hearings Review Council, upon timely appeal by a Company or on its own initiative, may review the Decisions of the Hearings Panel. Rule 5820 contains provisions relating to the Listing Council review process.

Finally, the Exchange's Board of Directors may exercise discretion to call for review a Listing Council Decision. Rule 5825 contains provisions related to that process.

Procedures related to SEC notification of the Exchange's final Delisting Determinations are discussed in Rule 5830. Rules applicable to Adjudicators and Advisors are provided in Rule 5835 and general information relating to the adjudicatory process is provided in Rule 5840.

A Company's failure to maintain compliance with the applicable provisions of the Rule 5000 Series will result in the termination of the listing unless an exception is granted to the Company, as described below. The termination of the Company's listing will become effective in accordance with the procedures set forth herein, including Rule 5830.

### **5805. Definitions**

- (a) **"Adjudicatory Body" or "Adjudicator"** means the Hearings Panel, the Listing Council, the Board or a member thereof.
- (b) **"Advisor"** means an individual employed by the Exchange who is advising an Adjudicatory Body with respect to a proceeding under this section.
- (c) **"Hearings Department"** means the Hearings Department of the Exchange's Office of General Counsel.
- (d) The **"Hearings Panel"** is an independent panel made up of at least two persons who are not employees or otherwise affiliated with the Exchange or its affiliates, and who have been authorized by the Exchange's Board of Directors.
- (e) **"Listing Council"** means the Exchange's Listing and Hearing Review Council.
- (f) The **"Listing Qualifications Department"** is the department of the Exchange responsible for evaluating Company compliance with quantitative and qualitative listing standards and determining eligibility for initial and continued listing of a Company's securities.
- (g) **"Staff"** refers to employees of the Listing Qualifications Department.
- (h) **"Staff Delisting Determination" or "Delisting Determination"** is a written determination by the Listing Qualifications Department to delist a listed Company's securities for failure to meet a continued listing standard.
- (i) **"Decision"** means a written decision of an Adjudicatory Body.
- (j) **"Public Reprimand Letter"** means a letter issued by Staff or a Decision of an Adjudicatory Body in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 under the Act) and Staff or the Adjudicatory Body determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, Staff or the Adjudicatory Body will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.
- (k) **"Office of Appeals and Review"** means the Office of Appeals and Review of the Exchange's Office of General Counsel.
- (l) **"Board" or "Exchange Board"** means the Board of Directors of Nasdaq BX, Inc.

#### **5810. Notification of Deficiency by the Listing Qualifications Department**

When the Listing Qualifications Department determines that a Company does not meet a listing standard set forth in the Rule 5000 Series, it will immediately notify the Company of the deficiency. As explained in more detail below, deficiency notifications are of four types:

(1) Staff Delisting Determinations, which are notifications of deficiencies that, unless appealed, subject the Company to immediate suspension and delisting;

(2) notifications of deficiencies for which a Company may submit a plan of compliance for Staff review;

(3) notifications of deficiencies for which a Company is entitled to an automatic cure or compliance period; and

(4) Public Reprimand Letters.

Notifications of deficiencies that allow for submission of a compliance plan or an automatic cure or compliance period may result, after review of the compliance plan or expiration of the cure or compliance period, in issuance of a Staff Delisting Determination or a Public Reprimand Letter.

(a) Information Contained in Deficiency Notification and Delisting Determination

Deficiency notifications and Delisting Determinations will:

(1) inform the Company of the factual bases for Staff's determination of deficiency or delisting, and the quantitative or qualitative standard the Company has failed to satisfy;

(2) provide the Company with instructions regarding its obligations to disclose the deficiency under the Exchange's Listing Rules; and

(3) inform the Company:

(A) in the case of a Staff Delisting Determination, that the Company's securities will be suspended as of a date certain; the Company has a right to request review of the Delisting Determination by a Hearings Panel; and that a request for review within seven days (as set forth in Rule 5815(a)(1)) will stay the suspension;

(B) in the case of a deficiency for which the Company may submit a plan of compliance for review by Staff, the deadline by which a plan must be submitted;

(C) in the case of a deficiency for which the Company is entitled to an automatic cure or compliance period, the expiration date of the cure or compliance period; and

(D) in the case of a Public Reprimand Letter, an explanation of why Staff concluded the letter is appropriate and the Company's right to request review of the Letter by a Hearings Panel.

(b) Company Disclosure Obligations

A Company that receives a notification of deficiency, Staff Delisting Determination, or Public Reprimand Letter is required to make a public announcement through the news media disclosing receipt of the notification and the Rule(s) upon which the deficiency is based. A Company that receives a notification of deficiency or Staff Delisting Determination related to the requirement to file a periodic report contained in Rule

5250(c)(1) or (2) is required to make the public announcement by issuing a press release disclosing receipt of the notification and the Rule(s) upon which the deficiency is based, in addition to filing any Form 8-K required by SEC rules. In all other cases, the Company may make the public announcement either by filing a Form 8-K, where required by SEC rules, or by issuing a press release. As described in Rule 5250(b)(1) and IM-5250-1, the Company must notify the MarketWatch Department about the announcement through the electronic disclosure submission system available at a website designated by the Exchange for that purpose, except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during market hours, the Company must notify MarketWatch at least ten minutes prior to the announcement. If the public announcement is made outside of market hours, the Company must notify MarketWatch of the announcement prior to 6:50 a.m. ET. The Company should make the public announcement as promptly as possible but not more than four business days following receipt of the notification.

#### **IM-5810-1. Disclosure of Written Notice of Staff Determination**

Rule 5810(b) requires that a Company make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing the receipt of (i) a notice that the Company does not meet a listing standard set forth in the Rule 5000 Series, (ii) a Staff Delisting Determination to limit or prohibit continued listing of the Company's securities under Rule 5810 as a result of the Company's failure to comply with the continued listing requirements, or (iii) a Public Reprimand Letter; provided however, that if the notification relates to a failure to meet the requirements of Rules 5250(c)(1) or (2), the Company must make the public announcement by issuing a press release. Such public announcement shall be made as promptly as possible, but not more than four business days following the receipt of the notification, Staff Delisting Determination, or Public Reprimand Letter, as applicable. If the public announcement is not made by the Company within the time allotted, trading of its securities shall be halted, even if the Company appeals the Staff Delisting Determination or Public Reprimand Letter as set forth in Rule 5815. If the Company fails to make the public announcement by the time that the Hearings Panel issues its Decision, that Decision will also determine whether to delist the Company's securities for failure to make the public announcement.

Rule 5810(b) does not relieve a Company of its disclosure obligation under the federal securities laws, nor should it be construed as providing a safe harbor under the federal securities laws. It is suggested that the Company consult with corporate/securities counsel in assessing its disclosure obligations under the federal securities laws.

#### **(c) Types of Deficiencies and Notifications**

The type of deficiency at issue determines whether the Company will be immediately suspended and delisted, or whether it may submit a compliance plan for review or is entitled to an automatic cure or compliance period before a Staff Delisting Determination

is issued. In the case of a deficiency not specified below, Staff will issue the Company a Staff Delisting Determination or a Public Reprimand Letter.

(1) Deficiencies that Immediately Result in a Staff Delisting Determination

Staff's notice will inform the Company that its securities are immediately subject to suspension and delisting when:

(A) a Company fails to timely solicit proxies and hold its annual shareholders' meeting;

(B) Staff has determined, under its discretionary authority in the Rule 5100 Series, that the Company's continued listing raises a public interest concern;

(C) the Security fails to meet the \$0.25 per share bid price requirement of Rule 5550(d). A failure to meet this requirement shall be determined to exist only if the deficiency continues for 20 consecutive business days

(D) the Company represents itself as listed on The Nasdaq Stock Market or refers to itself as a Nasdaq listed Company; or

(E) the Company attempts to rely on an exemption from state securities registration which otherwise may be available under state law to Companies listed on the Exchange.

(2) Deficiencies for which a Company may Submit a Plan of Compliance for Staff Review

(A) Unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination, the Listing Qualifications Department may accept and review a plan to regain compliance when a Company is deficient with respect to one of the standards listed in subsections (i) through (iv) below. In accordance with Rule 5810(c)(2)(C), plans provided pursuant to subsections (i) through (iii) below must be provided generally within 30 calendar days, and in accordance with Rule 5810(c)(2)(E), plans provided pursuant to subsection (iv) must be provided generally within 45 calendar days.

(i) all quantitative deficiencies from standards that do not provide a compliance period;

(ii) deficiencies from the standards of Rules 5605 (Independent Directors, Audit Committees and Independent Director Oversight of Executive Officer Compensation) or 5615(a)(4)(C) (Independent Directors/Audit Committee of Limited Partnerships) where the cure period of the Rule is not applicable;

(iii) deficiencies from the standards of Rules 5620(c) (Quorum), 5630 (Review or Related Party Transactions), 5635 (Shareholder Approval), 5250(c)(3) (Auditor Registration), 5255(a) (Direct Registration Program), 5610 (Code of Conduct), 5615(a)(4)(E) (Quorum of Limited Partnerships), 5615(a)(4)(G) (Related Party Transactions of Limited Partnerships), or 5640 (Voting Rights); or

(iv) failure to file periodic reports as required by Rules 5250(c)(1) or (2).

**IM-5810-2. Staff Review of Deficiencies**

As provided in Rule 5810(c)(2)(A)(i), the Staff may accept a plan to regain compliance with respect to quantitative deficiencies from standards that do not themselves provide a compliance period. Such standards are included in Rules 5505 (Initial Listing of Securities) and Rule 5550 (Continued Listing of Securities).

**(B) Staff Alternatives Upon Review of Plan**

Staff may request such additional information from the Company as is necessary to make a determination, as described below. In cases other than filing delinquencies, which are governed by Rule 5810(c)(2)(E) below, upon review of a plan of compliance, Staff may either:

(i) grant an extension of time to regain compliance not greater than 90 calendar days from the date of Staff's initial notification, unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination. If Staff grants an extension, it will inform the Company in writing of the basis for granting the extension and the terms of the extension;

(ii) issue a Staff Delisting Determination letter that includes a description of the basis for denying the extension; or

(iii) issue a Public Reprimand Letter, as defined in Rule 5805(j).

**(C) Timeline for Submission of Compliance Plans**

Except for deficiencies from the standards of Rule 5250(c)(1) or (2), Staff's notification of deficiencies that allow for compliance plan review will inform the Company that it has 30 calendar days to submit a plan to regain compliance with the Exchange's listing standard(s). Staff may extend this deadline for up to an additional 5 calendar days upon good cause shown and may request such additional information from the Company as is necessary to make a determination regarding whether to grant such an extension.

**(D) Failure to Meet the Terms of a Staff Extension**

If the Company does not regain compliance within the time period provided by all applicable Staff extensions, Staff will immediately issue a Staff Delisting Determination indicating the date on which the Company's securities will be suspended unless it requests review by a Hearings Panel.

**(E) Filing Delinquencies**

In the case of deficiencies from the standards of Rule 5250(c)(1) or (2):

(i) Staff's notice shall provide the Company with 45 calendar days to submit a plan to regain compliance with the listing standard; provided, however, that the Company shall not be provided with an opportunity to submit such a plan if review under the Rule 5800 Series of a prior Staff Delisting Determination with respect to the Company is already

pending. Staff may extend this deadline for up to an additional 5 calendar days upon good cause shown and may request such additional information from the Company as is necessary to make a determination regarding whether to grant such an extension.

(ii) The maximum additional time provided by all exceptions granted by Staff for a deficiency described in paragraph (i) above is 90 calendar days from the due date of the first late periodic report (as extended by Rule 12b-25 under the Act, if applicable). In determining whether to grant an exception, and the length of any such exception, Staff will consider, and the Company should address in its plan of compliance, the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

### (3) Deficiencies for which the Rules Provide a Specified Cure or Compliance Period

With respect to deficiencies related to the standards listed in (A) - (C) below, Staff's notification will inform the Company of the applicable cure or compliance period provided by these Rules and discussed below. If the Company does not regain compliance within the specified cure or compliance period, the Listing Qualifications Department will immediately issue a Staff Delisting Determination letter.

#### (A) Market Makers

A failure to meet the continued listing requirement for a number of Market Makers shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.

#### (B) Market Value of Listed Securities

A failure to meet the continued listing requirements for Market Value of Listed Securities shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 90 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 90 day compliance period.

#### (C) Audit Committee Rules

If a Company fails to meet the audit committee composition requirements in Rule 5605(c)(2) because an audit committee member ceases to be independent for reasons outside his/her control, the Listing Qualifications Department will promptly notify the

Company and inform it that has until the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure, to cure the deficiency. If the Company fails to meet the audit committee composition requirement due to one vacancy on the audit committee, and the Company is not relying upon a cure period for another member, the Listing Qualifications Department will promptly notify the Company and inform it that it has until the earlier of its next annual shareholders meeting or one year from the event that caused the failure to cure the deficiency. However, if the Company's next annual shareholders' meeting is held sooner than 180 days after the event that caused the deficiency, then the Company has 180 days from the event that caused the deficiency to cure it.

(D) Director, Promoter, or Control Person with a Regulatory History

If an executive officer, director, promoter, or control person of a Company was involved in any event that occurred during the prior described in Item 401(f)(2) - (8) of Regulation S-K under the Act, the Listing Qualifications Department will promptly notify the Company and inform it that it has thirty calendar days to remove the individual from that position at the Company.

(4) Public Reprimand Letter

Staff's notification may be in the form of a Public Reprimand Letter in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 under the Act) and Staff determines that delisting is an inappropriate sanction. In determining whether to issue a public reprimand letter, the Listing Qualifications Department will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.

(d) Additional Deficiencies

The Listing Qualifications Department continues to evaluate the compliance of Companies while they are under review by Adjudicatory Bodies and may identify additional deficiencies. Upon identification of an additional deficiency, Staff will issue an additional notification of deficiency to the Company and send a copy to the appropriate Adjudicatory Body.

(1) Staff's notification of the additional deficiency will conform to the requirements set forth in Rule 5810(a) if:

(A) the matter under review by an Adjudicatory Body is a Public Reprimand Letter; or

(B) the additional deficiency identified is one that has an automatic cure or compliance period.

(2) If the additional deficiency is one that would in the normal course result in immediate suspension and delisting, or one for which the Company may submit a compliance plan

to Staff for review, Staff's notification will instruct the Company to address the issue to the Hearings Panel at its hearing, unless the hearing for the original deficiency has already taken place. If the hearing has already taken place, Staff's notification will instruct the Company to provide in writing, within a specified time period, a submission that addresses the deficiency to the Adjudicatory Body before which its matter is pending.

### **5815. Review of Staff Determinations by Hearings Panel**

When a Company receives a Staff Delisting Determination or a Public Reprimand Letter issued by the Listing Qualifications Department, or when its application for initial listing is denied, it may request in writing that the Hearings Panel review the matter in a written or an oral hearing. This section sets forth the procedures for requesting a hearing before a Hearings Panel, describes the Hearings Panel and the possible outcomes of a hearing, and sets forth Hearings Panel procedures.

#### (a) Procedures for Requesting and Preparing for a Hearing

##### (1) Timely Request Stays Delisting

(A) A Company may, within seven calendar days of the date of the Staff Delisting Determination notification, Public Reprimand Letter, or denial of a listing application, request a written or oral hearing before a Hearings Panel to review the Staff Delisting Determination. Subject to the limitations in paragraphs (B) and (C) below, a timely request for a hearing will stay the suspension and delisting action pending the issuance of a written Panel Decision. Requests for hearings should be submitted in writing to the Hearings Department.

(B) If the Staff Delisting Determination relates to deficiencies from the standards of Rule 5250(c)(1) or (2), which require a Company to timely file its periodic reports with the Commission, the delisting action will only be stayed for 15 calendar days from the deadline to request a hearing unless the Company specifically requests and the Hearings Panel grants a further stay. A request for a further stay must include an explanation of why such a stay would be appropriate and should be included in the Company's request for a hearing. Based on that submission and any recommendation provided by Staff, the Hearings Panel will determine whether to grant the Company a further stay. In determining whether to grant the stay, the Hearings Panel will consider the Company's specific circumstances, including the likelihood that the filing can be made within any exception period that could subsequently be granted, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. The Hearings Panel will notify the Company of its conclusion as soon as is practicable, but in no event more than 15 calendar days following the deadline to request the hearing. In the event the Hearings Panel determines not to grant the Company a stay, the Company's securities will be immediately suspended and will remain suspended unless the Panel Decision issued after the hearing determines to reinstate the securities.

(C) If the Staff Delisting Determination relates to a deficiency from the standard of Rule 5550(d), which requires a Company to maintain a minimum bid price of \$0.25 per share, a timely request for a hearing will stay delisting pending the issuance of a written Panel Decision. However, notwithstanding the request for a hearing, the security will be suspended from trading on the Exchange pursuant to Rule 4120(a)(12).

#### (2) Failure to Request Results in Immediate Delisting

If a Company fails to request in writing a hearing within seven calendar days, it waives its right to request review of a Delisting Determination. In that event, the Hearings Department will take action to suspend trading of the securities and follow procedures to delist the securities.

#### (3) Fees

Within 15 calendar days of the date of the Staff Delisting Determination the Company must submit a hearing fee to the Exchange to cover the cost of the hearing, as follows:

(A) when the Company has requested a written hearing, \$4,000; or

(B) when the Company has requested an oral hearing, whether in person or by telephone, \$5,000.

#### (4) Scheduling of Hearings

The Hearings Department will schedule hearings to take place, to the extent practicable, within 45 days of the request for a hearing, at a location determined by the Hearings Department. The Hearings Department will send written acknowledgment of the Company's hearing request and inform the Company of the date, time, and location of the hearing, and deadlines for written submissions to the Hearings Panel. The Company will be provided at least ten calendar days notice of the hearing unless the Company waives such notice.

#### (5) Submissions from Company

The Company may submit to the Hearings Department a written plan of compliance and request that the Hearings Panel grant an exception to the listing standards for a limited time period, as permitted by Rule 5815(c)(1)(A) or may set forth specific grounds for the Company's contention that the issuance of a Staff Delisting Determination, Public Reprimand Letter, or denial of a listing application, was in error, and may also submit public documents or other written material in support of its position, including any information not available at the time of the Staff Determination. The Hearings Panel will review the written record, as described in Rule 5840(a), before the hearing.

#### (6) Presentation at Hearing

At an oral hearing, the Company may make such presentation as it deems appropriate, including the appearance by its officers, directors, accountants, counsel, investment bankers, or other persons, and the Hearings Panel may question any representative

appearing at the hearing. Hearings are generally scheduled to last one hour, but the Hearings Panel may extend the time. The Hearings Department will arrange for and keep on file a transcript of oral hearings.

(b) Composition of the Hearings Panel

Each Hearing is presided over by at least two Hearings Panel members, except as provided in Rule 5815(d)(3).

(c) Scope of the Hearings Panel's Discretion

(1) When the Hearings Panel review is of a deficiency related to continued listing standards, the Hearings Panel may, where it deems appropriate:

(A) grant an exception to the continued listing standards for a period not to exceed 90 days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted;

(B) Reserved;

(C) suspend and delist the Company's securities;

(D) issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 under the Act) and the Hearings Panel determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Hearings Panel will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations;

(E) find the Company in compliance with all applicable listing standards;

(F) in the case of a Company that received a Staff Delisting Determination because its Security is not in compliance with the minimum price requirement of Rule 5550(d), determine that the Company has regained compliance if the Security maintains a closing bid price of \$0.25 per share or more for at least 10 consecutive trading days prior to Panel's Decision. However, if the Company has received three or more Staff Delisting Determinations for failure to comply with minimum price requirement of Rule 5550(d) in the prior 12 months, the Panel shall only determine that the Company has regained compliance if the Security maintains a closing bid price of \$0.25 per share or more for at least 20 consecutive trading days prior to the Panel's Decision. The Panel may make a compliance determination at any time, including prior to the Hearing; but must issue its Decision no later than 90 days after the date of the Staff Delisting Determination; or

(G) in the case of a Company that fails to file a periodic report (e.g., Form 10-K, 10-Q, 20-F, 40-F, or N-CSR), the Hearings Panel may grant an exception for a period not to exceed 180 days from the due date of the first such late periodic report. The Company

can regain compliance with the requirement by filing that periodic report and any other delinquent reports with due dates falling before the end of the exception period. In determining whether to grant an exception, and the length of any such exception, the Hearings Panel will consider the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

(2) When the Hearings Panel's review is of a Staff denial of an initial listing application, the Hearings Panel may, where it deems appropriate:

(A) affirm Staff's denial of the application;

(B) conditionally approve initial listing subject to an exception to the listing standards not to exceed 90 calendar days from the date of the Panel Decision; or

(C) approve initial listing on a finding that the Company meets all initial listing requirements.

(3) A Hearings Panel may consider any failure to meet any quantitative or qualitative standard for initial or continued listing, including failures previously not considered by Staff. The Company will be given written notice of such consideration and an opportunity to respond.

(4) Under the authority described in the Rule 5100 Series, the Hearings Panel may subject the Company to additional or more stringent criteria for the initial or continued listing of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities inadvisable or unwarranted in its opinion, even though the securities meet all enumerated criteria for initial or continued listing on the Exchange.

(d) Hearings Panel Procedures

(1) Panel Decision

After the hearing, the Hearings Department, on behalf of the Hearings Panel, will issue a Panel Decision that meets the requirements of Rule 5840(c) and has been approved by each member of the Hearings Panel. The Panel Decision shall be promptly provided to the Company, and is effective immediately upon issuance, unless it specifies to the contrary. The Panel Decision will provide notice that the Company may appeal the Panel Decision to the Listing Council within 15 calendar days of the date of the Decision and that the Decision may be called for review by the Listing Council within 45 calendar days from the date of the Decision.

(2) Form 25 Notification of Delisting

If the Panel issues a Decision to delist the Company's securities, the Hearings Department will immediately take action to suspend trading of the securities, unless the Decision specifies to the contrary. If the Company does not appeal a Decision to delist and the Listing Council does not call the decision for review or withdraws its call for review, the Exchange will follow the procedures described in Rule 5830 to submit an application on Form 25 to the SEC to strike the Security from listing.

### (3) Hearings Panel Deadlock

If, following the hearing, the Hearings Panel cannot reach a unanimous decision, the Hearings Department will notify the Company of this circumstance. The Company will be provided an additional hearing before a Hearings Panel composed of three members who did not participate in the previous hearing. The Company may decide whether the hearing will be written or oral, in person or by telephone. The Company may submit any documents or other written material in support of its request for review, including information not available at the time of the initial hearing. There will be no fee for the new hearing. After review by a Hearings Panel convened pursuant to this paragraph, the Hearings Department on behalf of the Hearings Panel will issue a Decision that meets the requirements of Rule 5840(c) and that has been approved by at least a majority of the Hearings Panel.

### (4) Procedures Applicable for Recurring Deficiencies

#### (A) Hearings Panel Monitor

A Hearings Panel may, after a Company regains compliance with all applicable listing standards, monitor the Company's continued compliance for up to one year after the compliance date, if the Hearings Panel concludes that there is a likelihood that the issuer will fail to maintain compliance with one or more listing standards during that period. If the Hearings Panel or the Listing Qualifications Department determines that a Company under Hearings Panel monitor fails any listing standard during the monitor period, the Staff will issue a Staff Delisting Determination and the Hearings Department will promptly schedule a new hearing, with the initial Hearings Panel or a newly convened Hearings Panel if the initial Hearings Panel is unavailable. The hearing may be oral or written, at the Company's election. Notwithstanding Rule 5810(c)(2), the Company will not be permitted to provide the Listing Qualifications Department with a plan of compliance with respect to any deficiency that arises during the monitor period, and the Listing Qualifications Department will not be permitted to grant additional time for the Company to regain compliance with respect to any deficiency. The Hearings Panel will consider the Company's compliance history when rendering its Decision.

#### (B) No Hearings Panel Monitor

If a Hearings Panel has not opted to monitor a Company that has regained compliance with the listing standards requiring the Company to timely file periodic reports, and within one year of the date the Company regained compliance with such listing standard,

the Listing Qualifications Department finds the Company again out of compliance with that requirement, then, notwithstanding Rule 5810(c)(2), the Listing Qualifications Department will not allow the Company to provide it with a plan of compliance or grant additional time for the Company to regain compliance. Rather, the Listing Qualifications Department will promptly issue a Staff Delisting Determination, and the Company may request review by a Hearings Panel. The Hearings Panel will consider the Company's compliance history when rendering its Decision.

#### (5) Request for Hearings Panel Reconsideration

A Company may request, in writing, that the Hearings Panel reconsider a Panel Decision only upon the basis that a mistake of material fact existed at the time of the Panel Decision. The Company's request for reconsideration shall be made within seven calendar days of the date of issuance of the Panel Decision. A Company's request for reconsideration will not stay a delisting determination or suspension of trading of the Company's securities, unless the Hearings Panel, before the scheduled date for suspension, issues a written determination staying the suspension and/or reversing the determination to delist. A Company's request for reconsideration will not extend the time for the Company to initiate the Listing Council's review of the Panel Decision.

If the Hearings Panel grants a Company's reconsideration request, it will issue a modified Decision meeting the requirements of Rule 5840(c) within 15 calendar days of the date of the original Panel Decision, or lose jurisdiction over the matter. If the Listing Council calls a Panel Decision for review on the same issue that the Company has requested reconsideration by the Hearings Panel, the Listing Council may assert jurisdiction over the initial Panel Decision or permit the Hearings Panel to proceed with the reconsideration and issue a new Decision.

### **5820. Exchange Listing and Hearing Review Council**

A Company may appeal a Panel Decision to the Listing Council. The Listing Council may also call for review a Panel Decision on its own initiative. This Rule 5820 describes the procedures applicable to appeals and calls for review.

#### (a) Procedure for Requesting Appeal

A Company may appeal any Panel Decision to the Listing Council by submitting a written request for appeal and a fee of \$4,000 to the Exchange's Office of Appeals and Review within 15 calendar days of the date of the Panel Decision. An appeal will not operate as a stay of the Panel Decision. Upon receipt of the appeal request and the applicable fee, the Office of Appeals and Review will acknowledge the Company's request and provide deadlines for the Company to provide written submissions.

#### (b) Procedures for Initiating Call for Review

The Listing Council may also call for review any Panel Decision upon the request of one or more members of the Listing Council within 45 calendar days of the date of the Panel

Decision. The Office of Appeals and Review will promptly inform the Company of the reasons for the review and provide a deadline for written submissions. A call for review by the Listing Council will not operate as a stay of the Panel Decision, unless the call for review specifies to the contrary. The Listing Council may withdraw the call for review of a Panel Decision at any time.

(c) Composition of Listing Council

The Listing Council is a committee appointed by the Exchange Board of Directors pursuant to the Exchange By-Laws whose responsibilities include the review of Panel Decisions by a Hearings Panel.

(d) Scope of Listing Council's Discretion

(1) The Listing Council may, where it deems appropriate, affirm, modify, or reverse the Panel Decision, or remand the matter to the Listing Qualifications Department or to the Hearings Panel for further consideration. The Listing Council may grant an exception for a period not longer than 180 calendar days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted. The Listing Council also may issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 under the Act) and the Listing Council determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Listing Council will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.

(2) The Listing Council may consider any failure to meet any quantitative standard or qualitative consideration for initial or continued listing, including failures previously not considered by the Hearings Panel. The Listing Council may also consider any action taken by a Company during the review process that would have constituted a violation of the Exchange's corporate governance requirements had the Company's securities been trading on the Exchange at the time. The Company will be afforded written notice of such consideration and an opportunity to respond.

(3) Under the authority described in the Rule 5100 Series, the Listing Council may subject the Company to additional or more stringent criteria for the initial or continued listing of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities inadvisable or unwarranted in its opinion, even though the securities meet all enumerated criteria for initial or continued listing on the Exchange.

(4) In the case of a Company that fails to file a periodic report (e.g., Form 10-K, 10-Q, 20-F, 40-F, or N-CSR), the Listing Council may grant an exception for a period not to

exceed 180 days from the due date of the first such late periodic report. The Company can regain compliance with the requirement by filing that periodic report and any other delinquent reports with due dates falling before the end of the exception period. In determining whether to grant an exception, and the length of any such exception, the Listing Council will consider the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

(5) The Listing Council may also recommend that the Exchange Board consider the matter.

#### (e) Listing Council Review Process

##### (1) Review Generally on Written Record

For each matter before the Listing Council, whether on appeal for call for review, a subcommittee consisting of at least two members of the Listing Council will review the written record, as described in Rule 5840(a). Members of the Listing Council who are not on a subcommittee will be provided with a written summary of the record prepared by an Advisor, and may, but will not be required to, review the written record. The Listing Council shall consider the written record and, at its discretion, may request additional written materials and/or hold additional hearings. If an oral hearing is scheduled, it will take place, to the extent practicable, within 45 days of the date the appeal was submitted or the call for review was initiated.

##### (2) Record of Proceedings Maintained

A record of the documents considered by the Listing Council will be kept by the Office of Appeals and Review.

##### (3) Written Decision Issued

A written Listing Council Decision meeting the requirements of Rule 5840(c) will be issued after approval by at least a majority of the Listing Council. The Listing Council Decision will be promptly provided to the Company and will take immediate effect unless it specifies to the contrary. If the Listing Council determines to delist the Company, the securities of the Company will be immediately suspended, unless the Listing Council Decision specifies to the contrary.

##### (4) Reconsideration of a Listing Council Decision

A Company may request, in writing, that the Listing Council reconsider a Listing Council Decision only upon the basis that a mistake of material fact existed at the time of the Listing Council Decision. The Company's request must be made within seven calendar

days of the date of the Listing Council Decision. A Company's request for reconsideration will not stay a Listing Council Decision unless the Listing Council issues a written determination staying the Decision. If the Listing Council grants a Company's reconsideration request, the Listing Council will issue a modified Decision meeting the requirements of Rule 5840(c) within 15 calendar days of the date of the original Listing Council Decision, or lose jurisdiction over the matter.

(5) Notice of Board Right to Call

The Listing Council Decision will provide notice that the Exchange Board may call the Listing Council Decision for review pursuant to provisions in Rule 5825.

(6) Form 25 Notification of Delisting

If the Listing Council determines to delist the Company and the Exchange Board does not call the matter for review or withdraws its call for review, the Exchange will follow the procedures described in Rule 5830 to submit an application on Form 25 to the Securities and Exchange Commission to delist the Security.

**5825. Discretionary Review by Exchange Board**

(a) Review at Discretion of Board

A Panel Decision, in a matter where the Hearings Panel has granted the maximum exception period and the Listing Council is precluded from granting additional time under Rules 5815(c)(1)(G) and 5820(d)(4), or a Listing Council Decision may be called for review by the Exchange Board solely upon the request of one or more Board members not later than the next Board meeting that is 15 calendar days or more following the date of the Panel or Listing Council Decision. This review will be undertaken solely at the discretion of the Board and will not operate as a stay of the Panel or Listing Council Decision, unless the Board's call for review specifies to the contrary. At the sole discretion of the Board, it may withdraw its call for review of a Panel or Listing Council Decision at any time before issuance of a Decision.

(b) Scope of Discretion of Board

The Board may consider any failure to meet any quantitative standard or qualitative consideration for initial or continued listing, including failures previously not considered by the Listing Council. It may also consider any action taken by a Company during the review process that would have constituted a violation of the Exchange's corporate governance requirements had the Company's securities been trading on the Exchange at the time. The Company will be afforded written notice of such consideration and an opportunity to respond. Pursuant to the Rule 5100 Series, the Board may subject the Company to additional or more stringent criteria for the initial or continued listing of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities inadvisable or unwarranted in its

opinion, even though the securities meet all enumerated criteria for initial or continued listing on the Exchange.

(c) Review on Written Record

If the Board conducts a discretionary review, the review generally will be based on the written record considered by the Hearings Panel or Listing Council. However, the Board may, at its discretion, request and consider additional information from the Company and/or from Staff. If the Board considers additional information, a record of the documents reviewed by the Board will be kept by the Office of Appeals and Review.

(d) Board Decision

If the Board conducts a discretionary review, the Company will be provided a written Decision that meets the requirements of Rule 5840(c). The Board may affirm, modify or reverse the Panel or Listing Council Decision and may remand the matter to the Listing Council, Hearings Panel, or staff of the Listing Qualifications Department with appropriate instructions. The Board also may issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated a corporate governance or notification listing standard (other than one required by Rule 10A-3 of the Act) and the Board determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Board will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations. The Decision of the Board will take immediate effect, unless it specifies to the contrary, and represents the final action of the Exchange. If the Board determines to delist the Company, the securities of the Company will be immediately suspended, unless the Board specifies to the contrary, and the Exchange will follow the procedures contained in Rule 5830 and submit an application on Form 25 to the Commission to strike the security from listing.

**5830. Finality of Delisting Determination**

When the Exchange has made a final determination to delist a Company's securities, it will follow procedures consistent with the Act to strike the Security from listing. The Exchange's determination to delist a Company's securities is final when, after a Delisting Determination has been issued, all available review and appeal procedures and periods available under these Rules have expired.

The Exchange will issue a press release and post a notice on its website announcing its final determination to remove a Security from listing, consistent with Rule 12d2-2 under the Act. Under Rule 12d2-2, the Exchange must disseminate this public notice not less than 10 days before the delisting becomes effective and maintain the website notice until the delisting is effective. Following the public notification, the Exchange will file an application on Form 25 with the Commission to delist the Security, and will promptly

provide a copy of that Form 25 to the Company. The delisting of the Security becomes effective 10 days after the Form 25 is filed pursuant to Rule 12d2-2(d)(1) under the Act, unless the Commission postpones the delisting pursuant to Rule 12d2-2(d)(3).

### **5835. Rules Applicable to Adjudicators and Advisors**

#### **(a) Ex Parte Communications**

##### **(1) No Ex parte Communications**

No member of the Staff of the Listing Qualifications Department or its counsel, and no Company representative will make or knowingly cause to be made an ex parte communication relevant to the merits of a proceeding under this Section to an Adjudicator or any Advisor.

Similarly, no Adjudicator who is participating in a Decision with respect to a proceeding under this Section, and no Advisor with respect to such a proceeding, will make or knowingly cause to be made an ex parte communication relevant to the merits of that proceeding to a Company representative, a member of the Staff of the Listing Qualifications Department or its counsel.

(2) An Adjudicator or Advisor who is participating in or advising with respect to a proceeding who receives, makes, or knowingly causes to be made an ex parte communication relevant to the merits of a proceeding will place a copy of it, or its substance if it is an oral communication, in the record of the proceeding. Staff of the Listing Qualifications Department or the Company, as applicable, will be permitted to respond to the ex parte communication, and any response will be placed in the record of the proceeding.

#### **(b) No Communications Between Adjudicatory Bodies**

(1) Members of a Hearings Panel and their Advisors who are participating in a proceeding under this Section are prohibited from making communications relevant to the merits of such proceeding to members of the Listing Council or the Board or their respective Advisors.

(2) Members of the Listing Council and their Advisors are prohibited from making communications relevant to the merits of a proceeding under this Rule 5800 Series to members of a Hearings Panel who are participating in such proceeding or their Advisors or members of the Board or their Advisors.

(3) Members of the Board and their Advisors are prohibited from making communications relevant to the merits of a proceeding under this Rule 5800 Series to members of a Hearings Panel who are participating in such proceeding or their Advisors, or members of the Listing Council or their Advisors.

(4) An Adjudicator or Advisor who is participating in or advising with respect to a proceeding who receives, makes, or knowingly causes to be made a communication

prohibited by paragraphs (1) - (2) above will place a copy of it, or its substance if it is an oral communication, in the record of the proceeding. Staff of the Listing Qualifications Department and the Company will be permitted to respond to the communication, and any such response will be placed in the record of the proceeding.

#### (c) Recusal or Disqualification

No person will serve as a member of a Hearings Panel, or participate as a member of the Listing Council, the Board, the Staff of the Listing Qualifications Department or Advisor to an Adjudicator, in a matter as to which he or she has a conflict of interest or bias, or circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the person will recuse himself or herself, or will be disqualified.

#### (1) Exchange of Biographical Information

To facilitate the process for recusal and disqualification, at least five days before any proceeding under this Section, the Company will provide the Hearings Department or the Advisor to the Listing Council or the Board, as applicable, with names and biographical information of each person who will appear on behalf of the Company at the proceeding, and the Hearings Department or Advisor, as applicable, will provide the Company and the Staff with names and biographical information of the Adjudicators for the proceeding; provided, however, that with respect to proceedings before the Listing Council or the Board, the Advisor may post names and biographical information of each Adjudicator on a publicly available website in lieu of providing them directly to the Company.

#### (2) Disqualification Procedures

A Company or the Staff of the Listing Qualifications Department may file a request to disqualify an Adjudicator. A request to disqualify will be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Adjudicator's fairness might reasonably be questioned, and will be accompanied by a statement setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the party learned of those facts. A request to disqualify must be filed (A) not later than two business days after the party was provided with the name and biographical information of the Adjudicator, or (B) if the name and biographical information of the Adjudicator was posted on a website, not later than two business days after the Company requested Listing Council review or received notice of discretionary review by the Listing Council or the Board. A request for disqualification of an Adjudicator will be decided by the party with authority to order disqualification of such Adjudicator, as detailed below, who will promptly investigate whether disqualification is required and issue a written response to the request.

#### (A) Exchange Board

The Chair of the Board will have authority to order the disqualification of a Director, and a majority of the Board excluding the Chair of the Board will have authority to order the disqualification of the Chair.

(B) Listing Council

A Chair of the Listing Council will have authority to order the disqualification of a member of the Listing Council, and a majority of the Listing Council excluding any Chairs of the Listing Council will have authority to order the disqualification of a Chair of the Listing Council.

(C) Staff of Listing Qualifications Department; Panelist of Hearings Panel

The General Counsel of the Exchange will have authority to order the disqualification of (i) a member of the Staff of the Listing Qualifications Department reviewing the qualifications of a Company, (ii) a member of a Hearings Panel, or (iii) an Advisor to an Adjudicatory Body.

**5840. Adjudicatory Process: General Information**(a) Record on Review

At each level of a proceeding under this Section, the written record may consist of the following items, as applicable: correspondence between the Exchange and the Company; the Company's public filings; information released to the public by the Company; written submissions, exhibits, or requests submitted by either the Company or the Listing Qualifications Department and responses thereto; and any additional information considered by the Adjudicatory Body as part of the review process. The written record will be supplemented by the transcript of any hearings held during the review process and all Decisions issued.

At each level of review under this Section, the Company will be informed of the contents of the written record. The Company will be provided a copy of any documents in the record that were not provided by the Company or are not publicly available, at least three calendar days before the deadline for Company submissions, unless the Company waives this production.

If additional issues arising under the Rule 5000 Series are considered, as permitted by the Rule 5800 Series, the notice of such consideration and any response to such notice shall be made a part of the record.

(b) Additional Information Requested or Considered

At each level of a proceeding under this Section, the Adjudicatory Body, as part of its review:

(1) may request additional information from the Company or the Listing Qualifications Department; and

(2) may consider additional information available from other sources it deems relevant. The Company and the Listing Qualifications Department will be afforded written notice and an opportunity to address the significance of any information requested or

considered, and the notice, responses to the notice, and the information considered will be made part of the record.

(c) Contents of Decisions

Each Adjudicatory Body's written Decision will include:

- (1) a statement describing the procedural history of the proceeding, including investigations or reviews undertaken by the Listing Qualifications Department;
- (2) the quantitative or qualitative standard that the Company is alleged to have failed to satisfy;
- (3) a statement setting forth the findings of fact with respect to the Company;
- (4) the conclusions of the Adjudicatory Body as to whether the Company has failed to satisfy the quantitative or qualitative standards for initial or continued listing; and
- (5) a statement of the Adjudicatory Body in support of its disposition of the matter, and, if applicable, the rationale for any exception to the initial or continued listing requirements granted.

(d) Correction of Clerical Errors

The Hearings Panel and the Listing Council may correct clerical or other non-substantive errors in their respective Decisions either on their own motion or at the request of a Company. A copy of any such corrected Decision will be provided to the Company.

(e) Computation and Adjustment of Time

- (1) Except as described in paragraph (2) below, in counting any time under this Section, the day of the act, event, or default from which the period of time begins to run, is not to be included. The last day of the period is included, unless it is a Saturday, Sunday, federal holiday, or Exchange holiday in which case the period runs until the end of the next day that is not a Saturday, Sunday, federal holiday or Exchange holiday.
- (2) When Staff determines whether a deficiency has occurred with respect to bid price or market value of listed securities, the first trading day that the market value is below the required standard is included in computing the total number of consecutive trading days of default. Similarly, when Staff determines whether a Company has regained compliance with the bid price or market value of listed securities requirement, the first trading day that the market value is at or above required standard is included in computing the total number of consecutive trading days.
- (3) If the Office of General Counsel determines that notice required to be provided under this Section was not properly given or that other extenuating circumstances exist, the Hearings Department may adjust the periods of time provided by the rules for the filing of written submissions, the scheduling of hearings, or the performance of other

procedural actions by the Company or an Adjudicator, as applicable, to allow the Company or the Adjudicator the time contemplated by these rules.

(4) A Company may waive any notice period specified in this Section.

(f) Delivery of Documents

Delivery of any document under this Section may be made by electronic delivery, hand delivery, facsimile, regular mail or overnight courier. Delivery will be considered timely if the electronic delivery, hand delivery, fax, or overnight courier is received on or before the relevant deadline. If a Company has not specified a facsimile number, e-mail address, or street address, delivery will be made to the last known facsimile number, e-mail address, and street address. If a Company is represented by counsel or a representative, delivery may be made to the counsel or representative.

(g) Document Retention Procedures

Any document submitted to the Exchange in connection with a proceeding under this Section will be retained in accordance with applicable record retention policies.

(h) Documentation of Decisions

The Listing Qualifications Department or the Advisor to an Adjudicatory Body, as applicable, shall document the date on which a Decision with respect to a Company is implemented.

(i) Re-Listing of a Company

A Company that has been the subject of a Decision by an Adjudicatory Body to delist such Company shall be required, prior to re-listing, to comply with the requirements for initial listing. A Company that has been suspended but that has not been the subject of such a Decision shall be required, prior to re-listing, to comply with requirements for continued listing.

(j) Voluntary Delisting

(1) A Company may voluntarily terminate its listing upon compliance with all requirements of Rule 12d2-2(c) under the Act. In part, Rule 12d2-2(c) requires that the Company may delist by filing an application on Form 25 with the Commission, provided that the Company: (i) complies with all applicable laws in effect in the state in which it is incorporated and with the applicable Exchange Rules; (ii) provides notice to the Exchange no fewer than 10 days before the Company files the Form 25 with the Commission, including a statement of the material facts relating to the reasons for delisting; and (iii) contemporaneous with providing notice to the Exchange, publishes notice of its intent to delist, along with its reasons therefore, via a press release and on its web site, if it has one. Any notice provided on the Company's web site pursuant to Rule 12d2-2(c) must remain available until the delisting has become effective. The Company must also provide a copy of the Form 25 to the Exchange simultaneously with its filing

with the Commission. The Exchange will provide notice on its web site of the Company's intent to delist as required by Rule 12d2-2(c)(3).

(2) A Company that seeks to voluntarily delist a class of securities pursuant to Rule 5840(j)(1) that has received notice from the Exchange, pursuant to the Rule 5800 Series or otherwise, that it fails to comply with one or more requirements for continued listing, or that is aware that it is below such continued listing requirements notwithstanding that it has not received such notice from the Exchange, must disclose this fact (including the specific continued listing requirement that it is below) in: (i) its statement of all material facts relating to the reasons for withdrawal from listing provided to the Exchange along with written notice of its determination to withdraw from listing required by Rule 12d2-2(c)(2)(ii) under the Act; and (ii) its press release and web site notice required by Rule 12d2-2(c)(2)(iii) under the Act.

#### (k) Disclosure of Public Reprimand Letter

A Company that receives an Adjudicatory Body Decision that serves as a Public Reprimand Letter must make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing the receipt of the Decision, including the Rule(s) upon which the Decision was based. As described in Rule 5250(b)(1) and IM-5250-1, the Company must notify the Exchange's MarketWatch Department about the announcement through the electronic disclosure submission system available at a website designated by the Exchange for that purpose, except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during market hours, the Company must notify MarketWatch at least ten minutes prior to the announcement. If the public announcement is made outside of market hours, the Company must notify MarketWatch of the announcement prior to 6:50 a.m. ET. The Company should make the public announcement as promptly as possible but not more than four business days following receipt of the Decision.

### **5900. Company Listing Fees**

#### **5901. Preamble to the Company Listing Fees**

This section sets forth the required fees for Companies both seeking listing and currently listed on the Exchange pursuant to the Rule 5000 Series. With certain exceptions, Companies seeking to list on the Exchange must pay a non-refundable application fee. Listed Companies are required to pay annual fees and fees for certain corporate changes, such as a change in name or a substitution listing. Please note that the fees related to written interpretations of the Exchange's listing rules can be found in Rule 5602.

#### **5910. Listing Fees**

##### (a) Application Fee

A Company that submits an application to list any class of its securities on the Exchange, shall pay to the Exchange a non-refundable application fee of \$10,000, which must be submitted with the Company's application. However, if a Company is listed on another national securities exchange and has received notice that it is subject to being delisted from that exchange for failure to comply with a quantitative listing requirement, the application fee does not have to be paid to the Exchange until the other exchange issues a final decision to delist the Company's securities or the Company is listed on the Exchange, whichever occurs first.

(b) Annual Fee

(1) Each issuer shall pay an annual fee of \$20,000 for the first class of securities listed on the Exchange and \$5,000 for each additional class of securities listed on the Exchange.

(2) The Annual Fee will be pro-rated during a Company's first year of listing on the Exchange based on the month of listing. For example, a Company initially listing in April would be charged 9/12 of the Annual Fee for the first year of listing.

(3) If a class of securities is delisted or voluntarily removed from The Nasdaq Stock Market, the Company shall receive a credit for that portion of the annual fees for such class of securities attributable to the months following the date of removal, which will be applied only to offset the Exchange's Annual fees for that calendar year. For example, a Company that is delisted from Nasdaq on April 5th and immediately lists on the Exchange will receive a credit of 8/12 of the annual fee paid to Nasdaq for the year, which will be used to offset the applicable Annual Fee owed to the Exchange for that year only. Any amounts paid to Nasdaq in excess of the Annual Fees owed to the Exchange for that year shall not be refunded nor applied against fees in future years.

(4) Mergers

(i) A Company that completes a merger with another Company listed on the Exchange during the first calendar quarter will receive a credit or waiver, as applicable, for 75% of the Annual Fee assessed to the acquired Exchange-listed Company.

(ii) A Company not listed on the Exchange that completes a merger with a Company listed on the Exchange and that is the surviving entity will, upon listing on the Exchange, receive a credit or waiver, as applicable, of the Annual Fee previously paid by the listed Company, pro-rated for the months remaining in the calendar year. If the fee was not paid, the credit will go to the non-surviving entity.

(c) Record-Keeping Fee

A Company that makes a change such as a change to its name, the par value or title of its Security, or its symbol shall pay a fee of \$2,500 to the Exchange and submit the appropriate form as designated by the Exchange.

(d) Substitution Listing Fee

A Company that implements a Substitution Listing Event shall pay a fee of \$7,500 to the Exchange and submit the appropriate form as designated by the Exchange.

### **5920. Fee Waivers**

The Exchange's Board of Directors or its designee may defer or waive all or any part of any of the fees prescribed herein. A deferral or waiver will only be granted in rare circumstances where in the opinion of the Exchange, charging the fee would be inequitable and the factual circumstances are unlikely to be frequently replicated. Requests for a deferral or waiver should be sent by e-mail to [billing@bxventure.com](mailto:billing@bxventure.com), and must include the bases for the request.

## **Equity 3A Other Listing Rules and Rules Regarding Unlisted Trading Privileges**

### **Section 1. Operation of Listing Standards**

The Exchange listing standards are contained in the Rule 5000 Series within Equity 3. The provisions of Equity 3A that permit the listing of securities are maintained solely to permit the trading of securities that cannot be listed on the Exchange through unlisted trading privileges. These rules will not be operative to permit the listing of these securities unless and until the Exchange files a proposed rule change under Section 19(b)(2) under the Act to adopt listing fees for these securities and such proposed rule change is approved by the Commission.

### **Section 2. Additional Quantitative Listing Criteria**

In order to be listed on the Exchange, an issuer shall be required to meet the criteria set forth in the Rule 5000 Series within Equity 3 or one or more of the paragraphs below. The Exchange may extend unlisted trading privileges to any security that is an NMS Stock (as defined in Rule 600 of Regulation NMS) 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 provisions of this Rule and Rule 4120, Equity 3A, Section 3, and Equity 10, Section 8.

(a) The Exchange may list Common Stock, Preferred Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests, American Depositary Receipts (ADR), American Depositary Shares (ADS), Units, Rights or Warrants pursuant to the Rule 5000 Series within Equity 3.

#### **(b) Index Warrants**

An index warrant may be listed if it substantially meets the following criteria:

- (1) The minimum public distribution shall be at least 1 million warrants.
- (2) The minimum number of public holders shall be at least 400.
- (3) The aggregate market value of the outstanding index warrants shall be at least \$4 million.

(4) The issuer of the index warrants must have a minimum tangible net worth in excess of \$150 million.

(5) The term of the index warrant shall be for a period from one to five years.

(6) Limitations on Issuance — Where an issuer has a minimum tangible net worth in excess of \$150 million but less than \$250 million, the Exchange will not list stock index warrants of the issuer if the value of such warrants plus the aggregate value, based upon the original issuing price, of all outstanding stock index, currency index and currency warrants of the issuer and its affiliates combined that are listed for trading on the Exchange or another national securities exchange exceeds 25% of the issuer's net worth.

(7) A.M. Settlement — The terms of stock index warrants for which 25% or more of the value of the underlying index is represented by securities that are traded primarily in the United States must provide that the opening prices of the stocks comprising the index will be used to determine (i) the final settlement value (i.e., the settlement value for warrants that are exercised at expiration) and (ii) the settlement value for such warrants that are valued on either of the two business days preceding the day on which the final settlement value is to be determined.

(8) Automatic Exercise — All stock index warrants and any other cash-settled warrants must include in their terms provisions specifying (i) the time by which all exercise notices must be submitted and (ii) that all unexercised warrants that are in the money (or that are in the money by a stated amount) will be automatically exercised on their expiration date or on or promptly following the date on which such warrants are delisted by the Exchange (if such warrant issue has not been listed on another national securities exchange).

(9) Foreign Country Securities — In instances where the stock index underlying a warrant is comprised in whole or in part with securities traded outside the United States, the foreign country securities or American Depositary Receipts ("ADRs") thereon that (i) are not subject to a comprehensive surveillance agreement, and (ii) have less than 50% of their global trading volume in dollar value within the United States, shall not, in the aggregate represent more than 20% of the weight of the index, unless such index is otherwise approved for warrant or option trading.

(10) Changes in Number of Warrants Outstanding — Issuers of stock index warrants either will make arrangements with warrant transfer agents to advise the Exchange immediately of any change in the number of warrants outstanding due to the early exercise of such warrants or will provide this information themselves. With respect to stock index warrants for which 25% or more of the value of the underlying index is represented by securities traded primarily in the United States, such notice shall be filed with the Exchange no later than 4:30 p.m. Eastern Time, on the date when the settlement value for such warrants is determined. Such

notice shall be filed in such form and manner as may be prescribed by the Exchange from time to time.

(11) Only eligible broad-based indexes can underlie index warrants. For purposes of this subparagraph, eligible broad-based indexes shall include those indexes approved by the Commission to underlie index warrants or index options traded on the Exchange or another national securities exchange.

Any index warrant listed pursuant to this paragraph shall not be required to meet the requirements of Equity 3A, Section 4. The Exchange may apply additional or more stringent criteria as necessary to protect investors and the public interest.

### **(c) Other Securities**

(1) The Exchange will consider listing any security not otherwise covered by the listing criteria of the Rule 4000 or 5000 Series, provided the instrument is otherwise suited to trade through the facilities of the Exchange. Such securities will be evaluated for listing against the following criteria:

(A) The issuer shall have assets in excess of \$100 million and stockholders' equity of at least \$10 million. In the case of an issuer which is unable to satisfy the income criteria set forth in the Rule 4300 Series, the Exchange generally will require the issuer to have the following: (i) assets in excess of \$200 million and stockholders' equity of at least \$10 million; or (ii) assets in excess of \$100 million and stockholders' equity of at least \$20 million.

(B) There must be a minimum of 400 holders of the security, provided, however, that if the instrument is traded in \$1,000 denominations, there must be a minimum of 100 holders.

(C) For equity securities listed pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units.

(D) The aggregate market value/principal amount of the security shall be at least \$4 million.

(2) Issuers of securities listed pursuant to this paragraph (f) must also be eligible for listing on the Nasdaq Global Market or the New York Stock Exchange (NYSE) or be an affiliate of a company that is also eligible for listing on the Nasdaq Global Market or the NYSE; provided, however, that the provisions of Equity 3A, Section 4 will be applied to sovereign issuers of "other" securities on a case-by-case basis.

(3) Prior to the commencement of trading of securities listed pursuant to this paragraph, the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance

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

(d) The Exchange will consider listing Selected Equity-linked Debt Securities (SEEDS), pursuant to Rule 19b-4(e) under the Act, that generally meet the criteria of this paragraph. SEEDS are limited-term, non-convertible debt securities of an issuer where the value of the debt is based, at least in part, on the value of up to thirty (30) other issuers' common stock or non-convertible preferred stock (or sponsored American Depositary Receipts (ADRs) overlying such equity securities).

(1) Issuer Listing Standards

(A) The issuer of a SEEDS must be an entity that:

(i) is eligible for listing on the Nasdaq Global Market or the New York Stock Exchange (NYSE) or is an affiliate of a company eligible for listing on the Nasdaq Global Market or the NYSE; provided, however, that the provisions of Equity 3A, Section 4 will be applied to sovereign issuers of SEEDS on a case-by-case basis; and

(ii) has a minimum net worth of \$150 million.

(B) In addition, the market value of a SEEDS offering, when combined with the market value of all other SEEDS offerings previously completed by the issuer and traded on the Exchange or another national securities exchange, may not be greater than 25 percent of the issuer's net worth at the time of issuance.

(2) Equity-Linked Debt Security Listing Standards

The issue must have:

(A) a minimum public distribution of one million SEEDS;

(B) a minimum of 400 holders of the SEEDS, provided, however, that if the SEEDS is traded in \$1,000 denominations, there is no minimum number of holders;

(C) a minimum market value of \$4 million; and

(D) a minimum term of one year.

(3) Minimum Standards Applicable to the Linked Security

An equity security on which the value of the SEEDS is based must:

(A)

(i) have a market value of listed securities of at least \$3 billion and a trading volume in the United States of at least 2.5 million shares in the one-year period preceding the listing of the SEEDS;

(ii) have a market value of listed securities of at least \$1.5 billion and a trading volume in the United States of at least 10 million shares in the one-year period preceding the listing of the SEEDS;

or

(iii) have a market value of listed securities of at least \$500 million and a trading volume in the United States of at least 15 million shares in the one-year period preceding the listing of the SEEDS.

(B) be issued by a company that has a continuous reporting obligation under the Act, and the security must be listed on the Exchange or another national securities exchange and be subject to last sale reporting; and

(C) be issued by:

(i) a U.S. company; or

(ii) a non-U.S. company (including a company that is traded in the United States through sponsored ADRs) (for purposes of this paragraph (g), a non-U.S. company is any company formed or incorporated outside of the United States) if:

a. the Exchange or its subsidiaries has a comprehensive surveillance sharing agreement in place with the primary exchange in the country where the security is primarily traded (in the case of an ADR, the primary exchange on which the security underlying the ADR is traded);

b. the combined trading volume of the non-U.S. security (a security issued by a non-U.S. company) and other related non-U.S. securities occurring in the U.S. market and in markets with which the Exchange or its subsidiaries has in place a comprehensive surveillance sharing agreement represents (on a share equivalent basis for any ADRs) at least 50% of the combined world-wide trading volume in the non-U.S. security, other related non-U.S. securities, and other classes of common stock related to the non-U.S. security over the six month period preceding the date of listing; or

c.

1. the combined trading volume of the non-U.S. security and other related non-U.S. securities occurring in the U.S.

market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the non-U.S. security and in other related non-U.S. securities over the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing.

2. the average daily trading volume for the non-U.S. security in the U.S. markets over the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing is 100,000 or more shares; and

3. the trading volume for the non-U.S. security in the U.S. market is at least 60,000 shares per day for a majority of the trading days for the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing.

d. If the underlying security to which the SEEDS is to be linked is the stock of a non-U.S. company which is traded in the U.S. market as a sponsored ADR, ordinary shares or otherwise, then the minimum number of holders of the underlying linked security shall be 2,000.

(4) Limits on the Number of SEEDS Linked to a Particular Security

(A) The issuance of SEEDS relating to any underlying U.S. security may not exceed five percent of the total outstanding shares of such underlying security. The issuance of SEEDS relating to any underlying non-U.S. security or sponsored ADR may not exceed: (i) two percent of the total shares outstanding worldwide if at least 30 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing; (ii) three percent of the total shares outstanding worldwide if at least 50 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing; (iii) five percent of the total shares outstanding worldwide if at least 70 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing. 1

(B) If an issuer proposes to issue SEEDS that relate to more than the allowable percentages of the underlying security specified above, then the Exchange, with the concurrence of the staff of the Division of Trading and Markets of the Commission, will evaluate the maximum percentage of SEEDS that may be issued on a case-by-case basis.

(5) Prior to the commencement of trading of a particular SEEDS listed pursuant to this subsection, the Exchange or its subsidiaries will distribute a circular to the membership providing guidance regarding member firm compliance responsibilities (including suitability recommendations and account approval) when handling transactions in SEEDS.

**(e) Portfolio Depository Receipts**

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

(A) Portfolio Depository Receipt. The term "Portfolio Depository Receipt" means a security:

(i) that is based on a unit investment trust ("Trust") which holds the securities which comprise an index or portfolio underlying a series of Portfolio Depository Receipts;

(ii) that is issued by the Trust in a specified aggregate minimum number in return for a "Portfolio Deposit" consisting of specified numbers of shares of stock and/or a cash amount, a specified portfolio of fixed income securities and/or a cash amount and/or a combination of the above;

(iii) that, when aggregated in the same specified minimum number, may be redeemed from the Trust which will pay to the redeeming holder the stock and/or cash, fixed income securities and/or cash and/or a combination thereof then comprising the "Portfolio Deposit"; and

(iv) that pays holders a periodic cash payment corresponding to the regular cash dividends or distributions declared with respect to the component securities of the securities index or portfolio of securities underlying the Portfolio Depository Receipts, less certain expenses and other charges as set forth in the Trust prospectus.

(B) Reporting Authority. The term "Reporting Authority" in respect to a particular series of Portfolio Depository Receipts means the Exchange, an affiliate of the Exchange, an institution (including the Trustee for a series of Portfolio Depository Receipts), or a reporting service designated by the Exchange or its affiliate as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the Trust in connection with issuance of Portfolio Depository Receipts; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depository Receipts,

net asset value, and other information relating to the creation, redemption or trading of Portfolio Depository Receipts.

Nothing in this paragraph shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Portfolio Depository Receipts must be designated by the Exchange; the term "Reporting Authority" shall not refer to an institution or reporting service not so designated.

(C) US Component Stock. The term "US Component Stock" shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Act, or an American Depository Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act.

(D) Non-US Component Stock. The term "Non-US Component Stock" shall mean an equity security that (a) is not registered under Sections 12(b) or 12(g) of the Act, (b) is issued by an entity that is not organized, domiciled or incorporated in the United States, and (c) is issued by an entity that is an operating company (including Real Estate Investment Trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

(2) The Exchange requires that members provide to all purchasers of a series of Portfolio Depository Receipts a written description of the terms and characteristics of such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of Portfolio Depository Receipts that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Portfolio Depository Receipts as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of Portfolio Depository Receipts] has been prepared by [Trust name] and is available from your broker or Nasdaq BX. It is recommended that you obtain and review such circular before purchasing [the series of Portfolio Depository Receipts]. In addition, upon request you may obtain from your broker a prospectus for [the series of Portfolio Depository Receipts]."

A member 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 Portfolio Depository Receipts 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 shall also provide a prospectus for the particular series of Portfolio Depository Receipts.

(3) Equity. The Exchange may approve a series of Portfolio Depository Receipts for listing and trading pursuant to Rule 19b-4(e) under the Act, provided each of the following criteria is satisfied:

(A) Eligibility Criteria for Index Components.

(i) US Index or Portfolio. Upon the initial listing of a series of Portfolio Depository Receipts pursuant to Rule 19b-4(e) under the Act, the component stocks of an index or portfolio of US Component Stocks underlying such series of Portfolio Depository Receipts shall meet the following criteria:

a. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least \$75 million;

b. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares;

c. The most heavily weighted component stock shall not exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks shall not exceed 65% of the weight of the index or portfolio;

d. The index or portfolio shall include a minimum of 13 component stocks; and

e. All securities in the index or portfolio shall be US Component Stocks listed on the Exchange or another national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act.

(ii) International or global index or portfolio. Upon the initial listing of a series of Portfolio Depository Receipts pursuant to Rule 19b-4(e) under the Act, the components of an index or portfolio underlying a series of Portfolio Depository Receipts that consist of either only Non-US Component Stocks or both US Component Stocks and Non-US Component Stocks shall meet the following criteria:

a. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least \$100 million;

b. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares;

c. The most heavily weighted component stock shall not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks shall not exceed 60% of the weight of the index or portfolio;

d. The index or portfolio shall include a minimum of 20 component stocks; and

e. Each US Component Stock shall be listed on a national securities exchange and shall be an NMS Stock as defined in Rule 600 of Regulation NMS under the Act, and each Non-US Component Stock shall be listed and traded on an exchange that has last-sale reporting.

(iii) Index or portfolio approved in connection with derivative securities. Upon the initial listing of a series of Portfolio Depository Receipts pursuant to Rule 19b-4(e) under the Act, the index or portfolio underlying a series of Portfolio Depository Receipts shall have been reviewed and approved for trading of options, Portfolio Depository Receipts, Index Fund Shares, index-linked exchangeable notes, or index-linked securities 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 with respect to Non-US Component Stocks and the requirements regarding dissemination of information, continue to be satisfied. Each component stock of the index or portfolio shall be either

a. a US Component Stock that is listed on a national securities exchange and is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act, or

b. a Non-US Component Stock that is listed and traded on an exchange that has last-sale reporting.

(B) Index Methodology and Calculation.

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" 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 or fund advisor;

(ii) The current index value for Portfolio Depository Receipts listed pursuant to:

a. Equity 3A, Section 2(e)(3)(A)(i) will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's regular market session.

b. Equity 3A, Section 2(e)(3)(A)(ii) will be widely disseminated by one or more major market data vendors at least every 60 seconds during the Exchange's regular market session; or

c. Equity 3A, Section 2(e)(3)(A)(iii) will be widely disseminated by one or more major market data vendors at least every 15 seconds with respect to indexes containing only US Component Stocks and at least every 60 seconds with respect to indexes containing Non-US Component Stocks, during the Exchange's regular market session.

If the index value does not change during some or all of the period when trading is occurring on the Exchange (for example, for indexes of Non-US Component Stocks because of time zone differences or holidays in the countries where such indexes' component stocks trade), then the last official calculated index value must remain available throughout the Exchange's trading hours; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority 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.

(C) Disseminated Information. The Reporting Authority will disseminate for each series of Portfolio Depository Receipts an estimate, updated at least every 15 seconds, of the value of a share of each series (the "Intraday Indicative Value") during the Exchange's regular market session. The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value will be updated at least every 15 seconds during the Exchange's regular market session; to reflect changes in the exchange rate between the US dollar and the currency in which any component stock is denominated. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on the Exchange, then the last official calculated Intraday Indicative Value must remain available throughout the Exchange's trading hours.

(D) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Portfolio Depository Receipts is required to be outstanding at start-up of trading.

(E) Surveillance Procedures. FINRA will implement written surveillance procedures for Portfolio Depository Receipts.

(F) Creation and redemption. For Portfolio Depository Receipts listed pursuant to Equity 3A, Section 2(e)(3)(A)(ii) or (iii) above, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the series of Portfolio Depository Receipts must state that the Trust 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.

(4) Fixed Income. Fixed Income Securities are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or subdivision thereof. The Exchange may approve a series of Portfolio Depository Receipts based on Fixed Income Securities for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided such portfolio or index: (i) has been reviewed and approved for the trading of options, Portfolio Depository Receipts, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and the rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied; or (ii) the following criteria are satisfied:

(A) Eligibility Criteria for Index Components. Upon the initial listing of a series of Portfolio Depository Receipts pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, each component of an index or portfolio that underlies a series of Portfolio Depository Receipts shall meet the following criteria:

(i) The index or portfolio must consist of Fixed Income Securities;

(ii) Components that in aggregate account for at least 75% of the weight of the index or portfolio must have a minimum original principal amount outstanding of \$100 million or more;

(iii) A component may be a convertible security, however, once the convertible security component converts to an underlying equity security, the component is removed from the index or portfolio;

(iv) No component fixed-income security (excluding Treasury Securities) will represent more than 30% of the weight of the index or portfolio, and the five highest weighted component fixed-income securities do not in the aggregate account for more than 65% of the weight of the index or portfolio;

(v) An underlying index or portfolio (excluding exempted securities) must include securities from a minimum of 13 non-affiliated issuers; and

(vi) Component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either: (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Exchange Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (c) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; (d) exempted securities as defined in section 3(a)(12) of the Securities Exchange Act of 1934; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

(B) Index Methodology and Calculation.

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current index value will be widely disseminated by one or more major market data vendors at least once per day; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index 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.

(5) The Exchange may approve a series of Portfolio Depository Receipts based on a combination of indexes or an index or portfolio of component securities representing the U.S. equity market, the international equity market, and the fixed income market for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided: (i) each index has been reviewed and approved for the trading of options, Portfolio Depository Receipts, Index Fund

Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied; or (ii) each index or portfolio of equity and fixed income component securities separately meets either the criteria set forth in Equity 3A, Section 2(e)(3) or (4) above.

(A) Index Methodology and Calculation.

(i) If an index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current composite index value will be widely disseminated by one or more major market data vendors at least once every 15 seconds during the regular market session, provided however, that (a) with respect to the Non-US Component Stocks of the combination index, the impact on the index is only required to be updated at least every 60 seconds during the regular market session, and (b) with respect to the fixed income components of the combination index the impact on the index is only required to be updated at least once each day; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on index 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.

(6) The following provisions shall apply to all series of Portfolio Depository Receipts listed pursuant Equity 3A, Section 2(e)(4) and (5) above:

(A) Disseminated Information. The Reporting Authority will disseminate for each series of Portfolio Depository Receipts an estimate, updated at least every 15 seconds, of the value of a share of each series (the "Intraday Indicative Value"). The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value may be calculated by the Exchange or by an independent third party throughout the day using prices obtained from independent market data providers or other independent pricing sources such as a broker-dealer or price evaluation services.

(B) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Portfolio Depository Receipts is required to be outstanding at start-up of trading.

(C) Surveillance Procedures. FINRA will implement written surveillance procedures for Portfolio Depository Receipts.

(7) Regular market session trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Portfolio Depository Receipts, as specified by the Exchange. In addition, the Exchange may designate each series of Portfolio Depository Receipts for trading during a pre-market session beginning at 7:00 a.m. and/or a post-market session ending at 7:00 p.m.

(8) The Exchange may list and trade Portfolio Depository Receipts based on one or more indexes or portfolios. The Portfolio Depository Receipts based on each particular index or portfolio, or combination thereof, shall be designated as a separate series and shall be identified by a unique symbol. The components of an index or portfolio on which Portfolio Depository Receipts are based shall be selected by the Exchange or its agent, an affiliate of the Exchange, or by such other person as shall have a proprietary interest in and authorized use of such index or portfolio, and may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(9) A Trust upon which a series of Portfolio Depository Receipts is based will be listed and traded on the Exchange subject to application of the following criteria:

(A) Initial Listing —

(i) for each Trust, the Exchange will establish a minimum number of Portfolio Depository Receipts 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 Portfolio Depository Receipts that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.

(B) Continued Listing —

(i) The Exchange will consider the suspension of trading in or removal from listing of a Trust upon which a series of Portfolio Depository Receipts is based under any of the following circumstances:

a. if, following the initial twelve month period after the formation of a Trust and commencement of trading on the Exchange, the Trust has more than 60 days remaining until

termination and there are fewer than 50 record and/or beneficial holders of Portfolio Depository Receipts for 30 or more consecutive trading days;

b. if the value of the index or portfolio of securities on which the Trust is based is no longer calculated or available or the index or portfolio on which the Trust is based is replaced with a new index or portfolio, unless the new index or portfolio meets the requirements of this Rule for listing either pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 (including the filing of a Form 19b-4(e) with the Commission) or by Commission approval of a filing pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934; or

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

Upon termination of a Trust, the Exchange requires that Portfolio Depository Receipts issued in connection with such Trust be removed from listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(C) Term — the stated term of the Trust shall be as stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(D) Voting — voting rights shall be as set forth in the Trust prospectus. The Trustee of a Trust may have the right to vote all of the voting securities of such Trust.

(10) 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 index or portfolio value, the current value of the portfolio of securities required to be deposited to the Trust; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depository Receipts; net asset value; or other information relating to the creation, redemption or trading of Portfolio Depository Receipts, 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.

**(f) Index Fund Shares**

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

(A) Index Fund Share. The term "Index Fund Share" means a security:

(i) that is issued by an open-end management investment company based on a portfolio of stocks or fixed income securities or a combination thereof, that seeks to provide investment results that correspond generally to the price and yield performance or total return performance of a specified foreign or domestic stock index, fixed income securities index or combination thereof;

(ii) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount, a specified portfolio of fixed income securities and/or a cash amount and/or a combination of the above, with a value equal to the next determined net asset value; and

(iii) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock and/or cash, fixed income securities and/or cash and/or a combination thereof, with a value equal to the next determined net asset value.

(B)

(i) The term "Index Fund Share" includes a security issued by an open-end management investment company that seeks to provide investment results that either exceed the performance of a specified domestic equity, international or global equity, or fixed income index or a combination thereof by a specified multiple or that correspond to the inverse (opposite) of the performance of a specified domestic equity, international or global equity, or fixed income index or a combination thereof by a specified multiple. Such a security is issued in a specified aggregate number in return for a deposit of a specified number of shares of stock, a specified portfolio of fixed income securities or a combination of the above and/or cash with a value equal to the next determined net asset value. When aggregated in the same specified minimum number,

Index Fund Shares may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock, fixed income securities or a combination thereof and/or cash with a value equal to the next determined net asset value.

(ii) In order to achieve the investment result that it seeks to provide, such an investment company may hold a combination of financial instruments, including, but not limited to, stock index futures contracts; options on futures contracts; options on securities and indices; equity caps, collars and floors; swap agreements; forward contracts; repurchase agreements and reverse repurchase agreements (the "Financial Instruments"), but only to the extent and in the amounts or percentages as set forth in the registration statement for such Index Fund Shares.

(iii) Any open-end management investment company which issues Index Fund Shares referenced in this subparagraph (1)(B) that seeks to provide investment results, before fees and expenses, in an amount that exceeds -200% of the percentage performance on a given day of a particular domestic equity, international or global equity or fixed income securities index or a combination thereof shall not be approved by the Exchange for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934.

(iv) For the initial and continued listing of a series of Index Fund Shares referenced in the provisions of this subparagraph (1)(B), the following requirements must be adhered to:

Daily public website disclosure of portfolio holdings that will form the basis for the calculation of the net asset value by the issuer of such series, including, as applicable, the following instruments:

- a. The identity and number of shares held of each specific equity security;
- b. The identity and amount held for each specific fixed income security;
- c. The specific types of Financial Instruments and characteristics of such Financial Instruments; and
- d. Cash equivalents and the amount of cash held in the portfolio.

If the Exchange becomes aware that the net asset value related to Index Fund Shares included in the provisions of this subparagraph (1)(B) is not being disseminated to all market participants at the same time or the daily public website disclosure of portfolio holdings does not occur, the Exchange shall halt trading in such series of Index Fund Share, as appropriate. The Exchange may resume trading in such Index Fund Shares only when the net asset value is disseminated to all market participants at the same time or the daily public website disclosure of portfolio holdings occurs, as appropriate.

(C) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Index Fund Shares means the Exchange, an affiliate of the Exchange, or an institution or reporting service designated by the Exchange or its affiliate as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares, net asset value, and other information relating to the issuance, redemption or trading of Index Fund Shares.

Nothing in this paragraph shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Index Fund Shares must be designated by the Exchange; the term "Reporting Authority" shall not refer to an institution or reporting service not so designated.

(D) US Component Stock. The term "US Component Stock" shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Act, or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act.

(E) Non-US Component Stock. The term "Non-US Component Stock" shall mean an equity security that (a) is not registered under Sections 12(b) or 12(g) of the Act, (b) is issued by an entity that is not organized, domiciled or incorporated in the United States, and (c) is issued by an entity that is an operating company (including Real Estate Investment Trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

(2) The Exchange requires that members provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such

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 shall include such a written description with any sales material relating to a series of Index Fund Shares that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Index 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 Index Fund Shares] has been prepared by the [open-end management investment company name] and is available from your broker or Nasdaq BX. It is recommended that you obtain and review such circular before purchasing [the series of Index Fund Shares]. In addition, upon request you may obtain from your broker a prospectus for [the series of Index Fund Shares]."

A member 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 Index 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 shall also provide a prospectus for the particular series of Index Fund Shares.

(3) Equity. The Exchange may approve a series of Index Fund Shares for listing and trading pursuant to Rule 19b-4(e) under the Act provided each of the following criteria is satisfied:

(A) Eligibility Criteria for Index Components.

(i) US Index or Portfolio. Upon the initial listing of a series of Index Fund Shares pursuant to 19b-4(e) under the Act, the component stocks of an index or portfolio of US Component Stocks underlying a series of Index Fund Shares shall meet the following criteria:

a. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least \$75 million;

b. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares;

c. The most heavily weighted component stock shall not exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks shall not exceed 65% of the weight of the index or portfolio;

d. The index or portfolio shall include a minimum of 13 component stocks; and

e. All securities in the index or portfolio shall be US Component Stocks listed on the Exchange or another national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act.

(ii) International or global index or portfolio. Upon the initial listing of a series of Index Fund Shares pursuant to Rule 19b-4(e) under the Act, the components of an index or portfolio underlying a series of Index Fund Shares that consist of either only Non-US Component Stocks or both US Component Stocks and Non-US Component Stocks shall meet the following criteria:

a. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least \$100 million;

b. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares;

c. The most heavily weighted component stock shall not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks shall not exceed 60% of the weight of the index or portfolio;

d. The index or portfolio shall include a minimum of 20 component stocks; and

e. Each US Component Stock shall be listed on a national securities exchange and shall be an NMS Stock as defined in Rule 600 of Regulation NMS under the Act, and each Non-US Component Stock shall be listed and traded on an exchange that has last-sale reporting.

(iii) Index or portfolio approved in connection with derivative securities. Upon the initial listing of a series of Index Fund Shares pursuant to Rule 19b-4(e) under the Act, the index or portfolio underlying a series of Index Fund Shares shall have been reviewed and approved for trading of options.

Portfolio Depository Receipts, Index Fund Shares, index-linked exchangeable notes, or index-linked securities 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 with respect to Non-US Component Stocks and the requirements regarding dissemination of information, continue to be satisfied. Each component stock of the index or portfolio shall be either

- a. a US Component Stock that is listed on a national securities exchange and is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act, or
- b. a Non-US Component Stock that is listed and traded on an exchange that has last-sale reporting.

(B) Index Methodology and Calculation

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" 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 or fund advisor;

(ii) The current index value for Index Fund Shares listed pursuant to:

- a. Equity 3A, Section 2(f)(3)(A)(i) will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's regular market session;
- b. Equity 3A, Section 2(f)(3)(A)(ii) will be widely disseminated by one or more major market data vendors at least every 60 seconds during the Exchange's regular market session; or
- c. Equity 3A, Section 2(f)(3)(A)(iii) will be widely disseminated by one or more major market data vendors at least every 15 seconds with respect to indexes containing only US Component Stocks and at least every 60 seconds with respect to indexes containing Non-US Component Stocks, during the Exchange's regular market session

If the index value does not change during some or all of the period when trading is occurring on the Exchange (for example, for indexes of Non-US Component Stocks because of time zone differences or holidays in the countries where such indexes' component stocks trade), then the last official calculated index

value must remain available throughout the Exchange's trading hours; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority 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.

(C) Disseminated Information. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated at least every 15 seconds, of the value of a share of each series (the "Intraday Indicative Value") during the Exchange's regular market session. The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value will be updated at least every 15 seconds during the Exchange's regular market session; to reflect changes in the exchange rate between the US dollar and the currency in which any component stock is denominated. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on the Exchange, then the last official calculated Intraday Indicative Value must remain available throughout the Exchange's trading hours.

(D) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at start-up of trading.

(E) Surveillance Procedures. FINRA will implement written surveillance procedures for Index Fund Shares.

(F) Creation and redemption. For Index Fund Shares listed pursuant to Equity 3A, Section 2(f)(3)(A)(ii) or (iii) above, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the series of Index Fund Shares must state that the series of Index Fund Shares 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.

(4) Fixed Income. Fixed Income Securities are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust

preferred securities, supranational debt and debt of a foreign country or subdivision thereof. The Exchange may approve a series of Index Fund Shares based on Fixed Income Securities for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided such portfolio or index: (i) has been reviewed and approved for the trading of options, Portfolio Depository Receipts, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and the rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied; or (ii) the following criteria are satisfied:

(A) Eligibility Criteria for Index Components. Upon the initial listing of Index Fund Shares pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, each component of an index or portfolio that underlies a series of Index Fund Shares shall meet the following criteria:

- (i) The index or portfolio must consist of Fixed Income Securities;
- (ii) Components that in aggregate account for at least 75% of the weight of the index or portfolio must have a minimum original principal amount outstanding of \$100 million or more;
- (iii) A component may be a convertible security, however, once the convertible security component converts to an underlying equity security, the component is removed from the index or portfolio;
- (iv) No component fixed-income security (excluding Treasury Securities) will represent more than 30% of the weight of the index or portfolio, and the five highest weighted component fixed-income securities do not in the aggregate account for more than 65% of the weight of the index or portfolio;
- (v) An underlying index or portfolio (excluding exempted securities) must include securities from a minimum of 13 non-affiliated issuers; and
- (vi) Component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either: (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Exchange Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (c) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; (d) exempted securities as defined in section 3(a)(12) of the Securities Exchange Act of 1934; or (e)

from issuers that are a government of a foreign country or a political subdivision of a foreign country.

(B) Index Methodology and Calculation.

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current index value will be widely disseminated by one or more major market data vendors at least once per day; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index 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.

(5) The Exchange may approve a series of Index Fund Shares based on a combination of indexes or an index or portfolio of component securities representing the U.S. equity market, the international equity market, and the fixed income market for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided:

(i) such portfolio or combination of indexes has been reviewed and approved for the trading of options, Portfolio Depository Receipts, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied; or (ii) each index or portfolio of equity and fixed income component securities separately meets either the criteria set forth in Equity 3A, Section 2(f)(3) or (4) above.

(A) Index Methodology and Calculation.

(i) If an index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current composite index value will be widely disseminated by one or more major market data vendors at least once every 15 seconds during regular market session, provided however, that (a) with respect to the Non-US Component Stocks of the combination index, the impact on the index is only required to be updated at least every 60 seconds during the regular market session, and (b) with respect to the fixed income components of the combination index the impact on the index is only required to be updated at least once each day; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on index 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.

(6) The following provisions shall apply to all series of Index Fund Shares listed pursuant Equity 3A, Section 2(f)(4) and (5) above:

(A) Disseminated Information. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated at least every 15 seconds, of the value of a share of each series (the "Intraday Indicative Value"). The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value may be calculated by the Exchange or by an independent third party throughout the day using prices obtained from independent market data providers or other independent pricing sources such as a broker-dealer or price evaluation services.

(B) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at start-up of trading.

(C) Surveillance Procedures. FINRA will implement written surveillance procedures for Index Fund Shares.

(7) Regular market session trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by the Exchange. In addition, the Exchange may designate each series of Index Fund Shares for trading during a pre-market session beginning at 7:00 a.m. and/or a post-market session ending at 7:00 p.m.

(8) The Exchange may list and trade Index Fund Shares based on one or more foreign or domestic indexes or portfolios. Each issue of Index Fund Shares based on each particular index or portfolio, or combination thereof, shall be designated as a separate series and shall be identified by a unique symbol. The components that are included in an index or portfolio on which a series of Index Fund Shares are based shall be selected by such person, which may be the Exchange or an agent or wholly-owned subsidiary thereof, as shall have authorized use of such index or portfolio. Such index or portfolio may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(9) Each series of Index Fund Shares will be listed and traded on the Exchange subject to application of the following criteria:

(A) Initial Listing —

(i) for each series, the Exchange will establish a minimum number of Index 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 Index Fund Shares that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.

(B) Continued Listing —

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

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

b. if the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available or the index or portfolio on which the series of Index Fund Shares is based is replaced with a new index or portfolio, unless the new index or portfolio meets the requirements of this Equity 3A, Section 2(f) for listing either pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 (including the filing of a Form 19b-4(e) with the Commission) or by Commission approval of a filing pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934; or

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

Upon termination of an open-end management investment company, the Exchange requires that Index Fund Shares issued in connection with such entity be removed from listing.

(C) Voting — voting rights shall be as set forth in the applicable open-end management investment company prospectus.

(10) 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

index or 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 Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares; net asset value; or other information relating to the purchase, redemption or trading of Index 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.

**(g) Trust Issued Receipts**

(1) Definition. The term "Trust Issued Receipt" means a security (a) that is issued by a trust ("Trust") which holds specified securities deposited with the Trust; (b) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.

(2) The Exchange requires that members provide to all purchasers of newly issued Trust Issued Receipts a prospectus for the series of Trust Issued Receipts.

(3) The eligibility requirements for component securities that are represented by a series of Trust Issued Receipts and that became part of the Trust Issued Receipt when the security was either: (a) distributed by a company already included as a component security in the series of Trust Issued Receipts; or (b) received in exchange for the securities of a company previously included as a component security that is no longer outstanding due to a merger, consolidation, corporate combination or other event, shall be as follows:

(A) the component security must be listed on the Exchange or another national securities exchange;

(B) the component security must be registered under Section 12 of the Act; and

(C) the component security must have a Standard & Poor's Sector Classification that is the same as the Standard & Poor's Sector Classification represented by the component securities included in the Trust Issued Receipt at the time of the distribution or exchange.

(4) Transactions in Trust Issued Receipts may be effected until 4:00 p.m. each business day.

(5) The Exchange may list and trade Trust Issued Receipts based on one or more securities. The Trust Issued Receipts based on particular securities shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Trust Issued Receipts shall be selected by the Exchange or its agent, an affiliate of the Exchange, or by such other person as shall have a proprietary interest in such Trust Issued Receipts.

(6) Trust Issued Receipts will be listed and traded on the Exchange subject to application of the following criteria:

(A) Initial Listing — for each Trust, the Exchange will establish a minimum number of Trust Issued Receipts required to be outstanding at the time of the commencement of trading on the Exchange.

(B) Continued Listing — following the initial twelve month period following formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in or removal from listing of a Trust upon which a series of Trust Issued Receipts is based under any of the following circumstances:

(i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days;

(ii) if the Trust has fewer than 50,000 receipts issued and outstanding;

(iii) if the market value of all receipts issued and outstanding is less than \$1 million; 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.

Upon termination of a Trust, the Exchange requires that Trust Issued Receipts issued in connection with such Trust be removed from listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(C) Term — the stated term of the Trust shall be as stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(D) Trustee — the following requirements apply:

(i) the trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

(ii) no change is to be made in the trustee of a listed issue without prior notice to and approval of the Exchange.

(E) Voting — voting rights shall be as set forth in the Trust prospectus.

(7) Unit of Trading — transactions in Trust Issued Receipts may only be made in round lots of 100 receipts or round lot multiples.

(8) The Exchange may approve a series of Trust Issued Receipts for listing and trading on the Exchange pursuant to Rule 19b-4(e) under the Act, provided each of the component securities satisfies the following criteria:

(A) each component security must be registered under Section 12 of the Act;

(B) each component security must have a minimum public float of at least \$150 million;

(C) each component security must be listed on the Exchange or another national securities exchange;

(D) each component security must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period;

(E) each component security must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least \$1 million; and

(F) the most heavily weighted component security may not initially represent more than 20% of the overall value of the Trust Issued Receipt.

**(h) 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 Equity 10, Section 8.

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 Securities Exchange Act of 1934 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 Securities Exchange Act of 1934, provided:

(1) Both the issue and the issuer of such security meet the criteria for other securities set forth in paragraph (f) of this rule, 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 issuer.

(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 issuer 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 issuer 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 issuer's other index-linked note offerings (combined with index-linked note offerings of the issuer's affiliates) listed on a national securities exchange 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) 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 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

(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 Depository 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 SEC Regulation NMS) 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 1934 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 (1) the generally accepted spot price for the currency exchange rate in question or (2) derived from a market 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—(i) 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. (ii) 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 (iii). (iii) 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). (iv) 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. (v) 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.

**(i) FINRA**

The Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions described in this Rule on behalf of the Exchange. Functions performed by FINRA, FINRA departments, and FINRA staff under Equity 3A, Section 2 are being performed by FINRA on behalf of the Exchange. Notwithstanding the fact that the Exchange has entered into the Regulatory Contract with FINRA to perform some of the Exchange's functions, the Exchange shall retain ultimate legal responsibility for, and control of, such functions.

**(j) Managed Fund Shares**

(1) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Fund Shares that meet the criteria of Equity 3A, Section 2(j).

(2) Applicability. Equity 3A, Section 2(j) is applicable only to Managed Fund Shares. Except to the extent inconsistent with Equity 3A, Section 2(j), 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 Equity Rules.

(A) The Exchange will file separate proposals under Section 19(b) of the Act before the listing of Managed Fund Shares. Trading of Managed Fund Shares on an unlisted trading privileges basis shall be governed by Equity 3A, Section 3.

(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) Nasdaq 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.

(iii) 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:

(a) 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;

(b) 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;

(c) 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

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

(iv) 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. If a series of Managed Fund Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading in that series as specified in Rules 4120 and 4121. 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.

(v) 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.

(vi) 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 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 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 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 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 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 under this rule.

Upon request of a customer, a member 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.

1 The two percent limit, based on 20 percent of the worldwide trading volume in the non-U.S. security or sponsored ADR, applies only if there is

a comprehensive surveillance sharing agreement in place with the primary exchange in the country where the security is primarily traded (in the case of an ADR, the primary exchange on which the security underlying the ADR is traded). If there is no such agreement, subparagraph (3) above requires that the combined trading volume of such security and other related securities occurring in the U.S. market represents (on a share equivalent basis for any ADRs) at least 50% of the combined world-wide trading volume in such security, other related securities, and other classes of common stock related to such security over the six month period preceding the date of listing.

### **Section 3. Derivative Securities Traded under Unlisted Trading Privileges**

(a) Any security that is a "new derivative securities product" as defined in Rule 19b-4(e) under the Exchange Act (a "UTP Derivative Security") and traded under unlisted trading privileges pursuant to Rule 19b-4(e) under the Act shall be subject to the additional following rules:

(1) Information Circular. The Exchange shall distribute an information circular prior to the commencement of trading in each such UTP Derivative Security that generally includes the same information as contained in the information circular provided by the listing exchange, including: (a) the special risks of trading the new derivative securities product; (b) the Rules of the Exchange that will apply to the new derivative securities product, including General 9, Section 10; (c) information about the dissemination of the value of the underlying assets or indexes; and (d) the applicable trading hours for the UTP Derivative Security and the risks of trading during the period from 7:00 a.m. to 9:30 a.m. and from 4:00 p.m. to 7:00 p.m. due to the lack of calculation or dissemination of the underlying index value, the Intra-Day Indicative Value (as defined in Equity 3A, Section 2), or a similar value.

(2) Product Description.

Members are subject to the prospectus delivery requirements under the Securities Act of 1933, unless the UTP Derivative Security is the subject of an order by the 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 Members of the application of the provisions of this subparagraph to UTP Derivative Securities by means of an information circular. The Exchange requires that Members provide all purchasers of UTP Derivative Securities 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, Members shall include a written description with any sales material relating to UTP Derivative Securities that is provided to customers or the public. Any other written materials provided by a Member to customers or the public making specific reference to the UTP Derivative Securities as an investment vehicle must include a statement substantially in the following form:

"A circular describing the terms and characteristics of [the UTP Derivative Securities] 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 [the UTP Derivative Securities]."

A Member carrying an omnibus account for a non-Member is required to inform such non-Member that execution of an order to purchase UTP Derivative Securities 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 Member under this Rule.

Upon request of a customer, a Member shall also provide a prospectus for the particular UTP Derivative Securities.

(3) Trading Halts. Trading halts of UTP Derivative Securities shall be governed by Equity Rule 4120.

(4) Limitations on Market Makers. Market makers in a UTP Derivative Security that is a Commodity-Related Security (as defined in Equity 10, Section 8) shall comply with Equity 10, Section 8.

(5) Surveillance. The Exchange shall enter into a comprehensive surveillance sharing agreement with markets trading components of the index or portfolio on which the UTP Derivative Security is based to the same extent as the listing exchange's rules require the listing exchange to enter into a comprehensive surveillance sharing agreement with such markets.

#### **Section 4. Additional Quantitative Maintenance Criteria**

After listing on the Exchange, certain securities must substantially meet the criteria set forth in the paragraphs below to continue to remain listed on the Exchange.

##### (a) Other Securities Listed Pursuant to Equity 3A, Section 2(c) and Linked Securities

(1) The aggregate market value or principal amount of publicly-held units (except Linked Securities that were listed pursuant to Equity 3A, Section 2(h)) 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 Equity Index-Linked

Security that was listed pursuant to paragraph (7)(B) of Equity 3A, Section 2(h) if any of the standards set forth in paragraph (7)(B) of 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 Equity Index-Linked Security that was listed pursuant to paragraph (7)(A) of Equity 3A, Section 2(h), delisting or removal proceedings will be commenced (unless the Commission has approved the continued trading of the subject 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 1934 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 Equity 3A, Section 2(h), 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 Equity 3A, Section 2(h) 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 Equity 3A, Section 2(h) (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 Equity 3A, Section 2(h)(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 Equity 3A, Section 2(h); 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.

#### (b) Rights and Warrants

The common stock of the issuer must continue to be listed on the Exchange.

#### (c) Bankruptcy and/or Liquidation

Should an issuer file under any of the sections of the Bankruptcy Act or announce that liquidation has been authorized by its board of directors and that it is committed to proceed, the Exchange may suspend or terminate the issuer's securities unless it is determined that the public interest and the protection of investors would be served by continued listing.

### **Equity 4 Equity Trading Rules[Limit Up-Limit Down]**

#### **4110. Use of the Exchange on a Test Basis**

Notwithstanding the listing standards set forth in the Rule 5000 Series within Equity 3 and Equity 3A, the Exchange may at any time authorize the use of its systems on a test basis for whatever studies it considers necessary and appropriate.

#### **4120. Limit Up-Limit Down Plan and Trading Halts**

##### (a) Authority to Initiate Trading Halts or Pauses

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

- (1) may halt trading on the Exchange of a security listed on the Exchange to permit the dissemination of material news; or
- (2) may halt trading on the Exchange of a security listed on another national securities exchange during a trading halt imposed by such exchange to permit the dissemination of material news; or
- (3) may halt trading on the Exchange: (A) in a security listed on another national securities exchange when such exchange imposes a trading halt in that security because of an order imbalance or influx ("operational trading halt"); or (B) by Equities Market Makers in a security listed on the Exchange, when the security is a derivative or component of a security listed on another national securities exchange and such exchange imposes an operational trading halt in that security. In the event that the Exchange halts trading, Exchange Participants may commence quotations and trading at any time following initiation of operational trading halts, without regard to procedures for resuming trading set forth in paragraph (c); or
- (4) may halt trading in an American Depository Receipt ("ADR") or other security listed on the Exchange, when the security listed on the Exchange or the security underlying the ADR is listed on or registered with another national or foreign securities exchange or market, and the national or foreign securities exchange or market, or regulatory authority overseeing such exchange or market, halts trading in such security for regulatory reasons; or
- (5) may halt trading in a security listed on the Exchange when the Exchange requests from the issuer information relating to:
- (A) material news;
  - (B) the issuer's ability to meet Exchange listing qualification requirements, as set forth in the Rule 5000 Series; or
  - (C) any other information which is necessary to protect investors and the public interest.
- (6) may halt trading in a security listed on the Exchange when
- (A) extraordinary market activity in the security is occurring, such as the execution of a series of transactions for a significant dollar value at prices substantially unrelated to the current market for the security, as measured by the national best bid and offer, and
  - (B) the Exchange determines that such extraordinary market activity is likely to have a material effect on the market for the security; and
  - (C)

(i) the Exchange believes that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, the Exchange;

(ii) After consultation with another national securities exchange trading the security on an unlisted trading privileges basis, the Exchange believes that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, such other national securities exchange; or

(iii) After consultation with FINRA regarding a FINRA facility trading the security, the Exchange believes that such extraordinary market activity is caused by the misuse or malfunction of such FINRA facility or an electronic quotation, communication, reporting, or execution system linked to such FINRA facility.

(7) Reserved

(8) may halt trading in an index warrant on the Exchange whenever the Regulation Department 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.

(9) may halt trading in a series of Portfolio Depository Receipts, Index Fund Shares, or Managed Fund Shares (as defined in Equity 3A, Section 2) listed on the Exchange if the Intraday Indicative Value (as defined in Equity 3A, Section 2) or the index value applicable to that series is not being disseminated as required, during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. If the interruption to the dissemination of the Intraday Indicative Value or the index 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. The Exchange may also exercise discretion to halt trading in a series of Portfolio Depository Receipts, Index Fund Shares, or Managed Fund Shares based on a consideration of the following factors: (A) trading in underlying securities comprising the index applicable to that series has been halted in the primary market(s), (B) the extent to which

trading has ceased in securities underlying the index, or (C) the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.

(10) shall halt trading in Derivative Securities Products (as defined in Rule 4120(b)(4)(A)) for which a net asset value ("NAV") (and in the case of Managed Fund Shares under Equity 3A, Section 2(j), a Disclosed Portfolio) is disseminated if the Exchange becomes aware that the NAV (or in the case of Managed Fund Shares, 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 the Exchange becomes aware that the NAV (or in the case of Managed Fund Shares, the Disclosed Portfolio, as applicable) is available to all market participants or, in the case of Derivative Securities Products traded on the Exchange pursuant to unlisted trading privileges, until such time trading resumes in the listing market.

(11) If a primary listing market issues an individual stock trading pause in any of the Circuit Breaker Securities, as defined in Rule 4120, 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 subparagraph shall be in effect during a pilot set to end on February 4, 2014. During the pilot, the term "Circuit Breaker Securities" shall mean all NMS stocks other than NMS stocks subject to the Regulation NMS Plan to Address Extraordinary Market Volatility.

(12) shall halt trading on the Exchange in a security listed on the Exchange if the security fails to comply with Rule 5550(d).

(13) Limit Up-Limit Down Mechanism.

(A) Definitions.

(1) "Plan" means the Plan to Address Extraordinary Market Volatility Submitted to the Securities and Exchange Commission Pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934, Exhibit A to Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

(2) All capitalized terms not otherwise defined in this Rule shall have the meanings set forth in the Plan or Exchange rules, as applicable.

(B) Exchange Participation in the Plan. The Exchange is a Participant in, and subject to the applicable requirements of, the Plan, which establishes procedures to address extraordinary volatility in NMS Stocks.

(C) Member Organization Compliance. Member organizations shall comply with the applicable provisions of the Plan.

(D) Exchange Compliance with the Plan. Exchange systems shall not display or execute buy (sell) interest above (below) the Upper (Lower) Price Bands, unless such interest is specifically exempted under the Plan.

(E) Repricing and Cancellation of Interest. Exchange systems shall reprice and/or cancel buy (sell) interest that is priced or could be executed above (below) the Upper (Lower) Price Band. Any interest that is repriced pursuant to this Rule shall receive a new time stamp and new execution priority.

(1) Market Orders. If a market order with a time in force other than Immediate or Cancel cannot be fully executed at or within the Price Bands, Exchange systems shall post the unexecuted portion of the buy (sell) market order at the Upper (Lower) Price Band.

(2) Limit-priced Interest. Both displayable and non-displayable incoming limit-priced interest to buy (sell) that is priced above (below) the Upper (Lower) Price Band shall be repriced to the Upper (Lower) Price Band.

(a) For limit-priced orders entered via the OUCH protocol, the order shall be repriced upon entry only if the Price Bands are such that the price of the limit-priced interest to buy (sell) would be above (below) the upper (lower) Price Band. Once slid:

(i) if the Price Bands move such that the price of the order to buy (sell) would be below (above) the lower (upper) Price Band, the order will not be re-priced again. Rather, the order will either remain on the book at the same price or be cancelled back to the entering party, depending on how the entering party has configured its order entry port.

(ii) if the Price Bands move such that the price of the order to buy (sell) would be above (below) the upper (lower) Price Band, the order will not be re-priced again. Rather, the order will be cancelled.

(b) For limit-priced orders entered via RASH or FIX protocols, the order shall be eligible to be repriced by the system multiple times if the Price Bands move such that the price of resting limit-priced interest to buy (sell) would be above (below) the upper (lower) Price Band. Once slid, if the Price Bands again move such that the price of resting limit interest to buy (sell) would be below (above) the upper (lower) Price Band the order will continue to be repriced either to its original limit price or to the new price bands, whichever is less aggressive.

(3) IOC Orders. If an IOC order cannot be fully executed at or within the Price Bands, Exchange systems shall cancel any unexecuted portion of the IOC Order.

(4) Routable Orders. Exchange systems shall not route buy (sell) interest to an away market displaying a sell (buy) quote that is above (below) the Upper (Lower) Price Band. Orders that are eligible to be routed to away destinations will be price slid before routing if the buy (sell) is priced above (below) the Upper (Lower) Price Band.

(5) Auction Orders. On close or halt auction orders are not price slid or cancelled due to LULD price bands.

(6) Sell Short Orders. During a Short Sale Price Test, as defined in Rule 4763(b), Short Sale Orders priced below the Lower Price Band shall be repriced to the higher of the Lower Price Band or the Permitted Price, as defined in Rule 4763(b).

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

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

(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, the Exchange 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, the Exchange 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, the Exchange 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 Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares, or Trust Issued Receipts (as defined in Equity 3A, Section 2), a series of Commodity-Related Securities (as defined in Equity 10, Section 8), securities representing interests in unit investment trusts or investment companies, or any other UTP Derivative Security (as defined in Equity 3A, Section 3).

(B) "Pre-Market Session" means the trading session that begins at 7:00 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 7:00 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 Security 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 and Terminating a Trading Halt

(1) Issuers of securities listed on the Exchange are required to notify the Exchange of the release of certain material news prior to the release of such information to the public as required by Rule 5250(b)(1).

(2) Except in emergency situations, notification shall be provided directly to the Exchange's MarketWatch Department through the Exchange's electronic disclosure submission system available at a website designated by the Exchange for that purpose. In emergency situations, issuers shall instead provide notification by telephone or facsimile.

(3) Upon receipt of information, from the issuer or other source, the Exchange will promptly evaluate the information, estimate its potential impact on the market and determine whether a trading halt in the security is appropriate.

(4)(A) Should the Exchange determine that a basis exists under Rule 4120(a) 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 website of the Exchange. In addition, the Exchange shall disseminate notice of the commencement of a trading halt through major wire services.

(B) During any trading halt or pause, orders entered during the trading halt or pause will not be accepted.

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

(6)

(A) In the case of a trading halt under Rule 4120(a)(6) based on the misuse or malfunction of an electronic quotation, communication, reporting, or execution system that is not operated by the Exchange, the Exchange will promptly contact the operator of the system in question (as well as any national securities exchange or FINRA facility to which such system is linked) to ascertain information that will assist the Exchange in determining whether a misuse or malfunction has occurred, what effect the misuse or malfunction is having on trading in a security, and what steps are being taken to address the misuse or malfunction. If the operator of the system is unavailable when contacted by the Exchange, the Exchange will continue efforts to contact the operator of the system to ascertain information that will assist the Exchange in determining whether the trading halt should be terminated.

(B) A trading halt initiated under Rule 4120(a)(6) shall be terminated as soon as the Exchange determines either that the system misuse or malfunction that caused the extraordinary market activity will no longer have a material effect on the market for the security or that system misuse or malfunction is not the cause of the extraordinary market activity.

(7)

(A) A trading halt initiated under Rule 4120(a)(1), (4), (5), (6), (9), (10) or (11) or Rule 4120(b) shall be terminated when the Exchange releases the security for trading, at a time announced to market participants in advance by the Exchange.

The provisions of paragraph (a)(11) of this Rule shall be in effect during a pilot set to end on the earlier of the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility or February 4, 2014. During the pilot, the term "Circuit Breaker Securities" shall mean all NMS stocks except rights and warrants.

#### **4121. Trading Halts Due to Extraordinary Market Volatility**

This Rule shall be in effect during a pilot period that expires at the close of business on October 18, 2021. If the pilot is not either extended or approved permanently at the end of the pilot period, the prior version of Rule 4121 shall be in effect.

(a) The Exchange shall halt trading in all stocks and shall not reopen for the time periods specified in this Rule if there is a Level 1, 2, or 3 Market Decline.

(i) For purposes of this Rule, a Market Decline means a decline in price of the S&P 500® Index between 9:30 a.m. EST and 4:00 p.m. EST on a trading day as compared to the closing price of the S&P 500® Index for the immediately preceding trading day. The Level 1, Level 2, and Level 3 Market Declines that will be applicable for the trading day will be publicly disseminated before 9:30 a.m. EST.

(ii) A "Level 1 Market Decline" means a Market Decline of 7%.

(iii) A "Level 2 Market Decline" means a Market Decline of 13%.

(iv) A "Level 3 Market Decline" means a Market Decline of 20%.

(b) Halts in Trading.

(i) If a Level 1 Market Decline or a Level 2 Market Decline occurs after 9:30 a.m. EST and up to and including 3:25 p.m. EST or in the case of an early scheduled close, 12:25 p.m. EST the Exchange shall halt trading in all stocks for 15 minutes after a Level 1 or Level 2 Market Decline. The Exchange shall halt trading based on a Level 1 or Level 2 Market Decline only once per trading day. The Exchange will not halt trading if a Level 1 Market Decline or a Level 2 Market Decline occurs after 3:25 p.m. EST or in the case of an early scheduled close, 12:25 p.m. EST.

(ii) If a Level 3 Market Decline occurs at any time during the trading day, the Exchange shall halt trading in all stocks for the remainder of the trading day.

(c) Re-opening of Trading

(i) The re-opening of trading following a Level 1 or 2 trading halt shall follow the procedures set forth in Rule 4120.

(ii) If the primary listing market halts trading in all stocks, the Exchange will halt trading in those stocks until trading has resumed on the primary listing market or notice has been received from the primary listing market that trading may resume.

If the primary listing market does not reopen a security within 15 minutes following the end of the 15-minute halt period, the Exchange may resume trading in that security.

(d) Nothing in this Rule 4121 should be construed to limit the ability of the Exchange to otherwise halt, suspend, or pause the trading in any stock or stocks traded on the Exchange pursuant to any other Exchange rule or policy.

#### **4702. Order Types.**

(a) Participants may express their trading interest in the Nasdaq BX Equities Market by entering Orders. The Nasdaq BX Equities Market offers a range of Order Types that behave in the manner specified for each particular Order Type. Each Order Type may be assigned certain Order Attributes that further define its behavior. All Order Types and Order Attributes operate in a manner that is reasonably designed to comply with the requirements of Rules 610 and 611 under Regulation NMS. Each Order must designate whether it is to effect a buy, a long sale, a short sale, or an exempt short sale.

The Exchange maintains several communications protocols for Participants to use in entering Orders and sending other messages to the System:

- OUCH is an Exchange proprietary protocol.
- RASH is an Exchange proprietary protocol.
- FLITE is an Exchange proprietary protocol.
- FIX is a non-proprietary protocol.

Except where otherwise stated, all protocols are available for all Order Types and Order Attributes.

Upon entry, an Order is processed to determine whether it may execute against any contra-side Orders on the Exchange Book in accordance with the parameters applicable to the Order Type and Order Attributes selected by the Participant and in accordance with the priority for Orders on the Exchange Book provided in Rule 4757. In addition, the Order may have its price adjusted in accordance with applicable parameters and may be routed to other market centers for potential execution if designated as Routable. The Order may then be posted to the Exchange Book if consistent with the parameters of the Order Type and Order Attributes selected by the Participant. Thereafter, as detailed in Rules 4702, 4703, and 4758, there are numerous circumstances in which the Order on the Exchange Book may be modified and receive a new timestamp. The sole instances in which the modification of an Order on the Exchange Book will not result in a new timestamp are: (i) a decrease in the size of the Order due to execution or modification by the Participant or by the System, and (ii) a redesignation of a sell Order as a long sale, a short sale, or an exempt short sale. Whenever an Order receives a new timestamp for any reason, it is processed by the System as a new Order with respect to potential execution against Orders on the Exchange Book, price adjustment, routing, reposting to the

Exchange Book, and subsequent execution against incoming Orders, except where otherwise stated.

All Orders are also subject to cancellation and/or repricing and reentry onto the Exchange Book in the circumstances described in Rule 4120(a)(13) (providing for compliance with Plan to Address Extraordinary Market Volatility) and Rule 4763 (providing for compliance with Regulation SHO). In all circumstances where an Order is repriced pursuant to those provisions, it is processed by the System as a new Order with respect to potential execution against Orders on the Exchange Book, price adjustment, routing, reposting to the Exchange Book, and subsequent execution against incoming Orders. If multiple Orders at a given price are repriced, the Order in which they are reentered is random, based on the respective processing time for each such Order; provided, however, that in the case of Price to Comply Orders and Post-Only Orders that have their prices adjusted upon entry because they lock a Protected Quotation but that are subsequently displayed at their original entered limit price as provided in Rules 4702(b)(1)(B) and (4)(B), they are processed in accordance with the time priority under which they were previously ranked on the Exchange Book.

(b) Except where stated otherwise, the following Order Types are available to all Participants:

(1) (A) A "Price to Comply Order" is an Order Type designed to comply with Rule 610(d) under Regulation NMS by avoiding the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours. The Price to Comply Order is also designed to provide potential price improvement.

When a Price to Comply Order is entered, the Price to Comply Order will be executed against previously posted Orders on the Exchange Book that are priced equal to or better than the price of the Price to Comply Order, up to the full amount of such previously posted Orders, unless such executions would trade through a Protected Quotation. Any portion of the Order that cannot be executed in this manner will be posted on the Exchange Book (and/or routed if it has been designated as Routable).

During Market Hours, the price at which a Price to Comply Order is posted is determined in the following manner. If the entered limit price of the Price to Comply Order would lock or cross a Protected Quotation and the Price to Comply Order could not execute against an Order on the Exchange Book at a price equal to or better than the price of the Protected Quotation, the Price to Comply Order will be displayed on the Exchange Book at a price one minimum price increment lower than the current Best Offer (for a Price to Comply Order to buy) or higher than the current Best Bid (for a Price to Comply Order to sell) but will also be ranked on the Exchange Book with a non-displayed price equal to the current Best Offer (for a Price to Comply Order to buy) or to the current Best Bid (for a Price

to Comply Order to sell). For example, if a Price to Comply Order to buy at \$11 would lock a Protected Offer of \$11, the Price to Comply Order will be ranked at a non-displayed price of \$11 but will be displayed at \$10.99. An incoming Order to sell at a price of \$11 or lower would execute against the Price to Comply Order at \$11 (unless the incoming Order was an Order Type that was not immediately executable, in which case the incoming Order would behave in the manner specified for that Order Type).

During Pre-Market Hours and Post-Market Hours, a Price to Comply Order will be ranked and displayed at its entered limit price without adjustment.

(B) If a Price to Comply Order is entered through RASH or FIX, during Market Hours the price of the Price to Comply Order will be adjusted in the following manner after initial entry and posting to the Exchange Book (unless the Order is assigned a Routing Order Attribute that would cause it to be routed to another market center rather than remaining on the Exchange Book):

- If the entered limit price of the Price to Comply Order locked or crossed a Protected Quotation and the NBBO changes, the displayed and non-displayed price of the Price to Comply Order will be adjusted repeatedly in accordance with changes to the NBBO; provided, however, that if the quotation of another market center moves in a manner that would lock or cross the displayed price of a Price to Comply Order, the prices of the Price to Comply Order will not be adjusted. For example, if a Price to Comply Order to buy at \$11.02 would cross a Protected Offer of \$11, the Order will be ranked at a non-displayed price of \$11 but will be displayed at \$10.99. If the Best Offer then moves to \$11.01, the displayed price will be changed to \$11 and the Order will be ranked at a non-displayed price of \$11.01. However, if another market center then displays an offer of \$11 (thereby locking the previously displayed price of the Price to Comply Order, notwithstanding Rule 610(d) under Regulation NMS), the price of the Price to Comply Order will not be changed. The Order may be repriced repeatedly until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price (\$11.02 in the example). The Price to Comply Order receives a new timestamp each time its price is changed.

- If the original entered limit price of the Price to Comply Order would no longer lock or cross a Protected Quotation, the Price to Comply Order will be ranked and displayed at that price and will receive a new timestamp, and will not thereafter be adjusted under this paragraph (B).

If a Price to Comply Order is entered through OUCH or FLITE, during Market Hours the price of the Price to Comply Order may be adjusted in the following manner after initial entry and posting to the Exchange Book:

- If the entered limit price of the Price to Comply Order crossed a Protected Quotation and the NBBO changes so that the Price to Comply Order could be

displayed at a price at or closer to its entered limit price without locking or crossing a Protected Quotation, the Price to Comply Order may either remain on the Exchange Book unchanged or may be cancelled back to the Participant, depending on its choice. For example, if a Price to Comply Order to buy at \$11.02 would cross a Protected Offer of \$11, the Order will be ranked at a non-displayed price of \$11 but will be displayed at \$10.99. If the Best Offer changes to \$11.01, the Order will not be repriced, but rather will either remain with a displayed price of \$10.99 but ranked at a non-displayed price of \$11 or be cancelled back to the Participant, depending on its choice. A Participant's choice with regard to maintaining the Price to Comply Order or cancelling it is set in advance for each port through which the Participant enters Orders.

• If the entered limit price of the Price to Comply Order locked a Protected Quotation, the price of the Price to Comply Order will be adjusted after initial entry only as follows. If the entered limit price would no longer lock a Protected Quotation, the Price to Comply Order may either remain on the Exchange Book unchanged, may be cancelled back to the Participant, or may be ranked and displayed at its original entered limit price, depending on the Participant's choice. For example, if a Price to Comply Order to buy at \$11 would lock a Protected Offer of \$11, the Price to Comply Order will be ranked at a non-displayed price of \$11 but will be displayed at \$10.99. If the Best Offer changes to \$11.01, the Price to Comply Order may either remain with a displayed price of \$10.99 but ranked at a non-displayed price of \$11, be cancelled back to the Participant, or be ranked and displayed at \$11, depending on the Participant's choice. A Participant's choice with regard to maintaining the Price to Comply Order, cancelling it, or allowing it to be displayed is set in advance for each port through which the Participant enters Orders. If the Price to Comply Order is ranked and displayed at its original entered limit price, it will receive a new timestamp, and will not thereafter be adjusted under this paragraph (B).

(C) The following Order Attributes may be assigned to a Price to Comply Order:

• Price. As described above, the price of the Order may be adjusted to avoid locking or crossing a Protected Quotation, and may include a displayed price as well as a non-displayed price.

• Size.

• Reserve Size (available through RASH and FIX only).

• A Time-in-Force other than IOC. (A Price to Comply Order entered with a Time-in-Force of IOC would be processed as a Non-Displayed Order with a Time-in-Force of IOC).

• Designation as an ISO. In accordance with Regulation NMS, a Price to Comply Order designated as an ISO would be processed at its entered limit price, since

such a designation reflects a representation by the Participant that it has simultaneously routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Price to Comply Order would lock or cross.

- Routing (available through RASH and FIX only).
- Primary Pegging and Market Pegging (available through RASH and FIX only).
- Discretion (available through RASH and FIX only).
- Display. A Price to Comply Order is always displayed, although as provided above, may also have a non-displayed price and/or Reserve Size.
- Trade Now (available through OUCH, RASH, FLITE and FIX).

(2) (A) A "Price to Display Order" is an Order Type designed to comply with Rule 610(d) under Regulation NMS by avoiding the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours. Price to Display Orders are available solely to Participants that are Market Makers.

When a Price to Display Order is entered, if its entered limit price would lock or cross a Protected Quotation, the Price to Display Order will be repriced to one minimum price increment lower than the current Best Offer (for a Price to Display Order to buy) or higher than the current Best Bid (for a Price to Display Order to sell). For example, if a Price to Display Order to buy at \$11 would cross a Protected Offer of \$10.99, the Price to Display Order will be repriced to \$10.98. The Price to Display Order (whether repriced or not repriced) will then be executed against previously posted Orders on the Exchange Book that are priced equal to or better than the adjusted price of the Price to Display Order, up to the full amount of such previously posted Orders, unless such executions would trade through a Protected Quotation. Any portion of the Order that cannot be executed in this manner will be posted on the Exchange Book (and/or routed if it has been designated as Routable).

During Market Hours, the price at which a Price to Display Order is displayed and ranked on the Exchange Book will be its entered limit price if the Price to Display Order was not repriced upon entry, or the adjusted price if the Price to Display Order was repriced upon entry, such that the price will not lock or cross a Protected Quotation.

During Pre-Market Hours and Post-Market Hours, a Price to Display Order will be displayed and ranked at its entered limit price without adjustment.

(B) If a Price to Display Order is entered through RASH or FIX, during Market Hours the Price to Display Order may be adjusted in the following manner after initial entry and posting to the Exchange Book (unless the Order is assigned a

Routing Order Attribute that would cause it to be routed to another market center rather than remaining on the Exchange Book):

• If the entered limit price of the Price to Display Order locked or crossed a Protected Quotation and the NBBO changes, the price of the Order will be adjusted repeatedly in accordance with changes to the NBBO; provided, however, that if the quotation of another market center moves in a manner that would lock or cross the price of a Price to Display Order, the price of the Price to Display Order will not be adjusted. For example, if a Price to Display Order to buy at \$11.02 would cross a Protected Offer of \$11, the Order will be displayed and ranked at \$10.99. If the Best Offer then moves to \$11.01, the displayed/ranked price will be changed to \$11. However, if another market center then displays an offer of \$11 (thereby locking the previously displayed price of the Price to Display Order, notwithstanding Rule 610(d) under Regulation NMS), the price of the Price to Display Order will not be changed. The Order may be repriced repeatedly until such time as the Price to Display Order is able to be displayed and ranked at its original entered limit price (\$11.02 in the example). The Price to Display Order receives a new timestamp each time its price is changed.

• If the original entered limit price of the Price to Display Order would no longer lock or cross a Protected Quotation, the Price to Display Order will be displayed and ranked at that price and will receive a new timestamp, and will not thereafter be adjusted under this paragraph (B).

If a Price to Display Order is entered through OUCH or FLITE, during Market Hours the Price to Display Order may be adjusted in the following manner after initial entry and posting to the Exchange Book:

• If the entered limit price of the Price to Display Order locked or crossed a Protected Quotation and the NBBO changes so that the Price to Display Order could be ranked and displayed at a price at or closer to its original entered limit price without locking or crossing a Protected Quotation, the Price to Display Order may either remain on the Exchange Book unchanged or may be cancelled back to the Participant, depending on the Participant's choice. For example, if a Price to Display Order to buy at \$11.02 would cross a Protected Offer of \$11, the Order will be ranked and displayed at \$10.99. If the Best Offer changes to \$11.01, the Price to Display Order will not be repriced, but rather will either remain at its current price or be cancelled back to the Participant, depending on its choice. A Participant's choice with regard to maintaining the Price to Display Order or cancelling it is set in advance for each port through which the Participant enters Orders.

(C) The following Order Attributes may be assigned to a Price to Display Order:

• Price. As described above, the price of the Order may be adjusted to avoid locking or crossing a Protected Quotation.

- Size.
- Reserve Size (available through RASH and FIX only).
- A Time-in-Force other than IOC. (A Price to Display Order entered with a Time-in-Force of IOC would be processed as a Non-Displayed Order with a Time-in-Force of IOC).
- Designation as an ISO. In accordance with Regulation NMS, a Price to Display Order designated as an ISO would be processed at its entered limit price, since such a designation reflects a representation by the Participant that it has simultaneously routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Price to Display Order would lock or cross.
- Routing (available through RASH and FIX only).
- Primary Pegging and Market Pegging (available through RASH and FIX only).
- Discretion (available through RASH and FIX only).
- Attribution. All Price to Display Orders are Attributable Orders.
- Display. A Price to Display Order is always displayed (but may also have Reserve Size).

(3) (A) A "Non-Displayed Order" is an Order Type that is not displayed to other Participants, but nevertheless remains available for potential execution against incoming Orders until executed in full or cancelled. In addition to the Non-Displayed Order Type, there are other Order Types that are not displayed on the Exchange Book. Thus, "Non- Display" is both a specific Order Type and an Order Attribute of certain other Order Types.

When a Non-Displayed Order is entered, the Non-Displayed Order will be executed against previously posted Orders on the Exchange Book that are priced equal to or better than the price of the Non-Displayed Order, up to the full amount of such previously posted Orders, unless such executions would trade through a Protected Quotation. Any portion of the Non-Displayed Order that cannot be executed in this manner will be posted to the Exchange Book (unless the Non-Displayed Order has a Time-in-Force of IOC) and/or routed if it has been designated as Routable.

During Market Hours, the price at which a Non-Displayed Order is posted is determined in the following manner. If the entered limit price of the Non-Displayed Order would lock a Protected Quotation, the Non-Displayed Order will be placed on the Exchange Book at the locking price. If the Non-Displayed Order would cross a Protected Quotation, the Non-Displayed Order will be repriced to a price that would lock the Protected Quotation and will be placed on the Exchange

Book at that price. For example, if a Non-Displayed Order to buy at \$11 would cross a Protected Offer of \$10.99, the Non-Displayed Order will be repriced and posted at \$10.99. A Non-Displayed Order to buy at \$10.99 would also be posted at \$10.99.

During Pre-Market Hours and Post-Market Hours, a Non-Displayed Order will be posted at its entered limit price without adjustment.

(B) If a Non-Displayed Order is entered through RASH or FIX, during Market Hours the Non-Displayed Order may be adjusted in the following manner after initial entry and posting to the Exchange Book (unless the Order is assigned a Routing Order Attribute that would cause it to be routed to another market center rather than remaining on the Exchange Book):

- If the original entered limit price of a Non-Displayed Order is higher than the Best Offer (for an Order to buy) or lower than the Best Bid (for an Order to sell) and the NBBO moves toward the original entered limit price of the Non-Displayed Order, the price of the Non-Displayed Order will be adjusted repeatedly in accordance with changes to the NBBO. For example, if a Non-Displayed Order to buy at \$11.02 would cross a Protected Offer of \$11, the Non-Displayed Order will be priced and posted at \$11. If the Best Offer then changes to \$11.01, the price of the Non-Displayed Order will be changed to \$11.01. The Order may be repriced repeatedly in this manner, receiving a new timestamp each time its price is changed, until the Non-Displayed Order is posted at its original entered limit price. The Non-Displayed Order will not thereafter be repriced under this paragraph (B), except as provided below with respect to crossing a Protected Quotation.

- If, after being posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would cross a Protected Quotation, the Non-Displayed Order will be repriced at a price that would lock the new NBBO and receive a new timestamp. For example, if a Non-Displayed Order to buy at \$11 would lock a Protected Offer of \$11, the Non-Displayed Order will be posted at \$11. If the Best Offer then changes to \$10.99, the Non-Displayed Order will be repriced at \$10.99, receiving a new timestamp. The Non-Displayed Order may be repriced and receive a new timestamp repeatedly.

If a Non-Displayed Order is entered through OUCH or FLITE, during Market Hours the Non-Displayed Order may be adjusted in the following manner after initial entry and posting to the Exchange Book:

- If the original entered limit price of the Non-Displayed Order locked or crossed a Protected Quotation and the NBBO changes so that the Non-Displayed Order could be posted at a price at or closer to its original entered limit price without crossing a Protected Quotation, the Non-Displayed Order may either remain on the Exchange Book unchanged or may be cancelled back to the Participant,

depending on its choice. For example, if a Non-Displayed Order to buy at \$11.02 would cross a Protected Offer of \$11, the Order will be priced at \$11. If the Best Offer changes to \$11.01, the Order will not be repriced, but rather will either remain at its current \$11 price or be cancelled back to the Participant, depending on its choice. A Participant's choice with regard to maintaining the Non-Displayed Order or cancelling it is set in advance for each port through which the Participant enters Orders.

• If, after a Non-Displayed Order is posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would cross a Protected Quotation, the Non-Displayed Order will be cancelled back to the Participant. For example, if a Non-Displayed Order to buy at \$11 would lock a Protected Offer of \$11, the Non-Displayed Order will be posted at \$11. If the Best Offer then changes to \$10.99, the Non-Displayed Order will be cancelled back to the Participant.

(C) The following Order Attributes may be assigned to a Non-Displayed Order:

• Price. As described above, the price of the Order may be adjusted to avoid crossing a Protected Quotation.

• Size.

• Minimum Quantity.

• Time-in-Force.

• Designation as an ISO. In accordance with Regulation NMS, a Non-Displayed Order designated as an ISO would be processed at its entered limit price, since such a designation reflects a representation by the Participant that it has simultaneously routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Non-Displayed Order would cross. As discussed above, a Non-Displayed Order would be accepted at a price that locked a Protected Quotation, even if the Order was not designated as an ISO, because the non-displayed nature of the Order allows it to lock a Protected Quotation under Regulation NMS. Accordingly, the System would not interpret receipt of a Non-Displayed Order marked ISO that locked a Protected Quotation as the basis for determining that the Protected Quotation had been executed for purposes of accepting additional Orders at that price level.

• Routing (available through RASH and FIX only).

• Primary Pegging and Market Pegging (available through RASH and FIX only).

• Pegging to the Midpoint (see Rule 4703(d) with respect to differences between OUCH and FLITE and RASH and FIX).

• Discretion (available through RASH and FIX only).

• Trade Now (available through OUCH, RASH, FLITE and FIX).

(4) (A) A "Post-Only Order" is an Order Type designed to have its price adjusted as needed to post to the Exchange Book in compliance with Rule 610(d) under Regulation NMS by avoiding the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours, or to execute against locking or crossing quotations in circumstances where economically beneficial to the Participant entering the Post-Only Order.

During Market Hours, a Post-Only Order is evaluated at the time of entry with respect to locking or crossing other Orders on the Exchange Book, Protected Quotations, and potential execution as follows:

- If a Post-Only Order would lock or cross a Protected Quotation, the price of the Order will first be adjusted. If the Order is Attributable, its adjusted price will be one minimum price increment lower than the current Best Offer (for bids) or higher than the current Best Bid (for offers). If the Order is not Attributable, its adjusted price will be equal to the current Best Offer (for bids) or the current Best Bid (for offers). However, the Order will not post or execute until the Order, as adjusted, is evaluated with respect to Orders on the Exchange Book.

— If the adjusted price of the Post-Only Order would not lock or cross an Order on the Exchange Book, the Order will be posted in the same manner as a Price to Comply Order (if it is not Attributable) or a Price to Display Order (if it is Attributable). Specifically, if the Post-Only Order is not Attributable, it will be displayed on the Exchange Book at a price one minimum price increment lower than the current Best Offer (for bids) or higher than the current Best Bid (for offers) but will be ranked on the Exchange Book with a non-displayed price equal to the current Best Offer (for bids) or to the current Best Bid (for offers). For example, if a Post-Only Order to buy at \$11 would lock a Protected Offer of \$11, the Order will be ranked at a non-displayed price of \$11 but will be displayed at \$10.99. If the Post-Only Order is Attributable, it will be ranked and displayed on the Exchange Book at a price one minimum increment lower than the current Best Offer (for bids) or higher than the current Best Bid (for offers). Thus, in the preceding example, the Post-Only Order to buy would be ranked and displayed at \$10.99.

— If the adjusted price of the Post-Only Order would lock or cross a displayed Order at its displayed price on the Exchange Book, the Post Only Order will be repriced, ranked, and displayed at one minimum price increment below the current best-priced displayed Order to sell on the Exchange Book (for bids) or above the current best-priced displayed Order to buy on the Exchange Book (for offers); provided, however, the Post-Only Order will execute if (i) it is priced at \$1.00 or more, or (ii) it is priced below \$1.00 and the value of price improvement associated with executing against an Order on the Exchange Book (as measured against the original limit price of the Order) equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if

the Order posted to the Exchange Book and subsequently provided liquidity. For example, if a Participant entered a Non-Attributable Post-Only Order to buy at \$11.01, another market center is displaying a Protected Offer at \$11, and there is an Order on the Exchange Book to sell at \$11, the adjusted price of the Post-Only Order will be \$11. However, because the Post-Only Order would be executable against the Order on the Exchange Book, the Post-Only Order would execute.

— If the adjusted price of the Post-Only Order would lock or cross a nondisplayed price on the Exchange Book, the Post-Only Order will be posted in the same manner as a Price to Comply Order; provided, however, the Post-Only Order will execute if (i) it is priced at \$1.00 or more, or (ii) it is priced below \$1.00 and the value of price improvement associated with executing against an Order on the Exchange Book (as measured against the original limit price of the Order) equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the Order posted to the Exchange Book and subsequently provided liquidity. For example, if a Participant entered a Non-Attributable Post-Only Order to buy at \$11.01, another market center is displaying a Protected Offer at \$11, and there is a Non-Displayed Order on the Exchange Book to sell at \$11, the adjusted price of the Post-Only Order will be \$11. However, because the Post-Only Order would be executable against the Non-Displayed Order on the Exchange Book, the Post-Only Order would execute.

• If the Post-Only Order would not lock or cross a Protected Quotation but would lock or cross a displayed Order at its displayed price on the Exchange Book, the Post Only Order will be repriced, ranked, and displayed at one minimum price increment below the current best-priced Order to sell on the Exchange Book (for bids) or above the current best-priced Order to buy on the Exchange Book (for offers); provided, however, the Post-Only Order will execute if (i) it is priced at \$1.00 or more, or (ii) it is priced below \$1.00 and the value of price improvement associated with executing against an Order on the Exchange Book (as measured against the original limit price of the Order) equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the Order posted to the Exchange Book and subsequently provided liquidity. For example, if a Participant entered a Post-Only Order to buy at \$11.02, the Best Offer on an away exchange was \$11.04, and there was a Displayed Order on the Exchange Book to sell at \$11.02, the Post-Only Order would execute.

• If the Post-Only Order would not lock or cross a Protected Quotation but would lock or cross a non-displayed Order on the Exchange Book, the Post- Only Order will be posted, ranked, and displayed at its limit price; provided, however, the Post- Only Order will execute if (i) it is priced at \$1.00 or more, or (ii) it is priced below \$1.00 and the value of price improvement associated with executing against an Order on the Exchange Book equals or exceeds the sum of fees charged

for such execution and the value of any rebate that would be provided if the Order posted to the Exchange Book and subsequently provided liquidity. For example, if a Participant entered a Post-Only Order to buy at \$0.95, the Best Offer was \$0.97, and there was a Non-Displayed Order on the Exchange Book to sell at \$0.95, the Post-Only Order would be ranked and displayed at \$0.95.

• If a Post-Only Order is entered with a Time-in-Force of IOC, the Order will be evaluated for possible execution in the same manner as any other Post-Only Order but will be cancelled rather than posted if the Order cannot execute.

• If a Post-Only Order would not lock or cross an Order on the Exchange Book or any Protected Quotation, it will be posted on the Exchange Book at its entered limit price.

During Pre-Market and Post-Market Hours, a Post-Only Order will be processed in a manner identical to Market Hours with respect to locking or crossing Orders on the Exchange Book, but will not have its price adjusted with respect to locking or crossing the quotations of other market centers.

(B) If a Post-Only Order is entered through RASH or FIX, during System Hours the Post-Only Order may be adjusted in the following manner after initial entry and posting to the Exchange Book:

• If the original entered limit price of the Post-Only Order is not being displayed, the displayed price (and non-displayed price, if any) of the Order will be adjusted repeatedly in accordance with changes to the NBBO or the best price on the Exchange Book, as applicable; provided, however, that if the quotation of another market center moves in a manner that would lock or cross the displayed price of a Post-Only Order, the price(s) of the Post-Only Order will not be adjusted. For example, if a Non-Attributable Post-Only Order to buy at \$11.02 would cross a Protected Offer of \$11, the Order will be ranked at a non-displayed price of \$11 but will be displayed at \$10.99. If the Best Offer then moves to \$11.01, the displayed price will be changed to \$11 and the non-displayed price at which the Order is ranked will be changed to \$11.01. However, if another market center then displays an offer of \$11 (thereby locking the previously displayed price of the Post-Only Order notwithstanding Rule 610(d) under Regulation NMS), the price of the Post-Only Order will not be changed. The Order may be repriced repeatedly until such time as the Post-Only Order is able to be displayed at its original entered limit price (\$11.02 in the example). The Post-Only Order receives a new timestamp each time its price is changed.

• If the original entered limit price of the Post-Only Order would no longer lock or cross a Protected Quotation or a displayed Order on the Exchange Book, the Post-Only Order will be ranked and displayed at that price and will receive a new timestamp, and will not thereafter be adjusted under this paragraph (B).

If a Post-Only Order is entered through OUCH or FLITE, the Post-Only Order may be adjusted in the following manner after initial entry and posting to the Exchange Book:

• During Market Hours, if the original entered limit price of the Post-Only Order locked or crossed a Protected Quotation, the Post-Only Order may be adjusted after initial entry in the same manner as a Price to Comply Order (or a Price to Display Order, if it is Attributable). Thus, in the case of a Non-Attributable Post-Only Order that crossed a Protected Quotation, if the NBBO changed so that the Post-Only Order could be ranked and displayed at a price at or closer to its original entered limit price without locking or crossing a Protected Quotation, the Post-Only Order may either remain on the Exchange Book unchanged or may be cancelled back to the Participant, depending on its choice. In the case of a Non-Attributable Post-Only Order that locked a Protected Quotation, if the limit price would no longer lock a Protected Quotation, the Post-Only Order may either remain on the Exchange Book unchanged, may be cancelled back to the Participant, or may be ranked and displayed at its original entered limit price, depending on the Participant's choice, and will not thereafter be adjusted under this paragraph (B). If the Post-Only Order is displayed at its original entered limit price, it will receive a new timestamp. Finally, in the case of an Attributable Post-Only Order that locked or crossed a Protected Quotation, if the NBBO changed so that the Post-Only Order could be ranked and displayed at a price at or closer to its original entered limit price without locking or crossing a Protected Quotation, the Post-Only Order may either remain on the Exchange Book unchanged or may be cancelled back to the Participant, depending on the Participant's choice. A Participant's choice with regard to adjustment of Post-Only Orders is set in advance for each port through which the Participant enters Orders.

• During System Hours, if the original entered limit price of the Post-Only Order locked or crossed a displayed Order on the Exchange Book and the Exchange Book changes so that the original entered limit price would no longer lock or cross an Order on the Exchange Book, the Post-Only Order may either remain on the Exchange Book unchanged or may be cancelled back to the Participant, depending on the Participant's choice. For example, if a Post-Only Order to buy at \$0.98 would lock a displayed Order on the Exchange Book priced at \$0.98, the Post-Only Order will be ranked and displayed at \$0.9799. If the Order at \$0.98 is cancelled or executed, the Post-Only Order may either remain with a displayed price of \$0.9799 or be cancelled back to the Participant, depending on the Participant's choice. A Participant's choice with regard to maintaining the Post-Only Order or cancelling it is set in advance for each port through which the Participant enters Orders.

(C) The following Order Attributes may be assigned to a Post-Only Order:

- Price. As described above, the price of the Order may be adjusted to avoid locking or crossing a Protected Quotation, and may include a displayed price as well as a non-displayed price.
- Size.
- Time-in-Force; provided, however, that a Post-Only Order with a Time-in-Force of IOC may not be entered through RASH or FIX.
- Designation as an ISO. In accordance with Regulation NMS, a Post-Only Order designated as an ISO that locked or crossed a Protected Quotation would be processed at its entered limit price, since such a designation reflects a representation by the Participant that it has simultaneously routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Post-Only Order would lock or cross. However, as described above, a Post-Only Order designated as an ISO that locked or crossed an Order on the Exchange Book would either execute at time of entry, post at its limit price, or would have its price adjusted prior to posting. Accordingly, the System would not interpret receipt of a Post-Only Order marked ISO that had its price adjusted prior to posting as the basis for determining that any Protected Quotation at the Order's original entered limit price level had been executed for purposes of accepting additional Orders at that price level. However, if the Post-Only Order is ranked and displayed at its adjusted price, the System would consider the adjusted price level to be open for purposes of accepting additional Orders at that price level. For example, assume that there is a Protected Offer at \$0.98 and a Participant enters a Post-Only Order marked ISO to buy at \$0.98. If there are no Orders to sell at \$0.98 on the Exchange Book, the Order to buy will be displayed and ranked at \$0.98, since the designation of the Order as an ISO reflects the Participant's representation that it has routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Post-Only Order would lock or cross. However, if there was also a displayed Order to sell at \$0.98 on the Exchange Book, the Post-Only Order may be repriced, ranked, and displayed at \$0.9799. In that case, the mere fact that the Post-Only Order was designated as an ISO would not allow the Exchange to conclude that the \$0.98 price level was "open" for receiving orders to buy at that price; the \$0.98 price level would be considered open only if market data received by the System demonstrated that the Protected Offer at \$0.98 had been removed or if a subsequent Displayed Order marked ISO was received and ranked at that price.
- Attribution.
- Display. A Post-Only Order is always displayed, although as provided above, may also have a non-displayed price.
- Trade Now (available through OUCH, RASH, FLITE and FIX).

(5) (A) A "Retail Price Improving Order" or "RPI Order" is an Order Type with a Non- Display Order Attribute that is held on the Exchange Book in order to provide liquidity at a price at least \$0.001 better than the NBBO through a special execution process described in Rule 4780. A Retail Price Improving Order may be entered in price increments of \$0.001. RPI Orders collectively may be referred to as "RPI Interest."

An RPI Order will be posted to the Exchange Book regardless of its price, but an RPI Order may execute only against a Retail Order, and only if its price is at least \$0.001 better than the NBBO.

(B) The following Order Attributes may be assigned to an RPI Order:

- Price. The price of an RPI Order must be at least \$0.001 better than the NBBO in order to execute.
- Size.
- A Time-in-Force other than IOC.
- Primary Pegging (available through RASH and FIX only).
- Midpoint Pegging (available through RASH and FIX only).
- Non-Display. All RPI Orders are Non-Displayed.

(6) (A) A "Retail Order" is an Order Type with a Non-Display Order Attribute submitted to the Exchange by a Retail Member Organization (as defined in Rule 4780). A Retail Order must be an agency Order, or riskless principal Order that satisfies the criteria of FINRA Rule 5320.03. The Retail Order must reflect trading interest of a natural person with no change made to the terms of the underlying order of the natural person with respect to price (except in the case of a market order that is changed to a marketable limit order) or side of market and that does not originate from a trading algorithm or any other computerized methodology.

A Retail Order may be designated as either a Type-1 Retail Order or a Type-2 Retail Order. Upon entry, a Type-1 Retail Order will attempt to execute against RPI Orders and any other Orders on the Exchange Book with a price that is (i) equal to or better than the price of the Type-1 Retail Order and (ii) at least \$0.001 better than the NBBO. A Type-1 Retail Order is not Routable and will thereafter be cancelled.

Upon entry, a Type-2 Retail Order will first attempt to execute against RPI Orders and any other Orders on the Exchange Book with a price that is (i) equal to or better than the price of the Type-2 Retail Order and (ii) at least \$0.001 better than the NBBO and will then attempt to execute against any other Order on the Exchange Book with a price that is equal to or better than the price of the Type-2

Retail Order, unless such executions would trade through a Protected Quotation. A Type-2 Retail Order may be designated as Routable.

(B) The following Order Attributes may be assigned to a Retail Order:

- Price.
- Size.
- A Time-in-Force of IOC.
- Routing (available through RASH or FIX only).
- Midpoint Pegging (available through RASH or FIX only).
- Non-Display. All Retail Orders are Non-Displayed.

(7) (A) A "Market Maker Peg Order" is an Order Type designed to allow a Market Maker to maintain a continuous two-sided quotation at a displayed price that is compliant with the quotation requirements for Market Makers set forth in Equity 2, Section 5(a)(2). The displayed price of the Market Maker Peg Order is set with reference to a "Reference Price" in order to keep the displayed price of the Market Maker Peg Order within a bounded price range. A Market Maker Peg Order may be entered through RASH or FIX only. A Market Maker Peg Order must be entered with a limit price beyond which the Order may not be priced. The Reference Price for a Market Maker Peg Order to buy (sell) is the then-current National Best Bid (National Best Offer), including BX, or if no such National Best Bid or National Best Offer, the most recent reported last-sale eligible trade from the responsible single plan processor for that day, or if none, the previous closing price of the security as adjusted to reflect any corporate actions (e.g., dividends or stock splits) in the security.

Upon entry, the displayed price of a Market Maker Peg Order to buy (sell) is automatically set by the System at the Designated Percentage (as defined in Equity 2, Section 5) away from the Reference Price in order to comply with the quotation requirements for Market Makers set forth in Equity 2, Section 5(a)(2). For example, if the National Best Bid is \$10 and the Designated Percentage for the security is 8%, the displayed price of a Market Maker Peg Order to buy would be \$9.20. If the limit price of the Order is not within the Designated Percentage, the Order will be sent back to the Participant.

Once a Market Maker Peg Order has posted to the BX Book, it is repriced if needed as the Reference Price changes. Specifically, if as a result of a change to the Reference Price, the difference between the displayed price of the Market Maker Peg Order and the Reference Price exceeds the Defined Limit (as defined in Equity 2, Section 5), the Market Maker Peg Order to buy (sell) will be repriced to the Designated Percentage away from the Reference Price. In the foregoing example, if the Defined Limit is 9.5% and the National Best Bid increased to

\$10.17, such that the displayed price of the Market Maker Peg Order would be more than 9.5% away, the Order will be repriced to \$9.36, or 8% away from the National Best Bid. Note that prices will be rounded in a manner to ensure that they are calculated and displayed at a level that is consistent with the Designated Percentage and the permissible minimum increment of \$0.01 or \$0.0001, as applicable. If the limit price of the Order is not within the Designated Percentage, the Order will be sent back to the Participant.

Similarly, if as a result of a change to the Reference Price, the displayed price of a Market Maker Peg Order to buy (sell) is at least one minimum price variation more than (less than) a price that is 4% less than (more than) the Reference Price, rounded up (down), then the Market Maker Peg Order to buy (sell) will be repriced to the Designated Percentage away from the Reference Price. For example, if the National Best Bid is \$10 and the Designated Percentage for the security is 8%, the displayed price of a Market Maker Peg Order to buy would initially be \$9.20. If the National Best Bid then moved to \$9.57, such that the displayed price of the Market Maker Peg Order would be a minimum of \$0.01 more than a price that is 4% less than the National Best Bid, rounded up (i.e.  $\$9.57 - (\$9.57 \times 0.04) = \$9.1872$ , rounding up to \$9.19), the Order will be repriced to \$8.81, or 8% away from the National Best Bid.

Market Maker Peg Orders entered with a pegging offset will not be accepted.

A new timestamp is created for a Market Maker Peg Order each time that it is repriced. In the absence of a Reference Price, a Market Maker Peg Order will be cancelled (if on the BX Book) or rejected (if it is an incoming Order). If, after entry, a Market Maker Peg Order has a displayed price based on a Reference Price other than the National Best Bid or National Best Offer and such Market Maker Peg Order is established as the National Best Bid or National Best Offer, the Market Maker Peg Order will not be subsequently repriced in accordance with this rule until a new Reference Price is established. Additionally, if after entry, a Market Maker Peg Order has a displayed price based on the NBBO, and the NBBO subsequently shifts such that the displayed price of the Market Maker Peg Order to buy (sell) is equal to or greater (less) than the National Best Bid (or National Best Offer), the Market Maker Peg Order will not be subsequently repriced in accordance with this Rule until a new Reference Price is established that is more aggressive than the displayed price of the Market Maker Peg Order. In such cases, the new Reference Price may be established by a change in the National Best Bid or National Best Offer based on another market center's quotation or by the entry into the System of any Displayed Order with a price better than the displayed price of the Market Maker Peg Order, whether the new Order is at a price that is lower than, higher than or equal to the prior Reference Price.

Notwithstanding the availability of Market Maker Peg Order functionality, a Market Maker remains responsible for entering, monitoring, and resubmitting, as applicable, quotations that meet the requirements of Equity 2, Section 5.

(B) The following Order Attributes may be assigned to a Market Maker Peg Order:

- Price. The displayed price of a Market Maker Peg Order is established by the BX System based on the Reference Price, the Designated Percentage, the Defined Limit, and the 4% minimum difference from the Reference Price.
- Size.
- A Time-in-Force other than IOC or GTC.
- Attribution. All Market Maker Peg Orders are Attributable.
- Display. Market Maker Peg Orders are always Displayed.

#### **4703. Order Attributes.**

As described in Rule 4702, the following Order Attributes may be assigned to those Order Types for which they are available.

##### (a) Time-in-Force

The "Time-in-Force" assigned to an Order means the period of time that the System will hold the Order for potential execution. Participants specify an Order's Time-in-Force by designating a time at which the Order will become active and a time at which the Order will cease to be active. The available times for activating Orders are:

- The time of the Order's receipt by the System;
- the beginning of Market Hours;
- the end of Market Hours;
- the resumption of trading, in the case of a security that is the subject of a trading halt.

The available times for deactivating Orders are:

- "Immediate" (i.e., immediately after determining whether the Order is marketable);
- the end of Market Hours;
- the end of System Hours;
- one year after entry; or
- a specific time identified by the Participant; provided, however, that an Order specifying an expire time beyond the current trading day will be cancelled at the end of the current trading day.

Notwithstanding the Time-in-Force originally designated for an Order, a Participant may always cancel an Order after it is entered.

The following Times-in-Force are referenced elsewhere in the Exchange's Rules by the designations noted below:

- (1) An Order that is designated to deactivate immediately after determining whether the Order is marketable may be referred to as having a Time in Force of "Immediate or Cancel" or "IOC". An Order with a Time-in-Force of IOC that is entered at any time between 7:00 a.m. ET and 7:00 p.m. ET may be referred to as having a Time-in-Force of "System Hours Immediate or Cancel" or "SIOC".
  - (2) An Order that is designated to deactivate at 7:00 p.m. may be referred to as having a Time in Force of "System Hours Day" or "SDAY".
  - (3) An Order that is designated to deactivate one year after entry may be referred to as a "Good-till-Cancelled" or "GTC" Order. If a GTC Order is designated as eligible for execution during Market Hours only, it may be referred to as having a Time in Force of "Market Hours Good-till-Cancelled" or "MGTC". If a GTC is designated as eligible for execution during System Hours, it may be referred to as having a Time in Force of "System Hours Good-till-Cancelled" or "SGTC".
  - (4) An Order that is designated to deactivate at the time specified in advance by the entering Participant may be referred to as having a Time-in-Force of "System Hours Expire Time" or "SHEX".
  - (5) An Order that is designated to activate at any time during Market Hours and deactivate at 4:00 p.m. ET may be referred to as having a Time-in-Force of "Market Hours Day" or "MDAY". An Order entered with a Time-in-Force of MDAY after 4:00 p.m. ET will be accepted but given a Time-in-Force of IOC.
  - (6) An Order that is designated to activate when entered and deactivate at 4:00 p.m. ET may be referred to as having a Time-in-Force of "Good-till-Market Close" or "GTMC". GTMC Orders entered after 4:00 p.m. ET will not be accepted.
- (b) Size. Except as otherwise provided, an Order may be entered in any whole share size between one share and 999,999 shares. Orders for fractional shares are not permitted. The following terms may be used to describe particular Order sizes:
- (1) "normal unit of trading" or "round lot" means the size generally employed by traders when trading a particular security, which is 100 shares in most instances;
  - (2) "mixed lot" means a size of more than one normal unit of trading but not a multiple thereof; and
  - (3) "odd lot" means a size of less than one normal unit of trading.

(c) Price. With limited exceptions, all Orders must have a price, such that they will execute only if the price available is equal to or better than the price of the Order. The maximum price that the System will accept is \$199,999.99. Certain Orders have a price that is determined by the System based on the NBBO or other reference prices, rather than by the Participant. As described below with respect to the Pegging Order Attribute, an Order may have a price that is pegged to the opposite side of the market, in which case the Order will behave like a "market order" or "unpriced order" (i.e., an Order that executes against accessible liquidity on the opposite side of the market, regardless of its price).

(d) Pegging. Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the NBBO; provided, however, that if the Exchange is the sole market center at the Best Bid or Best Offer (as applicable), then the price of any Displayed Order with Primary Pegging (as defined below) will be set with reference to the highest bid or lowest offer disseminated by a market center other than the Exchange. An Order with a Pegging Order Attribute may be referred to as a "Pegged Order." For purposes of this rule, the price to which an Order is pegged will be referred to as the Inside Quotation, the Inside Bid, or the Inside Offer, as appropriate. There are three varieties of Pegging:

- Primary Pegging means Pegging with reference to the Inside Quotation on the same side of the market. For example, if the Inside Bid was \$11, an Order to buy with Primary Pegging would be priced at \$11.
- Market Pegging means Pegging with reference to the Inside Quotation on the opposite side of the market. For example, if the Inside Offer was \$11.06, an Order to buy with Market Pegging would be priced at \$11.06.
- Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid and the Inside Offer (the "Midpoint"). Thus, if the Inside Bid was \$11 and the Inside Offer was \$11.06, an Order with Midpoint Pegging would be priced at \$11.03. An Order with Midpoint Pegging is not displayed. An Order with Midpoint Pegging may be executed in sub-pennies if necessary to obtain a midpoint price.

Pegging is available only during Market Hours. An Order with Pegging may specify a limit price beyond which the Order may not be executed; provided, however, that if an Order has been assigned a Pegging Order Attribute and a Discretion Order Attribute, the Order may execute at any price within the discretionary price range, even if beyond the limit price specified with respect to the Pegging Order Attribute. If an Order with Pegging is priced at its limit price, the price of the Order may nevertheless be changed to a less aggressive price based on changes to the Inside Quotation. In addition, an Order with Primary Pegging or Market Pegging may specify an Offset Amount, such that the price of the Order will vary from the Inside Quotation by the selected Offset Amount. The Offset Amount may be either aggressive or passive. Thus, for example, if a Participant entered an Order to buy with Primary Pegging and a passive Offset Amount

of \$0.05 and the Inside Bid was \$11, the Order would be priced at \$10.95. If the Participant selected an aggressive Offset Amount of \$0.02, however, the Order would be priced at \$11.02. An Order with Primary Pegging and an Offset Amount will not be Displayed, unless the Order is Attributable. An Order with Midpoint Pegging will not be Displayed. An Order with Market Pegging and no Offset behaves as a "market order" with respect to any liquidity on the Exchange Book at the Inside Quotation on the opposite side of the market because it is immediately executable at that price. If, at the time of entry, there is no price to which a Pegged Order can be pegged, the Order will be rejected; provided, however, that a Displayed Order that has Market Pegging, or an Order with a Non-Display Attribute that has Primary Pegging or Market Pegging, will be accepted at its limit price. In the case of an Order with Midpoint Pegging, if the Inside Bid and Inside Offer are locked, the Order will be priced at the locking price, if the Inside Bid and Inside Offer are crossed or if there is no Inside Bid and/or Inside Offer, the Order will be cancelled or rejected. However, even if the Inside Bid and Inside Offer are locked, an Order with Midpoint Pegging that locked an Order on the Exchange Book would execute.

Primary Pegging and Market Pegging are available through RASH and FIX only. An Order entered through OUCH or FLITE with Midpoint Pegging will have its price set upon initial entry to the Midpoint, unless the Order has a limit price, and that limit price is lower than the Midpoint for an Order to buy (higher than the Midpoint for an Order to sell), in which case the Order will be ranked on the Exchange Book at its limit price. The price of the Order will not thereafter be adjusted based on changes to the Inside Bid or Offer. However, an Order with Midpoint Pegging entered through OUCH or FLITE will be cancelled back to the Participant after initial entry and posting to the Exchange Book if any of the following conditions are met:

- There is no Inside Bid and/or Inside Offer;
- The Order to buy (sell) is entered with a limit price above (below) the Midpoint and is ranked at the Midpoint; thereafter the Inside Bid and/or Inside Offer change so that the Midpoint changes and the Order is no longer at the Midpoint;
- The Order to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint and is ranked at its limit price; thereafter, the Inside Bid and/or Inside Offer change so that the Midpoint is lower (higher) than the limit price of the Order;
- The Order to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint and is ranked at its limit price; thereafter, the Inside Bid and Inside Offer become crossed, such that the Midpoint of the crossed Quotation remains equal to or higher (lower) than the limit price of the Order, and then a new sell (buy) Order is received at a price that locks or crosses the limit price of the resting Order marked for Midpoint Pegging; or
- The Order to buy (sell) is entered at a limit price that is greater than (less than) the Midpoint and is therefore ranked at the Midpoint; thereafter the Inside Bid and Inside

Offer become crossed but the Midpoint does not change, and then a new sell (buy) Order is received at a price that locks or crosses the Midpoint of the Inside Bid and Inside Offer.

An Order entered through RASH or FIX with Pegging will have its price set upon initial entry and will thereafter have its price reset in accordance with changes to the relevant Inside Quotation. An Order with Pegging receives a new timestamp whenever its price is updated and therefore will be evaluated with respect to possible execution (and routing, if it has been assigned a Routing Order Attribute) in the same manner as a newly entered Order. If the price to which an Order is pegged is not available, the Order will be rejected.

Primary Pegging Orders and Market Pegging Orders are subject to a collar. Any portion of a Primary Pegging Order or Market Pegging Order that would execute, either on the Exchange or when routed to another market center, at a price of more than \$0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled.

(e) Minimum Quantity. Minimum Quantity is an Order Attribute that allows a Participant to provide that an Order will not execute unless a specified minimum quantity of shares can be obtained. An Order with a Minimum Quantity Order Attribute may be referred to as a "Minimum Quantity Order." For example, a Participant could enter an Order with a Size of 1000 shares and specify a Minimum Quantity of 500 shares.

A Participant may specify two alternatives with respect to the processing of a Minimum Quantity Order at time of entry:

- First, the Participant may specify that the minimum quantity condition may be satisfied by execution against multiple Orders. In that case, upon entry, the System would determine whether there were one or more posted Orders executable against the incoming Order with an aggregate size of at least the minimum quantity (500 shares in the above example). If there were not, the Order would post on the Exchange Book in accordance with the characteristics of its underlying Order Type.

- Second, the Participant may specify that the minimum quantity condition must be satisfied by execution against one or more Orders, each of which must have a size that satisfies the minimum quantity condition. If there are such Orders but there are also other Orders that do not satisfy the minimum quantity condition, the Minimum Quantity Order will execute against Orders on the Exchange Book in accordance with Rule 4757 (pertaining to execution priority) until it reaches an Order that does not satisfy the minimum quantity condition, and then the remainder of the Order will be cancelled. For example, if a Participant entered an Order to buy at \$11 with a size of 1,500 shares and a minimum quantity condition of 500 shares, and there were three Orders to sell at \$11 on the Exchange Book, two with a size of 500 shares each and one with a size of 200 shares, with the 200 share Order ranked in time priority between the 500 share Orders, the 500 share Order with the first time priority would execute and the remainder of the Minimum Quantity Order would be cancelled. Alternatively, if the Order would lock or cross

Orders on the Exchange Book but none of the resting Orders would satisfy the minimum quantity condition, an Order with a minimum quantity condition to buy (sell) will be repriced to one minimum price increment lower than (higher than) the lowest price (highest price) of such Orders. For example, if there was an Order to buy at \$11 with a minimum quantity condition of 500 shares, and there were resting Orders on the Exchange Book to sell 200 shares at \$10.99 and 300 shares at \$11, the Order would be repriced to \$10.98 and ranked at that price.

• Once posted to the Exchange Book, a Minimum Quantity Order retains its Minimum Quantity Order Attribute, such that the Order may execute only against incoming Orders with a size of at least the minimum quantity condition. An Order that has a Minimum Quantity Order Attribute and that posts to the Exchange Book will not be displayed.

Upon entry, an Order with a Minimum Quantity Order Attribute must have a size of at least one round lot. An Order entered through OUCH or FLITE may have a minimum quantity condition of any size of at least one round lot. An Order entered through RASH or FIX must have a minimum quantity of one round lot or any multiple thereof, and a mixed lot minimum quantity condition will be rounded down to the nearest round lot. In the event that the shares remaining in the size of an Order with a Minimum Quantity Order Attribute following a partial execution thereof are less than the minimum quantity specified by the Participant entering the Order, the minimum quantity value of the Order will be reduced to the number of shares remaining. An Order with a Minimum Quantity Order Attribute may not be displayed; if a Participant marks an Order with both a Minimum Quantity Order Attribute and a Display Order Attribute, the System will accept the Order but will give a Time-in-Force of IOC, regardless of the Time-in-Force marked by the Participant. An Order marked with a Minimum Quantity Order Attribute and a Routing Order Attribute will be rejected.

(f) Routing. Routing is an Order Attribute that allows a Participant to designate an Order to employ one of several Routing Strategies offered by the Exchange, as described in Rule 4758; such an Order may be referred to as a "Routable Order." Upon receipt of an Order with the Routing Order Attribute, the System will process the Order in accordance with the applicable Routing Strategy. In the case of a limited number of Routing Strategies, the Order will be sent directly to other market centers for potential execution. For most other Routing Strategies, the Order will attempt to access liquidity available on the Exchange in the manner specified for the underlying Order Type and will then be routed in accordance with the applicable Routing Strategy. Shares of the Order that cannot be executed are then returned to the Exchange, where they will (i) again attempt to access liquidity available on the Exchange and (ii) post to the Exchange Book or be cancelled, depending on the Time-in-Force of the Order. Under certain Routing Strategies, the Order may be routed again if the System observes an accessible quotation of another market center, and returned to the Exchange again for potential execution and/or posting to the Exchange Book. In connection with the trading of securities governed by Regulation NMS, all Orders shall be routed for potential execution in

compliance with Regulation NMS. Where appropriate, Routable Orders will be marked as Intermarket Sweep Orders.

(g) Discretion. Discretion is an Order Attribute under which an Order has a non-displayed discretionary price range within which the entering Participant is willing to trade; such an Order may be referred to as a "Discretionary Order." Thus, an Order with Discretion has both a price (for example, buy at \$11) and a discretionary price range (for example, buy up to \$11.03). Depending on the Order Type used, the price may be displayed (for example, a Price to Display Order) or non-displayed (for example, a Non-Displayed Order). The discretionary price range is always non-displayed. In addition, it should be noted that the Discretion Order Attribute may be combined with the Pegging Order Attribute, in which case either the price of the Order or the discretionary price range or both may be pegged in the ways described in Rule 4702(d) with respect to the Pegging Order Attribute. For example, an Order with Discretion to buy might be pegged to the Best Bid with a \$0.05 passive Offset and might have a discretionary price range pegged to the Best Bid with a \$0.02 passive Offset. In that case, if the Best Bid was \$11, the price of the Order would be \$10.95, with a discretionary price range up to \$10.98. If the Best Bid moved to \$10.99, the price of the Order would then be \$10.94, with a discretionary price range up to \$10.97. Alternatively, if the price of the Order was pegged but the discretionary price range was not, the price of the Order would be \$10.94, but the discretionary price range would continue to range up to \$10.98. Likewise, if the discretionary price range was pegged but the price of the Order was not, the Order would remain priced at \$10.95 but with a discretionary price range of up to \$10.97. A Participant may also specify a limit price beyond which the discretionary price range may not extend.

Under the circumstances described below, the System processes an Order with Discretion by generating a Non-Displayed Order with a Time-in-Force of IOC (a "Discretionary IOC") that will attempt to access liquidity available within the discretionary price range. The Discretionary IOC will not be permitted to execute, however, if the price of the execution would trade through a Protected Quotation. If more than one Order with Discretion satisfies conditions that would cause the generation of a Discretionary IOC simultaneously, the order in which such Discretionary IOCs are presented for execution is random, based on the respective processing time for each such Order. Whenever a Discretionary IOC is generated, the underlying Order with Discretion will be withheld or removed from the Exchange Book and will then be routed and/or placed on the Exchange Book if the Discretionary IOC does not exhaust the full size of the underlying Order with Discretion, with its price determined by the underlying Order Type and Order Attributes selected by the Participant. Because the circumstances under which a Discretionary IOC will be generated are dependent upon a range of factors, several specific scenarios are described below.

- If an Order has been assigned a Discretion Order Attribute, but has not been assigned a Routing Order Attribute, upon entry of the Order, the System will automatically generate

a Discretionary IOC with a price equal to the highest price for an Order with Discretion to buy (lowest price for an Order with Discretion to sell) within the discretionary price range and a size equal to the full size of the underlying Order to determine if there are any Orders within the discretionary price range on the Exchange Book. If the Discretionary IOC does not exhaust the full size of the Order with Discretion, the remaining size of the Order with Discretion will post to the Exchange Book in accordance with the parameters that apply to the underlying Order Type. Thus, for example, if a Participant enters a Price to Display Order to buy at \$11 with a discretionary price range of up to \$11.03, upon entry the System will generate a Discretionary IOC to buy priced at \$11.03. If there is an Order on the Exchange Book to sell priced at \$11.02 and an execution at \$11.02 would not trade through a Protected Quotation, the Discretionary IOC will execute against the Order on the Exchange Book, up to the full size of each Order.

- After the Order posts to the Exchange Book, the System will examine whether at any time there is an Order on the Exchange Book with a price in the discretionary price range against which the Order with Discretion could execute. In doing so, the System will examine all Orders (including Orders that are not Displayed). If the System observes such an Order, it will generate a Discretionary IOC with a price equal to the highest price for an Order to buy (lowest price for an Order to sell) within the discretionary price range and a size equal to the full size of the Order.

- If an Order that uses a passive routing strategy (i.e., a strategy that does not seek routing opportunities after posting to the Exchange Book) has been assigned a Discretion Order Attribute but does not have a pegged discretionary price range, upon entry of the Order, the System will examine all Orders (including Orders that are not Displayed) on the Exchange Book to determine if there is an Order on the Exchange Book with a price in the discretionary price range against which the Order with Discretion could execute. If the System observes such an Order, it will generate a Discretionary IOC with a price equal to the price of the Order on the Exchange Book and a size equal to the applicable size of the Order on the Exchange Book. The System will also determine if there are any accessible quotations with prices that are within the discretionary price range at destinations on the applicable routing table for the selected routing strategy. If there are such quotations, the System will generate one or more Discretionary IOCs to route to such destinations, with a price and size that match the price and size of the market center's quotation. If necessary to maximize execution opportunities and comply with Regulation NMS, the System's routing broker may mark such Discretionary IOCs as Intermarket Sweep Orders. If the Discretionary IOC(s) do not exhaust the full size of the Order with Discretion, the remaining size of the Order with Discretion will post to the Exchange Book in accordance with the parameters that apply to the underlying Order Type. The System will then examine whether at any time there is an Order on the Exchange Book with a price in the discretionary price range against which the Order with Discretion could execute. In doing so, the System will examine all Orders (including Orders that are not Displayed). If the System observes such an Order, it will generate a

Discretionary IOC with a price equal to the price of the Order on the Exchange Book and a size equal to the applicable size of the Order on the Exchange Book.

• If an Order that uses a reactive routing strategy (i.e., a strategy that seeks routing opportunities after posting to the Exchange Book) has been assigned a Discretion Order Attribute but does not have a pegged discretionary price range, upon entry of the Order, the System will examine all Orders (including Orders that are not Displayed) on the Exchange Book to determine if there is an Order on the Exchange Book with a price in the discretionary price range against which the Order with Discretion could execute. If the System observes such an Order, it will generate a Discretionary IOC with a price equal to the price of the Order on the Exchange Book and a size equal to the applicable size of the Order on the Exchange Book. The System will also determine if there are any accessible quotations with prices that are within the discretionary price range at destinations on the applicable routing table for the selected routing strategy. If there are such quotations, the System will generate one or more Discretionary IOCs to route to such destinations, with a price and size that match the price and size of the market center's quotation. If necessary to maximize execution opportunities and comply with Regulation NMS, the System may mark such Discretionary IOCs as Intermarket Sweep Orders. If the Discretionary IOC(s) do not exhaust the full size of the Order with Discretion, the remaining size of the Order with Discretion will post to the Exchange Book in accordance with the parameters that apply to the underlying Order Type. The System will then examine whether at any time there is an Order on the Exchange Book or an accessible quotation at another trading venue with a price in the discretionary price range against which the Order with Discretion could execute. In examining the Exchange Book, the System will examine all Orders (including Orders that are not Displayed). If the System observes such an Order or quotation, it will generate a Discretionary IOC with a price equal to the price of such the Order or quotation and a size equal to the applicable size of the Order on the Exchange Book or the displayed size of the quotation.

• If an Order that uses a passive routing strategy has been assigned a Discretion Order Attribute and does have a pegged discretionary price range, upon entry of the Order, the System will examine all Orders (including Orders that are not Displayed) on the Exchange Book to determine if there is an Order on the Exchange Book with a price in the discretionary price range against which the Order with Discretion could execute. If the System observes such an Order, it will generate a Discretionary IOC with a price equal to the price of the Order on the Exchange Book and a size equal to the applicable size of the Order on the Exchange Book. The System will also determine if there are any accessible quotations with prices that are within the discretionary price range at destinations on the applicable routing table for the selected routing strategy. If there are such quotations, the System will generate one or more Discretionary IOCs to route to such destinations, with a price and size that match the price and size of the market center's quotation. If necessary to maximize execution opportunities and comply with Regulation NMS, the System may mark such Discretionary IOCs as Intermarket Sweep Orders. If the Discretionary IOC(s) do not exhaust the full size of the Order with

Discretion, the remaining size of the Order with Discretion will post to the Exchange Book in accordance with the parameters that apply to the underlying Order Type. Thereafter, the Order will not generate further Discretionary IOCs unless the Order is updated in a manner that causes it to receive a new timestamp, in which case the Order will behave in the same manner as a newly entered Order.

• If an Order that uses a reactive routing strategy has been assigned a Discretion Order Attribute and does have a pegged discretionary price range, upon entry of the Order, the System will examine all Orders (including Orders that are not Displayed) on the Exchange Book to determine if there is an Order on the Exchange Book with a price in the discretionary price range against which the Order with Discretion could execute. If the System observes such an Order, it will generate a Discretionary IOC with a price equal to the price of the Order on the Exchange Book and a size equal to the applicable size of the Order on the Exchange Book. The System will also determine if there are any accessible quotations with prices that are within the discretionary price range at destinations on the applicable routing table for the selected routing strategy. If there are such quotations, the System will generate one or more Discretionary IOCs to route to such destinations, with a price and size that match the price and size of the market center's quotation. If necessary to maximize execution opportunities and comply with Regulation NMS, the System may mark such Discretionary IOCs as Intermarket Sweep Orders. If the Discretionary IOC(s) do not exhaust the full size of the Order with Discretion, the remaining size of the Order with Discretion will post to the Exchange Book in accordance with the parameters that apply to the underlying Order Type. The System will then examine whether at any time there is an Order on the Exchange Book or an accessible quotation at another trading venue with a price in the discretionary price range against which the Order with Discretion could execute. In examining the Exchange Book, the System will examine Displayed Orders but will not examine Non-Displayed Orders. If the System observes such an Order or quotation, it will generate a Discretionary IOC with a price equal to the price of such the Order or quotation and a size equal to the applicable size of the Order on the Exchange Book or the displayed size of the quotation.

(h) Reserve Size. Reserve Size is an Order Attribute that permits a Participant to stipulate that an Order Type that is displayed may have its displayed size replenished from additional non-displayed size. An Order with Reserve Size may be referred to as a "Reserve Order." At the time of entry, the displayed size of such an Order selected by the Participant must be one or more normal units of trading; an Order with a displayed size of a mixed lot will be rounded down to the nearest round lot. A Reserve Order with displayed size of an odd lot will be accepted but with the full size of the Order displayed. Reserve Size is not available for Orders that are not displayed; provided, however, that if a Participant enters Reserve Size for a Non-Displayed Order with a Time-in-Force of IOC, the full size of the Order, including Reserve Size, will be processed as a Non-Displayed Order.

Whenever a Participant enters an Order with Reserve Size, the full size of the Order will be presented for potential execution in compliance with Regulation NMS; thereafter, unexecuted portions of the Order will be processed as two Orders: a Displayed Order (with the characteristics of its selected Order Type) and a Non-Displayed Order. For example, a Participant might enter a Price to Display Order with 200 shares displayed and an additional 3,000 shares non-displayed. Upon entry, the Order would attempt to execute against available liquidity on the Exchange Book, up to 3,200 shares. Thereafter, unexecuted portions of the Order would post to the Exchange Book as a Displayed Price to Display Order and a Non-Displayed Order; provided, however, that if the remaining total size is less than the display size stipulated by the Participant, the Displayed Order will post without Reserve Size. Thus, if 3,050 shares executed upon entry, the Price to Display Order would post with a size of 150 shares and no Reserve Size.

When an Order with Reserve Size is posted, if there is an execution against the Displayed Order that causes its size to decrease below a normal unit of trading, another Displayed Order will be entered at the limit price and size stipulated by the Participant while the size of the Non-Displayed Order will be reduced by the same amount. Any remaining size of the original Displayed Order will remain on the Exchange Book. The new Displayed Order will receive a new timestamp, but the Non-Displayed Order (and the original Displayed Order, if any) will not; although the new Displayed Order will be processed by the System as a new Order in most respects at that time, if it was designated as Routable, the System will not automatically route it upon reentry. If the new Displayed Order would lock an Order that posted to the Exchange Book before replenishment can occur, the Displayed Order will post at the locking price if the resting Order is Non-Display or will be repriced, ranked, and displayed at one minimum price increment lower (higher) than the locking price if the resting order to sell (buy) is Displayed. For example, if a Price to Comply Order with Reserve Size posted with a Displayed Size of 200 shares, along with a Non-Displayed Order of 3,000 and 150 shares of the Displayed Order was executed, the remaining 50 shares of the original Price to Comply Order would remain, a new Price to Comply Order would post with a size of 200 shares and a new timestamp, and the Non-Displayed Order would be decremented to 2,800 shares. Because a new Displayed Order is entered and the Non-Displayed Order is not reentered, there are circumstances in which the Displayed Order may receive a different price than the Non-Displayed Order. For example, if, upon reentry, a Price to Display Order would lock or cross a newly posted Protected Quotation, the price of the Order will be adjusted but its associated Non-Displayed Order would not be adjusted. In that circumstance, it would be possible for the better priced Non-Displayed Order to execute prior to the Price to Display Order.

In addition, the Participant may stipulate that the original and subsequent displayed size will be an amount randomly determined based on factors selected by the Participant (a "Random Reserve"). When a Participant stipulates use of a Random Reserve, the Participant would select both (i) a nominal displayed size and (ii) a range size, which may be any share amount less than the nominal displayed size. The actual displayed size will

then be randomly determined by the System from a range of normal trading units in which the minimum size is the nominal displayed size minus the range size, and the maximum size is (i) the minimum size plus (ii) an amount that is two times the range size minus one round lot. For example, if the nominal displayed size is 600 shares and the range size is 500, the minimum displayed size will be 100 shares (600-500), and the maximum size will be 1,000 shares ((600-500) + ((2 x 500) - 100)).

When the Displayed Order with Reserve Size is executed and replenished, applicable market data disseminated by the Exchange will show the execution and decrementation of the Displayed Order, followed by replenishment of the Displayed Order.

In all cases, if the remaining size of the Non-Displayed Order is less than the fixed or random amount stipulated by the Participant, the full remaining size of the Non-Displayed Order will be displayed and the Non-Displayed Order will be removed.

(i) Attribution. Attribution is an Order Attribute that permits a Participant to designate that the price and size of the Order will be displayed next to the Participant's MPID in market data disseminated by the Exchange. An Order with Attribution is referred to as an "Attributable Order" and an Order without attribution is referred to as a "Non-Attributable Order."

(j) Intermarket Sweep Order. Designation of an Order as an Intermarket Sweep Order, or ISO, is an Order Attribute that allows the Order to be 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) under Regulation NMS. ISOs are immediately executable within the System against Orders against which they are marketable. An Order designated as an ISO may not be assigned a Routing Order Attribute. In connection with the trading of securities governed by Regulation NMS, Intermarket Sweep Orders shall be executed exclusively within the System and the entering Participant shall be responsible for compliance with Rules 610 and 611 under Regulation NMS with respect to order protection and locked and crossed markets with respect to such Orders. Orders eligible for execution outside the System shall be processed in compliance with Regulation NMS, including accessing Protected Quotations and resolving locked and crossed markets, as instructed.

Simultaneously with the routing of an ISO to the System, one or more additional limit orders, as necessary, are routed by the entering Participant to execute against the full displayed size of any Protected Quotation with a price that is superior to the price of the Order identified as an Intermarket Sweep Order (as defined in Rule 600(b) under Regulation NMS). These additional routed orders must be identified as Intermarket Sweep Orders.

Upon receipt of an ISO, the System will consider the stated price of the ISO to be available for other Orders to be entered at that price, unless the ISO is not itself accepted

at that price level (for example, a Post-Only Order that has its price adjusted to avoid executing against an Order on the Exchange Book) or the ISO is not Displayed.

In addition, as described with respect to various Order Types, such as the Price to Comply Order, Orders on the Exchange Book that had their price adjusted may be eligible to be reentered at the stated price of the ISO. For example, if a Price to Comply Order to buy at \$11 would lock a Protected Offer at \$11, the Price to Comply Order will be posted with a non-displayed price of \$11 and a displayed price of \$10.99. If the System then receives an ISO to buy at \$11, the ISO will be posted at \$11 and the Price to Comply Order will be reentered at \$11 (if the Participant opted to have its Orders reentered). The respective priority of such reentered Orders will be maintained among multiple repriced Orders; however, other new Orders may also be received after receipt of the ISO but before the repricing of the Price to Comply Order is complete; accordingly, the priority of an Order on the Exchange Book vis-à-vis a newly entered Order is not guaranteed.

(k) Display. Display is an Order Attribute that allows the price and size of an Order to be displayed to market participants via market data feeds. All Orders that are Attributable are also displayed, but an Order may be displayed without being Attributable. As discussed in Rule 4702, a Non-Displayed Order is a specific Order Type, but other Order Types may also be non-displayed if they are not assigned a Display Order Attribute; however, depending on context, all Orders that are not displayed may be referred to as "Non-Displayed Orders." An Order with a Display Order Attribute may be referred to as a "Displayed Order."

(l) Trade Now. Trade Now is an Order Attribute that allows a resting Order that becomes locked by an incoming Displayed Order to execute against the available size of the contra-side locking Order as a liquidity taker, and any remaining shares of the resting Order will remain posted on the BX Book with the same priority.

• An Order entered through RASH or FIX protocol with a Trade Now Order Attribute will execute against locking interest automatically. When entered through RASH or FIX protocol, the Trade Now Order Attribute may be enabled on an order-by-order or a port-level basis.

• An Order entered through OUCH or FLITE may not be assigned a Trade Now attribute upon entry, but rather the Participant that entered the Order must send a Trade Now instruction after the Order becomes locked. If a Trade Now instruction is given when there is no locking interest, the instruction will be ignored by the System and the Order will remain on the BX Book with the same priority. When entered through OUCH or FLITE protocol, the Trade Now instruction must be sent on an order-by-order basis.

#### **4752. Opening Process; Opening and Closing Price**

(a) Trading Prior To Normal Market Hours. The system shall process all eligible Quotes/Orders at 7:00 a.m.:

- (1) At 7:00 a.m., the system shall add in time priority all eligible Orders in accordance with each order's defined characteristics.
- (2) Quoting Market Participants must enter quotations in compliance with Equity 2, Section 5 at 9:25 a.m. until market open, and at all times thereafter during Regular Market Hours.
- (3) All trades executed prior to 9:30 shall be automatically appended with the ".T" modifier.
- (b) The official opening price for a security listed on the Exchange will be the price of the first trade executed at or after 9:30 a.m. and the official closing price will be the price of the last trade executed at or prior to 4:00 p.m.

#### **4756. Entry and Display of Quotes and 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 shall indicate the amount of Reserve Size (if applicable).
- (2) The System shall time-stamp an order which shall determine the time ranking of the order for purposes of processing the order.
- (3) Orders can be entered into the System (or previously entered Orders cancelled or modified) from 7:00 a.m. until 7:00 p.m. ET. Participants may modify a previously entered Order without cancelling it or affecting the priority of the Order on the Exchange Book solely for the purpose of modifying the marking of a sell Order as long, short, or short exempt; provided, however, that such a modification may be made only with respect to Orders entered through OUCH or FLITE; and provided further, that if an Order is redesignated as short, a Short Sale Period is in effect under Rule 4763, and the Order is not priced at a Permitted Price or higher under Rule 4763(d), the Order will be cancelled. In addition, a partial cancellation of an Order to reduce its share size will not affect the priority of the Order on the book; provided, however, that such a partial cancellation may not be made with respect to a Pegged Order (including a Discretionary Order that is Pegged). Except as provided in Rule 4761, all other modifications of orders will result in the replacement of the original order with a new order with a new time stamp.
- (4) Each Order is subject to a daily limit on the number of changes that may occur with respect to the Order; if the daily limit is reached, the Order will be cancelled. The number of permissible changes may vary by Order Type or Order Attribute and may change from time to time. The Exchange will post on its website what is

considered a change for a particular Order Type and Order Attribute, and the current limits on the number of such changes.

(b) Entry of Quotes—Equities Market Makers and Equities ECNs can enter Quotes into the system from 7:00 a.m. to 7:00 p.m. Eastern Time. Quotes will be processed as Attributable Orders, with such time-in-force designation as the Equities Market Maker or Equities ECN may assign. Entry of Quotes will be subject to the requirements and conditions set forth in section (a) above.

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

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

(2) Best Priced Order Display—Pursuant to Rule 602 of Regulation NMS under the Exchange Act, the Exchange will transmit for display to the appropriate network processor for each System Security:

(i) the highest price to buy wherein the aggregate size of all displayed buy interest in the System greater than or equal to that price is one round lot or greater;

(ii) the aggregate size of all displayed buy interest in the System greater than or equal to the price in (i), rounded down to the nearest round lot;

(iii) the lowest price to sell wherein the aggregate size of all displayed sell interest in the System less than or equal to that price is one round lot or greater; and

(iv) the aggregate size of all displayed sell interest in the System less than or equal to the price in (iii), rounded down to the nearest round lot.

(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 4757.

(B) Discretionary Orders—The discretionary portion of Discretionary Orders shall not be displayed but shall be made available for execution only upon the appearance of contra-side marketable trading interest, and shall be executed pursuant to Rule 4703(g) and Rule 4757.

(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 time stamp, and shall be executed pursuant to Rule 4757.

(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 members 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.

#### **4757. Book Processing**

Orders on the Exchange Book shall be presented for execution against incoming Orders in the order set forth below:

(a) Execution Algorithm - Price/Display/Time. The System shall present Orders on the Exchange Book for execution against incoming Order in accordance with a price/display/time algorithm:

(A) Price. Better priced Orders will be presented for execution first. For example, an Order on the Exchange Book to buy at \$10.00 will be ranked ahead of an Order to buy at \$9.99.

(1) Display and Time. Equally priced Orders with a Display Attribute will be ranked in time priority.

(2) Non-Display and Time. Orders with a Non-Display Attribute, including the Non-Displayed portion of an Order with Reserve Size, will be ranked in time priority.

(3) Exception: Anti-Internalization - Market participants may direct that quotes/orders entered into the System not execute against quotes/orders entered under the same MPID. In addition, market participants using the OUCH order entry protocol may assign to orders entered through a specific order entry port a unique group identification modifier that will prevent quotes/orders with such modifier from executing against each other. In such a case, a market participant may elect from the following options:

(i) if the interacting quotes/orders are equivalent in size, both quotes/orders will be cancelled back to their entering parties. If the interacting quotes/orders are not equivalent in size, share amounts equal to size of the smaller of the two quotes/orders will be

cancelled back to their originating parties with the remainder of the larger quote/order being retained by the System for potential execution;

(ii) regardless of the size of the interacting quotes/orders, cancelling the oldest of them in full; or

(iii) regardless of the size of the interacting quotes/orders, cancelling the most recent of them in full.

The foregoing options may be applied to all orders entered under the same MPID, or, in the case of market participants using the OUCH order entry protocol, may be applied to all orders entered through a specific order entry port.

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

(c) 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 the Exchange book at 10.

Incoming order to sell priced at 9 comes into the System

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

(d) Limit Order Protection ("LOP"). LOP is a feature of BX that prevents certain Limit Orders at prices outside of pre-set standard limits ("LOP Limit") from being accepted by the System.

(i) Applicability. LOP applies to all Quotes and Orders, including Quotes and Orders that have been modified, where the modification results in a new timestamp and priority. LOP does not apply to Orders with Market and Primary Pegging, Market Maker Peg Orders or Intermarket Sweep Orders. A Midpoint Pegging Order with a discretion price would not be subject to LOP. LOP is operational each trading day. LOP is not operational during trading halts and pauses. LOP would not apply in the event there is no established LOP Reference Price or the National Best Bid, when used as the LOP Reference Price, is equal to or less than \$0.50.

(ii) LOP Limit. The LOP Limit shall be the greater of 10% of the LOP Reference Price or \$0.50 for all securities across all trading sessions.

(iii) LOP Reference Price. The LOP Reference Price shall be the current National Best Bid or Best Offer, the bid for sell orders and the offer for buy orders.

(iv) LOP Reference Threshold. The LOP Reference Threshold for buy orders will be the LOP Reference Price (offer) plus the applicable LOP Limit. The LOP Reference Threshold for sell orders will be the LOP Reference Price (bid) minus the applicable LOP Limit.

(v) Acceptance of Orders. LOP will reject incoming Limit Orders that exceed the LOP Reference Threshold. Limit Orders will be rejected if the price of the Limit Order is greater than the LOP Reference Threshold for a buy Limit Order. Limit Orders will be rejected if the price of the Limit Order is less than the LOP Reference Threshold for a sell Limit Order.

#### **4758. Order Routing**

##### **(a) Order Routing Process**

(1) The Order Routing Process shall be available to Participants from 7:00 a.m. until 7:00 p.m. Eastern Time, and shall route orders as described below. All routing of orders shall comply with Rule 611 of Regulation NMS under the Act.

(A) The System provides a variety of routing options. Routing options may be combined with all available order types and times-in-force, with the exception of order types and times-in-force whose terms are inconsistent with the terms of a particular routing option. The System will consider the quotations only of accessible markets. The term "System routing table" refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. The System routing options are:

(i)-(ii) Reserved.

(iii) BSTG is a routing option under which orders check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table. If shares remain un-executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another accessible market center, the System shall route the order to the locking or crossing market center. BSKN is a form of BSTG in which the entering firm instructs the System to bypass any market centers included in the BSTG System routing table that are not posting Protected Quotations within the meaning of Regulation NMS.

(iv) BSCN is a routing option under which orders check the System for available shares and simultaneously route the

remaining shares to destinations on the System routing table. If shares remain un-executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. BSKP is a form of BSCN in which the entering firm instructs the System to bypass any market centers included in the BSCN System routing table that are not posting Protected Quotations within the meaning of Regulation NMS.

(v) BTFY is a routing option under which orders check the System for available shares only if so instructed by the entering firm and are thereafter routed to destinations on the System routing table. If shares remain un-executed after routing, they are posted to the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

(vi) BMOP is a routing option under which orders route only to Protected Quotations and only for displayed size. If shares remain unexecuted after routing, they are posted to the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

(vii) BCRT is a routing option under which orders check the System and then route to the Nasdaq PSX facility of Nasdaq PHLX and Nasdaq. If shares remain un-executed, they are posted to the book or cancelled. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

(viii) BDRK is a routing option under which orders check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table that are not posting Protected Quotations within the meaning of Regulation NMS. If shares remain un-executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

(ix) BCST is a routing option under which orders check the System for available shares and simultaneously route the remaining shares

to destinations on the System routing table that are not posting Protected Quotations within the meaning of Regulation NMS and to certain, but not all, exchanges. If shares remain un-executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

(x) SCAR is a routing option under which orders will check the System for available shares and simultaneously route to The Nasdaq Stock Market and Nasdaq PSX in accordance with the System routing table. If shares remain unexecuted after routing, they are posted on the book or cancelled. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

(B) Priority of Routed Orders. Regardless of the routing option selected, orders sent by the System to other markets do not retain time priority with respect to other orders in the System and the System shall continue to execute other orders while routed orders are away at another market center. Once routed by the System, an order becomes subject to the rules and procedures of the destination market including, but not limited to, order cancellation. If a routed order is subsequently returned, in whole or in part, that order, or its remainder, shall receive a new time stamp reflecting the time of its return to the System.

(b) Routing Broker

(1) All routing by the System shall be performed by the Exchange's affiliated broker-dealer, Nasdaq Execution Services, LLC, ("NES"), which, in turn, shall route orders to other market centers as directed by the Exchange either directly or through one or more third-party unaffiliated routing broker-dealers. The Exchange will determine the logic that provides when, how, and where orders are routed away to other exchanges. Except as provided in subparagraph (8) below, the routing broker(s) cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order.

(2) NES will not engage in any business other than: (a) as an outbound router for the Exchange and (b) any other activities it may engage in as approved by the Commission; provided, however, that immediately prior to the commencement of operations of NES as an outbound router for the Exchange, the Exchange may use NES to conduct a test of its routing functionality, as provided in SR-BX-2011-076.

(3) NES shall operate as a facility, as defined in Section 3(a)(2) of the Act, of the Exchange.

(4) For purposes of SEC Rule 17d-1, the designated examining authority of NES shall be a self-regulatory organization unaffiliated with the Exchange or any of its affiliates. The Exchange and NES may not use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority.

(5) The Exchange shall be responsible for filing with the Securities and Exchange Commission rule changes related to the operation of, and fees for services provided by, NES and NES shall be subject to exchange non-discrimination requirements.

(6) The books, records, premises, officers, agents, directors and employees of NES as a facility of the Exchange shall be deemed to be the books, records, premises, officers, agents, directors and employees of the Exchange for purposes of, and subject to oversight pursuant to, the Act. The books and records of NES as a facility of the Exchange shall be subject at all times to inspection and copying by the Commission.

(7) Use of NES to route orders to other market centers will be optional. Parties that do not desire to use NES must enter orders into the System as immediate-or-cancel orders or any other order type available through the System that is ineligible for routing.

(8) NES shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and its facilities (including NES as its routing facility) and any other entity; or, where there is a routing broker, the Exchange, the Routing Facility and any routing broker, and any other entity, including any affiliate of the routing broker (and if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services).

(c) Market Access. In addition to the Exchange Rules regarding routing to away trading centers, NES has, pursuant to Rule 15c3-5 under the Act, implemented certain tests designed to mitigate risks associated with providing the Exchange's Members with access to such away trading centers. Pursuant to the policies and procedures developed by NES to comply with Rule 15c3-5, if an order or series of orders are deemed to be violative of applicable pre-trade requirements under Rule 15c3-5, the order will be rejected prior to routing and/or NES will seek to cancel the order if it has been routed.

(d) Cancellation of Orders and Error Account

(1) The Exchange or NES may cancel orders as either deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, NES, or a routing destination. The Exchange or NES shall provide notice of the cancellation to affected members as soon as practicable.

(2) NES shall maintain an error account for the purpose of addressing positions that result from a technical or systems issue at NES, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders ("error positions").

(A) For purposes of this Rule 4758(d), an error position shall not include any position that results from an order submitted by a member to the Exchange that is executed on the Exchange and automatically processed for clearance and settlement on a locked-in basis.

(B) Except as provided in Rule 4758(d)(2)(C), NES shall not (i) accept any positions in its error account from an account of a member, or (ii) permit any member to transfer any positions from the member's account to NES's error account.

(C) If a technical or systems issue results in the Exchange not having valid clearing instructions for a member to a trade, NES may assume that member's side of the trade so that the trade can be automatically processed for clearance and settlement on a locked-in basis.

(3) In connection with a particular technical or systems issue, NES or the Exchange shall either (i) assign all resulting error positions to members in accordance with subparagraph (A) below, or (ii) have all resulting error positions liquidated in accordance with subparagraph (B) below. Any determination to assign or liquidate error positions, as well as any resulting assignments, shall be made in a nondiscriminatory fashion.

(A) NES or the Exchange shall assign all error positions resulting from a particular technical or systems issue to the members affected by that technical or systems issue if NES or the Exchange:

(i) determines that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the members affected by that technical or systems issue;

(ii) determines that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the members affected by that technical or systems issue; and

(iii) has not determined to cancel all orders affected by that technical or systems issue in accordance with subparagraph (d)(1) above.

(B) If NES or the Exchange is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected members in accordance with subparagraph (A) above, or if NES or the Exchange determines to cancel all orders affected by the technical or systems issue in accordance with subparagraph (d)(1) above, then NES shall liquidate the error positions as soon as practicable. NES shall:

(i) provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading; and

(ii) establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer and NES/the Exchange associated with the liquidation of the error positions.

(4) NES and the Exchange shall make and keep records to document all determinations to treat positions as error positions and all determinations for the assignment of error positions to members or the liquidation of error positions, as well as records associated with the liquidation of error positions through the third-party broker-dealer.

**4759. Data Feeds Utilized**

(a) The BX System consumes quotation data from the below proprietary and network processor feeds for the handling, routing, and execution of orders, as well as for the regulatory compliance processes related to those functions. The Primary Source of data is used unless it is delayed by a configurable amount compared to the Secondary Source of data. The Exchange will revert to the Primary Source of data once the delay has been resolved. The configurable amount described in this rule will be made available to members via Equity Trader Alert.

<u>Market Center</u>	<u>Primary Source Quotes</u>	<u>Secondary Source Quotes</u>
<u>A - NYSE American</u>	<u>Direct Feed</u>	<u>CQS/UQDF</u>

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<u>B - Nasdaq BX</u>	<u>Direct Feed</u>	<u>CQS/UQDF</u>
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<u>C - NYSE National</u>	<u>Direct Feed</u>	<u>CQS/UQDF</u>
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<u>D - FINRA ADF</u>	<u>CQS/UQDF</u>	<u>n/a</u>
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<u>H - MIAX Pearl</u>	<u>Direct Feed</u>	<u>CQS/UQDF</u>
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<u>J - CBOE EDGA</u>	<u>Direct Feed</u>	<u>CQS/UQDF</u>
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<u>K - CBOE EDGX</u>	<u>Direct Feed</u>	<u>CQS/UQDF</u>
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<u>L - LTSE</u>	<u>CQS/UQDF</u>	<u>n/a</u>
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<u>M - NYSE Chicago</u>	<u>Direct Feed</u>	<u>CQS/UQDF</u>
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<u>N - NYSE</u>	<u>Direct Feed</u>	<u>CQS/UQDF</u>
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<u>P - NYSE Arca</u>	<u>Direct Feed</u>	<u>CQS/UQDF</u>
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<u>T/Q - Nasdaq</u>	<u>Direct Feed</u>	<u>CQS/UQDF</u>
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<u>U - MEMX</u>	<u>Direct Feed</u>	<u>CQS/UQDF</u>
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<u>V - IEX</u>	<u>Direct Feed</u>	<u>CQS/UQDF</u>
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<u>X - Nasdaq PSX</u>	<u>Direct Feed</u>	<u>CQS/UQDF</u>
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<u>Y - CBOE BYX</u>	<u>Direct Feed</u>	<u>CQS/UQDF</u>
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<u>Z - CBOE BZX</u>	<u>Direct Feed</u>	<u>CQS/UQDF</u>
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(b) SIP Trade and Administrative Data. The SIP is the Primary Source of trade and administrative messages such as limit-up limit-down price bands, market-wide circuit breaker decline and status messages, Regulation SHO state messages, halts and resumes, and last sale information. Where available, the Direct Feeds are the Secondary Source of such information.

#### **4760. 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, the Exchange will reveal to a member, no later than the end of the day on the date an anonymous trade was executed, when the member's Quote or Order has been decremented by another Quote or Order submitted by that same member.

#### **4761. Issuer Corporate Actions Related to a Dividend, Payment or Distribution**

(a) Except as provided below, the System will automatically cancel open quotes and/or orders in all System Securities resident in the System in response to issuer corporate actions, including any dividend (whether payable in cash or securities or both), payment, distribution, forward or reverse stock split, symbol change, or change in primary listing venue, immediately prior to the opening of the System at 7:00 a.m. on the ex-date of such actions.

(b) A member may designate that all orders with a time-in-force of good-till-cancelled that are entered through one or more order entry ports specified by the member will be processed in the following manner in the event of certain issuer corporate actions as specified below. The member may opt for the processing provided in this paragraph (b) on a port-by-port basis, but all of the provisions of this paragraph shall apply to all good

till-cancelled orders entered through a port that has been specified by the member hereunder.

(1) Cash Dividend. If an issuer is paying a cash dividend, the price of an order to buy will be reduced by the amount of the sum of all dividends payable, rounded up to the nearest whole cent; provided, however, that there will be no adjustment if the sum of all dividends is less than \$0.01. For example, if the sum of all dividends is \$0.381, the price of the order will be reduced by \$0.39. An order to sell will be retained but will receive no price adjustment.

(2) Forward Stock Split or Stock Dividend. If an issuer is implementing a forward stock split or a stock dividend (i.e., a corporate action in which additional shares are issued to holders), the order will be cancelled if its size is less than one round lot. If the order's size is greater than one round lot, (i) the size of the order will be multiplied by the ratio of post-action shares to pre-action shares, with the result rounded downward to the nearest whole share, and (ii) the price of the order will be multiplied by the ratio of pre-action shares to post-action shares, with the result rounded down to the nearest whole penny in the case of orders to buy and rounded up to the nearest whole penny in the case of orders to sell. For example, if a member has entered a good-till-cancelled order to buy 375 shares at \$10.95 per share and the issuer implemented a split or dividend under which an additional 1.25 shares would be issued for each share outstanding, the size of the order would be adjusted to 843 shares ( $375 \times 2.25/1 = 843.75$ , rounded down to 843) and the price of the order would be adjusted to \$4.86 per share ( $\$10.95 \text{ per share} \times 1/2.25 = \$4.8667$  per share, rounded down to \$4.86 per share). An order to sell at the same price and size would be adjusted to 843 shares with a price of \$4.87 per share.

(3) Combination of Cash Dividend and Forward Stock Split or Stock Dividend. If an issuer is implementing a cash dividend and a forward stock split or stock dividend on the same date, the adjustments described above will both be applied, in the order described in the notice of the corporate actions received by the Exchange.

(4) For other corporate actions, including symbol changes, changes in primary listing venue, reverse stock splits, and dividends payable in either cash or securities at the option of the stockholder, the order will be cancelled.

(5) All of the foregoing changes will be effected immediately prior to the opening of the System at 7:00 a.m. on the ex-date of the applicable corporate action. Open orders that are retained will be re-entered by the System (as adjusted above) immediately prior to the opening of the System, such that they will retain time priority over new orders entered at or after 7:00 a.m.

#### **4762. Clearly Erroneous Transactions**

All matters related to clearly erroneous transactions executed in the System shall be initiated and adjudicated pursuant to Equity 11, Rule 11890.

### **4763. Short Sale Price Test Pursuant to Rule 201 of Regulation SHO**

(a) Definitions. For purposes of this Rule, the terms "covered security," "listing market," and "national best bid" shall have the same meaning as in Rule 201 of Regulation SHO.

(b) Short Sale Price Test. The System (as defined in Equity 1, Section 1(a)(6) shall not execute or display a short sale order with respect to a covered security at a price that is less than or equal to the current national best bid if the price of that security decreases by 10% or more, as determined by the listing market for the security, from the security's closing price on the listing market as of the end of regular trading hours on the prior day ("Trigger Price").

(c) Duration of Short Sale Price Test. If the Short Sale Price Test is triggered by the listing market with respect to a covered security, the Short Sale Price Test shall remain in effect until the close of trading on the next trading day, as provided for in Regulation SHO Rule 201(b)(1)(ii) (the "Short Sale Period").

(d) Re-pricing of Orders during Short Sale Period. Except as provided below, during the Short Sale Period, short sale orders that are limited to the national best bid or lower and short sale market orders will be re-priced by the System one minimum allowable price increment above the current national best bid ("Permitted Price"). To reflect declines in the national best bid, the Exchange will continue to re-price a short sale order at the lowest Permitted Price down to the order's original limit price, or if a market order, until the order is filled. Non-displayed orders between the BX bid and offer will also be re-priced upward to a Permitted Price to correspond with a rise in the national best bid.

(1) During the Short Sale Period, immediate or cancel orders ("IOC") requiring that all or part of the order be executed immediately will be executed at a Permitted Price and higher and then cancelled, and will not be re-priced. IOC short sale orders that are inter-market sweep orders and not marked "short exempt" will be handled in the same manner as IOC orders.

(2) During the Short Sale Period, if an order was entered as a long sale order or a short sale exempt order but is subsequently marked pursuant to Rule 4756(a)(3) as a short sale order, the System will cancel the order unless it is priced at a Permitted Price or higher.

(e) Execution of Permissible Orders during the Short Sale Period. During the Short Sale Period, the System will execute and display a short sale order without regard to whether the order is at a Permitted Price or higher if, at the time of initial display of the short sale order, the order was at a price above the then current national best bid. Short sale orders that are entered into the Exchange prior to the Short Sale Period but are not displayed will be re-priced as described in (d) above.

(f) Short Exempt Orders. During the Short Sale Period, the System will execute and display orders marked "short exempt" without regard to whether the order is at a Permitted Price or higher. The System will accept orders marked "short exempt" at any time when the System is open for order entry, regardless of whether the Short Sale Price Test has been triggered.

#### **4770. Compliance with Regulation NMS Plan to Implement a Tick Size Pilot**

##### (a) Tick Size Pilot Program

###### (1) Definitions.

(A) "Plan" means the Tick Size Pilot Plan Submitted to the Securities and Exchange Commission Pursuant to Rule 608(a)(3) of Regulation NMS under the Exchange Act.

(B) "Pilot Test Groups" means the three test groups established under the Plan, consisting of 400 Pilot Securities each, which satisfy the respective criteria established by the Plan for each such test group.

(C) "Retail Investor Order" means an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted in a Participant-operated retail liquidity program by a retail member, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. A Retail Investor Order may be an odd lot, round lot, or partial round lot.

(D) "Trade-at Intermarket Sweep Order" means a limit order for a Pilot Security that meets the following requirements:

(i) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and

(ii) Simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders or Intermarket Sweep Orders.

(E) All capitalized terms not otherwise defined in this Rule shall have the meanings set forth in the Plan, Regulation NMS under the Exchange Act, or Exchange rules, as applicable.

(2) Exchange Participation in the Plan. The Exchange is a Participant in, and subject to the applicable requirements of, the Plan, which establishes a Tick Size Pilot Program that will allow the Securities and Exchange Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies.

(3) Member Compliance. Members shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the applicable requirements of the Plan.

(4) Exchange Compliance with the Plan. Exchange systems will not display, quote or trade in violation of the applicable quoting and trading requirements for a Pilot Security specified in the Plan and this Rule, unless such quotation or transaction is specifically exempted under the Plan.

(5) Pilot Securities That Drop Below \$1.00 during the Pilot Period. If the price of a Pilot Security drops below \$1.00 during regular trading on any given business day, such Pilot Security will continue to be subject to the Plan and the requirements enumerated in (c)(1)-(3) below and will continue to trade in accordance with such Rules as if the price of the Pilot Security had not dropped below \$1.00. However, if the Closing Price of a Pilot Security on any given business day is below \$1.00, such Pilot Security will be moved out of its respective Pilot Test Group into the Control Group, and may then be quoted and traded at any price increment that is currently permitted by Exchange rules for the remainder of the Pilot Period. Notwithstanding anything contained herein to the contrary, at all times during the Pilot Period, Pilot Securities (whether in the Control Group or any Pilot Test Group) will continue to be subject to the requirements contained in Paragraph (b).

(b) Compliance with Data Collection Requirements

(1) Policies and Procedures Requirement. A Member that operates a Trading Center shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Items I and II of Appendix B of the Plan, and a Member that is a Market Maker shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Item IV of Appendix B of the Plan and Item I of Appendix C of the Plan.

(2) The Exchange shall collect and transmit to the SEC the data described in Items I and II of Appendix B of the Plan relating to trading activity in Pre-Pilot Securities and Pilot Securities on a Trading Center operated by the Exchange. The Exchange shall transmit such data to the SEC in a pipe delimited format, on a disaggregated basis by Trading Center, within 30 calendar days following month end for:

(A) Each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through thirty-one days prior to the first day of the Pilot Period; and

(B) Each Pilot Security for the period beginning thirty days prior to the first day of the Pilot Period through six months after the end of the Pilot Period. The Exchange also shall make such data publicly available on the Exchange web site within 120 calendar days following month end at no charge and shall not identify the Member that generated the data.

(3) Daily Market Maker Participation Statistics Requirement

(A) A Member that is a Market Maker shall collect and transmit to their DEA data relating to Item IV of Appendix B of the Plan, with respect to activity conducted on any Trading Center in Pre-Pilot Securities and Pilot Securities in furtherance of its status as a Market Maker, including a Trading Center that executes trades otherwise than on a national securities exchange, for transactions that have settled or reached settlement date. Market Makers shall transmit such data in a format required by their DEA by 12:00 p.m. EST on T+4:

(i) For transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through thirty-one days prior to the first day of the Pilot Period; and

(ii) For transactions in each Pilot Security for the period beginning thirty days prior to the first day of the Pilot Period through six months after the end of the Pilot Period.

(B) A Member that is a Market Maker whose DEA is not a Participant to the Plan shall transmit the data collected pursuant to paragraph (3)(A) above to the Financial Industry Regulatory Authority, Inc. ("FINRA"). Market Makers shall transmit such data in a format required by FINRA by 12:00 p.m. EST on T+4 in accordance with paragraphs (3)(A)(i) and (ii) above.

(C) The Exchange shall transmit the data collected by the DEA or FINRA pursuant to paragraphs (3)(A) and (B) above relating to Market Maker activity on a Trading Center operated by the Exchange to the SEC in a pipe delimited format within 30 calendar days following month end. The

Exchange shall also make such data publicly available on the Exchange web site within 120 calendar days following month end at no charge and shall not identify the Trading Center that generated the data.

(4) Market Maker Profitability

(A) A Member that is a Market Maker shall collect and transmit to their DEA the data described in Item I of Appendix C of the Plan with respect to executions on any Trading Center that have settled or reached settlement date. Market Makers shall transmit such data in a format required by their DEA by 12:00 p.m. EST on T+4 for executions during and outside of Regular Trading Hours in each:

(i) Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through thirty-one days prior to the first day of the Pilot Period; and

(ii) Pilot Security for the period beginning thirty days prior to the first day of the Pilot Period through six months after the end of the Pilot Period.

(B) A Member that is a Market Maker whose DEA is not a Participant to the Plan shall transmit the data collected pursuant to paragraph (4)(A) above to FINRA. Market Makers shall transmit such data in a format required by FINRA by 12:00 p.m. EST on T+4 for executions during and outside of Regular Trading Hours in accordance with paragraphs (4)(A)(i) and (ii) above.

(5) Market Maker Registration Statistics. The Exchange shall collect and transmit to the SEC the data described in Item III of Appendix B of the Plan relating to daily Market Maker registration statistics in a pipe delimited format within 30 calendar days following month end for:

(A) For transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and

(B) For transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

The Exchange also shall make such data publicly available on the Exchange web site within 120 calendar days following month end at no charge.

(c) Compliance with Quoting and Trading Restrictions

(1) Pilot Securities in Test Group One will be subject to the following requirement: No member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than \$0.05. However, orders priced to trade at the midpoint of the national best bid and national best offer ("NBBO") or best protected bid and best protected offer ("PBBO") and orders entered in the Exchange's Retail Price Improvement Program as Retail Price Improvement Orders (as defined in Rule 4780(a)(3)) may be ranked and accepted in increments of less than \$0.05. Pilot Securities in Test Group One may continue to trade at any price increment that is currently permitted by Equity 1, Section 1(a)(17).

(2) Pilot Securities in Test Group Two shall be subject to the following requirements:

(A) No member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than \$0.05. However, orders priced to trade at the midpoint of the NBBO or PBBO and orders entered in the Exchange's Retail Price Improvement Program as Retail Price Improvement Orders (as defined in Rule 4780(a)(3)) may be ranked and accepted in increments of less than \$0.05.

(B) Absent any of the exceptions listed in (C) below, no member may execute orders in any Pilot Security in Test Group Two in price increments other than \$0.05. The \$0.05 trading increment will apply to all trades, including Brokered Cross Trades.

(C) Pilot Securities in Test Group Two may trade in increments less than \$0.05 under the following circumstances:

(i) Trading may occur at the midpoint between the NBBO or the PBBO;

(ii) Retail Investor Orders may be provided with price improvement that is at least \$0.005 better than the PBBO;

(iii) Negotiated Trades may trade in increments less than \$0.05; and

(iv) Execution of a customer order to comply with IM-2110-2 following the execution of a proprietary trade by the member at an increment other than \$0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.

(3) Pilot Securities in Test Group Three shall be subject to the following requirements:

(A) No member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than \$0.05. However, orders priced to trade at the midpoint of the NBBO or PBBO and orders entered in the Exchange's Retail Price Improvement Program as Retail Price Improvement Orders (as defined in Rule 4780(a)(3)) may be ranked and accepted in increments of less than \$0.05.

(B) Absent any of the exceptions listed in (C) below, no member may execute orders in any Pilot Security in Test Group Three in price increments other than \$0.05. The \$0.05 trading increment will apply to all trades, including Brokered Cross Trades.

(C) Pilot Securities in Test Group Three may trade in increments less than \$0.05 under the following circumstances:

(i) Trading may occur at the midpoint between the NBBO or PBBO;

(ii) Retail Investor Orders may be provided with price improvement that is at least \$0.005 better than the Best Protected Bid or the Best Protected Offer;

(iii) Negotiated Trades may trade in increments less than \$0.05; and

(iv) Execution of a customer order to comply with IM-2110-2 following the execution of a proprietary trade by the member at an increment other than \$0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.

(D) Pilot Securities in Test Group Three will be subject to the following Trade-at Prohibition:

(i) "Trade-at Prohibition" means the prohibition against executions by a Trading Center of a sell order for a Pilot Security at the price of a Protected Bid or the execution of a buy order for a Pilot Security at the price of a Protected Offer during regular trading hours.

(ii) Absent any of the exceptions listed in (iii) below, no member may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer.

(iii) Members may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order

for a Pilot Security in Test Group Three at the price of a Protected Offer if any of the following circumstances exist:

(a) The order is executed as agent or riskless principal by an independent trading unit, as defined under Rule 200(f) of Regulation SHO, of a Trading Center within a member that has a displayed quotation as agent or riskless principal, via either a processor or an SRO Quotation Feed, at a price equal to the traded-at Protected Quotation, that was displayed before the order was received, but only up to the full displayed size of that independent trading unit's previously displayed quote;

(b) The order is executed by an independent trading unit, as defined under Rule 200(f) of Regulation SHO, of a Trading Center within a member that has a displayed quotation for the account of that Trading Center on a principal (excluding riskless principal) basis, via either a processor or an SRO Quotation Feed, at a price equal to the traded-at Protected Quotation, that was displayed before the order was received, but only up to the full displayed size of that independent trading unit's previously displayed quote;

(c) The order is of Block Size at the time of origin and may not be:

(A) an aggregation of non-block orders; or

(B) broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution;

(d) The order is a Retail Investor Order executed with at least \$0.005 price improvement;

(e) The order is executed when the Trading Center displaying the Protected Quotation that was traded at was experiencing a failure, material delay, or malfunction of its systems or equipment;

(f) The order is executed as part of a transaction that was not a "regular way" contract;

(g) The order is executed as part of a single-priced opening, reopening, or closing transaction on the Exchange;

(h) The order is executed when a Protected Bid was priced higher than a Protected Offer in the Pilot Security;

(i) The order is identified as a Trade-at Intermarket Sweep Order;

(j) The order is executed by a Trading Center that simultaneously routed Trade-at Intermarket Sweep Orders or Intermarket Sweep Orders to execute against the full displayed size of the Protected Quotation that was traded at;

(k) The order is executed as part of a Negotiated Trade;

(l) The order is executed when the Trading Center displaying the Protected Quotation that was traded at had displayed, within one second prior to execution of the transaction that constituted the Trade-at, a Best Protected Bid or Best Protected Offer, as applicable, for the Pilot Security with a price that was inferior to the price of the Trade-at transaction;

(m) The order is executed by a Trading Center which, at the time of order receipt, the Trading Center had guaranteed an execution at no worse than a specified price (a "stopped order"), where:

(A) The stopped order was for the account of a customer;

(B) The customer agreed to the specified price on an order-by-order basis; and

(C) The price of the Trade-at transaction was, for a stopped buy order, equal to or less than the National Best Bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to or greater than the National Best Offer in the Pilot Security at the time of execution, as long as such order is priced at an acceptable increment;

(n) The order is for a fractional share of a Pilot Security, provided that such fractional share order was not the result of breaking an order for one or more whole shares of a Pilot Security into orders for fractional shares or was not otherwise effected to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan; or

(o) The order is to correct a bona fide error, which is recorded by the Trading Center in its error account. A bona fide error is defined as:

(A) The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market;

(B) The unauthorized or unintended purchase, sale, or allocation of securities, or the failure to follow specific client instructions;

(C) The incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or

(D) A delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.

(iv) No member shall break an order into smaller orders or otherwise effect or execute an order to evade the requirements of the Trade-at Prohibition of this Rule or any other provisions of the Plan.

(d) Operation of Order Types and Order Attributes

This section sets forth BX's specific procedures for handling, executing, re-pricing and displaying of certain Order Types and Order Attributes applicable to Pilot Securities. Unless otherwise indicated, this section applies to orders in all three Test Group Pilot Securities.

(1) All Order Types. Any Order Type in a security of any of the Test Groups that requires a price and does not otherwise qualify for an exception, will not be accepted if it is in a minimum price increment other than \$0.05. This minimum price increment applies to repricing and rounding by the System, unless otherwise noted below.

Subject to the provisions below, if the entered limit price of an Order in a Test Group Three Pilot Security, entered through RASH or FIX, locked or crossed a

Protected Quotation and the NBBO changes so that the Order can be ranked closer to its original entered limit price, the price of the Order will be adjusted repeatedly in accordance with changes to the NBBO.

(2) Price to Comply Order. A Price to Comply Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(1) except as provided under this paragraph. If a Price to Comply Order for a Test Group Three Pilot Security is partially executed upon entry and the remainder would lock a Protected Quotation of another market center, the unexecuted portion of the Order will be cancelled. If the Order is not executable against any previously posted orders on the Exchange Book, and the limit price of a buy (sell) Price to Comply Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be ranked on the Exchange Book at the current midpoint of the NBBO.

A Price to Comply Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the Exchange Book:

- If entered at a price that locked a Protected Quotation, and if the NBBO changes such that it can be ranked and displayed at the price of the Protected Quotation that it locked, the Price to Comply Order will be adjusted to rank and display at its original entered limit price.
- If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Price to Comply Order, based on the participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed upon entry with its displayed price remaining unchanged.
- If, after being posted on the Exchange Book, the non-displayed price of a Price to Comply Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Price to Comply Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Price to Comply Order will be cancelled.

(3) Non-Displayed Order. A Non-Displayed Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(3) except as provided under this paragraph. A resting Non-Displayed Order in a Test Group Three Pilot security cannot execute at the price of a Protected Quotation of another market center unless the incoming Order otherwise qualifies for an exception to the Trade-at prohibition provided under Rule 4770(c)(3)(D). If the limit price of a buy (sell) Non-Displayed Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will be ranked on the Exchange Book at either one minimum price increment below (above) the

National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower). If a resting Non-Displayed Order in a Test Group Three Pilot Security entered through RASH or FIX becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Non-Displayed Order is at an impermissible price under Regulation NMS or the Plan, the Non-Displayed Order will be repriced to a price that is at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower) and will receive a new timestamp.

For a Non-Displayed Order in a Test Group Three Pilot Security entered through OUCH or FLITE, if after such a Non-Displayed Order is posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order will be cancelled back to the Participant.

A Non-Displayed Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the Exchange Book:

- If entered at a price that locked a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation that it locked, the Non-Displayed Order will be adjusted to rank at its original entered limit price.
- If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Order, based on the Participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed.
- If entered at a price that locked or crossed a Protected Quotation, and if the NBBO changes such that it cannot be ranked at the price of the Protected Quotation it locked or crossed but can be ranked closer to its original limit price, the Non-Displayed Order will be adjusted to the new midpoint of the NBBO.
- If, after being posted on the Exchange Book, the Non-Displayed Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Non-Displayed Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Non-Displayed Order will be cancelled.

(4) Post-Only Order. A Post-Only Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(4) except as provided under this paragraph. For orders that are not attributable, if the limit price of a buy (sell) Post-Only Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will display at one minimum price

increment below (above) the Protected Quotation, and the Order will be ranked on the Exchange Book at the current midpoint of the NBBO.

A Non-Attributable Post-Only Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the Exchange Book:

- If entered at a price that locked a Protected Quotation, and if the NBBO changes such that it can be ranked and displayed at the price of the Protected Quotation that it locked,, the Post-Only Order will be adjusted to rank and display at its original entered limit price.

- If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Post-Only Order, based on the Participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed upon entry with its displayed price remaining unchanged.

- If, after being posted on the Exchange Book, the non-displayed price of a resting Post-Only Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Post-Only Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Post-Only Order will be cancelled.

(5) Retail Price Improving Order. A Retail Price Improving Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(5) except as provided under this paragraph. A Retail Price Improving Order in a Test Group Two or Three Pilot Security must be entered in a minimum price increment of \$0.005 and will only execute against Retail Orders if its price is at least \$0.005 better than the NBBO.

(6) Retail Order. A Retail Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(6) except as provided under this paragraph. A Retail Order in a Test Group One Pilot Security must be entered with a limit price in a minimum price increment and may execute in an increment other than a minimum price increment if the Order is provided with price improvement that is at least \$0.001 better than the NBBO. A Retail Order in a Test Group Two or Three Pilot Security must be entered in a minimum price increment and may execute in an increment other than a minimum price increment if the Order is provided with price improvement that is at least \$0.005 better than the NBBO.

(7) Market Maker Peg Order. A Market Maker Peg Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(7) except as provided under this paragraph. The displayed price of a Market Maker Peg Order in a Test Group Pilot Security will be rounded up (down) to the nearest minimum price increment for bids (offers), if it would otherwise display at an increment smaller than the

minimum price increment. For example, if the NBB is \$10.05 and NBO is \$10.15, and the Designated Percentage (as defined in Equity 2, Section 5) is 28%, the displayed price of a Market Maker Peg Order to buy 100 shares of a Test Group Pilot Security would be \$7.25 (i.e.,  $\$10.05 - (\$10.05 \times 0.28) = \$7.236$ , rounded up to \$7.25). Using the same market, but with a Market Maker Peg Order to sell 100 shares, the displayed price of the Order would be \$12.95 (i.e.,  $\$10.15 + (\$10.15 \times 0.28) = \$12.992$ , rounded down to \$12.95).

(8) Midpoint Pegging. An Order with Midpoint Pegging in a Test Group Pilot Security will operate as described in Rule 4703(d) except as provided under this paragraph. An order in a Test Group Pilot Security with Midpoint Pegging may execute at the midpoint of the NBBO in an increment other than the minimum price increment.

(9) Reserve Size. An Order with Reserve Size in a Test Group Pilot Security will operate as described in Rule 4703(h) except as provided under this paragraph. A resting Order in a Test Group Three Pilot Security with a Reserve Size (either a Price to Comply Order or a Price to Display Order through RASH or FIX) may not execute the non-displayed Reserve Size at the price of a Protected Quotation of another market center unless the incoming Order otherwise qualifies for an exception to the Trade-at prohibition provided under Rule 4770(c)(3)(D). If an Order with Reserve Size for a Test Group Three Pilot Security is partially executed upon entry and the remainder would lock a Protected Quotation of another market center, the unexecuted portion of the Order will be cancelled. If the Order is not executable against any previously posted orders on the Exchange Book, and the limit price of a buy (sell) Price to Comply Order with Reserve Size in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the displayed portion of the Order will display at one minimum price increment below (above) the Protected Quotation, and the displayed and non-displayed portions of the Order will be ranked on the Exchange Book at the current midpoint of the NBBO. If the Order is not executable against any previously posted orders on the Exchange Book, and the limit price of a buy (sell) Price to Display Order with Reserve Size in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the displayed portion of the Order will display and be ranked at one minimum price increment below (above) the Protected Quotation, and the non-displayed portion of the Order will be ranked on the Exchange Book at the current midpoint of the NBBO. If after being posted to the Exchange Book, the NBBO changes so that the Order with Reserve Size in a Test Group Three Pilot Security would no longer be executable at its ranked price due to the requirements of Regulation NMS or the Plan, the order will be adjusted in the same manner as described above.

(10) Good-till-Cancelled. An Order with a Time-in-Force of Good-till-Cancelled in a Test Group Pilot Security will operate as described in Rule 4703(a)(3) except

as provided under this paragraph. An order in a Test Group Security with a Good-till-Cancelled Time-in-Force that is adjusted pursuant to Rule 4761(b) will be adjusted based on a \$0.05 increment.

Supplementary Material:

.01 The terms used in this Rule 4770 shall have the same meaning as provided in the Plan, unless otherwise specified.

.02 For purposes of the reporting requirement in Appendix B.II.(n), a Trading Center shall report "Y" to their DEA where it is relying upon the Retail Investor Order exception to Test Groups Two and Three, and "N" in all other instances.

.03 For purposes of Appendix B.I, the field "Affected by Limit-Up Limit-Down bands" shall be included. A Trading Center shall report a value of "Y" to their DEA when the ability of an order to execute has been affected by the Limit-Up Limit-Down (LULD) bands in effect at the time of order receipt. A Trading Center shall report a value of "N" to their DEA when the ability of an order to execute has not been affected by the LULD bands in effect at the time of order receipt. For purposes of Appendix B.I, the Participants shall classify all orders in Pilot and Pre-Pilot Securities that may trade in a foreign market as: (1) fully executed domestically or (2) fully or partially executed on a foreign market. For purposes of Appendix B.II, the Participants shall classify all orders in Pilot and Pre-Pilot Securities that may trade in a foreign market as: (1) directed to a domestic venue for execution; (2) may only be directed to a foreign venue for execution; or (3) fully or partially directed to a foreign venue at the discretion of the Member.

.04 (a) For purposes of Appendix B.I.a(14), B.I.a(15), B.I.a(21) and B.I.a(22), the time ranges shall be changed as follows:

(1) Appendix B.I.a(14A): The cumulative number of shares of orders executed from 100 microseconds to less than 1 millisecond after the time of order receipt;

(2) Appendix B.I.a(15): The cumulative number of shares of orders executed from 1 millisecond to less than 100 milliseconds after the time of order receipt;

(3) Appendix B.I.a(21A): The cumulative number of shares of orders canceled from 100 microseconds to less than 1 millisecond after the time of order receipt; and

(4) Appendix B.I.a(22): The cumulative number of shares of orders canceled from 1 millisecond to less than 100 milliseconds after the time of order receipt.

- (b) For purposes of Appendix B.I.a(21) through B.I.a(27), unexecuted Immediate or Cancel orders shall be categorized separately irrespective of the duration of time after order receipt.
- .05 For purposes of Appendix B.I.a(31)-(33), the relevant measurement is the time of order receipt.
- .06 For purposes of Appendix B, the following order types and numbers shall be included and assigned the following numbers: "not held" orders (18); clean cross orders (19); auction orders (20); and orders that cannot otherwise be classified, including orders received when the NBBO is crossed (21); and limit order priced more than \$0.10 away from the NBBO (22). For purposes of order types 12-14 in Appendix B, such order types shall include all orders and not solely "resting" orders.
- .07 A Member shall not be deemed a Trading Center for purposes of Appendix B of the Plan where that Member only executes orders otherwise than on a national securities exchange for the purpose of: (i) correcting a bona fide error related to the execution of a customer order; (ii) purchases a security from a customer at a nominal price solely for purposes of liquidating the customer's position; or (iii) completing the fractional share portion of an order.
- .08 A Trading Center shall begin the data collection required pursuant to Appendix B.I.a(1) through B.II.(y) of the Plan and Item I of Appendix C of the Plan on April 4, 2016. The requirement that the Exchange or their DEA provide information to the SEC within 30 days following month end pursuant to Appendix B and C of the Plan shall commence at the beginning of the Pilot Period. Notwithstanding the provisions of paragraphs (b)(2)(B), (b)(3)(C), and (b)(5) of this Rule, with respect to data for the Pre-Pilot and Pilot Period, the requirement that the Exchange or DEA make Appendix B data publicly available on the Exchange's or DEA's web site shall commence on August 31, 2017. Notwithstanding the provisions of paragraph (b)(4) of this Rule, the Exchange or DEA shall make Appendix C data for the Pre-Pilot Period through January 2017 publicly available on the Exchange or DEA's web site by February 28, 2017.
- .09 For purposes of Appendix B.IV, the count of the number of Market Makers used in the calculation of share (trade) participation shall be added to each category. For purposes of Appendix B.IV(b) and (c), share participation and trade participation shall be calculated by using a total count instead of a share-weighted average or a trade-weighted average. For purposes of Appendix B, B.IV(d) (cross-quote share (trade) participation), (e) (inside-the-quote share (trade) participation), (f) (at-the-quote share (trade) participation), and (g) (outside-the-quote share (trade) participation), shall be calculated by reference to the National Best Bid or National Best Offer in effect immediately prior to the trade.
- .10 For purposes of Item I of Appendix C, the Participants shall calculate daily Market Maker realized profitability statistics for each trading day on a daily last in, first out (LIFO) basis using reported trade price and shall include only trades executed on the

subject trading day. The daily LIFO calculation shall not include any positions carried over from previous trading days. For purposes of Item I.c of Appendix C, the Participants shall calculate daily Market Maker unrealized profitability statistics for each trading day on an average price basis. Specifically, the Participants must calculate the volume weighted average price of the excess (deficit) of buy volume over sell volume for the current trading day using reported trade price. The gain (loss) of the excess (deficit) of buy volume over sell volume shall be determined by using the volume weighted average price compared to the closing price of the security as reported by the primary listing exchange. In calculating unrealized trading profits, the Participant also shall report the number of excess (deficit) shares held by the Market Maker, the volume weighted average price of that excess (deficit), and the closing price of the security as reported by the primary listing exchange used in reporting unrealized profit.

.11 "Pre-Pilot Data Collection Securities" are the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C of the Plan for the period beginning six months prior to the Pilot Period through thirty-one days prior to the Pilot Period. The Participants shall compile the list of Pre-Pilot Data Collection Securities by selecting all NMS stocks with a market capitalization of \$5 billion or less, a Consolidated Average Daily Volume (CADV) of 2 million shares or less and a closing price of \$1 per share or more. The market capitalization and the closing price thresholds shall be applied to the last day of the Pre-Pilot measurement period, and the CADV threshold shall be applied to the duration of the Pre-Pilot measurement period. The Pre-Pilot measurement period shall be the three calendar months ending on the day when the Pre-Pilot Data Collection Securities are selected. The Pre-Pilot Data Collection Securities shall be selected thirty days prior to the commencement of the six-month Pre-Pilot Period.

.12 This Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

.13 For purposes of qualifying for the Block Size exception under paragraph (c)(3)(D)(iii) of this Rule, the Order must have a size of 5,000 shares or more and the resulting execution upon entry must have a size of 5,000 shares or more in aggregate.

#### **4780. Retail Price Improvement Program**

##### (a) Definitions.

(1) Retail Member Organization. A "Retail Member Organization" or "RMO" is a Member (or a division thereof) that has been approved by the Exchange under this Rule to submit Retail Orders.

(2) "Retail Order" shall have the meaning provided in Rule 4702.

(3) "Retail Price Improvement Order" shall have the meaning provided in Rule 4702.

(4) Other Price Improving Contra-Side Interest. For purposes of Rule 4780, "Other Price Improving Contra-Side Interest" shall refer to booked, non-displayed orders that are priced more aggressively than the NBBO.

(b) Retail Member Organization Qualifications and Application.

(1) To qualify as a Retail Member Organization, a Member must conduct a retail business or route retail orders on behalf of another broker-dealer. For purposes of this Rule, conducting a retail business shall include carrying retail customer accounts on a fully disclosed basis.

(2) To become a Retail Member Organization, a Member must submit:

(A) an application form;

(B) supporting documentation, which may include sample marketing literature, website screenshots, other publicly disclosed materials describing the Member's retail order flow, and any other documentation and information requested by the Exchange in order to confirm that the applicant's order flow would meet the requirements of the Retail Order definition; and

(C) an attestation, in a form prescribed by the Exchange, that substantially all orders submitted as Retail Orders will qualify as such under this Rule.

(3) After an applicant submits the application form, supporting documentation, and attestation, the Exchange shall notify the applicant of its decision in writing.

(4) A disapproved applicant may: (A) request an appeal of such disapproval by the Exchange as provided in paragraph (d) below; and/or (B) reapply for Retail Member Organization status 90 days after the disapproval notice is issued by the Exchange.

(5) A Retail Member Organization may voluntarily withdraw from such status at any time by giving written notice to the Exchange.

(6) A Retail Member Organization must have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and procedures must require the Member to: (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements of this Rule, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If a Retail Member Organization does not itself conduct a retail business but routes Retail Orders on behalf of another broker-dealer, the Retail Member Organization's supervisory procedures must be reasonably designed to assure that the orders it receives from such other broker-dealer that are designated as Retail Orders meet the definition of a Retail Order. The Retail Member Organization must: (i) obtain an annual written representation, in a form

acceptable to the Exchange, from each other broker-dealer that sends the Retail Member Organization orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this Rule; and (ii) monitor whether Retail Order flow routed on behalf of such other broker-dealers meets the applicable requirements.

(c) Failure of RMO to Abide by Retail Order Requirements.

(1) If a Retail Member Organization designates orders submitted to the Exchange as Retail Orders and the Exchange determines, in its sole discretion, that such orders fail to meet any of the requirements set forth in paragraph (a) of this Rule, the Exchange may disqualify a Member from its status as a Retail Member Organization.

(2) Disqualification Determinations. The Exchange shall determine if and when a Member is disqualified from its status as a Retail Member Organization. When disqualification determinations are made, the Exchange shall provide a written disqualification notice to the Member.

(3) Appeal and/or Reapplication for Retail Member Organization Status. A Retail Member Organization that is disqualified under this paragraph (c) may: (A) appeal such disqualification as provided in paragraph (d) below; and/or (B) reapply for Retail Organization status 90 days after the date of the disqualification notice from the Exchange.

(d) Appeal of Disapproval or Disqualification.

(1) If a Member disputes the Exchange's decision to disapprove it under paragraph (b) above or disqualify it under paragraph (c) above, the Member ("appellant") may request, within five business days after notice of the decision is issued by the Exchange, that the Retail Price Improvement Panel ("RPI Panel") review the decision to determine if it was correct.

(2) The RPI Panel shall consist of the Exchange's Chief Regulatory Officer ("CRO"), or a designee of the CRO, and two officers of the Exchange designated by the Chief Executive Officer of the Exchange.

(3) The RPI Panel shall review the facts and render a decision within the time frame prescribed by the Exchange.

(4) The RPI Panel may overturn or modify an action taken by the Exchange under this Rule. A determination by the RPI Panel shall constitute final action by the Exchange.

(e) Retail Liquidity Identifier. An identifier shall be disseminated through proprietary data feeds and through the appropriate Securities Information Processor when RPI interest priced at least \$0.001 better than the Exchange's Protected Bid or Protected Offer for a particular security is available in the System ("Retail Liquidity Identifier"). The

Retail Liquidity Identifier shall reflect the symbol for the particular security and the side (buy or sell) of the RPI interest, but shall not include the price or size of the RPI interest.

(f) Retail Order Designation. A Retail Member Organization can designate how a Retail Order will interact with available contra-side interest as provided in Rule 4702.

(g) Priority and Order Allocation.

RPI Orders in the same security shall be ranked and allocated according to price then time of entry into the Systems. Executions shall occur in price/time priority in accordance with Rule 4757. Any remaining unexecuted RPI interest will remain available to interact with other incoming Retail Orders. Any remaining unexecuted portion of the Retail Order will cancel or execute in accordance with paragraph (f) above.

Examples of priority and order allocation are as follows:

Protected NBBO for security ABC is \$10.00 — \$10.05

Member 1 enters a RPI Order to buy ABC at \$10.015 for 500

Member 2 then enters a RPI Order to buy ABC at \$10.02 for 500

Member 3 then enters a RPI Order to buy ABC at \$10.035 for 500

An incoming Retail Order to sell ABC for 1,000 executes first against Member 3's bid for 500 at \$10.035, because it is the best priced bid, then against Member 2's bid for 500 at \$10.02, because it is the next best priced bid. Member 1 is not filled because the entire size of the Retail Order to sell 1,000 is depleted. The Retail Order executes against RPI Orders in price/time priority.

However, assume the same facts above, except that Member 2's RPI Order to buy ABC at \$10.020 is for 100. The incoming Retail Order to sell 1,000 executes first against Member 3's bid for 500 at \$10.035, because it is the best priced bid, then against Member 2's bid for 100 at \$10.02, because it is the next best priced bid. Member 1 then receives an execution for 400 of its bid for 500 at \$10.015, at which point the entire size of the Retail Order to sell 1,000 is depleted.

As a final example, assume the same facts as above, except that Member 3's order was not a RPI Order to buy ABC at \$10.035, but rather, a Non-Displayed Order to buy ABC at \$10.03. The result would be similar to the result immediately above, in that the incoming Retail Order to sell 1,000 executes first against Member 3's bid for 500 at \$10.03, because it is the best priced bid, then against Member 2's bid for 100 at \$10.02, because it is the next best priced bid. Member 1 then receives an execution for 400 of its bid for 500 at \$10.015, at which point the entire size of the Retail Order to sell 1,000 is depleted.

(h) The pilot period, the Program will be limited to securities whose Bid Price on the Exchange is greater than or equal to \$1.00 per share.

## Equity 5 Order Audit Trail System

### Section 1. Definitions

For purposes of the Equity 5 Series:

- (a) Terms shall have the same meaning as those defined in the Exchange By-Laws and rules, unless otherwise specified.
- (b) "Bunched Order" shall mean two or more orders that are aggregated prior to execution.
- (c) "Customer" shall mean a person other than a broker or dealer.
- (d) "Nasdaq BX Equities Market" shall mean the service provided by the Exchange that provides for the automated execution and reporting of transactions in securities listed on the Exchange and other exchanges.
- (e) "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.
- (f) "Electronic Order" shall mean an order captured by a member in an electronic order-routing or execution system.
- (g) "Index Arbitrage Trade" shall have the same meaning as the term "Index Arbitrage" in New York Stock Exchange Rule 7410.
- (h) "Intermarket sweep order" shall have the same meaning as contained in Rule 600 of SEC Regulation NMS.
- (i) "Manual Order" shall mean an order that is captured by a member other than in an electronic order-routing or execution system.
- (j) "Order" shall mean any oral, written, or electronic instruction to effect a transaction in an equity security listed on the Exchange or Nasdaq that is received by a member from another person for handling or execution, or that is originated by a department of a member for execution by the same or another member, other than any such instruction to effect (1) a proprietary transaction originated by a trading desk in the ordinary course of a member's market making activities in an Exchange- or Nasdaq-listed equity security or (2) effect a bona fide hedge transaction involving an Exchange- or Nasdaq-listed equity security originated by a trading desk in the ordinary course of the member's options market making activities.
- (k) "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 Nasdaq reported by members for integration with trade and quotation

information to provide FINRA with an accurate time sequenced record of orders and transactions.

(l) "Program Trade" shall have the same meaning as the term "Program Trading" in New York Stock Exchange Rule 7410.

(m) "Reporting Agent" shall mean a third party that enters into any agreement with a member pursuant to which the Reporting Agent agrees to fulfill such member's obligations under Equity 5, Section 5.

(n) "Reporting Member" shall mean a member that receives or originates an order and has an obligation to record and report information under Equity 5, Sections 4 and 5. A member shall not be considered a Reporting Member in connection with an order, if the following conditions are met:

(1) the member 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) a single receiving Reporting Member; or

(B) two receiving Reporting Members, provided:

(i) orders are routed by the member to each receiving Reporting Member on a pre-determined schedule approved by FINRA; and

(ii) orders are routed to two receiving Reporting Members pursuant to the schedule for a time period not to exceed one year; and

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

(3) the receiving Reporting Member records and reports all information required under Equity 5, Sections 4 and 5 with respect to the order; and

(4) the member has a written agreement with the receiving Reporting Member specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of Equity 5, Sections 4 and 5.

(o) "Proprietary Trading Firm" shall mean an Exchange member that trades its own capital and that does not have "customers," as that term is defined in paragraph (c), 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.

## **Section 2. Applicability**

(a) Unless otherwise indicated, the requirements of Equity 5 are in addition to the requirements contained elsewhere in the Rules of the Exchange.

(b) Unless otherwise indicated, the requirements of Equity 5 shall apply to all Exchange Members and to their associated persons.

(c) Unless otherwise indicated, the requirements of Equity 5 shall apply to all executed or unexecuted orders for equity securities listed on the Exchange or on Nasdaq.

### **Section 3. Synchronization of Member Business Clocks**

(a) Exchange members shall comply with FINRA Rule 4590 as if such Rule were part of the Exchange's rules.

(b) For purposes of this Rule, references to "the FINRA By-Laws or other FINRA rules" shall be construed as references to the Exchange Rules.

### **Section 4. Recording of Order Information**

(a) With respect to orders for securities listed on Nasdaq, Exchange members and persons associated with a member shall comply with FINRA Rule 7440 as if such Rule were part of the Rules of the Exchange. The Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Equity 5, Section 4 are being performed by FINRA on behalf of the Exchange.

(b) With respect to orders for securities listed on the Exchange, Exchange members and persons associated with a member shall comply with FINRA Rule 7440 as if such Rule applied to orders for securities listed on the Exchange and such Rule were part of the Rules of the Exchange.

(c) For purposes of this Rule:

(1) references to FINRA Rules 7420 through 7460 shall be construed as references to Equity 5, Sections 2 through 6;

(2) references to FINRA Rules 5320, 7440, and 7450 shall be construed as references to BX General 9, Section 1, Equity 5, Sections 4 and 5, respectively.

(d) Exchange members shall assign and enter a unique order identifier, in the form prescribed by the Exchange, to all orders that are electronically transmitted to Nasdaq BX Equities Market. An order identifier shall not be required for orders that are manually transmitted.

### **Section 5. Order Data Transmission Requirements**

(a) Except as provided in paragraph (b), with respect to orders for securities listed on Nasdaq, Exchange members and persons associated with a member shall comply with FINRA Rule 7450 as if such Rule were part of the Rules of the Exchange. The Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Equity 5, Section 5 are being performed by FINRA on behalf of the Exchange.

(b) Proprietary Trading Firms and their associated persons shall be required to comply with FINRA Rule 7450 as if such Rule were part of the Exchange's rules only when they receive a request from the Exchange's Regulation Department 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 Section within Equity 5, including but not limited to, Equity 5, Section 4.

(c) With respect to orders for securities listed on the Exchange, Exchange members and their associated persons shall be required to comply with FINRA Rule 7450 as if such Rule applied to orders for securities listed on the Exchange and such Rule were part of the Rules of the Exchange, but only when they receive a request from the Exchange's Regulation Department 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 members and their associated persons under any other Section within Equity 5, including but not limited to, Equity 5, Section 4.

(d) For purposes of this Rule, references to FINRA Rule 7440 shall be construed as references to Equity 5, Section 4.

## **Section 6. Violation of Order Audit Trail System Rules**

Failure of a member or person associated with a member to comply with any of the requirements of Equity 5, Sections 1 through 6 may be considered conduct that is inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of General 9, Section 1.

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## **Equity 6 [Reserved]BX Risk Management Service; Other Systems and Programs**

### **Section 1. Reserved**

### **Section 2. Reserved**

### **Section 3. BX Kill Switch**

(a) **Definition.** The BX Kill Switch is an optional tool offered at no charge that enables Participants to establish pre-determined levels of risk exposure, to receive notifications as the value of executed orders and if applicable, unexecuted orders approaches the risk levels, and to have order entry ports disabled and unexecuted orders administratively cancelled when the value of executed orders, and if applicable unexecuted orders exceeds the risk levels set forth below. For purposes of this Rule, the term "Participant" has the meaning set forth in Equity 1, Section 1(a)(9).

(1) Gross Executed Risk Exposure . This refers to a pre-established maximum daily dollar amount for buy and sell orders across all symbols, where both buy and sell orders are counted as positive values. For purposes of calculating Gross Executed Risk Exposure, only executed orders are included.

(2) Gross Notional Risk Exposure . This refers to a pre-established maximum daily dollar amount for buy and sell orders across all symbols, where both buy and sell orders are counted as positive values. For purposes of calculating Gross Notional Risk Exposure, unexecuted orders on the Exchange book and executed orders are included.

(b) **Establishing and Adjusting Levels.** Participants or a Participant's clearing member, as designated pursuant to paragraph (d), may set risk levels for each MPID individually. Each Participant, or a Participant's clearing member, as designated pursuant to paragraph (d), is responsible for establishing and maintaining its risk levels. Participants or a Participant's clearing member, as designated pursuant to paragraph (d), may set and adjust risk level values before the beginning of a trading day and during the trading day.

(c) **Notification.** Participants and a Participant's clearing member, as designated pursuant to paragraph (d), will receive notifications when the total value of executed orders and, if applicable, unexecuted orders associated with an MPID exceeds 50, 75, 85, 90, and 95 percent of either of the risk level values. When either risk level value is exceeded, the notification will include the total number of orders cancelled and remaining open in the System.

(d) **Clearing Member Designation.** A Participant that does not self-clear may allocate the responsibility for establishing and adjusting the risk levels identified in paragraph (a) of this Rule to a clearing member that clears transactions on behalf of the Participant, if designated in a manner prescribed by the Exchange. A Participant that chooses to allocate responsibility to its clearing member may view any risk levels established by the clearing member pursuant to this Rule, and will be notified of any action taken by the Exchange with respect to its trading activity. By allocating responsibility to its clearing member, the Participant consents to the Exchange taking action with respect to the Participant's trading activity as provided for in paragraph (e) of this Rule. A Participant may revoke responsibility allocated to its clearing member pursuant to this paragraph at any time, if designated in a manner prescribed by the Exchange.

(e) **Breach Action and Reinstatement.** When a pre-established risk level is breached and the Kill Switch is triggered, it shall result in the immediate cancellation of all unexecuted orders of any type or duration entered by the Participant via the affected MPID, and in the immediate prevention of order entry of any type via the affected MPID. The Participant or the Participant's clearing member, if designated pursuant to paragraph (d), must request reactivation of the MPID before trading will be reauthorized.

#### **Section 4. Exchange Sharing of Participant Risk Settings**

The Exchange may share any Participant risk settings in the trading system specified in Equity 6, Section 5 with the clearing member that clears transactions on behalf of the Participant. For purposes of this Rule, the term "Participant" has the meaning set forth in Equity 1, Section 1(a)(9).

#### **Section 5. Risk Settings**

The Exchange offers certain risk settings applicable to a Participant's activities on the Exchange. The risk settings currently offered by the Exchange are:

(a) **Share Size Control** - When enabled by a Participant, this optional control will allow a Participant to limit the number of shares that the Participant may associate with an order placed on the Exchange;

(b) **ISO Control** - When enabled by a Participant, this optional control will prevent a Participant from entering an ISO order onto the Exchange;

(c) **Cancel-on-Disconnect Control** - When enabled by a Participant, this optional control will allow a Participant, when it experiences a disruption in its connection to the Exchange, to immediately cancel all pending Exchange orders except for Good-Till-Canceled orders (RASH & FIX only);

(d) **The BX Kill Switch** - This control is described in Equity 6, Section 3;

(e) **Limit Order Protection** - This control is described in Rule 4757(d);

(f) **Price Collar Check** - This control will automatically restrict a routed order from executing at a price that differs from the NBBO (at the time of order entry) by more than five percent or \$0.25, whichever difference is greater. The system will proceed to route an order unless and until it crosses the greater of these two price collars, and if it does so, then the system will block further routings of the order that fall outside of the collars. For example, if the NBBO is \$99 x \$100 at the time of entry of a buy order, then the system will route the order at prices at or below \$105, but will stop doing so if the offer price rises above \$105 (five percent of the NBO).

(g) **Maximum Order Volume Check** - This control will automatically reject an order for routing away that exceeds a maximum volume of shares. As applied to equity orders, the default maximum order volume is set at 25,000 shares, but the Participant may request that the Exchange set a higher default based on historic volume.

(h) **Maximum Single Order Notional Check** – When enabled by a Participant, this optional control will allow the Participant to limit the maximum dollar amount that the Participant may associate with an order placed on the Exchange;

(i) **Cumulative Order Volume Check** - This control will automatically block an attempt by a Participant using a particular MPID to route orders away to buy or sell equity securities that, cumulatively, exceed 9.5 million shares during a five second time period; and

(j) **Duplication Control** - This control will automatically reject an order that a Participant submits to the Exchange to the extent that it is duplicative of another order that the Participant submitted to the Exchange during the prior five seconds.

### **Section 6. Reserved**

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### **Equity 8 [Uniform Practice Code]Reserved**

### **Equity 8A Reserved**

### **Equity 9 [Supplementary Conduct Rules]Business Conduct**

#### **Section 1. Adjustment of Open Orders**

(a) A member holding an open order from a customer or another broker/dealer shall, prior to executing or permitting the order to be executed, reduce, increase or adjust the price and/or number of shares of such order by an amount equal to the dividend, payment or distribution, on the day that the security is quoted ex-dividend, ex-rights, ex-distribution or ex-interest, except where a cash dividend or distribution is less than one cent (\$.01), as follows:

(1) In the case of a cash dividend or distribution, the price of the order shall be reduced by subtracting the dollar amount of the dividend or distribution from the price of the order and rounding the result to the next lower minimum quotation variation used in the primary market, provided that if there is more than one minimum quotation variation in the primary market, then the greater of the variations shall be used;

(2) In the case of a stock dividend or split, the price of the order shall be reduced by rounding the dollar value of the stock dividend or split to the next higher minimum quotation variation used in the primary market as specified in paragraph (a)(1) and subtracting that amount from the price of the order; provided further, that the size of the order shall be increased by (A) multiplying the size of the original order by the numerator of the ratio of the dividend or split, (B) dividing the result by the denominator of the ratio of the dividend or split, and (C) rounding the result to the next lower round lot; and

(3) In the case of a dividend payable in either cash or securities at the option of the stockholder, the price of the order shall be reduced by the dollar value of the cash or securities, whichever is greater, according to the formulas in subparagraph (1) or (2), above; provided, that if the stockholder opts for securities, the size of the order shall be increased pursuant to the formula in subparagraph (2), above.

(b) If the value of the distribution cannot be determined, the member shall not execute or permit such order to be executed without reconfirming the order with the customer.

(c) If a security is the subject of a reverse split, all open orders shall be cancelled.

(d) The term "open order" means an order to buy or an open stop order to sell, including but not limited to "good `til cancelled," "limit" or "stop limit" orders which remain in effect for a definite or indefinite period until executed, cancelled or expired.

(e) The provisions of this Rule shall not apply to:

(1) orders governed by the rules of another registered national securities exchange or the FINRA;

(2) orders marked "do not reduce" where the dividend is payable in cash;

(3) orders marked "do not increase" where the dividend is payable in stock, provided that the price of such orders shall be adjusted as required by this Rule;

(4) open stop orders to buy;

(5) open sell orders; or

(6) orders for the purchase or sale of securities where the issuer of the securities has not reported a dividend, payment or distribution pursuant to SEC Rule 10b-17.

## **Section 2. Clearing Agreements**

(a) All clearing or carrying agreements entered into by a member shall specify the respective functions and responsibilities of each party to the agreement and shall, at a minimum, specify the responsibility of each party with respect to each of the following matters:

(1) opening, approving and monitoring customer accounts;

(2) extension of credit;

(3) maintenance of books and records;

(4) receipt and delivery of funds and securities;

(5) safeguarding of funds and securities;

(6) confirmations and statements;

(7) acceptance of orders and execution of transactions;

(8) whether, for purposes of the Commission's financial responsibility rules adopted under the Act, and the Securities Investor Protection Act, as amended, and regulations adopted thereunder, customers are customers of the clearing member; and

(9) the requirement to provide customer notification under paragraph (g) of this Rule.

(b)

(1) In order for the introducing member to carry out its functions and responsibilities under the agreement, each clearing member must forward promptly any written customer complaint received by the clearing member regarding the introducing member or its associated persons relating to functions and responsibilities allocated to the introducing member under the agreement directly to: (A) the introducing member; and (B) the introducing member's examining authority designated under Section 17 of the Act ("DEA") (or, if none, to its appropriate regulatory agency or authority). The clearing or carrying agreement must specifically direct and authorize the clearing member to do so.

(2) The clearing member must also notify the customer, in writing, that it has received the complaint, and that the complaint has been forwarded to the introducing member and to the introducing member's DEA (or, if none, to its appropriate regulatory agency or authority).

(3) Pursuant to the General 5, Rule 9600 Series, the Exchange may exempt a member or person associated with a member from the requirements of this paragraph for good cause shown in instances where the introducing organization is an affiliated entity of the carrying organization.

(c)

(1) A clearing member, when it enters into a clearing agreement, must immediately, and annually thereafter, provide the introducing member a list or description of all reports (exception and other types of reports) which it offers to the introducing member to assist the introducing member in supervising its activities, monitoring its customer accounts, and carrying out its functions and responsibilities under the clearing agreement. The introducing member must notify promptly the clearing member, in writing, of those specific reports offered by the clearing member that the introducing member requires to supervise and monitor its customer accounts.

(2) The clearing member must retain as part of its books and records required to be maintained under the Act and the Rules of the Exchange, copies of the reports requested by or provided to the introducing member. For purposes of this Rule, the clearing member will be in compliance with the requirements of this paragraph if it retains the data from which the original report was produced, provided, the clearing member can, at the request of the DEA (or, if none, to its appropriate regulatory agency or authority), either (A) recreate the report; or (B) provide the data and the data formatting that was used to prepare the report.

(3) Each year, no later than July 31, the clearing member must notify in writing the introducing member's chief executive and compliance officers of the reports offered to the introducing member pursuant to paragraph (c)(1) and the reports requested by or supplied to the introducing member as of such date. The clearing member must also provide a copy of the notice to the introducing member's DEA (or, if none, to its appropriate regulatory agency or authority).

(4) Pursuant to the General 5, Rule 9600 Series, the Exchange may exempt a member or person associated with a member from the requirements of this paragraph for good cause shown in instances where the introducing organization is an affiliated entity of the carrying organization.

(d) The clearing or carrying agreement may permit the introducing member to issue negotiable instruments directly to the introducing member's customers using instruments for which the clearing member is the maker or drawer. The clearing member may not grant the introducing member the authority to issue negotiable instruments until the introducing member has notified the clearing member in writing that it has established, and will maintain and enforce, supervisory procedures with respect to the issuance of such instruments that are satisfactory to the carrying organization.

(e) Whenever a clearing member designated to the Exchange for oversight pursuant to Section 17 of the Act, or a rule of the Commission adopted thereunder, amends any of its clearing or carrying agreements with respect to any item enumerated in subparagraphs (a)(1) through (a)(9) or enters into a new clearing or carrying agreement with an introducing member, the clearing member shall submit the agreement to the Exchange for review and approval.

(f) Whenever an introducing member designated to the Exchange for oversight pursuant to Section 17 of the Act, or a rule of the Commission adopted thereunder, amends its clearing or carrying agreement with a clearing member designated to another self-regulatory organization for oversight with respect to any item enumerated in subparagraphs (a)(1) through (a)(9) or enters into a new clearing agreement with another clearing member, the introducing member shall submit the agreement to the Exchange for review.

(g) Each customer whose account is introduced on a fully disclosed basis shall be notified in writing upon the opening of his account of the existence of the clearing or carrying agreement.

(h) All clearing agreements shall require each introducing member to maintain its proprietary and customer accounts and the proprietary and customer accounts of any member for which it is acting as an intermediary in obtaining clearing services from the clearing firm in such a manner as to enable the clearing firm and the Exchange to identify data belonging to the proprietary and customer accounts of each member. The requirements of this paragraph (h) shall apply to intermediary clearing arrangements between a member and an introducing member that are established on or after December 23, 2008.

(i) Members shall be exempt from Equity 9, Section 2 to the extent any party to the clearing agreement is subject to a comparable rule of the self-regulatory organization designated pursuant to SEC Rule 17d-1 as the party's designated examining authority.

### **Section 3. Publication of Transactions and Quotations**

No member shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such member believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security. If nominal quotations are used or given, they shall be clearly stated or indicated to be only nominal quotations.

### **Section 4. Manipulative and Deceptive Quotations**

General 9, Section 1 provides that:

A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

Equity 9, Section 3 provides that:

No member shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such member believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security. If nominal quotations are used or given, they shall be clearly stated or indicated to be only nominal quotations.

General 9, Section 1 provides that:

No member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.

It would be inconsistent with the above provisions for a member to publish or circulate or cause to be published or circulated, by any means whatsoever, any report of any securities transaction or of any purchase or sale of any security unless such member knows or has reason to believe that such transaction was a bona fide transaction, purchase or sale.

Similarly, it would be inconsistent with the above provisions for a member, for itself or for any other person, to publish or circulate or to cause to be published or circulated, by any means whatsoever, any quotation for any security without having reasonable cause to believe that such quotation is a bona fide quotation, is not fictitious and is not published or circulated or caused to be published or circulated for any fraudulent, deceptive or manipulative purpose.

For the purposes of this interpretation, the term "quotation" shall include any bid or offer or any formula, such as "bid wanted" or "offer wanted," designed to induce any person to make or submit any bid or offer.

#### **Section 5. Offers at Stated Prices**

No member shall make an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

#### **Section 6. Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts**

(a) No member or person associated with a member shall, directly or indirectly, effect any transaction or publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" and "offer wanted" and name only indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest, in any security as to which a trading halt is currently in effect.

(b) No member or person associated with a member shall, directly or indirectly, effect any transaction or publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" and "offer wanted" and name only indications), or a bid or offer, accompanied by a modifier to reflect unsolicited customer interest, in:

(1) a future for a single security when the underlying security has a regulatory trading halt that is currently in effect; and

(2) a future on a narrow-based securities index when one or more underlying securities that constitute 50% or more of the market capitalization of the index has a regulatory trading halt that is currently in effect.

#### **Section 7. Suspension of Trading**

(a) Members shall promptly notify Nasdaq whenever they have knowledge of any matter related to any "NMS Stock" (as defined in SEC Rule 600(b)(42)) or the issuer thereof which has not been adequately disclosed to the public or where they have knowledge of a regulatory problem relating to such security.

(b) Whenever any market for any NMS Stock halts or suspends trading in such security, members may continue to conduct trading in such security during the period of any such halt or suspension and shall continue to report all last sale prices reflecting transactions in such security, unless Nasdaq has initiated a trading halt for the security, pursuant to Rule 4120.

### **Section 8. Trading Practices**

(a) No member shall execute or cause to be executed or participate in an account for which there are executed purchases of any "NMS Stock" (as defined in SEC Rule 600(b)(42)) at successively higher prices, or sales of any such security at successively lower prices, for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security or for the purpose of unduly or improperly influencing the market price for such security or for the purpose of establishing a price which does not reflect the true state of the market in such security.

(b) No member shall, for the purpose of creating or inducing a false or misleading appearance of activity in an NMS Stock or creating or inducing a false or misleading appearance with respect to the market in such security:

(1) execute any transaction in such security which involves no change in the beneficial ownership thereof; or

(2) enter any order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties; or

(3) enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.

(c) No member shall execute purchases or sales of any NMS Stock for any account in which such member is directly or indirectly interested, which purchases or sales are excessive in view of the member's financial resources or in view of the market for such security.

(d) No member shall participate or have any interest, directly or indirectly, in the profits of a manipulative operation or knowingly manage or finance a manipulative operation.

(1) Any pool, syndicate or joint account organized or used intentionally for the purpose of unfairly influencing the market price of an NMS Stock shall be deemed to be a manipulative operation.

(2) The solicitation of subscriptions to or the acceptance of discretionary orders from any such pool, syndicate or joint account shall be deemed to be managing a manipulative operation.

(3) The carrying on margin of a position in such securities or the advancing of credit through loans to any such pool, syndicate or joint account shall be deemed to be financing a manipulative operation.

(e) No member shall make any statement or circulate and disseminate any information concerning any NMS Stock which such member knows or has reasonable grounds for believing is false or misleading or would improperly influence the market price of such security.

(f) No member or person associated with a member shall, directly or indirectly, hold any interest or participation in any joint account for buying or selling an NMS Stock, unless such joint account is promptly reported to Nasdaq. The report should contain the following information for each account:

(1) Name of the account, with names of all participants and their respective interests in profits and losses;

(2) a statement regarding the purpose of the account;

(3) name of the member carrying and clearing the account; and

(4) a copy of any written agreement or instrument relating to the account.

(g) No member shall offer that a transaction or transactions to buy or sell an NMS Stock will influence the closing transaction on the Consolidated Tape.

(h)

(1) A member may, but is not obligated to, accept a stop order in an NMS Stock.

(A) A buy stop order is an order to buy which becomes a market order when a transaction takes place at or above the stop price.

(B) A sell stop order is an order to sell which becomes a market order when a transaction takes place at or below the stop price.

(2) A member may, but is not obligated to, accept stop limit orders in NMS Stocks. When a transaction occurs at the stop price, the stop limit order to buy or sell becomes a limit order at the limit price.

(i) No member or person associated with a member shall execute or cause to be executed, directly or indirectly, on Nasdaq a transaction in a security subject to an initial public offering until such security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination of an opening transaction in the security by the listing exchange via the Consolidated Tape.

### **Section 9. Short-Interest Reporting**

(a) To the extent such information is not otherwise reported to FINRA in conformance with FINRA Rule 4560, each member shall maintain a record of total "short" positions in all customer and proprietary firm accounts in all securities listed on the Exchange and shall regularly report such information to the Exchange in such a manner as may be prescribed by the Exchange. Reports shall be received by the Exchange no later than the second business day after the reporting settlement date designated by the Exchange.

(b) Members shall record and report all gross short positions existing in each individual firm or customer account, including the account of a broker-dealer, that resulted from (1) a "short sale" as that term is defined in Rule 200(a) of SEC Regulation SHO, or (2) where the transaction(s) that caused the short position was marked "long," consistent with SEC Regulation SHO, due to the firm's or the customer's net long position at the time of the transaction. Members shall report only those short positions resulting from short sales that have settled or reached settlement date by the close of the reporting settlement date designated by the Exchange.

(c) The recording and reporting requirements of this Rule shall not apply to:

(1) any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as is possible without undue inconvenience or expense; and

(2) any sale by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities through rights or a standby underwriting commitment.

### **Section 10. Prompt Receipt and Delivery of Securities**

No member or person associated with a member may accept a customer's purchase order for any security unless it has first ascertained that the customer placing the order or its agent agrees to receive securities against payment in an amount equal to any execution, even though such an execution may represent the purchase of only a part of a larger order.

**Section 11. Order Entry and Execution Practices**

No member or associated person may engage in conduct that has the intent or effect of splitting any order into multiple smaller orders for execution or any execution into multiple smaller executions for transaction reporting for the primary purpose of maximizing a monetary or in-kind amount to be received by the member or associated person as a result of the execution of such orders or the transaction reporting of such executions. For purposes of this rule, "monetary or in-kind amount" shall be defined to include, but not be limited to, any credits, commissions, gratuities, payments for or rebates of fees, or any other payments of value to the member or associated person.

**Section 12. SEC Rule 19c-1 Governing Certain Off-Board Agency Transactions by Members of National Securities Exchanges**

No rule, stated policy, or practice of this exchange shall prohibit or condition, or be construed to prohibit or condition or otherwise limit, directly or indirectly, the ability of any member acting as agent to effect any transaction otherwise than on this exchange with another person (except when such member also is acting as agent for such other person in such transaction), in any equity security listed on this exchange or to which unlisted trading privileges on this exchange have been extended.

**Section 13. SEC Rule 19c-3 Governing Off-Board Trading by Members of National Securities Exchanges**

(a) No rule, stated policy or practice of this exchange shall prohibit or condition, or be construed to prohibit, condition or otherwise limit, directly or indirectly, the ability of any member to effect any transaction otherwise than on this exchange in any reported security listed and registered on this exchange or as to which unlisted trading privileges on this exchange have been extended (other than a put option or call option issued by The Options Clearing Corporation) which is not a covered security.

(b) For purposes of this rule,

(1) The term "Act" shall mean the Securities Exchange Act of 1934, as amended.

(2) The term "exchange" shall mean a national securities exchange registered as such with the Securities and Exchange Commission pursuant to section 6 of the Act.

(3) The term "covered security" shall mean:

(A) Any equity security or class of equity securities which

(i) was listed and registered on an exchange on April 26, 1979, and

(ii) remains listed and registered on at least one exchange continuously thereafter;

(B) Any equity security or class of equity securities which

(i) was traded on one or more exchanges on April 26, 1979, pursuant to unlisted trading privileges permitted by Section 12(f)(1)(A) of the Act, and

(ii) remains traded on any such exchange pursuant to such unlisted trading privileges continuously thereafter; and

(C) Any equity security or class of equity securities which

(i) is issued in connection with a statutory merger, consolidation or similar plan or reorganization (including a reincorporation or change of domicile) in exchange for an equity security or class of equity securities described in paragraph (b)(3)(A) or (b)(3)(B) of this rule,

(ii) is listed and registered on an exchange after April 26, 1979, and

(iii) remains listed and registered on at least one exchange continuously thereafter.

(4) The term "**reported security**" shall mean any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan.

(5) The term "**transaction report**" shall mean a report containing the price and volume associated with a completed transaction involving the purchase or sale of a security.

(6) The term "**effective transaction reporting plan**" shall mean any plan approved by the Commission pursuant to Rule 11Aa3-1 for collecting, processing and making available transaction reports with respect to transactions in an equity security or class of equity securities.

#### **Section 14. SEC Rule 604 Display of Customer Limit Orders**

Equities Market Makers shall comply with the obligations of SEC Rule 604 and any interpretations issued thereunder. Solely for the purposes of this Rule and SEC Rule 604, Equities Market Makers shall be deemed to be exchange specialists.

#### **Section 15. Suitability**

The provisions of FINRA Rule 2360(b)(19) shall apply to recommendations by members and persons associated with members regarding the purchase or sale of index warrants, currency index warrants, or currency warrants. To the extent that it is made applicable to index warrants, currency index warrants, and currency warrants by FINRA Rule 2353, Exchange Members and their associated persons shall comply with FINRA Rule 2360(b)(19) as if such Rule were part of the Rules of the Exchange.

#### **Section 16. Discretionary Accounts**

(a) Insofar as a member or person associated with a member exercises discretion to trade in index warrants, currency index warrants, or currency warrants in a customer's account, such account shall be subject to the provisions of FINRA Rule 2360(b)(18). To the extent that it is made applicable to index warrants, currency index warrants, and currency warrants by FINRA Rule 2354, Exchange Members and their associated persons shall comply with FINRA Rule 2360(b)(18) as if such Rule were part of the Rules of the Exchange.

(b) For purposes of this Rule, references to Rule 3260 and Rule 4512(c) shall be construed as references to General 9, Sections 19 and 45.

### **Section 17. Supervision of Accounts**

(a) The provisions of FINRA Rule 2360(b)(20) shall apply to all customer accounts of a member in which transactions in index warrants, currency index warrants, or currency warrants are effected. To the extent that it is made applicable to index warrants, currency index warrants, and currency warrants by FINRA Rule 2355, Exchange Members and their associated persons shall comply with FINRA Rule 2360(b)(20) as if such Rule were part of the Rules of the Exchange.

(b) For purposes of this rule, references to Rules 3110, 3120, and 3130 shall be construed as references to General 9, Sections 20 and 21.

### **Section 18. Customer Complaints**

(a) The record-keeping requirements of FINRA Rule 2360(b)(17)(A) concerning the receipt and handling of customer complaints relating to options shall also apply to customer complaints relating to index warrants, currency index warrants, or currency warrants. To the extent that it is made applicable to index warrants, currency index warrants, and currency warrants by FINRA Rule 2356, Exchange Members and their associated persons shall comply with FINRA Rule 2360(b)(17)(A) as if such Rule were part of the Rules of the Exchange.

(b) For purposes of this rule, references to Rule 2268 and the Rule 4510 Series shall be construed as references to General 6, Section 1(b) and General 9, Section 30. The reference to Rule 5340 shall be disregarded.

### **Section 19. Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants, and Currency Warrants**

(a) The provisions of FINRA Rule 2220 (except FINRA Rule 2220(c)) shall be applicable to communications to customers regarding index warrants, currency index warrants, or currency warrants. To the extent that it is made applicable to index warrants, currency index warrants, and currency warrants by FINRA Rule 2357, Exchange Members and their associated persons shall comply with FINRA Rule 2220 (except FINRA Rule 2220(c)) as if such Rule were part of the Rules of the Exchange.

(b) For purposes of this rule, references to "FINRA" shall be construed as references to the Exchange.

### **Section 20. Maintenance of Records**

The record-keeping provisions of FINRA Rule 2360(b)(17)(B) shall be applicable to customer accounts approved to trade index warrants, currency index warrants, or currency warrants. To the extent that it is made applicable to index warrants, currency index warrants, and currency warrants by FINRA Rule 2358, Exchange Members and their associated persons shall comply with FINRA Rule 2360(b)(17)(B) as if such Rule were part of the Rules of the Exchange.

### **Section 21. Reserved**

### **Section 22. Reserved**

### **Section 23. Reserved**

## **Equity 10 [BX Venture Listing Rules]Other Products and Securities**

### **Section 1. Direct Participation Programs**

(a) Exchange Members and their associated persons shall comply with FINRA Rule 2310 as if such Rule were part of the Rules of the Exchange.

(b) For purposes of this Rule

(1) references to amounts fixed by the Board of Governors with respect to noncash compensation arrangements shall be construed to reflect the policy of the Exchange with respect to the application of this Rule,

(2) references to "procedures established by the FINRA" and "FINRA Rules" shall be construed as references to "Rules of the Exchange", and

(3) for purposes of this Rule only, Exchange members and their associated persons shall comply with applicable provisions of FINRA Rule 5110 as if such Rule were part of the Rules of the Exchange, and references to the "Corporate Financing Department" shall be construed as references to FINRA's Corporate Financing Department.

(c) Pursuant to the General 5, Rule 9600 Series, the Exchange may exempt any member from the provisions of this Rule for good cause shown.

### **Section 2. Investment Company Securities**

(a) Exchange Members and their associated persons shall comply with FINRA Rule 2341 as if such Rule were part of the Rules of the Exchange.

(b) For purposes of this Rule:

(1) references to "FINRA rules" shall be construed as references to "the Rules of the Exchange",

(2) references to Rule 2320 shall be deleted, and no comparable Exchange Rule shall apply to activities of Exchange Members in connection with contracts providing for benefits or values which may vary according to the investment experience of any separate or segregated account or accounts maintained by an insurance company,

(3) references to Rule 2040 shall be construed as a requirement that an Exchange member who is an underwriter of the securities of an investment company selling any such securities, may not directly or indirectly, pay any compensation, fees, concessions, discounts, commissions or other allowances to any person that is not registered as a broker-dealer under Section 15(a) of the Exchange Act but, by reason of receipt of any such payments and the activities related thereto, is required to be so registered under applicable federal securities laws and Exchange Act rules and regulations; or any appropriately registered associated person unless such payment complies with all applicable federal securities laws, Exchange rules and Exchange Act rules and regulations, and

(4) references to Rule 2232 shall be construed as references to SEC Rule 10b-10.

**Section 3. Trading in Index Warrants, Currency Index Warrants, and Currency Warrants**

**(a) General**

(1) Applicability – General 9, Section 64, Equity 9, Section 15- 20, Equity 10, Section 3 -7 shall be applicable: (1) to the conduct of accounts, the execution of transactions, and the handling of orders in index warrants listed on the Exchange; and (2) to the extent appropriate unless otherwise stated herein, to the conduct of accounts, the execution of transactions, and the handling of orders in other exchange-listed stock index warrants, currency index warrants, and currency warrants by members who are not members of the exchange on which the warrant is listed or traded.

(2) Except to the extent that specific provisions in this Rule Series govern, or unless the context otherwise requires, the provisions of the Equity Rules and all other interpretations and policies shall also be applicable to transactions in index warrants, currency index warrants, and currency warrants.

(3) The rules at General 9, Section 64, Equity 9, Section 15- 20, Equity 10, Section 3 - 7 are not applicable to stock index warrants, currency index warrants, and currency warrants listed on national securities exchanges prior to September 28, 1995.

**(b) Definitions**

(1) "Control"

(A) The term "control" means the power or ability of an individual or entity to make investment decisions for an account or accounts, or influence directly or indirectly the investment decisions of any person or entity who makes investment decisions for an account. In addition, control will be presumed in the following circumstances:

(i) among all parties to a joint account who have authority to act on behalf of the account;

(ii) among all general partners to a partnership account;

(iii) when a person or entity:

(a) holds an ownership interest of 10 percent or more in an entity (ownership interest of less than 10 percent will not preclude aggregation), or

(b) shares in 10 percent or more of profits and/or losses of an account;

(iv) when accounts have common directors or management;

(v) where a person or entity has the authority to execute transactions in an account.

(B) Control, presumed by one or more of the above powers, abilities or circumstances, can be rebutted by proving the factor does not exist or by showing other factors which negate the presumption of control. The rebuttal proof must be submitted by affidavit and/or such other evidence as may be appropriate in the circumstances.

(C) The Exchange will also consider the following factors in determining if aggregation of accounts is required:

(i) similar patterns of trading activity among separate entities;

(ii) the sharing of kindred business purposes and interests;

(iii) whether there is common supervision of the entities which extends beyond assuring adherence to each entity's investment objectives and/or restrictions;

(iv) the degree of contact and communication between directors and/or managers of separate accounts.

(2) The term "**currency index**" means a group of currencies each of whose inclusion and relative representation in the group is determined by its inclusion and relative representation in a currency index.

(3) The term "**currency index warrants**" shall mean instruments that are direct obligations of the issuing company, either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style), entitling the holder thereof to a cash settlement in U.S. dollars to the extent that the value of the underlying currency index has declined below (in the case of a put warrant) or increased above (in the case of a call warrant) the pre-stated cash settlement value of the underlying currency index.

(4) The term "**currency warrants**" shall mean instruments that are direct obligations of the issuing company, either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style), entitling the holder thereof to a cash settlement in U.S. dollars to the extent that the value of the underlying foreign currency has declined below (in the case of a put warrant) or increased above (in the case of a call warrant) the pre-stated cash settlement value of the underlying foreign currency. The term "foreign currency warrants" shall also include cross-rate currency warrants.

(5) The term "**index warrants**" means instruments that are direct obligations of the issuing company, either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style), entitling the holder thereof to a cash settlement in U.S. dollars to the extent that the value of the underlying stock index group has declined below (in the case of a put warrant) or increased above (in the case of a call warrant) the pre-stated cash settlement value of the underlying stock index group.

(6) The term "**stock index group**" means a group of stocks each of whose inclusion and relative representation in the group is determined by its inclusion and relative representation in a stock index.

#### **Section 4. Position Limits**

(a) Except with the prior written approval of the Exchange pursuant to the General 5, Rule 9600 Series for good cause shown, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, a purchase or sale transaction in an index warrant listed on the Exchange or on another national securities exchange if the member has reason to believe that as a result of such transaction the member, or partner, officer, director or employee thereof, or customer would, acting alone or in concert with others, directly or indirectly, hold or control an aggregate position in an index warrant issue on the same side of the market, combining such index warrant position with positions in index warrants overlying the same index on the same side of the market, in excess of the position limits established by the Exchange or the other exchange on which the index warrant is listed.

(b) In determining compliance with this Rule, the position limits for index warrants listed on the Exchange are as follows:

(1) Fifteen million warrants with respect to warrants on the same stock index (other than the Standard & Poor's MidCap 400 Index) with an original issue price of ten dollars or less.

(2) Seven million five hundred thousand warrants, with respect to warrants on the Standard & Poor's MidCap 400 Index with an original issue price of ten dollars or less.

(3) For stock index warrants with an original issue price greater than ten dollars, positions in these warrants must be converted to the equivalent of warrants on the same index priced initially at ten dollars by dividing the original issue price of the index warrants priced above ten dollars by ten and multiplying this number by the size of such index warrant position. After recalculating a warrant position pursuant to this subparagraph, such recalculated warrant position shall be aggregated with other warrant positions on the same underlying index on the same side of the market and subjected to the applicable position limit set forth in subparagraph (1) or (2) above. For example, if an investor held 100,000 Nasdaq 100 Index warrants offered originally at \$20 per warrant, the size of this position for the purpose of calculating position limits would be 200,000, or 100,000 times 20/10.

### **Section 5. Exercise Limits**

(a) Except with the prior written approval of the Exchange pursuant to the General 5, Rule 9600 Series for good cause shown, in each instance, no member or person associated with a member shall exercise, for any account in which such member or person associated with such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, a long position in any index warrant if as a result thereof such member or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly:

(1) has or will have exercised within any five (5) consecutive business days a number of index warrants overlying the same index in excess of the limits for index warrant positions contained in Equity 10, Section 4 or

(2) has or will have exceeded the applicable exercise limit fixed from time to time by an exchange other than the Exchange.

(b) The Exchange, pursuant to the General 5, Rule 9600 Series for good cause shown, may institute other limitations concerning the exercise of index warrants from time to time. Reasonable notice shall be given of each new limitation fixed by the Exchange. These exercise limitations are separate and distinct from any other exercise limitations imposed by the issuers of index warrants.

### **Section 6. Reporting Requirements**

(a) Each member shall file with the Regulation Department a report with respect to each account in which the member has an interest, each account of a partner, officer, director or employee of such member, and each customer account of the member, which has

established an aggregate position of 100,000 index warrants on the same side of the market in an index warrant issue listed on the Exchange, combining such index warrant position with positions in index warrants overlying the same index on the same side of the market traded on the Exchange or another national securities exchange.

(b) Such report shall identify the person or persons having an interest in such account and shall identify separately the total number of each type of index warrant that comprises the reportable position in such account. The report shall be in such form as may be prescribed by the Regulation Department and shall be filed no later than the close of business on the next business day following the day on which the transaction or transactions necessitating the filing of such report occurred. Whenever a report shall be required to be filed with respect to an account pursuant to this Rule, the member filing such report shall file with the Regulation Department such additional periodic reports with respect to such account as the Regulation Department may from time to time prescribe.

### **Section 7. Liquidation of Index Warrant Positions**

(a) Whenever the Regulation Department determines that a person or group of persons acting in concert holds or controls an aggregate position (whether short or long) in index warrants overlying the same index in excess of the position limitations established by Equity 10, Section 4, it may, when deemed necessary or appropriate in the public interest and for the protection of investors, direct any member or all members carrying a position in index warrants overlying such index for such person or persons to liquidate such position or positions, or portions thereof, as expeditiously as possible and consistent with the maintenance of an orderly market, so as to bring such person or persons into compliance with the position limitations contained in Equity 10, Section 4.

(b) Whenever such a directive is issued by the Regulation Department no member receiving notice thereof shall accept and/or execute for any person or persons named in such directive any order to purchase or sell short any index warrants based on the same index, unless in each instance express approval therefor is given by the Regulation Department, or the directive is rescinded.

### **Section 8. Trading in Commodity-Related Securities**

(a) The Exchange will consider for trading pursuant to unlisted trading privileges, 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 market sessions if members comply with Equity 2, Section 20 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 Equity Rules shall be applicable to the trading on the Exchange of

such securities. Commodity-Related Securities are included within the definition of "security" or "securities" as such terms are used in the Equity Rules.

(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) Information Barriers. A member acting as a registered market maker in a Commodity-Related Security is obligated to establish adequate information barriers when such market maker engages in inter-departmental communications. Members should refer to NASD/NYSE Joint Memo on Chinese Wall Policies and Procedures (NASD Notice to Members 91-45) for guidance on the "minimum elements" of adequate Chinese Wall policy and procedures." For purposes of a Commodity-Related Security only, "inter-departmental communications" shall include communications to other departments within the same firm or the firm's affiliates that involve trading in commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

(e) Market Maker Accounts. A member acting as a registered market maker in a Commodity-Related Security must file with the Exchange's Regulation Department in a manner prescribed by such Department and keep current a list identifying all accounts for trading in commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security, in which the market maker holds an interest, over which it may exercise investment discretion, or in which it shares in the profits and losses. No market maker shall trade in, or exercise investment discretion with respect to, such underlying commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, in an account in which a market maker, directly or indirectly, controls trading activities, or has an interest in the profits or losses thereof, that has not been reported as required by this Rule. A member acting as a registered market maker in a Commodity-Related Security shall not act or register as a market maker in any commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

(f) The member acting as a registered market maker in a Commodity-Related Security shall make available to the Exchange's Regulation Department such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security, as may be requested by the Regulation Department.

(g) In connection with trading a Commodity-Related Security or commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying a Commodity-Related Security, the member acting as a market maker in a Commodity-Related Security shall not use any material nonpublic information received from any person associated with the member or employee of such person regarding trading by such person or employee in the commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

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

### **Equity 11 Uniform Practice Code**

#### **11100. Scope of Uniform Practice Code**

(a) Transactions executed through the facilities of the Nasdaq BX Equities Market, including the rights and liabilities of the members participating in the transaction, and those operational procedures that affect the day-to-day business of members shall be subject to the provisions of this Code. However, the provisions of this Code shall not apply to transactions between members that are compared, cleared or settled through the facilities of a registered clearing agency (except to the extent that the rules of the clearing agency provide that rules of other organizations shall apply). Accordingly, because Equity 2, Section 9 contemplates that Nasdaq BX Equities Market transactions will be settled through the facilities of a registered clearing agency using a continuous net settlement system, the provisions of the Code relating to clearance and settlement will apply to Nasdaq BX Equities Market transactions only in unusual circumstances in which trades are settled "ex-clearing".

(b) The scope of coverage contained in paragraph (a) above may be expanded or limited in any Rule of this Code if specifically provided therein.

(c) With respect to transactions executed on the Exchange, failure to deliver the securities sold, or failure to pay for securities as delivered, on or after the settlement date, does not effect a cancellation of the contract. The remedy for the buyer or seller is provided for by Rules 11810 and 11820 respectively unless the parties mutually consent to cancel the trade. In every such case of non-delivery of securities, the party in default shall be liable

for any damages which may accrue thereby. All claims for such damages shall be made promptly.

(d) The CUSIP number must be used on the Uniform Transfer Instruction Form, Uniform Delivery Ticket and the Uniform Comparison or Confirmation.

### **11110. The Exchange's Regulation Department**

The Exchange's Regulation Department shall have the power to issue interpretations or rulings with respect to the applicability of this Code to situations in which there is no substantial disagreement as to the facts involved in order to make custom, practice, usage, and trading technique in the investment banking and securities business uniform, to simplify and facilitate day-to-day business of members and to remove causes for business disputes and misunderstandings which arise from uncertainty and lack of uniformity, including rulings in connection with "when, as and if issued" trading and "when, as and if distributed" trading, and whether a security tendered is a good delivery in settlement of such contracts.

### **IM-11110. Refusal to Abide by Rulings of the Exchange's Regulation Department Staff**

It shall be considered conduct inconsistent with just and equitable principles of trade for any member to refuse to abide by an official ruling of the Exchange's Regulation Department, acting within its appropriate sphere, with respect to any transaction which was consummated within the provisions and purview of the Uniform Practice Code.

### **11120. Definitions**

#### **(a) The Exchange's Regulation Department**

The term "the Exchange's Regulation Department" as used in this Code, unless the context otherwise requires, shall mean the Department of the Exchange that administers this Code.

#### **(b) Delivery Date**

The term "delivery date" as used in this Code shall be used interchangeably with "settlement date" and shall mean the date designated for the delivery of securities.

#### **(c) Ex-Date**

The term "ex-date" as used in this Code shall mean the date on and after which the security is traded without a specific dividend or distribution.

#### **(d) Immediate Return Receipt**

The term "immediate return receipt" as used in this Code, shall mean the acknowledgement by the receiving member of a written notice and which shall be issued, upon receipt, via the media in which such notice is received.

(e) Record Date

The term "record date" as used in this Code means the date fixed by the trustee, registrar, paying agent or issuer for the purpose of determining the holders of equity securities, bonds, similar evidences of indebtedness or unit investment trust securities entitled to receive dividends, interest or principal payments or any other distributions.

(f) Reserved

(g) Written Notices

The term "written notice," as used in this Code, shall include a notice delivered by hand, by letter, teletype, telegraph, TWX, facsimile ("FAX") transmission or other comparable media.

**11130. When, As and If Issued/Distributed Contracts**

(a) Confirmations or Comparisons

(1) Each party to the transaction shall send a written "when, as and if issued" or "when as and if distributed" confirmation or comparison in the same form as set forth in the Sample Form appearing after this Rule 11130 and pursuant to the requirements of Rules 11210(a), 11220, and 11860.

(2) Each confirmation or comparison covering a contract in a "when, as and if issued" or "when, as and if distributed" security shall, at a minimum, contain:

(A) an adequate description of the security and the plan, if any, under which the security is proposed to be issued or distributed;

(B) designation of the Exchange as the authority which shall rule upon the performance of the contract; and

(C) provision for marking the contract to the market.

(3) the Exchange's Regulation Department will furnish, upon written request therefor, an adequate description of any particular issue of securities and of the plan under which the securities are proposed to be issued for the purpose of inclusion in all contracts or confirmations covering transactions on a "when, as and if issued" or "when, as and if distributed" basis in the particular securities.

(b) Accrued Interest

(1) Unless the parties agree otherwise, "when, as and if issued" or "when, as and if distributed" transactions between members in fixed obligations of new or reorganized companies shall be "and accrued interest" to date of settlement. Interest shall be computed on the basis of the expired portion of the coupon current at the time of settlement, and all due and past due coupons shall be detached.

(2) "When, as and if issued" or "when, as and if distributed" transactions between members in income or contingent interest securities of such companies shall be traded "flat" and shall carry all payments that may be made or declared in connection with such new securities from the effective date of the plan; except that, if any payment is made or declared directly or indirectly in connection with such securities, prior to the settlement date, transactions made on and after the "ex" date for such payment shall carry only payments made or declared in connection with such securities from such "ex" date.

(3) Securities of such companies which bear a fixed rate of interest, plus contingent additional payment, are to be traded "and accrued interest" at the rate of the fixed interest, and traded "flat" in respect to the contingent payments.

(c) Marks to the Market

In case of "when, as and if issued" or "when, as and if distributed" contracts, the time of issuance or distribution of the securities is indefinite and may be long delayed. Therefore, such contracts should be marked to the market pursuant to the provisions of Rule 11740 of the Code.

(d) Contracts on Margin

All "when, as and if issued" or "when, as and if distributed" contracts shall be in compliance with Sections 220.4 and 220.5 of Regulation T of the Board of Governors of the Federal Reserve System.

(e) Request for Deposits

A member may require a customer to deposit cash or collateral to secure a "when, as and if issued" or "when, as and if distributed" contract even though Section 220.8(b)(1) of Regulation T of the Board of Governors of the Federal Reserve System may not require such deposit.

(f) Segregation of Funds

(1) Deposits against "when, as and if issued" or "when, as and if distributed" transactions should be segregated on the books of the firm in order to present a true picture of the firm's position and its commitment in transactions of this kind. It may be appropriate to segregate such deposits from the firm's general cash balances by depositing them in a bank other than those containing the general deposits, loans or other obligations of the firm. Whether or not such physical segregation is made, no member should permit any part of deposits against "when, as and if issued" or "when, as and if distributed" contracts to be used for any purpose whatsoever other than to secure such contracts.

(2) As a minimum, every member doing business in "when, as and if issued" or "when, as and if distributed" securities shall ensure that the sum of the cash balances and any deposits with banks, clearing houses, or other brokers against "when, as and if issued" or "when, as and if distributed" contracts always exceeds the aggregates of all free credits and deposits against "when, as and if issued" or "when, as and if distributed" contracts by

an amount fully ample to conduct his business without employing any part of such deposits.

(g) Settlement of Contracts

(1) A date for the settlement of "when, as and if issued" and "when, as and if distributed" contracts shall be determined by the Exchange's Regulation Department when a sufficient percentage of the issue is outstanding.

(2) In connection with a transaction in a security "when, as and if issued," delivery shall be made at the office of the purchaser on the date declared by the Exchange's Regulation Department; except that if no delivery date shall be declared by the Exchange's Regulation Department:

(A) delivery may be made by the seller on the business day following the day upon which the seller has delivered at the office of the purchaser written notice of intention to deliver, and

(B) open market "when, as and if issued" contracts in securities currently being publicly offered through a syndicate or selling group shall be settled on the date such syndicate or selling group contracts are settled; provided, however, delivery of securities in accordance with this paragraph shall be made during the normal delivery hours in the community where the buyer is located.

(3) In connection with a transaction in a security "when, as and if distributed," delivery shall be made at the office of the purchaser on the date declared by the Exchange's Regulation Department; except that if no delivery date shall be declared by the Exchange's Regulation Department, delivery may be made by the seller on the business day following the day upon which the seller has delivered at the office of the purchaser written notice of intention to deliver.

(h) Cancellation of Contracts

(1) Pursuant to Rule 11110, the Exchange's Regulation Department may cancel or terminate "when, as and if issued" and "when, as and if distributed" contracts as necessary to resolve conflicts over the settlement of such contracts.

(2) Contracts will be canceled if the securities are not to be issued or distributed.

(3) Contracts will generally be canceled if the securities which are to be issued or distributed are not substantially the same as those contemplated in the contract. Material changes which will generally result in cancellation include, but are not limited to, changes to the redemption schedule, dividend payments, interest rates, maturity, yield, and exercise price.

(4) Notwithstanding paragraph (h)(3), contracts will not generally be canceled as a result of changes that do not constitute material changes to the terms of the security called for

under the contract. Changes which will not generally result in cancellation include, but are not limited to:

(A) changes in the dollar value of securities to be issued or distributed;

(B) restructuring of financing arrangements previously announced by the issuer of the securities; or

(C) settlement of any legal action or the occurrence of any other event which has or will have a material effect on the financial condition of the issuer of the securities.

IM-11130. Standard Forms of "When, As and If Issued" or "When, As and If Distributed" Contract

(a) For use by dealers and brokers in confirming transactions with other dealers and brokers

"When, as and if Issued" or "When, as and if Distributed" Contract

-

(Firm Name)

Date

Sold to — Quantity.etc. Table Here

If this contract was made on a national securities exchange other than the Exchange, the contract shall be subject to and governed by the requirements of such other exchange, its constitution, rules, practices and interpretations thereof, relating to contracts between members of such exchange, as the same may be amended or modified from time to time.

If this contract was made elsewhere than on a national securities exchange, it shall be subject to and governed by the requirements of FINRA, its By-Laws, Rules, Uniform Practice Code and interpretations thereof as the same may be amended or modified from time to time.

This contract shall be settled and payment therefor made at such time and place, in such manner, and by the delivery of such securities and/or other property as the exchange or association to whose requirements this contract is subject in its sole discretion may determine, or shall be canceled and thereafter shall be null and void if such exchange or association determines in its sole discretion that the securities which are to be issued or distributed are not substantially the same as those contemplated in the contract. During the pendency of this contract either party shall have the right to call for a mark to the market, and upon failure of the other party to comply therewith the party not in default may close this contract in accordance with the requirements of the exchange or association to whose requirements this contract is subject.

(b) For use by a dealer (principal) and his customer covering transactions on a principal basis

-

Date

"When, as and if Issued" or "When, as and if Distributed" Contract

TO

I/we have sold to you/purchased from you shares/par value at These securities shall be payable and deliverable "when, as and if issued" or "when, as and if distributed," or this contract shall be cancelable in accordance with the requirements of the Rules of the Nasdaq BX, Uniform Practice Code and interpretations thereof.

I/we shall have the right to demand deposits according to such requirements. On your failure to comply therewith, we may close the contract in accordance with such requirements.

-

(Firm Signature)

Accepted:

-

(Signature of Customer)

#### **11140. Transactions in Securities "Ex-Dividend," "Ex-Rights" or "Ex-Warrants"**

##### (a) Designation of Ex-Date

All transactions in securities, except "cash" transactions, shall be "ex-dividend," "ex-rights" or "ex-warrants": (1) on the day specifically designated by the Exchange's Regulation Department after definitive information concerning the declaration and payment of a dividend or the issuance of rights or warrants has been received at the office of the Exchange's Regulation Department; or (2) on the day specified as such by the appropriate national securities exchange which has received definitive information in accordance with the provisions of SEC Rule 10b-17 concerning the declaration and payment of a dividend or the issuance of rights or warrants.

##### (b) Normal Ex-Dividend, Ex-Warrants Dates

(1) In respect to cash dividends or distributions, or stock dividends, and the issuance or distribution of warrants, which are less than 25% of the value of the subject security, if the definitive information is received sufficiently in advance of the record date, the date designated as the "ex-dividend date" shall be the first business day preceding the record date if the record date falls on a business day, or the second business day preceding the record date if the record date falls on a day designated by the Exchange's Regulation Department as a non-delivery date.

(2) In respect to cash dividends or distributions, stock dividends and/or splits, and the distribution of warrants, which are 25% or greater of the value of the subject security, the ex-dividend date shall be the first business day following the payable date.

(3) In respect to stock dividends and/or splits relating to American Depository Receipts (ADRs) and foreign securities, the ex-dividend or ex-warrants date shall be designated by the Exchange's Regulation Department.

(c) Late Information Re: Ex-Dividend, Ex-Warrants Dates

If definitive information is not received sufficiently in advance of the record date to permit designation of an ex-dividend or ex-warrants date in accordance with paragraph (b)(1) hereof, the date designated shall be the first business day which, in the opinion of the Exchange's Regulation Department, shall be practical having regard to the circumstances pertaining.

(d) Normal Ex-Rights Dates

In respect to transferable rights subscription offerings, if definitive information is received sufficiently in advance of the effective date of the registration statement, the date designated as the ex-rights date shall be the first business day after the effective date of the registration statement.

(e) Late Information Re: Ex-Rights

If definitive information is not received sufficiently in advance of the effective date of the registration statement to permit designation of an ex-rights date in accordance with the paragraph (d) hereof, the date designated shall be the first business day which in the opinion of the Exchange's Regulation Department shall be practical having regard to the circumstances pertaining.

**11150. Transactions "Ex-Interest" in Bonds Which Are Dealt in "Flat"**

(a) Normal Ex-Interest Dates

All transactions, except "cash" transactions, in bonds or similar evidences of indebtedness which are traded "flat" shall be "ex-interest" as prescribed by the following provisions:

(1) On the first business day preceding the record date if the record date falls on a business day.

(2) On the second business day preceding the record date if the record date falls on a day other than a business day.

(3) On the second business day preceding the date on which an interest payment is to be made if no record date has been fixed.

(b) Late Information Re: Ex-Interest Dates

If notice of payment of interest is not made public sufficiently in advance of the record date or the payment date, as the case may be, to permit the security to be dealt in "ex-interest" in accordance with paragraph (a) hereof such security shall be dealt in "ex-interest" on the first business day which, in the opinion of the Exchange's Regulation Department, shall be practical having regard to the circumstances pertaining.

#### **11160. "Ex" Liquidating Payments**

All transactions except "cash" transactions in stocks, bonds or similar evidences of indebtedness shall be "ex" liquidating payments or payments on account of principal in accordance with the formula set forth in Rules 11140 and 11150.

#### **11170. Transactions in "Part-Redeemed" Bonds**

In transactions in bonds which have been redeemed or paid in part, such bonds shall be designated as "part-redeemed" bonds. The settlement price of contracts in "part-redeemed" bonds shall be determined by multiplying the contract price by the original principal amount thereof and contracts shall be made on the same basis.

#### **11180. Reserved**

#### **11190. Reconfirmation and Pricing Service Participants**

(a) Each member or its agent that is a participant in a registered clearing agency, for purposes of clearing transactions executed on the Exchange, shall participate in fail reconfirmation and pricing services when offered.

(b)

(1) A contract submitted to a reconfirmation and repricing service ("service") which has been DK'd ("Don't Know") by the contra-party or is otherwise deemed a DK under the rules of the service may be closed-out by the party who submitted the contract to the service without notice during normal trading hours promptly after the completion of the reconfirmation and pricing cycle of the service for the account and liability of the non-confirming member.

(2) Notice of any execution pursuant to this paragraph (b), shall be made as promptly as possible on the day of execution, as provided in Rules 11810(g) and 11820(b).

#### **11200. Comparisons or Confirmations and "Don't Know Notices"**

#### **11210. Sent by Each Party**

#### **(a) Comparisons or Confirmations**

(1) Each party to a transaction, other than a cash transaction, shall send a Uniform Comparison or Confirmation of same on or before the first business day following the date of the transaction.

(2) Comparisons or confirmations of cash transactions shall be exchanged on the day of the trade.

(3) Comparisons or confirmations shall be compared upon receipt to ascertain whether any discrepancies exist. If discrepancies do exist, a corrected Uniform Comparison or Confirmation shall be sent by the party in error.

(4) This Rule shall not be applicable to transactions which clear through the National Securities Clearing Corporation or other clearing organizations registered under the Act.

(b) Uniform Comparison or Confirmation

A properly executed Uniform Comparison or Confirmation must be used for each transaction. 1

(c) "DK" Procedures Using "Don't Know Notices" (FINRA Form No. 101)

When a party to a transaction sends a comparison or confirmation of a trade, but does not receive a comparison or confirmation or a signed DK, from the contra-member by the close of one business day following the trade date of the transaction, the following procedure may be utilized.

(1) The confirming member shall send by certified mail, return receipt requested, or messenger, a "Don't Know Notice" on the form prescribed by FINRA Rule 11210 to the contra-member in accordance with the directions contained thereon. If the notice is sent by certified mail the returned, signed receipt therefor must be retained by the confirming member and attached to the fourth copy of the "Don't Know Notice." If delivered by messenger, the fourth copy must immediately be dated and manually receipted by, and imprinted with the firm stamp of, the contra-member pursuant to the provisions of paragraph (c)(4) of this Rule, returned to the messenger and thereafter be retained by the confirming member.

(2)

(A) After receipt of the "Don't Know Notice" as specified in paragraph (c)(1) of this Rule, the contra-member shall have two business days after the notice is received to either confirm or DK the transaction in accordance with the provisions of paragraph (c)(2)(B) or (c)(2)(C) below.

(B) If the contra-member desires to respond by mail, the second copy of the "Don't Know Notice" previously received shall be executed in accordance with the provisions of paragraph (c)(4) of this Rule and sent to the confirming broker by certified mail, return receipt requested. The notice so returned shall indicate clearly whether the contra-member desires to confirm or DK the transaction. The returned, signed receipt must thereafter be retained by the contra-member.

(C) If the contra-member desires to respond by messenger, it shall return to the confirming member the second and third copies of the notice which shall indicate clearly

whether the contra-member desires to confirm or DK the transaction. The third copy shall be dated and manually receipted by the confirming broker pursuant to the provisions of paragraph (c)(4) of this Rule and immediately be returned to the messenger and thereafter be retained by the contra-member.

(3) If the confirming member does not receive a response from the contra-member by the close of two business days after receipt by the confirming member of the fourth copy of the "Don't Know Notice" if delivered by messenger, or the post office receipt if delivered by mail, as specified in paragraph (c)(1) of this Rule, such shall constitute a DK and the confirming member shall have no further liability for the trade.

(4) All "Don't Know Notices" sent by any party pursuant to the provisions of this paragraph (c) must be manually signed by a person authorized to pursue further discussions in respect to the transaction on behalf of the signing member. In addition to the manual signature receipt on the third and fourth copies, as required by paragraphs (c)(1) and (c)(2)(C) hereof, if delivered by hand, the firm stamp of the contra-member must be imprinted thereon to signify receipt.

(5) The "Don't Know Notice" form to be used for purposes of complying with this section, may be ordered through any office of FINRA. If the official form is not used, the form which is used must conform in every respect to the official form.

(d) "DK" Procedure Using Other Forms of Notice

When a party to a transaction sends comparison or confirmation of a trade, but does not receive a comparison or confirmation or a signed DK, from the contra-member by the close of one business day following the date of the transaction, the following procedure may be utilized in place of that provided in the preceding paragraph (c).

(1) The confirming member shall provide notice to the contra-member identifying the trade in question by providing the information described in Rule 11220. The notice shall, in addition, contain a request for the contra-member to confirm or "DK" the trade and the name of the individual issuing the notice.

(2) The confirming member shall record and retain verification of delivery to the contra-member of each notice issued in accordance with paragraph (d)(1) of this Rule.

(3) The contra-member, on receipt of the notice from the confirming member, shall research the trade in question.

(4) The contra-member shall then send notice to the confirming member to either confirm or "DK" the trade and shall include the name of the individual issuing the notice.

(5) If the confirming member does not receive a response in the form of a notice from the contra-member by the close of two business days after receipt of the confirming member's notice, such shall constitute a DK and the confirming member shall have no further liability.

(6) Both the confirming member and the contra-member shall record and retain verification of the delivery and receipt of each notice issued pursuant to paragraph (d)(4) of this Rule.

(7) If the trade in question is confirmed by the contra-member pursuant to paragraph (d)(4) of this Rule, settlement shall be completed in the normal manner.

(8) Notices under this paragraph (d) may be delivered through any communications medium which provides verification of delivery and receipt as required under paragraphs (d)(2) and (d)(6).

1 Specifications for use of the Uniform Comparison are contained in the Final Report of the Banking and Securities Industry Committee entitled "Four Uniform Forms," dated December 22, 1971.

**IM-11210. Uniform Comparison Form**

<u>NO. COMPARISON</u>	<u>Firm Name</u>	<u>TELEPHONE</u>		
-	<u>CODES</u>	-	-	
<u>ORIGINATOR</u>	<u>TRANS.</u>	<u>TR CAP SETT</u>	<u>TRADE DATE</u>	<u>SETTLEMENT</u>
<u>NO.</u>	<u>NO</u>			<u>DATE</u>
<u>IDENTIFICATION</u>	<u>CONTRA</u>	<u>C.H.</u>	<u>SPECIAL DELIVERY</u>	
<u>NO.</u>	<u>PARTY</u>	<u>NUMBER</u>	<u>INSTRUCTIONS</u>	
<u>WE</u>	<u>QUANTITY</u>	<u>CUSIP</u>	<u>SECURITY</u>	<u>NET AMOUNT</u>
		<u>NUMBER</u>	<u>DESCRIPTION</u>	
<u>PRICE</u>	-	-	-	-

RESERVED FOR USER'S MONEY DETAIL

**11220. Description of Securities**

Confirmations or comparisons shall include, in addition to an adequate description of the security (which shall include payment options on a unit investment trust series), the price at which the transaction was made and any other information deemed necessary to insure that the buyer and seller agree as to details of the transaction. Such "other information" should include, if applicable, but need not be limited to, such phrases as "ex-warrants," "ex-stock," "registered," "flat," "part-redeemed," "Canadian funds," "with proxy," etc.

**11300. Delivery of Securities**

**11310. Book-Entry Settlement**

(a) A member shall use the facilities of a securities depository for the book-entry settlement of all transactions in depository eligible securities with another member or a member of a national securities exchange or a registered securities association.

(b) A member shall not effect a delivery-versus-payment or receipt-versus payment transaction in a depository eligible security with a customer unless the transaction is settled by book-entry using the facilities of a securities depository.

(c) For purposes of this Rule, the term "securities depository" shall mean a securities depository registered as a clearing agency under Section 17A of the Act.

(d)

(1) The term "depository eligible securities" shall mean securities that (A) are part of an issue of securities that is eligible for deposit at a securities depository and (B) with respect to a particular transaction, are eligible for book-entry transfer at the depository at the time of settlement of the transaction.

(2) A determination under Rule 4310(c)(23) or under the corresponding rule of another national securities exchange that a security depository has included a CUSIP number identifying a security in its file of eligible issues does not render the security "depository eligible" under this Rule until:

(A) in the case of any new issue distributed by an underwriting syndicate on or after the date a securities depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available, the date of the commencement of trading in such security on the Exchange; or

(B) in the case of any new issue distributed by an underwriting syndicate prior to the date a securities depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available where the managing underwriter elects not to deposit the securities on the date of the commencement of trading in such security on the Exchange, such later date designated by the managing underwriter in a notification submitted to the securities depository; but in no event more than three (3) months after the commencement of trading in such security on the Exchange.

(e) This Rule shall not apply to transactions settled outside of the United States.

(f) The requirements of this Rule shall supersede any inconsistent requirements under other Rules in the Code.

(g) This Rule shall not apply to any transactions where the securities to be delivered in settlement of the transaction are not on deposit at a securities depository and:

(1) if the transaction is for same-day settlement, the deliverer is unable to deposit the securities in a securities depository prior to the cut-off time established by the depository for same-day crediting of deposited securities, or

(2) the deliverer is unable to deposit the securities in a depository prior to the cut-off date established by the depository for that issue of securities.

### **11320. Dates of Delivery**

#### **(a) For "Cash"**

In connection with a transaction for "cash," delivery shall be made at the office of the purchaser on the day of the transaction.

#### **(b) "Regular Way"**

In connection with a transaction "regular way," delivery shall be made at the office of the purchaser on, but not before, the second business day following the date of the transaction.

#### **(c) "Seller's Option"**

In connection with a transaction "seller's option," delivery shall be made at the office of the purchaser on the date on which the option expires; except that delivery may be made by the seller on any business day after the second business day following the date of the transaction and prior to the expiration of the option, provided the seller delivers at the office of purchaser, on a business day preceding the day of delivery, written notice of intention to deliver.

#### **(d) "Buyer's Option"**

In connection with a transaction "buyer's option," delivery shall be made at the office of the purchaser on the date on which the option expires.

#### **(e) Contracts Due on Holidays or Saturdays**

Contracts due on a day other than a business day shall mature on the next business day.

#### **(f) "Delayed-Delivery"**

In connection with a transaction made for "delayed-delivery," delivery shall be at the office of the purchaser on the date agreed upon at the time for the transaction.

#### **(g) Prior to Delivery Date**

If in contracts executed pursuant to paragraphs (b), (d) and (h) of this Rule, the seller tenders delivery before the stated time, acceptance shall be at the election of the purchaser, and rejection of such delivery by the purchaser shall be without prejudice to his rights.

#### **(h) Time and Place of Delivery**

Delivery shall be made at the office of the purchaser between the hours established by rule or practice in the community where such office is located. If the purchaser maintains



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<u>IDENTIFICATION NO.</u>	<u>ACCOUNT NAME</u>	<u>C.H. NUMBER</u>	<u>SPECIAL DELIVERY INSTRUCTIONS</u>
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<u>QUANTITY</u>	<u>CUSIP NUMBER</u>	<u>SECURITY DESCRIPTION</u>	<u>NET AMOUNT</u>
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**11361. Units of Delivery — Stocks****(a) Stock certificates delivered in settlement of contracts:**

(1) in which the transaction is for 100 shares may be in one certificate for the exact number of shares or certificates totaling 100 shares.

(2) in which the transaction is greater than 100 shares and a multiple of 100 shall be in the exact amount of the contract, or in multiples of 100 shares, or in amounts from which units of 100 shares can be made, or a combination thereof equaling the amount of the contract.

(3) in which the transaction is for more than 100 shares but not in a multiple of 100 shall be in multiples of 100 shares, or in amounts from which units of 100 shares can be made, or a combination thereof, plus either the exact amount for the odd lot or smaller amounts equaling the odd lot.

(4) in which the transaction is for less than 100 shares shall be in the exact amount of the contract or for smaller units aggregating the amount of the contract.

**(b) Uniform Delivery Ticket**

A properly executed Uniform Delivery Ticket must accompany the delivery of securities.

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1 Specifications for use of the Uniform Delivery Ticket are contained in the Final Report of the Banking and Securities Industry Committee entitled "Four Uniform Forms" dated December 22, 1971.

**11362. Units of Delivery — Bonds****(a) Coupon Bonds**

Each delivery of bonds or similar evidences of indebtedness in coupon bearer form shall be made in denominations of \$1,000 or in denominations of \$100 or multiples thereof aggregating \$1,000.

**(b) Registered Bonds**

Each delivery of bonds or similar evidences of indebtedness in fully registered bond issues shall be made in denominations of \$1,000 or multiples thereof or in amounts of \$100 or multiples aggregating \$1,000 but in no event in denominations larger than \$100,000.

(c) Bonds Issued in Both Coupon and Registered Form

Unless otherwise specified at the time of execution, contracts in bonds that are issuable in either coupon or registered form, shall be settled by delivery of bonds in either form pursuant to the denominations in paragraphs (a) and (b) above, notwithstanding that there may be a charge for interchanging one form with the other.

(d) Units of Delivery by Agreement

When a contract relating to paragraphs (a), (b) and (c) above is for a principal amount which is not a multiple of \$100, the parties shall agree, at the time of entering into the contract, as to the proper units of delivery.

**11363. Units of Delivery — Unit Investment Trust Securities**

The minimum unit of delivery for Unit Investment Trust Securities shall be a single unit of the trust.

**11364. Units of Delivery — Certificates of Deposit for Bonds**

The units of delivery for certificates of deposit for bonds, shall be the same as prescribed for bonds in Rule 11362.

**IM-11364. Trading Securities As "Units" or Bonds "With Stock"**

Where securities are physically separate instruments, transferable independently of one another, and not subject to any legal or technical condition which requires that they be kept together, good practice requires that they be quoted and dealt in separately and not as units.

Where, for some special reason, members enter into a contract calling for a group of securities, they are cautioned to make adequate specification both at the time of trade and in their confirmation or comparison, so that uncertainty or misunderstanding in the settlement of the contract may be eliminated.

**11400. Delivery of Securities with Draft Attached**

(a) Time of Presentation

Drafts accompanying the shipment of securities need be accepted only on a business day between the hours established by rule or practice in the community where the draft is presented. Acceptance of a draft at other times shall be at the option of the drawee, and the drawee shall not be liable for any expense arising out of his refusal of the draft when presented on a Saturday or half-holiday.

Note: For his own protection, the seller should instruct his bank or collecting agent that if the draft is received on a Saturday or half-holiday, it need not be presented to the drawee until the following business day.

(b) Prior to Settlement Date

The acceptance of a draft prior to the settlement date shall be at the option of the drawee.

(c) With Irregularities

The acceptance of a draft which contains irregularities shall be at the option of the drawee.

(d) Expense Due to Shipment

Expenses of shipment, including insurance, postage, draft, and collection charges, shall be paid by the seller.

(e) Expenses Due to Delay

Failure to accept a draft in which no irregularities exist, when duly presented on a business day, shall make the drawee liable for the payment of interest to the date the draft is paid and for other incidental expenses incurred because of the delay, including protest fees, if any, and wire charges.

(f) Claims for Irregularities

Claims with respect to such items as price, interest, protest fees or wire charges and items of similar nature, arising from the acceptance of draft shipments in which irregularities exist, shall be presented not later than ten days after payment. This limitation shall not apply to matters covered hereinafter under "Reclamations," in Rules 11710 to 11730.

**11500. Delivery of Securities with Restrictions**

**11510. Delivery of Temporary Certificates**

A temporary certificate shall not be a good delivery when permanent certificates are available.

**11520. Delivery of Mutilated Securities**

(a) A mutilated security shall not be a good delivery until appropriately authenticated by the trustee, registrar, transfer agent, or issuer.

(b) The delivery of a bond which bears a coupon which has been mutilated as to the bond number or signature or which bears a coupon which has been canceled in error shall not be good delivery unless an appropriate endorsement by an official authorized by paragraph (c) hereof shall have been placed on the reverse of the coupon.

(c) The endorsement shall be signed on behalf of the obligor by an officer thereof or, under authorization from the obligor, on behalf of the corporate trustee or paying agent by a duly authorized officer thereof or other person authorized to sign on behalf thereof.

### **11530. Delivery of Securities Called for Redemption or Which Are Deemed Worthless**

#### **(a) Securities Called for Redemption**

A certificate of stock or a bond shall cease to be a good delivery upon publication of notice of call for redemption, except when an entire issue is called for redemption and except against transactions in "called stock" or "called bonds" dealt in specifically as such.

#### **(b) Securities Deemed Worthless**

(1) In contracts for securities where a public announcement or publication of general circulation discloses that the securities have been deemed worthless, deliveries shall consist of (A) the worthless securities or (B) a Letter of Indemnity which shall grant the purchaser any rights and privileges which might accrue to the holders of the physical securities.

(2) Deliveries effected pursuant to paragraph (b)(1) shall operate to close-out the contract and must be accompanied by documentation evidencing that the security was deemed worthless after the original execution date of the contracts. Such contracts shall be settled at the existing contract price.

(3) For purposes of this paragraph (b), securities deemed worthless shall be those instruments which have no known market value.

### **11540. Delivery Under Government Regulations**

#### **(a) Documents Required**

When the laws, regulations, rulings, instructions or orders of any government, government instrumentality or agency, or official thereof having jurisdiction, require a license, clearance certificate, affidavit of ownership or any similar document in connection with the acquisition, disposition, transfer or redemption of, or other dealing in or with respect to, any security, such security shall not be a good delivery unless accompanied by the document or documents so required.

#### **(b) Certificate Subject to Stoppage**

If a specific certificate tendered in settlement of a contract in foreign securities is on a black list, blocked list, or subject to similar stoppage, from which an innocent holder in due course cannot have it removed by simple request, such certificate is not a good delivery, and reclamation may be made without limit of time.

### **11550. Assignments and Powers of Substitution; Delivery of Registered Securities**

(a) General Requirements

Any registered security to be a good delivery must be accompanied by an assignment and a power of substitution (when such power of substitution is required under paragraph (g) of this Rule) conforming to the requirements set forth in Rule 11550 to 11574, inclusive. Any expense incurred through failure of a seller to meet these requirements shall be paid by the seller.

(b) Assignment

An assignment shall be executed on the certificate itself or on a separate paper, in which latter case there shall be a separate assignment for each certificate.

(c) Signature Requirements

The signature to an assignment or power of substitution shall be technically correct; i.e., it shall correspond with the name as written upon the certificate in every particular without alteration or enlargement, or any change whatever, except that "and" or "&" "Company" or "Co." may be written either way.

(d) Detached Assignment Requirements

A separate (detached) assignment shall contain provision for the irrevocable appointment of an attorney, with power of substitution, and a full description of the security, including name of issuer, issue, certificate number, and amount (expressed in words and numerals).

(e) Two or More Names

A certificate registered in the names of two or more individuals or firms shall be a good delivery only if signed by all the registered owners.

(f) Alteration or Correction

Any alteration or correction in an assignment or power of substitution shall be accompanied by an explanation on the original instrument signed by the person or firm executing the same.

(g) Power of Substitution

When the name of an individual or firm has been inserted in an assignment, as attorney, a power of substitution shall be executed in blank by such individual or firm. When the name of an individual or firm has been inserted in a power of substitution as substitute attorney, a new power of substitution shall be executed in blank by such substitute attorney.

(h) Guarantee

Each assignment, endorsement, alteration and erasure shall bear a guarantee acceptable to the transfer agent or registrar. It is not the intent of this paragraph that a "New York,"

national securities exchange member or other specific guarantee is required; rather, it is the intent only that the guarantee be acceptable to the transfer agent.

(i) Foreign Internal Securities

Except for Canadian Securities, American Depositary Receipts, American Shares, New York Shares and similar securities, the provisions of paragraphs (b) through (g), inclusive, and Rule 11572 shall not apply to Foreign Internal Securities in registered form. In default of specific Rules in this Code, the usual conditions of delivery and transfer of Foreign Internal Securities in registered form in the foreign market where principally traded shall apply.

(j) Uniform Transfer Instruction Form

A properly executed Uniform Transfer Instruction Form must accompany securities presented for transfer. 1

1 Specifications for use of the Uniform Transfer Instruction Form are contained in the Final Report of the Banking and Securities Industry Committee entitled "Four Uniform Forms" dated December 22, 1971.

**IM-11550. Uniform Transfer Instructions Form**

TO TRANSFER AGENT:

- - - Firm Name I.D. #

PLEASE TRANSFER THE ATTACHED  
SECURITIES AS SHOWN BELOW

SECURITY DESCRIPTION

CERTIFICATION PRESENTED TO  
TRANSFER

-

<u>QUANTITY</u>	<u>DENOMINATIONS</u>	<u>TAX PAYER NO.</u>	<u>CUSIP NUMBER</u>	<u>CONTROL</u>	<u>PRESENTOR</u>	<u>DATE</u>
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-

TO BE REGISTERED IN THE NAME OF

**11560. Certificate of Company Whose Transfer Books Are Closed**

General Requirements

A certificate of a company whose transfer books are closed indefinitely for any reason shall be good delivery only if the required ownership transfer indemnification is affixed

to or recorded upon the certificate. The indemnification acknowledges the assignor(s)' ultimate responsibility for the ownership of the certificate as of the date of the indemnification and shall be affixed or recorded only once during the lifetime of the certificate. Certificates delivered pursuant to this Rule must conform with all the applicable delivery requirements set forth in Rule 11550 of this Code.

### **IM-11560. Sample Ownership Transfer Indemnification Stamp**

Date:

The undersigned owner of this certificate (number) representing Shares of hereby certifies the transfer of all ownership therewith to the bearer hereby. We acknowledge that the transfer books of the herein named corporation are closed and agree to accept responsibility in accordance with the provisions of Rule 11560 of Nasdaq BX's Uniform Practice Code.

NAME OF MEMBER

AUTHORIZED SIGNATURE

Amended Oct. 18, 2017 (SR-BX-2017-045).

### **11570. Certificates in Various Names**

#### **11571. Certificate in Name of Corporation**

##### (a) Transfer Books Open

A certificate in the name of a corporation or an institution, or in a name with official designation shall be a good delivery only if the statement "Proper papers for transfer filed by assignor" is placed on the assignment and signed by the transfer agent.

##### (b) Transfer Books Closed

Where a certificate, an assignment or a power of attorney is in the name of a corporation and the transfer books of the issuing company are closed indefinitely for any reason, the certificate shall be a good delivery if the assignment or other instrument effecting transfer on the corporation's behalf is executed by an officer of such corporation, other than the secretary, and is accompanied by (1) a guarantee of such officer's signature executed by a person with the authority to make such a guarantee; (2) a copy of a corporate resolution and a completed and executed certificate of incumbency; and (3) the ownership transfer indemnification, as provided in Rule 11560, affixed to or recorded on the certificate.

##### (c) Foreign Internal Securities

The foregoing requirements shall not apply to foreign internal securities when the requirements do not correspond to the laws or customs of the country concerned; but instead such laws and customs shall govern such securities.

**IM-11571. Sample Certificate and Authorizing Resolution/Certificate of Incumbency**

I hereby certify that a meeting of the Board of Directors of , a corporation organized under the laws of the State of , held the day of , 19, at which a quorum was present and acting throughout, the following resolution was duly adopted and is now in full force and effect:

RESOLVED, that any one of the following officers of this Corporation, viz: the President, Vice President, Treasurer or Secretary, be and is hereby fully authorized and empowered to sell, assign, transfer and deliver any and all shares of stock, bonds, debentures, notes, evidences of indebtedness, or other securities now or hereafter standing in the name of or owned by this Corporation, and to make, execute, and deliver, any and all written instruments necessary or proper to effectuate the authority hereby conferred.

I further certify that the authority thereby conferred is not inconsistent with the Charter or By-Laws of this Corporation, and that the following is a true and correct list of the officers of this Corporation authorized to act.

Signing Officers:

In witness, whereof, I have hereunto set my hand and the seal of said Corporation this day of , 19

(Affix Corporate Seal)

-

Secretary

(The foregoing certification and the assignment of the securities should be executed by different officers.)

**11572. Certificate in Name of Firm**

Unless the endorsement specifies otherwise, there shall be a presumption that stock registered in a firm or business name is registered in the name of a partnership and not a corporation.

**11573. Certificate in Name of Dissolved Firm Succeeded by New Firm**

A certificate with an assignment or a power of substitution executed in the name of a firm that has since dissolved and is succeeded by a firm or firms having as general partners one or more of the general partners of the dissolved firm shall be a good delivery only if the new firm or one of the new firms shall have signed the statement "Execution Guaranteed" under a date subsequent to the formation of the new firm so signing.

**11574. Certificate in Name of Deceased Person, Trustee, Etc.**

(a) A certificate shall not be a good delivery with an assignment or power of substitution executed by a: (1) person since deceased; (2) trustee or trustees, except as provided in paragraph (b) below, or except for trustees acting in the capacity of a board of directors of a corporation or association, in which case Rule 11561(a) shall apply; (3) guardian, except as provided in paragraph (b) below; (4) infant; (5) executor, except as provided in paragraph (b) below; (6) administrator, except as provided in paragraph (b) below; (7) receiver in bankruptcy; (8) agent; (9) attorney; (10) or with a qualification, restriction or special designation.

(b) A certificate shall be a good delivery with an assignment or a power of substitution executed by a: (1) domestic individual executor(s) or administrator(s); (2) domestic individual trustee(s) under an inter vivos or testamentary trust; or (3) domestic guardian(s) including committees, conservators and curators. These exceptions to paragraph (a) above are to cover transfers that will be effected by transfer agents without additional documentation. This paragraph (b) shall apply only to securities of a domestic issuer (organized under the laws of any state in the United States or District of Columbia) which are registered in the name(s) of (1), (2) or (3) of this paragraph (b). Certificates delivered pursuant to this paragraph (b) must be properly assigned, and the signature(s) to the assignment be guaranteed pursuant to Rule 11550(h).

(c) This Rule does not apply to certificates registered under a Statutory Gifts to Minors Act.

### **IM-11574. Sample Limited Partnership Change of Trustee Form**

#### Limited Partnership Change of Trustee Form

FBO (Investor's Name)                      Partnership Name

Assignor (Present Trustee's Name)                      Assignor's Address

Customer's A/C Number with Assignor                      This hereby constitutes and appoints the said Partnership to transfer the said interests on the books of the Partnership with full power of substitution in the premises.

The Assignor hereby assigns to the Assignee 100% of the Assignor's right, title and interest in the Limited Partnership(s) described herein.

ASSIGNOR'S

RELEASE:

Authorized Signature                      (DATE)

X

Designee (New  
Trustee's Name)                    (Assignee's Address)

(Customer's A/C  
Number with  
Assignee)                    (Assignee's Tax ID Number)

New Trustee's (Assignee's) Instructions:

Partnership Information:

ASSIGNEE'S  
ACCEPTANCE

Authorized Signature

X                    (DATE)

Assignee:                    Upon receipt, forward this form and the original  
certificate (if available) to the General Partner for  
re-registration.

General Partner:

### **11600. Delivery of Bonds and Other Evidences of Indebtedness**

#### **11610. Liability for Expenses**

Failure of the seller to meet the requirements of good delivery relating to bonds and similar evidences of indebtedness, as set forth in paragraphs (a) through (h) of this Rule inclusive, shall make the seller liable for any expense incurred as a result of such failure.

##### (a) Coupon Bonds

A coupon bond shall have securely attached in the correct place proper coupons, warrants, etc., of the same serial number as the bond. Acceptance of cash or check in lieu of missing coupons shall be at the option of the purchaser.

##### (b) Endorsed Bonds

A coupon bond bearing an endorsement of a definite name of a person, firm, corporation, association, etc., in conjunction with words of condition, qualification, direction, or restriction, not properly pertaining thereto as a security, shall not be a good delivery unless sold specifically as an "endorsed bond." This shall also apply to bonds with coupons bearing such endorsements.

##### (c) Interest in Default

A bond upon which interest is in default shall carry all unpaid coupons.

##### (d) Registerable as to Principal

A coupon bond registerable as to principal shall be a good delivery only if registered to bearer.

(e) Endorsements for Banking or Insurance Requirements

A coupon bond bearing an endorsement indicating that the bond was deposited in accordance with a governmental requirement pertaining to banking institutions or insurance companies shall not be a good delivery. If released, with such release acknowledged before an officer authorized to take acknowledgments, it shall be a good delivery if sold specifically as a "released endorsed bond."

(f) Coupon Detached Prior to Delivery

(1) A bond dealt in "and interest," for delivery on or after the date on which interest is due and payable, shall be delivered without the coupon payable on such date.

(2) Late delivery. In the settlement of contracts in bonds dealt in "and interest" where delivery is due prior to the interest payment date but is made on or after the interest payment date, bonds may be delivered without coupons payable on such date, and the seller may present such detached, unpaid coupons to the buyer for payment, the buyer bearing the risk of non-payment.

(g) Stamped Bonds

(1) If a plan of reorganization which has been declared operative, or an amendment or supplement to an indenture provides that the bonds covered thereby shall be stamped to reflect the adoption of such plan or the amendment or supplement to the indenture, bonds so stamped shall be a good delivery and bonds not so stamped shall not be a good delivery.

(2) The fact that a bond has been stamped "Tax Paid" by any authority vested with the power to tax, if the stamp does not indicate ownership, shall not prevent such bond from being a good delivery.

(h) Certificates of Deposit

Certificates of deposit issued by committees or depositaries other than those specified at time of trade shall not be a good delivery.

**11620. Computation of Interest**

(a) Interest to be Added to the Dollar Price

In the settlement of contracts in interest-paying securities other than for "cash," there shall be added to the dollar price interest at the rate specified in the security, which shall be computed up to but not including the second business day following the date of the transaction. In transactions for "cash," interest shall be added to the dollar price at the rate specified in the security up to but not including the date of transaction.

(b) Basis of Interest

Interest shall be computed on the basis of a 360-day year, i.e., every calendar month shall be considered to be 1/12 of 360 days; every period from a date in one month to the same date in the following month shall be considered to be 30 days.

Note: The number of elapsed days should be computed in accordance with the examples given in the following table:

From 1st to 30th of the same month to be figured as 29 days;

From 1st to 31st of the same month to be figured as 30 days;

From 1st to 1st of the following month to be figured as 30 days;

From 1st to 28th of February to be figured as 27 days;

From the 23rd of February to the 3rd of March is to be figured as 10 days;

From the 15th of May to the 6th of June is to be figured as 21 days.

Where interest is payable on 30th or 31st of the month:

From 30th or 31st to 1st of the following month to be figured as 1 day;

From 30th or 31st to 30th of the following month to be figured as 30 days;

From 30th or 31st to 31st of the following month to be figured as 30 days;

From 30th or 31st to 1st of second following month to be figured as 1 month, 1 day.

(c) Securities Traded "and interest"

When delivery of a security traded "and interest" is made between the record date fixed for the purpose of determining the holder entitled to receive interest and the interest payment date, a deduction equivalent to the full amount of the interest to be paid shall be made on settlement.

(d) Securities Traded "flat"

When delivery of a security traded "flat" is made after the record date fixed for the purpose of determining the holder entitled to receive interest, in the settlement of a contract made prior to the date on which the security was traded "ex-interest," a due-bill check for the full amount of the interest to be paid shall accompany the delivery.

(e) Income Bonds

Income bonds shall be dealt in "flat" even though such bonds are paying interest, except that where a certain fixed rate is guaranteed in the indenture and provision is made for additional contingent payment, they shall be dealt in "and interest" at the fixed rate guaranteed in the indenture (so long as interest payments at such fixed rate are not in default and no announcement of intention to default has been made).

(f) Fractions of a Cent

In all transactions involving the payment of interest, fractions of a cent equaling or exceeding five mills shall be regarded as one cent; fractions of a cent less than five mills shall be disregarded.

### **11630. Due-Bills and Due-Bill Checks**

#### (a) Definition of Due-Bills

The term "due-bill" as used in this Rule means an instrument employed for the purpose of evidencing the transfer of title to any security or rights pertaining to any security contracted for or evidencing the obligation of a seller to deliver such to a subsequent purchaser. A due-bill shall not be transferable or assignable by the purchaser.

#### (b) Definition of Due-Bill Checks

The term "due-bill checks" as used in this Rule means a due-bill in the form of a check payable on the date of payment of a cash dividend, interest on registered bonds or interest on unit investment trust securities, which prior to such date shall be considered as a due-bill, as defined in paragraph (a) above, for the amount of such dividend or interest.

#### (c) Due-bills for Stock Dividends and Rights

A security sold before it trades "ex-dividend" (for stock and scrip dividends) or "ex-rights" and delivered too late for transfer on or before the record date, shall be accompanied by a due-bill for the distribution to be made. When a due-bill accompanying a delivery evidences the obligation of the seller to deliver stock, the purchaser shall prorate the value of the contract, and shall make payment of the balance upon redemption of the due-bill. The requirement to pro-rate the value of the contract as described above shall not apply to stock dividends less than ten percent (10%) or to "spinoffs" or rights.

#### (d) Due-bill Checks for Cash Distribution and Interest

Due-bill checks for a cash distribution, interest on registered bonds or interest on unit investment trust securities shall accompany securities delivered too late for transfer on or before the record date.

#### (e) Redemption of Due-Bills

Due-bills for any security or rights pertaining to any security shall be redeemable on the date on which the security or rights are issued by the corporation or as soon thereafter as the signer or guarantor of the due-bill can obtain transfer of the security or rights into denominations necessary to effect the redemption of the due-bills.

#### (f) Default Upon Redemption of Due-Bills

A due-bill for any security or rights pertaining to any security issued pursuant to paragraph (c) of this Rule and presented for redemption pursuant to the terms of paragraph (e), and not honored by the seller may, at the option of the buyer, be treated as a "fail to receive" from the seller, and the distribution evidenced by such due-bill may be

bought-in for the account and risk of the seller pursuant to the terms of Rule 11810. However, buy-ins executed in accordance with this paragraph must be executed after the payable date of such securities as determined by the issuing corporation.

**IM-11630. Sample Due-Bill Forms**

(a) Due-Bill for Stock Dividend or Stock Distribution

For value received, the undersigned hereby assigns, transfers and sets over to the stock distribution of ( ) shares of stock to be issued onto the registered holder of ( ) shares of stock of represented by certificate number, to which the undersigned is entitled as a stock dividend, and hereby irrevocably constitutes and appoints attorney to transfer the shares representing said stock dividend on the books of said corporation, with full power of substitution in the premises.

Dated

-

(Official Signature)

\_\_\_\_\_

(b) Due-Bill for Rights

For value received, the undersigned hereby assigns, transfers, and sets over to the warrant and/or fractional warrant to which the undersigned is entitled, evidencing the rights to subscribe for, which warrant and/or fractional warrant is to be issued to the holder of record at the close of business of ( ) shares of stock of represented by certificate No

Dated

-

(Official Signature)

\_\_\_\_\_

(c) Due-Bill for Interest on When Issued Contract

This is to certify that, upon issuance of in accordance with the plan approved by, the undersigned will pay to \$ representing (contingent)(income) interest for on \$ principal amount of said bonds sold to him when, as, and if issued on 19

This due-bill shall become null and void if the contract for sale of said bonds cannot be completed in accordance with the plan approved by, on

Dated

-

(Official Signature)

(d) Due-Bill for Dividend on When Issued Contract

This is to certify that, upon issuance of in accordance with the plan approved by , the undersigned will pay to \$, representing the dividend of \$ per share declared for the period ending 19, on shares of stock of sold to him when, as, and if issued on 19

This due-bill shall become null and void if the contract for sale of said stock cannot be completed in accordance with the plan approved by, on

Dated

-

(Official Signature)

(e) Due-Bill Check

-

-

Consider this check as due-bill until payable date as shown below

NEW YORK, 19 . . . No. 1999

XYZ BANK

Pay To The Order Of

\$

-

DOLLARS

In Payment of Dividend or Interest

Dividend  
Account

On

Interest  
Account

---

---

NOT PAYABLE BEFORE

---

---

Record Date

**11640. Claims for Dividends, Rights, Interest, etc.**

(a) Dividends or Rights

A buyer of stock who has the certificate in his possession in time to enable him to effect transfer prior to the closing of the books or to the record date shall have no claim upon the seller (unless the seller is the registered holder) for the dividend or rights pertaining to such certificate, but the seller, upon request of the buyer, shall use his best efforts to collect the same for the buyer.

(b) Substantiating Claims

When a buyer of stock who has failed to have said stock transferred in time requests the seller to collect the dividends or rights pertaining thereto, the seller may require from the buyer the presentation of the certificate or a letter from the transfer agent substantiating the claim, or the buyer's written statement that he or his customer was the holder on the record date, and a guarantee of indemnity for liability arising out of any further demand for said dividend or rights.

(c) Interest or Rights

The provisions of paragraphs (a) and (b) of this Rule shall be equally applicable to interest or rights pertaining to registered bonds and unit investment trust securities.

**11650. Transfer Fees**

The party at whose instance a transfer of securities is made shall pay all service charges of the transfer agent.

**11700. Reclamations and Rejections**

**11710. General Provisions**

(a) Definition

The term "reclamation" as used in this Code shall mean a claim for the right to return or the right to demand the return of a security which has been previously accepted. Securities which have been presented for delivery on a transaction and which for a valid reason have been refused shall within the meaning of Rules 11710 and 11720, inclusive, be deemed a rejection for the purposes of these Rules.

(b) Uniform Reclamation Form

(1) Form Must Accompany Securities

A properly executed Uniform Reclamation Form must accompany securities on reclamation or return. 1

(2) Absence of Form Permits Sell-Out

Any security reclaimed or returned on a transaction without a properly executed Uniform Reclamation Form as prescribed within this Rule may, at the option of the receiving broker, be "sold-out" pursuant to Rule 11820 of this Code, however, in no event later than three business days after receipt of the receiving broker or his agent.

(c) Time for Delivery of Reclamation and Manner of Settlement

(1) A security with an irregularity having been delivered may be returned or reclaimed between the hours established by rule or practice in the community where the delivery or reclamation is to be made.

(2) When a security is returned or reclaimed, the party who originally delivered it shall immediately give the party returning it either the security in proper form for delivery in exchange for the security originally delivered, or the money amount of the contract. In the latter case, unless otherwise agreed, the party to whom the security is returned shall be deemed to be failing to deliver the security until such time as a proper delivery is made.

(d) Minor Irregularities

Reclamation for an irregularity which affects only the currency of the security in the market shall be made within fifteen days from the day of original delivery, except that, if the security is issued under the jurisdiction of a foreign country, the period for reclamation under this section shall be forty-five days from the day of original delivery.

(e) Wrong Form of Certificate

Reclamation, by reason of the fact that a form of certificate was delivered which was not a good delivery, but which is exchangeable without charge for a certificate which is a good delivery, shall be made within fifteen days from the day of original delivery.

1 Specifications for use of the Uniform Reclamation Form are contained in the Final Report of the Banking and Securities Industry Committee entitled "Four Uniform Forms" dated December 22, 1971.

**IM-11710. Uniform Reclamation Form**


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To Accompany Reclamations                      NSCC  
Subject to Rules & Regulations of        FINRA — Uniform Practice Code  
    Nasdaq BX — Uniform Practice Code

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<u>RECLAIMED TO</u>	<u>Rec No.</u>	<u>Name of Receiver</u>	<u>Date Securities Below Received</u>
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<u>RECLAIMED BY</u>	<u>Del. No.</u>	<u>Name of Deliverer</u>	<u>Date of Return</u>
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<u>Quantity</u>	<u>Security Description (certificates can be applied to reverse side of copy #1</u>	<u>Amount</u>
-----------------	---	---------------

-	<u>Wrong Security _____Should Be</u>	-	<u>Wrong Money _____Our Money</u>
---	--	---	---

-	<u>Carries Due Bill</u>	-	<u>Duplicates Delivery _____ You Delivered On</u>
---	-----------------------------	---	---

-	<u>Needs Signature Guarantee</u>	-	<u>Wrong Settlement Date _____Our S/D</u>
---	--	---	---

-	<u>Needs Tax Stamp</u>	-	<u>No Instructions</u>
---	----------------------------	---	------------------------

-	<u>Release Power of Attorney</u>	-	<u>Needs Legal Opinion</u>
---	--	---	--------------------------------

<u>Coupon Missing</u>	-	<u>Needs Better Account Date</u>
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-	<u>Other — Explanation</u>	
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<u>Name of Person making Reclamation (Print)</u>	<u>Telephone Number</u>	<u>Extension</u>
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ATTACH COPIES 1 & 2 TO CERTIFICATE — COPIES 3 & 4 ARE  
RETAINED BY DELIVERER

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### **11720. Irregular Delivery — Transfer Refused — Lost or Stolen Securities**

#### **(a) Irregular Delivery**

Reclamation, by reason of the fact of an irregularity in the delivery of a security, shall be within 30 months after the settlement date of the contract. For purposes of this paragraph, the term "irregular delivery" shall include, among other things, wrong, duplicate, misdirected or over-deliveries and delivery of unit investment trust securities having the incorrect payment option.

#### **(b) Transfer Refused**

Reclamation, by reason of the fact that a specific certificate tendered in settlement of a contract has been presented for transfer and transfer thereof has been refused by the transfer agent, shall be within 30 months after the settlement date of the contract.

#### **(c) Lost or Stolen or Confiscated Securities**

Reclamation, by reason of the fact that a security is lost or stolen or confiscated shall be within 30 months after the settlement date of the contract.

#### **(d) Running of 30 Month Period**

The running of the 30-month period described in this Rule shall not be deemed to foreclose a member's rights to pursue its claim via other open avenues, including but not limited to arbitration.

### **IM-11720. Obligations of Members Who Discover Securities in Their Possession to Which They Are Not Entitled**

Any member who discovers securities in its possession to which it is not entitled is required to make reasonable attempts to ascertain and to promptly notify the true owner of such securities and to take affirmative steps to correct the situation. Failure to abide by this requirement may result in a violation of General 9, Section 1.

### **11730. Called Securities**

Reclamation by reason of the fact that a security was delivered after publication of notice of call for its redemption, may be made without limit of time and such security may be returned to the party who held it at the time of such publication; except that this Rule shall not apply when an entire issue is called for redemption or when the security involved was dealt in specifically as a "called" security.

### **11740. Marking to the Market**

(a) Demand for Deposit

The party who is partially unsecured by reason of a change in the market value of the subject of a contract in securities may demand from the other party a deposit equal to the difference between the contract price and the market price, without being required to make a mutual deposit. Such deposit shall be made either with the member demanding same or with a mutually agreed-on depository or, on failure to agree on a depository, with any member of the Federal Reserve System with an office in the financial district of the city where the unsecured party maintains its office.

(b) Assignment of Contract

Either party to a contract in securities may assign the contract, either at the time the transaction is effected or at the time a request is made for funds to "mark to the market," provided the other party to the contract assents to the assignment.

(c) Refund of Deposit

If the market value of the subject of the contract changes so as to permit a total or partial refund of any deposits which have been made in accordance with paragraph (a) of this Rule, such refunds shall be made on demand.

(d) Delivery of Demand for Deposit or Refund

All demands for deposits or refunds shall be in writing and shall be delivered at the office of the party upon whom the demand is made during the business hours of member banks of the Federal Reserve System located in the community where such party maintains his office, and such demands shall be complied with immediately.

(e) Failure to Comply with Demand

Failure of a party to comply with a demand for a deposit or refund made in accordance with paragraphs (a), (c) and (d) of this Rule shall entitle the party making the demand to close the contract without notice, by making offsetting purchase or sale contracts in the best available market for the account and liability of the party failing to comply with said demand.

(f) Contract Closure

No contract shall be closed pursuant to paragraph (e) of this Rule prior to the expiration of regular delivery time in the community where the party making the demand maintains his office, on the next business day following the day when notice of such demand was received by the other party.

(g) Notice of Offsetting Purchase or Sale

The party making such offsetting purchase or sale contracts shall as promptly as possible on the day on which they are made (1) notify the other party via telegram, TWX, or other

comparable written media, and (2) mail or deliver formal confirmation of same to the other party and a copy of said confirmation to the Exchange's Regulation Department.

### **11800. Close-Out Procedures**

#### **11810. Buying-In**

A contract which has not been completed by the seller according to its terms may be closed by the buyer not sooner than the third business day following the date delivery was due, in accordance with the following procedure:

##### (a) Notice of "Buy-In"

(1) Written notice of "buy-in" shall be delivered to the seller at his office not later than 12:00 noon, his time, two business days preceding the execution of the proposed "buy-in."

(2) For purposes of this Rule written notice shall include an electronic notice through a medium that provides for an immediate return receipt capability. Such electronic media shall include but not be limited to facsimile transmission, a computerized network facility, etc.

##### (b) Information Contained in "Buy-in" Notice

(1) Every notice of "buy-in" shall state the date of the contract to be closed, the quantity and contract price of the securities covered by said contract, the settlement date of said contract and any other information deemed necessary to properly identify the contract to be closed. Such notice shall state further that unless delivery is effected at or before a certain specified time, which may not be prior to 11:30 a.m. local time in the community where the buyer maintains his office, the security may be "bought-in" on the date specified for the account of the seller. If the originator of a "buy-in" in a depository eligible security is a participant in a registered securities depository, the specified delivery time may not be prior to 3:00 p.m. Eastern Time and the "buy-in" may not be executed prior to 3:00 p.m., Eastern Time. Each "buy-in" notice shall also state the name and telephone number of the individual authorized to pursue further discussions concerning the buy-in.

(2) Notice may be redelivered immediately to another broker/dealer from whom the securities involved are due in the form of a re-transmitted notice (re-transmit). A re-transmitted notice of buy-in must be delivered to subsequent broker/dealers not later than 12 noon, recipient's local time, on the business day preceding the time and date of execution of the proposed buy-in, and the time specified for delivery may not be prior to the time specified in the original notice.

#### **IM-11810. Sample Buy-In Forms**

##### (a) Notice of Buy-In

(Member's Name)

-

(Locality and Date)

TO

RE:

(Quantity and description of Security)

which is due from you to the undersigned on a contract made on at settlement

(Date of Contract) (Contract Price)

-

(Settlement Date)

\*\*\*

We hereby notify you that unless you make delivery of the foregoing security at or before (Time and Date) the security will be bought in for your account and risk pursuant to Rule 11810 in the Uniform Practice Code.

Note: If some or all of the foregoing securities are due you by another member of the Nasdaq BX, Rule 11810(b) permits the use of the re-transmitted buy- in.

Buy-In Dept.

By:

Phone:

(b) Notice of Re-transmitted Buy-In

-

(Member's Name)

-

(Locality and Date)

TO

RE:

(Quantity and Description of Security)

which is due from you to the undersigned on a contract made on at settlement on

(Date of Contract) (Contract Price)

-

(Settlement Date)

\*\*\*

We hereby inform you that a notice of buy-in has been issued with respect to the aforesaid securities and stated that unless delivery was made at or before (Time and date on original buy-in) the securities may be bought in pursuant to Rule 11810 in the Uniform Practice Code.

Note: If some or all of the foregoing securities are due you by another member of the Nasdaq BX, Rule 11810(b) permits the use of the re-transmitted buy-in.

Buy-In Dept.

By:

Phone:

(c) Seller's Failure to Deliver After Receipt of Notice

(1)

(A) On failure of the seller to effect delivery in accordance with the "buy-in" notice, or to obtain a stay as hereinafter provided, the buyer may close the contract by purchasing all or part of the securities necessary to satisfy the amount requested in the "buy-in" notice. Securities delivered subsequent to the receipt of the "buy-in" notice should be considered as delivered pursuant to the "buy-in" notice. Delivery of the requisite number of shares, as stated in the "buy-in" notice, or execution will also operate to close-out all contracts covered under re-transmitted notices of buy-ins issued pursuant to the original notice of buy-in. A "buy-in" may be executed by a member from its long position and/or from customers' accounts maintained with such member.

(B) For transactions where the buyer is a customer (other than another member), upon failure of a clearing corporation to effect delivery in accordance with a buy-in notice, the contract must be closed by purchasing for "cash" in the best available market, or at the option of the buyer for guaranteed delivery, for the account and liability of the party in default all or any part of the securities necessary to complete the contract.

(C) As provided in paragraph (c)(1)(A) and (B) hereof, members must be prepared to defend the price at which the "buy-in" is executed relative to the current market at the time of the "buy-in."

(2) Buy-in for unit investment trust securities. Buy-in execution options, in addition to those contained in paragraph (c)(1), may be available when the purchaser wishes to buy-in contracts made for unit investment trust securities. The purchaser may:

(A) by mutual agreement, accept from the seller in lieu of the seller's obligation under the original contract (which shall be concurrently canceled) the delivery of unit investment

trust securities which are comparable to those originally bought in quantity, quality, yield or price and maturity, with any additional expenses or any additional cost of acquiring such substituted securities being borne by the seller;

(B) if the purchaser's options in paragraph (c)(1) are not available and the purchaser and seller cannot agree upon option (A), above, require the seller, for the account and liability of the seller, to repurchase the unit investment trust securities on terms which provide that the seller pay an amount which requires the seller to bear the burden of any change in the market price from the original contract price, with accrued interest. Bearing the burden of any change in the market price from the original contract price means that if the current market price is higher than the original contract price, the purchaser may require the seller to repurchase the unit investment trust securities at the current market price and conversely means that if the current market price is lower than the original contract price, the purchaser may require the seller to repurchase the unit investment trust securities at the original contract price, with accrued interest.

(d) "Buy-in" Not Completed

(1) In the event that a "buy-in" is not completed pursuant to the provisions of paragraph (b) hereof on the day specified in the notice of "buy-in," or as such date may be extended pursuant to the provisions of paragraph (f) or (g) hereof, said notice shall expire at the close of business on the day specified in the notice of buy-in.

(2) When a "buy-in" notice is pending during a reconfirmation and pricing period and one or more members are participating in a reconfirmation and pricing service, such "buy-in" notice shall be canceled. Written notice of cancellation must be received by the non-participating member prior to the original or extended date of execution. Failure to provide such notification may result in an execution. New notice of "buy-in" may be issued no earlier than the first business day following the final reconfirmation and pricing settlement date.

(e) Partial Delivery by Seller

Prior to the closing of a contract on which a "buy-in" notice has been given, the buyer shall accept any portion of the securities called for by the contract, provided the portion remaining undelivered at the time the buyer proposes to execute the "buy-in" is not an amount which includes an odd-lot which was not part of the original transaction.

(f) Securities in Transit

If prior to the closing of a contract on which a "buy-in" notice has been given, the buyer receives from the seller written or comparable electronic notice stating that the securities are (1) in transfer; (2) in transit; (3) are being shipped that day; or (4) are due from a depository and giving the certificate numbers, except for those securities due from a depository, then the buyer must extend the execution date of the "buy-in" for a period of seven (7) calendar days from the date delivery was due under the "buy-in." Upon request

of the seller, an additional extension of seven (7) calendar days may be granted by the Exchange's Regulation Department due to the circumstances involved.

(g) Notice of Executed "Buy-In"

The party executing the "buy-in" shall immediately upon execution, but no later than the close of business, local time, where the seller maintains his office, notify the broker/dealer for whose account the securities were bought as to the quantity purchased and the price paid. Such notification should be in written or electronic form having immediate receipt capabilities. If this written media is not available the telephone shall be used for the purpose of same day notification, and written or similar electronic notification having next day receipt capabilities must also be sent out simultaneously. In either case formal confirmation of purchase along with a billing or payment, (depending upon which is applicable), should be forwarded as promptly as possible after the execution of the "buy-in." Notification of the execution of a "buy-in" shall be given to succeeding broker/dealers to whom a re-transmitted notice was issued pursuant to paragraph (b) using the same procedures stated herein. If a re-transmitted "buy-in" is executed, it will operate to close out all contracts covered under the re-transmitted notice.

(h) "Close-Out" Under the Exchange's Regulation Department, Securities Association or Other Exchange Rulings

(1) When a national securities association or another exchange makes a ruling that all open contracts with a particular member, who is also a member of the Exchange, should be closed-out immediately (or any similar ruling), members may close-out contracts as directed by the securities association or exchange.

(2) Whenever the Exchange's Regulation Department ascertains that a court has appointed a receiver for any member because of its insolvency or failure to meet its obligations, or whenever the Exchange's Regulation Department ascertains, based upon evidence before it, that a member cannot meet its obligations as they become due and that such action will be in the public interest, the Exchange's Regulation Department may, in its discretion, issue notification that all open contracts with the member in question may be closed-out immediately.

(3) Within the meaning of this paragraph (b), to close-out immediately shall mean that (A) "buy-ins" may be executed without prior notice of intent to "buy-in" and (B) "sell-outs" may be executed without making prior delivery of the securities called for.

(4) All close-outs executed pursuant to the provisions of this paragraph shall be executed for the account and liability of the member in question. Notification of all close-outs shall immediately be sent to such member pursuant to the confirmation provisions of the Rule 11200 Series.

(i) Failure to Deliver and Liability Notice Procedures

(1)

(A) If a contract is for warrants, rights, convertible securities or other securities which (i) have been called for redemption; (ii) are due to expire by their terms; (iii) are the subject of a tender or exchange offer; or (iv) are subject to other expiring events such as a record date for the underlying security and the last day on which the securities must be delivered or surrendered (the expiration date) is the settlement date of the contract or later the receiving member may deliver a Liability Notice to the delivering member as an alternative to the close-out procedures set forth in paragraphs (a) through (g). When the parties to a contract are both participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, the transmission of the liability notice must be accomplished through the use of said automated notification service. When the parties to a contract are not both participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, such notice must be issued using written or comparable electronic media having immediate receipt capabilities and must be sent as soon as practicable but not later than two hours prior to the cutoff time set forth in the instructions on a specific offer or other event to obtain the protection provided by this Rule.

(B) If the contract is for a deliverable instrument with an exercise provision and the exercise may be accomplished on a daily basis, and the settlement date of the contract to purchase the instrument is on or before the requested exercise date, the receiving member may deliver a Liability Notice to the delivering member no later than 11:00 a.m. on the day the exercise is to be effected. Notice may be redelivered immediately to another member but no later than noon on the same day. When the parties to a contract are both participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, the transmission of the liability notice must be accomplished through the use of said automated notification service. When the parties to a contract are not both participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, such notice must be issued using written or comparable electronic media having immediate receipt capabilities. If the contract remains undelivered at expiration, and has not been canceled by mutual consent, the receiving member shall notify the defaulting member of the exact amount of the liability on the next business day.

(C) In all cases, members must be prepared to document requests for which a Liability Notice is initiated.

(2) If the delivering member fails to deliver the securities on the expiration date, the delivering member shall be liable for any damages which may accrue thereby. A Liability Notice delivered in accordance with the provisions of this Rule shall serve as notification by the receiving member of the existence of a claim for damages. All claims for such damages shall be made promptly.

(3) For the purposes of this Rule, the term "expiration date" shall be defined as the latest time and date on which securities must be delivered or surrendered, up to and including the last day of the protect period, if any.

(4) If the above procedures are not utilized as provided under this Rule, contracts may be "bought-in" without prior notice, after normal delivery hours established in the community where the buyer maintains his office, on the expiration date. Such buy-in execution shall be for the account and risk of the defaulting member.

(j) Contracts Made for Cash

Contracts made for "cash," or made for or amended to include guaranteed delivery on a specified date may be "bought-in" without notice during the normal trading hours on the day following the date delivery is due on the contract; otherwise, the procedures set forth in paragraphs (a) through (f) of this Rule shall apply. In all cases, notification of executed "buy-in" must be provided pursuant to paragraph (g) of this Rule. "Buy-ins" executed in accordance with this paragraph shall be for the account and risk of the defaulting broker/dealer.

(k) Information on Notices

Notices of "buy-in" and "re-transmitted buy-in" shall include all information contained in the sample forms prescribed by the Exchange.

(l) "Buy-In" Desk Required

Members shall have a "buy-in" section or desk adequately staffed to process and research all "buy-ins" during normal business hours.

(m) Buy-In of Accrued Securities

Securities in the form of stock, rights or warrants which accrue to a purchaser shall be deemed due and deliverable to the purchaser on the payable date. Any such securities remaining undelivered at that time shall be subject to the "buy-in" procedures as provided under this Rule.

**11820. Selling-Out**

(a) Conditions Permitting "Sell-Out"

Upon failure of the buyer to accept delivery in accordance with the terms of the contract, and lacking a properly executed Uniform Reclamation Form or the equivalent depository generated advice for depository eligible securities meeting the requirements prescribed in Rule 11710(b), the seller may, without notice, "sell-out" in the best available market and for the account and liability of the party in default all or any part of the securities due or deliverable under the contract.

(b) Notice of "Sell-Out"

The party executing a "sell-out" as prescribed above shall, as promptly as possible on the day of execution, but no later than the close of business, local time, where the buyer maintains his office, notify the broker/dealer for whose account and risk such securities were sold of the quantity sold and the price received. Such notification should be in written or electronic form having immediate receipt capabilities. A formal confirmation of such sale should be forwarded as promptly as possible after the execution of the "sell-out."

### **11830. Reserved**

### **11840. Rights and Warrants**

#### **(a) Definition — "Rights"**

The term "rights" or "rights to subscribe," as used in this Rule is the privilege offered to holders of record of issued securities to subscribe (usually on a pro rata basis) for additional securities of the same class, of a different class, or of a different issuer as the case may be.

#### **(b) Definition — "Warrants"**

The term "warrants" or "stock purchase warrants" as used in this Rule is an instrument issued separately or accompanying other securities, but not necessarily issued to stockholders of record as of a specific date; i.e., warrants issued with or attached to bonds, common stock, preferred stocks, etc. The instrument represents the privilege to purchase securities at a stipulated price or prices and is usually valid for several years.

#### **(c) Basis and Unit of Trading — Rights**

Except as otherwise designated by the Exchange's Regulation Department, transactions in rights to subscribe shall be on the basis of one right accruing to each share of issued stock and the unit of trading in rights shall be 100 rights (unless otherwise specified).

#### **(d) Basis and Unit of Trading — Warrants**

Except as otherwise agreed or designated by the Exchange's Regulation Department, transactions in stock purchase warrants shall be on the basis of one warrant representing the right of the purchaser to receive one warrant in settlement of such transaction and the unit of trading shall be 100 warrants. Members must ascertain how many warrants they have to sell, what each warrant entitles the holder to purchase, the purchase price, and the current price of the warrant relative to the price of the underlying security which may be purchased. Trades in warrants should be properly described on comparisons and confirmations.

#### **(e) Securities Which Have Expired by Their Terms**

(1) In contracts for warrants, rights or other securities which have expired by their terms, deliveries effected more than thirty (30) days after expiration shall consist of (A) the expired securities; or (B) a Letter of Indemnity in lieu of the expired instrument.

(2) In the case of units or other securities of which one or more of the integral parts of the instrument has expired by its terms, after expiration, the instrument shall cease to be a unit as originally contemplated in the contract. Deliveries effected after expiration shall consist of the unexpired security and (A) the expired instrument; or (B) a Letter of Indemnity in lieu of the expired instrument.

(3) Deliveries effected pursuant to paragraphs (e)(1) and (2) of this Rule shall be settled at the existing contract price.

**IM-11840. Sample Letter of Indemnity**

DATE \_\_\_\_\_

TO: \_\_\_\_\_

RE: \_\_\_\_\_

(Quantity and Description)

CUSIP # \_\_\_\_\_

For value received the undersigned hereby assigns, transfers and sets over to you all rights and privileges which may accrue on the above contract made on (Date of Contract) ----- at (Contract Price)----- for settlement (Settlement Date).

Upon acceptance of this delivery in lieu of physical certificates, we agree, for ourselves, our successors, assigns, heirs, executors and administrators, to at all times indemnify and hold harmless from and against any and all claims, liabilities, damages, taxes, charges and expense sustained or incurred by reason of this action. Acceptance of this delivery shall operate to close- out the above stated contract in accordance with the provisions of Nasdaq BX's Uniform Practice Code.

-

(Member Firm)

-

(Official Signature)

If any questions, please contact at (telephone Number)

**11850. Reserved**

**11860. Acceptance and Settlement of COD Orders**

(a) Exchange members shall comply with FINRA Rule 11860 as if such Rule were part of the Rules of the Exchange.

(b) The Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange.

Therefore, Exchange members are complying with Equity Rule 11860 by complying with FINRA Rule 11860 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Equity Rule 11860 are being performed by FINRA on behalf of the Exchange.

**11870. Customer Account Transfer Contracts**

(a) Exchange members shall comply with FINRA Rule 11870 as if such Rule were part of the Rules of the Exchange.

(b) The Exchange and FINRA are parties to the Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. Therefore, Exchange members are complying with Equity Rule 11870 by complying with FINRA Rule 11870 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Equity Rule 11870 are being performed by FINRA on behalf of the Exchange.

(c) Pursuant to the General 5, Rule 9600 Series, the Exchange may exempt from the provisions of this Rule, either unconditionally or on specified terms and conditions, (A) any member, or (B) any type of account, security or financial instrument.

**IM-11870. Sample Transfer Instruction Forms**

(a) Customer Account Transfer

-	-
<u>CUSTOMER SECURITIES ACCOUNT TRANSFER INSTRUCTION</u>	
-	<u>.....</u>
-	<u>(Date)</u>
<u>RECEIVING FIRM .....</u>	<u>CARRYING FIRM .....</u>
<u>RECEIVING FIRM ACCOUNT NUMBER .....</u>	<u>CARRYING FIRM ACCOUNT NUMBER .....</u>
<u>ACCOUNT TITLE</u>	-
<u>.....</u>	
<u>.....</u>	
<u>ACCOUNT TYPE .....</u>	<u>(C = CASH, M = MARGIN)</u>
<u>TAX ID OR SS NUMBER</u>	-

.....

TO

-

.....

(Receiving Firm Name and Address)

Please receive my entire securities account from the below indicated carrying firm and remit to it the debit balance or accept from it the credit balance in my securities account.

TO .....

(Carrying Firm Name and Address)

Please transfer my entire securities account to the above indicated receiving firm, which has been authorized by me to make payment to you of the debit balance or to receive payment of the credit balance in my securities account. I understand that to the extent any assets or instruments in my securities account are not readily transferable, with or without penalties, such assets or instruments may not be transferred within the time frames required by Rule 11870 of Nasdaq BX's Uniform Practice Code.

I understand that you will contact me with respect to the disposition of any assets in my securities account that are nontransferable. If certificates or other instruments in my securities account are in your physical possession, I instruct you to transfer them in good deliverable form, including affixing any necessary tax waivers, to enable such receiving firm to transfer them in its name for the purpose of sale, when and as directed by me. I further instruct you to cancel all open orders for my securities account on your books.

I affirm that I have destroyed or returned to you any credit/debit cards and/or unused checks issued to me in connection with my securities account.

.....

.....

(Customer's Signature)

(Date)

.....

.....

(Customer's Signature if Joint Account)

(Date)

[It is suggested that a copy of the customer's most recent account statement be attached.]

Receiving Firm Contact:

Name .....

Phone Number .....

For Broker Use Only:

Mutual Fund Registration Instructions:

Registration Name

.....

Address .....

Tax ID # .....

Dividend and Capital Gains Options:

Reinvest ( )

Dividend Cash/Capital Gains  
Reinvest ( )

All Cash ( )

Deposit to New Plan ( )

Issue Certificate ( )

Deposit to Existing Plan ... ( )

Broker Instructions (if broker agreement exists):

Name .....

Address .....

RR Name/Number/Branch .....

(b) Customer Retirement Account Transfer

- -

CUSTOMER RETIREMENT PLAN SECURITIES ACCOUNT  
TRANSFER INSTRUCTION

RECEIVING FIRM .....

CARRYING FIRM  
.....

RECEIVING FIRM ACCOUNT NUMBER  
.....

CARRYING FIRM  
ACCOUNT NUMBER

.....

ACCOUNT TITLE

-

.....

.....

ACCOUNT TYPE .....

(I = IRA, Q = QUALIFIED)

TAX ID OR SS NUMBER

.....

TO .....

(Prior Custodian/Trustee Name, Address and Tax ID Number)

You are the custodian/trustee for my retirement plan securities account with

-

.....

(Carrying Firm Name and Address)

as my broker. Please be advised that I have amended my retirement plan and have adopted a new retirement plan with the below indicated as successor custodian/trustee and

.....as broker

(Receiving Firm Name and Address)

Pursuant to said amendment, please transfer all assets in my securities account to such successor custodian/trustee. I understand that to the extent any assets in my account are not readily transferable, with or without penalties, such assets may not be transferred within the time frames required by Rule 11870 of Nasdaq BX's Uniform Practice Code.

I understand that the above indicated carrying firm will contact me with respect to the disposition of any assets in my account that are nontransferable. I authorize you to deduct any outstanding fees due you from the credit balance in my account. If my account does not contain a credit balance, or if the credit balance in the account is insufficient to satisfy any outstanding fees due you, I authorize you to liquidate the assets in my

account to the extent necessary to satisfy any outstanding fees due you. If certificates or other instruments in my account are in your physical possession, I instruct you to transfer them in good deliverable form, including affixing any necessary tax waivers, to enable the successor custodian/trustee to transfer them in its name for the purpose of sale, when and as directed by me. Upon receiving a copy of this transfer instruction, the carrying firm will cancel all open orders for my account on its books.

.....

.....

(Customer's Signature)

(Date)

Please be advised that

.....

(Successor Custodian/Trustee Name, Address and Tax ID Number)

will accept the above captioned account as successor custodian/trustee.

Please send all checks to

..... and non-DTC eligible items to

.....

.....

.....

(Successor Custodian/Trustee Authorized Signature)

(Date)

.....

.....

(Tax ID Number)

(Date of Trust)

[It is suggested that a copy of the customer's most recent account statement be attached.]

Receiving Firm Contact:

Name .....

Phone Number .....

For Broker Use Only:

Mutual Fund Registration Instructions:

Registration Name

.....

Address .....

Tax ID # .....

Dividend and Capital Gains Options:

Reinvest ( )

Dividend Cash/Capital Gains  
Reinvest ( )

All Cash ( )

Deposit to New Plan ( )

Issue Certificate ( )

Deposit to Existing Plan ... ( )

Broker Instructions (if broker agreement exists):

Name .....

Address .....

RR Name/Number/Branch .....

(c) Mutual Fund Re-Registration

- -

-

MUTUAL FUND RE-REGISTRATION INSTRUCTIONS USED FOR  
BROKER-TO-BROKER TRANSFERS

(1) TO: .....

Date: .....

- Transfer Agent: .....

- Address: .....

- -

Name of Fund:

(2) Present Account Information

Fund A/C #:

.....

- -

Certificate # (if in physical  
form)

- -

[Certificate attached must be  
in negotiable form.]

- -

Account Registration:

	.....
(3)(A) <u>Broker Identification</u>	<u>Old Firm Name and In-house A/C# .....</u>
(3)(B) -	<u>New Firm Name and In-house A/C# .....</u>
<u>Registration Instructions</u>	<u>Please transfer ..... shares from the above-referenced account and register as follows:</u>
-	
- <u>Name .....</u>	
- <u>Address .....</u>	
(4) <u>Tax ID # .....</u>	
- <u>Dividend and Capital Gains Option:</u>	
- <u>Reinvest ( )</u>	<u>Dividend Cash/Capital Gains Reinvest ( )</u>
- <u>All Cash ( )</u>	<u>Deposit to New Plan ( )</u>
- <u>Issue Certificate ( )</u>	<u>Deposit to Existing Plan .... ( )</u>
-	<u>If a Broker/Dealer Agreement exists:</u>
-	<u>Name .....</u>
-	<u>Address .....</u>
(5) <u>Broker/Dealer Instructions</u>	<u>Address</u>
-	<u>RR Name/Number/Branch</u>
(6) <u>Release</u>	<u>In consideration for your complying with the above request, we hereby agree to indemnify the:</u>
-	<u>..... (fund)</u>

- - and

- - ..... (agent)

- - against any and all losses  
incurred hereof.

- - Thank you in advance for  
your cooperation in this  
matter.

- - Sincerely,

- - (Signature Guarantee Stamp)

- - Authorized Signature

- If there are any questions call:

- .....  
(Signature of Delivering Broker) .....  
(Phone Number)

- .....  
(Signature of Receiving Broker) .....  
(Phone Number)

Items 1, 2, 3a are completed by the delivering broker.

Items 3b, 4 and 5 are completed by the receiving broker.

**11880. Settlement of Syndicate Accounts**

**(a) Definitions**

(1) "Selling syndicate" means any syndicate formed in connection with a public offering to distribute all or part of an issue of corporate securities by sales made directly to the public by or through participants in such syndicate.

(2) "Syndicate account" means an account formed by members of the selling syndicate for the purpose of purchasing and distributing the corporate securities of a public offering.

(3) "Syndicate manager" means the member of the selling syndicate that is responsible for maintenance of syndicate account records.

(4) "Syndicate settlement date" means the date upon which corporate securities of a public offering are delivered by the issuer to or for the account of the syndicate members.

(b) Final settlement of syndicate accounts shall be effected by the syndicate manager within 90 days following the syndicate settlement date.

(c) No later than the date of final settlement of the syndicate account, the syndicate manager shall provide to each member of the selling syndicate an itemized statement of syndicate expenses that shall include, where applicable, the following categories of expenses: legal fees; advertising; travel and entertainment; closing expenses; loss on oversales; telephone; postage; communications; co-manager's expenses; computer, data processing charges; interest expense; and miscellaneous. The amount under "miscellaneous" should not be disproportionately large in relation to other items and should include only minor items that cannot be easily categorized elsewhere in the statement. Any other major items not included in the above categories shall be itemized separately.

(d) Settlement of Underwritten Public Offerings

The syndicate manager of a public offering underwritten on a "firm-commitment" basis shall, immediately, but in no event later than the scheduled closing date, notify the Exchange's Uniform Practice Department of any anticipated delay in the closing of such offering beyond the closing date in the offering document or any subsequent delays in the closing date previously reported pursuant to this Rule.

#### **11890. Clearly Erroneous Transactions**

The provisions of paragraphs (a)(2)(C), (c)(1), (b)(i), and (b)(ii) of this Rule, as amended on September 10, 2010, and the provisions of paragraphs (g) through (i), shall be in effect during a pilot period that expires at the close of business on April 20, 2021. If the pilot period is not either extended or approved as permanent, the prior versions of paragraphs (a)(2)(C), (c)(1), and (b) shall be in effect, and the provisions of paragraphs (g) through (i) shall be null and void.

(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 the Exchange 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 that receives an execution on an order that was submitted erroneously to the Exchange 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 a Notice to Members or Head 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 or person associated with a member that seeks to have a transaction reviewed pursuant to paragraph (a) hereof shall submit a written complaint to the Exchange's MarketWatch Department within 30 minutes of the execution time.

(ii) Routed executions to 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 the Exchange from that market center and executed on the Exchange.

(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 Regular Trading Hours (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 made as follows:

(1) Numerical Guidelines. Subject to the provisions of paragraph (C)(3) below, a transaction executed shall 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 threshold is Regular Trading Hours or Pre-Opening and After Hours Trading Hours (which occurs before and after the Regular Trading Hours). The Reference Price will be equal to the consolidated last sale immediately prior to the execution(s) under review except for: (A) Multi-Stock Events involving twenty or more securities, as described in subparagraph (C)(2) below; and (B) in other circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest .

<u>Reference Price, Circumstance or Product</u>	<u>Regular Trading Hours Numerical Guidelines (Subject transaction's % difference from the Reference Price):</u>	<u>Pre-Opening and After Hours Trading Session Numerical Guidelines (Subject transaction's % difference from the Reference Price):</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>
<hr/>		
<u>Multi-Stock Event - Filings involving five or more, but less than twenty, securities whose executions occurred within a period of five minutes or less</u>	<u>10%</u>	<u>10%</u>
<hr/>		
<u>Multi-Stock Event - Filings involving twenty or more securities whose executions occurred within a period of five minutes or less</u>	<u>30%, subject to the terms of paragraph (C)(2) below</u>	<u>30%, subject to the terms of paragraph (C)(2) below</u>
<hr/>		
<u>Leveraged ETF/ETN securities</u>	<u>Regular Trading Hours Numerical Guidelines multiplied by the leverage multiplier (ie. 2x)</u>	<u>Regular Trading Hours Numerical Guidelines multiplied by the leverage multiplier (ie. 2x)</u>
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(2) Multi-Stock Events Involving Twenty or More Securities. During Multi-Stock Events involving twenty or more securities the number of affected transactions is such that immediate finality may be necessary to maintain a fair and orderly market and to protect investors and the public interest. In such circumstances, the Exchange may use a Reference Price other than consolidated last sale. To ensure consistent application across market centers when this paragraph is invoked, the Exchange will promptly coordinate with the other market centers to determine the appropriate review period, which may be greater than the period of five minutes or less that triggered application of this paragraph, as well as select one or more specific points in time prior to the transactions in question and use transaction prices at or immediately prior to the one or more specific points in time selected as the Reference Price. The Exchange will nullify as clearly erroneous all transactions that are at prices equal to or greater than 30% away from the Reference Price in each affected security during the review period selected by the Exchange and other markets consistent with this paragraph.

(3) Additional Factors. Except in the context of a Multi-Stock Event involving five or more securities, 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, Pre-Opening and After Hours Trading 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.

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

(i) System Disruption or Malfunctions. In the event of any disruption or a malfunction in the operation of any electronic communications and trading facilities of the Exchange in which the nullification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest exist, the President of the Exchange or any designated officer of the Exchange or senior level employee pursuant to the Regulatory Services Agreement ("Senior Official") may, on his or her own motion, may review such transactions and declare such transactions arising out of the operation of such facilities during such period null and void. In such events, the Senior Official will rely on the provisions of paragraph (a)(2)(C)(1)-(3) of this Rule, but in extraordinary circumstances may also use a lower Numerical Guideline 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 pursuant to this paragraph (i) shall be taken within thirty (30) minutes of 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 Regular Trading Hours on the trading day following the date of execution(s) under review. Each Member involved in the transaction shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (c)(1) below.

(ii) Senior Official Acting on Own Motion. A Senior Official, acting on his or her own motion, may review potentially erroneous executions and declare trades null and void or shall decline to take any action in connection with the completed trade(s). In such events, the Senior Official will rely on the provisions of paragraph (a)(2)(C)(1)-(3) of this Rule. Absent extraordinary circumstances, any such action of the Senior Official shall be taken in a timely fashion, generally within thirty (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 Regular Trading Hours on the trading

day following the date of execution(s) under review. When such action is taken independently, each party involved in the transaction shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (c)(1) below.

(c) Review by the Exchange Review Council

(1) A member or person associated with a member may appeal a determination made under paragraph (a) to the Exchange Review Council. A member or person associated with a member may appeal a determination made under paragraph (b) to the Exchange Review Council 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, and further provided that with respect to rulings made by the Exchange in conjunction with one or more additional market centers, the number of affected transactions is similarly such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest and, hence, are also non-appealable. 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 Exchange Review Council. Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal to the Exchange Review Council shall not operate as a stay of the determination being appealed, and the scope of the appeal shall be limited to trades to which the person making the appeal is a party.

Once a party has appealed a determination to the Exchange Review Council, 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 Exchange Review Council, or (ii) the party filing the appeal withdraws its appeal prior to the notification of counterparties. The Exchange Review Council 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 Exchange Review Council, 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 Exchange Review Council, 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 firm whose revenues from market

making activity exceed ten percent of its total revenues. In no case shall an Exchange Review Council Panel include a person affiliated with a party to the trade in question.

(3) The decision of the Exchange Review Council 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 Exchange action on the matter in issue. Any determination by an Exchange official pursuant to paragraph (a) or (b) or any decision by the Exchange Review Council 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 Exchange Review Council 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 Notice to Members or Head 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 a Notice to Members or Head Trader Alert.

#### (e) Fees

##### (1) Filing Fees

No fee shall be assessed to a member for filing two or fewer unsuccessful clearly erroneous complaints pursuant to paragraph (a)(2) during a calendar month. A member 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 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 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 for purposes of this paragraph (e)(1) is defined by each unique broker Web CRD Number. All MPIDs associated with that Web CRD Number shall be included when calculating the number of unsuccessful clearly erroneous complaints for that member 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, (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 paragraph (b) of this Rule.

### (2) Appeal Fees

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

### (3) Fees Charged By Another Market Center

In instances where the Exchange, on behalf of a member, 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.

### (f) Refusal to Abide by Rulings of a the Exchange Official or the Exchange Review Council

It shall be considered conduct inconsistent with just and equitable principles of trade for any member to refuse to take any action that is necessary to effectuate a final decision of an Exchange official or the Exchange Review Council under Equity 11, Rule 11890.

(g) Securities Subject to Limit Up-Limit Down Plan. For purposes of this paragraph, the phrase "Limit Up-Limit Down Plan" or "Plan" shall mean the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act. The provisions of paragraphs (a) through (f) above and (h) through (i) below shall govern all Exchange transactions, including transactions in securities subject to the Plan, other than as set forth in this paragraph (g). If as a result of an Exchange technology or systems issue any transaction occurs outside of the applicable price bands disseminated pursuant to the Plan, a Senior Official of the Exchange, acting on his or her own motion or at the request of a third party, shall review and declare any such trades null and void. Absent extraordinary circumstances, any such action of the Senior Official of the Exchange shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Senior Official of the Exchange must be taken by no later than the start of Regular Trading Hours on the trading day following the date on which the execution(s) under review occurred. Each Member involved in the transaction shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (c) above. In the event that a single

plan processor experiences a technology or systems issue that prevents the dissemination of price bands, the Exchange will make the determination of whether to nullify transactions based on paragraphs (a) through (f) above and (h) through (i) below.

(h) Multi-Day Event . A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions (the "Event"). An Officer of the Exchange or senior level employee designee, acting on his or her own motion, shall take action to declare all transactions that occurred during the Event null and void not later than the start of trading on the day following the last transaction in the Event. If trading in the security is halted before the valuation error is corrected, an Officer of the Exchange or senior level employee designee shall take action to declare all transactions that occurred during the Event null and void prior to the resumption of trading. Notwithstanding the foregoing, no action can be taken pursuant to this paragraph with respect to any transactions that have reached settlement date or that result from an initial public offering of a security. To the extent transactions related to an Event occur on one or more other market centers, the Exchange will promptly coordinate with such other market center(s) to ensure consistent treatment of the transactions related to the Event, if practicable. Any action taken in connection with this paragraph will be taken without regard to the Numerical Guidelines set forth in this Rule. Each Member involved in a transaction subject to this paragraph shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (c) above.

(i) Trading Halts . In the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a regulatory trading halt, suspension or pause, an Officer of the Exchange or senior level employee designee, acting on his or her own motion, shall nullify any transaction in a security that occurs after the primary listing market for such security declares a regulatory trading halt, suspension or pause with respect to such security and before such regulatory trading halt, suspension or pause with respect to such security has officially ended according to the primary listing market. In addition, in the event a regulatory trading halt, suspension or pause is declared, then prematurely lifted in error and is then re-instituted, an Officer of the Exchange or senior level employee designee shall nullify transactions that occur before the official, final end of the halt, suspension or pause according to the primary listing market. Any action taken in connection with this paragraph shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction and in no circumstances later than the start of the Regular Market Session on the trading day following the date of execution(s) under review. Any action taken in connection with this paragraph will be taken without regard to the Numerical Guidelines set forth in this Rule. Each Member involved in a transaction subject to this paragraph shall be notified as soon as practicable by the Exchange, and the

party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (c) above.

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## **OPTIONS RULES**

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### **Options 9 Business Conduct**

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#### **Section 4. Reserved.[Disruptive Quoting and Trading Activity Prohibited**

(a) No Participant shall engage in or facilitate disruptive quoting and trading activity on the Exchange, as described in subsections (i) and (ii) of this Rule, including acting in concert with other persons to effect such activity.

(1) For purposes of this Rule, disruptive quoting and trading activity shall include a frequent pattern in which the following facts are present:

(A) Disruptive Quoting and Trading Activity Type 1:

(i) a party enters multiple limit orders on one side of the market at various price levels (the "Displayed Orders"); and

(ii) following the entry of the Displayed Orders, the level of supply and demand for the security changes; and

(iii) the party enters one or more orders on the opposite side of the market of the Displayed Orders (the "Contra-Side Orders") that are subsequently executed; and

(iv) following the execution of the Contra-Side Orders, the party cancels the Displayed Orders.

(B) Disruptive Quoting and Trading Activity Type 2:

(i) a party narrows the spread for a security by placing an order inside the NBBO; and

(ii) the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the order described in paragraph (b)(i).

(iii) Applicability. For purposes of this Rule, disruptive quoting and trading activity shall include a frequent pattern in which the facts listed above are

present. Unless otherwise indicated, the order of the events indicating the pattern does not modify the applicability of the Rule. Further, disruptive quoting and trading activity includes a pattern or practice in which of the quoting and trading activity is conducted on the Exchange as well as a pattern or practice in which some portion of the quoting or trading activity is conducted on the Exchange and the other portions of the quoting or trading activity is conducted on one or more other exchanges.]

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