

EXHIBIT 5I

AMERICAN STOCK EXCHANGE LLC
Text of Proposed Rule Change

[**Bold bracketing**] indicates text to be deleted and **bold underlining** indicates text to be added.

NYSE ALTERNEXT US [AMERICAN STOCK EXCHANGE] RULES

General and Floor Rules

Definitions and Powers of the Board of Directors

[1. "Member," "Allied Member," and "Member Organization," etc.

The terms "member," "allied member," and "member organization," etc., shall have the meanings specified in Article I, Section 3 of the Constitution. The terms "approved person," "publicly held security," "voting stock," and "non-voting stock," shall have the meanings specified in Article I, Section 3 of the Constitution.]

1. No Affiliation between Exchange and any Member Organization

(a) Without prior approval by the Securities and Exchange Commission, the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a member organization. In addition, a member organization shall not be or become an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange; provided, however, that, if a director of an affiliate of a member organization serves as a director of NYSE Euronext, this fact shall not cause such member organization to be an affiliate of the Exchange, or an affiliate of an affiliate of the Exchange. The term "affiliate" shall have the meaning specified in Rule 12b-2 under the Securities Exchange Act of 1934. Nothing in this rule shall prohibit a member organization from acquiring or holding an equity interest in NYSE Euronext that is permitted by the ownership limitations contained in the certificate of incorporation of NYSE Euronext.

(b) The holding company owning both the Exchange and Archipelago Securities L.L.C. shall establish and maintain procedures and internal controls reasonably designed to ensure that Archipelago Securities, L.L.C. does not develop or implement changes to its system on the basis of non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated members of the Exchange in connection with the provision of inbound order routing to the Exchange.

1A. Special Transfer Agreements

Neither the Exchange nor NYSE Euronext shall have any obligations under the special transfer agreements (i.e. lease agreements) that existed immediately prior to the Merger to any party thereto.

1B. Regulatory Services Agreements

The Board may authorize any officer, on behalf of the Exchange, subject to the approval of the Board, to enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Securities Exchange Act of 1934. Any action taken by another self-regulatory organization, or its employees or authorized agents, acting on behalf of the Exchange pursuant to a regulatory services agreement shall be deemed to be an action taken by the Exchange; provided, however, that nothing in this provision shall affect the oversight of such other self-regulatory organization by the Securities and Exchange Commission. The Exchange shall retain the authority to direct such other self-regulatory organization with which the Exchange has entered into one or more regulatory services agreements to take any action necessary to fulfill the Exchange's statutory and self-regulatory obligations, consistent with the independence of the regulatory functions performed by such other self-regulatory organization, the Exchange rules, policies and procedures and the federal securities laws. Notwithstanding the fact that the Exchange may enter into one or more regulatory services agreements, the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities, and any such regulatory services agreement shall so provide.

1C. Affiliation of Chief Executive Officer

The Chief Executive Officer shall have no affiliation with any member organization nor any other business interest during his incumbency proscribed by the Code of Conduct of the Exchange. By his acceptance of the office of Chief Executive Officer he shall be deemed to have agreed to uphold the Rules of the Exchange.

2. "Member Corporation and Member Firm"

(a) The term "member corporation," means a corporation registered with the Securities and Exchange Commission as a broker or dealer in securities approved by the Exchange as a member corporation which [(1) in the case of a regular or options principal member corporation,] meets the qualifications set forth in **Rule 356** [Article IV, Section 2(d), or (2) in the case of an associate member corporation, has at least one associate member of the Exchange who is a director or an executive officer thereof. The term "member corporation" when not preceded by the word (or words) "regular", "options principal" or "associate," shall include regular, options principal and associate member corporations registered with the Exchange.]

(b) The term "member firm" means a partnership registered with the Securities and Exchange Commission as a broker or dealer in securities, approved by the Exchange as a member firm, and which [(1) in the case of a regular or options principal member firm,] meets the qualifications

set forth in **Rule 356 [Article IV, Section 2(d)]**, and at least one of whose general partners or employees is a member of the Exchange[, or (2) in the case of an associate member firm, has at least one associate member of the Exchange who is a general partner or employee of the firm. The term "member firm" when not preceded by the word (or words) "regular," "options principal" or "associate," shall mean and include regular, options principal and associate member firms.]

••• *Commentary* -----

.01 The Exchange may, in its discretion, and on such terms and conditions as the Exchange may prescribe, approve as a member organization an entity that has characteristics essentially similar to corporations, partnerships or both. Such entities, and persons associated therewith, shall, upon approval, be fully, formally and effectively subject to the jurisdiction of, and to the **[Constitution and]** Rules of[, the Exchange to the same extent and degree as are any other member organizations and persons associated therewith. Such entity must be **an 86 Trinity Permit Holder** or have **an 86 Trinity Permit Holder who is a natural person [a regular or options principal member of the Exchange]** associated with it. In addition, every party affiliated with such entity which the Exchange requires to become an allied member or approved person of the Exchange must qualify as such, and the entity must submit to the Exchange such documentation as the Exchange may require.

3. "Associated with a Member or Member Organization"

For the purposes of **[the Constitution and]** these Rules, the term "associated with a member or member organization" shall have the same meaning as the definition given to the term "associated with a member" in Section 3(a)(21) of the Securities Exchange Act of 1934.

9. "He," "Him," "His"

The words "he," "him," and "his" shall **be deemed to refer to persons of female as well as male gender, and to** include organizations as well as individuals when the context so requires.

11. "The Exchange"

The term "the Exchange," when used with reference to the administration of any rule, means **NYSE Alternext US [American Stock Exchange] LLC, [either] the Board of Directors [Governors]** or the officer, employee committee or panel authorized **by the Exchange [under the constitution]** to administer such rule or to whom appropriate authority to administer such rule has been delegated or granted by the Board **[pursuant to the provisions of Section 1(b) of Article II of the Constitution]**.

13. "Control"

For the purposes of **[the Constitution and]** these Rules, the term "control" means the power to direct or cause the direction of the management or policies of a person, whether through ownership of securities, by contract, or otherwise. A person shall be presumed to control another person if such person, directly or indirectly,

- (i) has the right to vote or cause to be voted 25% or more of the voting securities,
- (ii) is entitled to receive 25% or more of the net profits, or
- (iii) is a director (or person occupying a similar status or performing similar functions) of such person. Any person who does not come within one of the foregoing categories shall be presumed not to control such other person. Such presumption may be rebutted by evidence, but shall continue until a determination to the contrary has been made by the Exchange.

14. "Clearing Corporation"

The terms "American Stock Exchange Clearing Corporation," ["**A.S.E. Clearing Corporation**"] and "Clearing Corporation" mean the ASECC Division of National Securities Clearing Corporation[, **except that in Rules 761, 765 (a) and (b) and 774, the term "A.S.E. Clearing Corporation" shall mean the American Stock Exchange Clearing Corporation, a wholly owned subsidiary of the American Stock Exchange**]. The term "By-Laws and Rules" of American Stock Exchange Clearing Corporation shall mean the rules of the ASECC Division of National Securities Clearing Corporation.

17. "Floor" or "Trading Floor"

The term "Floor" or "Trading Floor" means the trading floor of the Exchange and the premises immediately adjacent thereto and also means the telephone facilities available in these locations.

18. "Member"

The term "member" shall include the 86 Trinity Permit Holders who are natural persons and allied members.

19. "86 Trinity Permit"

The term "86 Trinity Permit" shall mean the temporary trading permit that is issued by the Exchange prior to the relocation of the Exchange equities and options trading facilities to the NYSE trading floor or the electronic trading platform of NYSE or NYSE Arca, Inc., as applicable. The issuance of an 86 Trinity Permit constitutes only a revocable privilege and confers on its holder no right or interest of any nature to continue as an 86 Trinity Permit Holder.

20. "86 Trinity Permit Holder"

The term "86 Trinity Permit Holder" shall mean the persons and entities who are issued one or more 86 Trinity Permits from the Exchange.

An 86 Trinity Permit Holder shall agree to be bound by the Operating Agreement of the Exchange and the Rules of the Exchange, and by all applicable rules and regulations of the Securities and Exchange Commission.

An 86 Trinity Permit Holder shall not have ownership or distribution rights in the Exchange. An 86 Trinity Permit Holder shall have limited voting rights to nominate Non-Affiliated Directors to the Exchange's Board of Directors as set forth in the Operating Agreement of the Exchange. An 86 Trinity Permit Holder shall have status as a "member" of the Exchange as that term is defined in Section 3 of the Securities Exchange Act of 1934, as amended.

21. "prior active member"

The term "prior active member" shall mean (i) an owner, lessee or nominee of regular membership that was authorized to trade on the Exchange immediately prior to the Merger, (ii) an owner, lessee or nominee of an options principal membership that was authorized to trade on the Exchange immediately prior to the Merger, (iii) a limited trading permit holder that was authorized to trade on the Exchange immediately prior to the Merger or (iv) an associate member that was authorized to trade on the Exchange immediately prior to the Merger.

22. "derivative products"

The term "derivative products" includes, in addition to standardized options, other securities which are issued by The Options Clearing Corporation or another limited purpose entity or trust, and which are based solely on the performance of an index or portfolio of other publicly traded securities. Notwithstanding the foregoing, the term "derivative products" shall not include warrants of any type or closed-end management investment companies.

23. "Allied Member"

The term "allied member" means:

- (1) a general partner in a member firm that is an 86 Trinity Permit Holder or an employee who controls such member firm who is not an 86 Trinity Permit Holder;**
- (2) an employee of a member corporation that is an 86 Trinity Permit Holder who does not hold an 86 Trinity Permit, and who is either:**

- (i) a principal executive officer of such corporation, or
- (ii) a person who controls such corporation and who in each case has become an allied member; or
- (3) an employee of any other entity permitted by the Exchange to become a member organization who controls such organization.

24. "Member Organization"

The term "member organization", means a partnership, corporation or such other entity as the Exchange may, by Rule, permit to become a member organization, and which meets the qualifications specified in the Rules. The term shall include "member firm" and "member corporation."

25. "Approved Person"

The term "approved person" means a person who is not an 86 Trinity Permit Holder or allied member or an employee of a member organization who has become an approved person as provided in the rules of the Exchange and who is:

- (1) a person who controls a member or member organization, or
- (2) a person engaged in a securities or kindred business who is controlled by or under common control with a member or member organization.

26. "Publicly Held Security"

The term "publicly held security" with respect to a member organization means any class of equity security issued by a member corporation which is owned beneficially by one hundred or more persons who are not members or employees of the member corporation.

27. "Voting Stock"

The term "voting stock" means stock in a corporation the holders of which are entitled to vote for the election of the directors of such corporation.

28. "Non-Voting Stock"

The term "non-voting stock" means stock of any class in a corporation other than voting stock.

29. "Security or Securities"

The term "security" or "securities" shall include stocks, bonds, options and other interests or instruments commonly known as securities.

30. "Member Contracts"

The term "Member Contracts" shall include all contracts of a member of the Exchange or of a member organization, with any member of the Exchange or with any member organization, for the purchase, sale, borrowing, loaning or hypothecation of securities, or for the borrowing, loaning or payment of money, whether occurring upon the Floor or elsewhere.

31. "Exchange Contracts"

The term "Exchange Contracts" shall include all "Member Contracts":

(1) made on the Exchange; or

(2) not made on the Exchange, unless made subject to the rules of another exchange or association, or unless the parties thereto have expressly agreed that the same shall not be Exchange Contracts.

32. "Nominee"

The term "nominee", unless the context requires otherwise, means an individual who is authorized by a member organization to conduct business on the Floor and to represent such member organization in all matters relating to the Exchange. A member organization may designate a person approved by the Exchange, subject to and in accordance with such rules as may be adopted from time to time by the Board of Directors, as a nominee to represent it with respect to its 86 Trinity Permit. As long as a nominee remains authorized, the nominee, for all purposes of the rules, shall be a "member" of the Exchange as that term is defined in Section 3 of the Securities Exchange Act of 1934, as amended. A nominee shall agree to be bound by the Rules of the Exchange, and by all applicable rules and regulations of the Securities and Exchange Commission.

33. "Non-Affiliated Director"

The term "Non-Affiliated Director" means the directors of the Exchange who are not members of the board of directors of NYSE Euronext.

34. "Merger"

The term "Merger" means the merger of American Stock Exchange LLC with and into American Stock Exchange 2, LLC, which is immediately renamed NYSE Alternext US LLC.

35. "Operating Agreement of the Exchange"

The term "Operating Agreement of the Exchange" means the Amended and Restated Operating Agreement of the Exchange, as may be amended from time to time.

36. "FINRA"

The term "FINRA" means the Financial Industry Regulatory Authority, Inc. or its successor.

PART I – General Rules

Rule 1. Hours of Business

Except as otherwise determined by the Board of **Directors [Governors]**, the Exchange shall be open for the transaction of business on every business day, Monday through Friday. At 9:00 a.m., official announcement shall be made that the Exchange is open for trading in options on debt securities. At 9:30 a.m., official announcement shall be made that the Exchange is open for all other business purposes. The Exchange shall remain open until closed by official announcement at 4:00 p.m.; provided however, that option transactions in debt options may be effected on the Exchange only until 3:00 p.m. and all other option transactions may be effected on the Exchange until 4:00 p.m. each business day at which times no further debt or other options transactions may be made.

"After-Hours Trading" (as defined in Rule 1300(e)(iii)) shall be conducted during such hours as the Exchange may from time to time specify.

Except as may be otherwise determined by the Board of **Directors [Governors]**, the Chief Executive Officer of the Exchange, or his designee, shall have the power to halt, extend or suspend trading in some or all securities traded on the Exchange, to close some or all Exchange facilities, and to determine the duration of any such halt, extension, suspension or closing, when he deems such action to be necessary or appropriate for the maintenance of a fair and orderly market or the protection of investors, or otherwise in the public interest, due to extraordinary circumstances, such as (1) actual or threatened physical danger, severe climatic conditions, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange; (2) a request by a governmental agency or official; or (3) a period of mourning or recognition for a person or event. In considering such action, the Chief Executive Officer of the Exchange, or his designee, shall consult with the Vice Chairman or Senior Supervisory Officer on the Floor, if available, and such available **Senior Floor Officials [Floor Governors]** as he deems appropriate under the circumstances. The Chief Executive Officer of the Exchange, or his designee, shall

notify the Board of **Directors** [**Governors**] of actions taken pursuant to this Rule, except for a period of mourning or recognition for a person or event, as soon thereafter as is feasible.

Rule 2. Visitors

Visitors shall not be admitted to the Floor except with the permission of an Officer of the Exchange or a member of the Board of **Directors** [**Governors**].

Rule 3. General Prohibitions and Duty to Report

(a) No member or member organization shall effect on the Exchange purchases or sales for any account in which he **or it** is directly or indirectly interested, which purchases or sales are excessive in view of his **or its** financial resources or in view of the market for such security.

(b) No **86 Trinity Permit Holder who is a natural person** [regular or options principal member] shall effect, in the rooms of the Exchange, a transaction with **a member who has no right to trade on the Floor** [an associate member] or with a non-member, in any security dealt in on the Exchange; but this rule shall not prohibit transactions permitted by Rule 118, Rule 152 or by Section 7 of Part II of the Rules of the Exchange or with an employee of the Exchange or American Stock Exchange Clearing Corporation engaged in carrying out arrangements approved by the Board of **Directors** [**Governors**] to facilitate the borrowing and lending of money.

(h) It shall be deemed an act detrimental to the interest or welfare of the Exchange for any member, member organization or employee thereof to fail to report immediately to the Exchange any fraudulent or manipulative conduct in connection with the trading of securities on the Floor (i) of which the member, member organization or employee thereof has knowledge, or (ii) that the member, member organization or employee thereof has been asked to perform.

Reports to the Exchange of fraudulent or manipulative conduct shall be made in such form and to such person(s) as the Exchange shall prescribe from time to time in a notice to the **members and member organizations** [membership].

(j) Every member or member organization, [other than a lessor that is neither registered, nor required to be registered, as a broker-dealer under Section 15 of the Securities Exchange Act of 1934,] shall establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the member's business, to prevent the misuse of material nonpublic information by such member or persons associated with such member in violation of the Securities Exchange Act of 1934 and the rules thereunder and the Exchange's own Rules.

Rule 13. Members' Access to Records

Members or member organizations shall not have access to the minutes of the Board of **Directors** **[Governors]** or to the minutes or records of any committee or to the records of the Exchange unless personally interested therein.

Rule 15. Loans by Members

Without the prior approval of the Board of **Directors** **[Governors]**, (i) no member, member organization, approved person, employee or any employee pension, retirement or similar plan of any member organization ("Member") shall directly or indirectly make any loan of money or securities to, or obtain any such loan from, any member of the Board of **Directors or** **[Governors,]** any member of any committee of the Exchange[, or any **Trustee of the Gratuity Fund**] ("Designated Person") and (ii) no such Designated Person shall directly or indirectly make any such loan to, or obtain any such loan from, any Member, unless such loan be:

(a) Fully secured by readily marketable collateral, or

(b) Made by a **Director or** **[Governor,]** committee member **[or Trustee]** to, or obtained by a **Director or** **[Governor,]** committee member **[or Trustee]** from, the member organization of which he is a member or employee or a member or employee therein or a party to a registered joint-account in which such **Director or** **[Governor,]** committee member **[or Trustee]** participates.

Rule 18. Withdrawal from Listing

[Rule 18 in the following form is effective through April 23, 2006. It will be rescinded after that date and will be replaced as set forth below.

An issuer may voluntarily withdraw a security from listing on the American Stock Exchange upon written notice to the Exchange, provided the issuer complies with all applicable state laws in effect in the state in which it is incorporated.

No application for delisting shall be filed with the Commission until the requirements of this rule and §1010 of the Exchange's Company Guide have been complied with.

Rule 18 in the following form will be effective on April 24, 2006.]

Rule 20. "When Issued" Trading

All rules of the Exchange pertaining to "when issued" or "when, as and if issued" trading and contracts shall apply to "when distributed" trading and contracts. The term "when issued" or "when, as and if issued" as used **[in any portion of the Constitution or]** in any Rules of the Exchange now or hereafter in effect also means "when distributed."

Rule 21. Appointment of the Senior Supervisory Officer, Senior Floor Officials, Exchange Officials and Floor Officials

(a) **Senior Supervisory Officer [Senior Floor Officials].**—Each **director [governor]** of the Exchange who spends a substantial part of his time on the Floor shall serve as a Senior Floor Official. The **Chief Executive Officer or his designee, or the Chief Regulatory Officer or his designee, [Vice Chairman of the Board shall serve as the Senior Supervisory Officer on the Floor. If the Vice Chairman does not spend a substantial part of his time on the Floor, the Chairman]** subject to the approval of the Board, shall designate one of the **directors [governors]** serving as a Senior Floor Official to act as the Senior Supervisory Officer on the Floor. **If none of the directors spend a substantial part of their time on the Floor, the Chief Executive Officer or his designee, or the Chief Regulatory Officer or his designee shall designate one of the Senior Floor Officials (appointed pursuant to paragraph (b) of this Rule) to act as the Senior Supervisory Officer on the Floor.** In the absence of the person designated as the Senior Supervisory Officer on the Floor, the Senior Floor Officials (**appointed pursuant to paragraph (b) of this Rule**), according to an order of succession to be prescribed at the time of appointment, or the acting Senior Floor Official, as provided in paragraph **(c) [(b)]** of this Rule, shall exercise the authority of the Senior Supervisory Officer on the Floor.

(b) Senior Floor Officials. – **[In addition, the Chairman, or] T[t]he Chief Executive Officer or his designee, or the Chief Regulatory Officer or his designee, [if delegated by the Chairman, subject to the approval of the Board, and]** in consultation with the Senior Supervisory Officer on the Floor, may, **subject to the approval of the Board,** appoint additional Senior Floor Officials from among the Exchange Officials (appointed pursuant to **paragraph (d) of this Rule [the provisions of Section 2 of Article II of the Constitution]**), who spend a substantial part of their time on the Floor of the Exchange. **[An Exchange Official who has been appointed as a Senior Floor Official has the same authority and responsibilities as a Floor Governor with respect to matters that arise on the Floor and require review or action by a Floor Governor or Senior Floor Official. An Exchange Official who has been appointed as a Senior Floor Official may not participate in meetings of the Exchange's Board of Governors unless the Board invites such person to attend its meetings.]**

(c) [(b)]Floor Officials.—The **[Chairman, or the] Chief Executive Officer or his designee, or the Chief Regulatory Officer or his designee [if delegated by the Chairman]**, subject to the approval of the Board, shall appoint as Floor Officials **[each] qualified employee of the Exchange and each E[e]xchange O[o]fficial (appointed pursuant to paragraph (d) of this Rule [the provisions of Section 2 of Article II of the Constitution])** who spends a substantial part of his time on the Floor, and such other **persons who are active on [persons familiar with] the Floor and familiar therewith,** as the **[Chairman, or the] Chief Executive Officer or his designee or the Chief Regulatory Officer or his designee [if delegated by the Chairman]** shall determine to be necessary for the effective and orderly supervision of the operations on the Floor. In the event all of the Senior Floor Officials are absent from the Floor, the senior **E[e]xchange O[o]fficial or the senior employee of the Exchange** who is serving as a Floor Official, **as the case may be,** according to an order of succession to be prescribed at the time of appointment, shall serve as the acting Senior Floor Official.

(d) Exchange Officials—Subject to the approval of the Board of Directors, and after seeking the advice of members, member organizations and allied members, the Chief Executive Officer or his designee, or the Chief Regulatory Officer or his designee, shall from time to time appoint a number of members of the Exchange, and individuals who are employed by or associated with a member organization in a senior capacity, to serve as Exchange Officials. In selecting such Exchange Officials, due consideration shall be given to the various phases of Exchange activities and member organization operations.

••• Commentary -----

.01 Floor Officials (other than **directors [governors]** and **E[exchange O]fficials**) are to be selected from among nominees recommended by members who spend a substantial part of their time on the Floor. Any organization or association, which is composed of members who are active on the Floor and **[which]** is organized for the purpose of representing the interests of such members or any segment thereof engaged in performing specific Floor functions, may submit to the Secretary of the Exchange a slate of nominees for appointment as Floor Officials. The Board shall have the authority to determine whether or not a particular organization or association represents a sufficient number of members active on the Floor of the Exchange to warrant its submission of a slate of nominees for appointment as Floor Officials, and the Board may require the submission of such records and data concerning any such organization or association as it may deem appropriate for making such determination. All nominees shall be persons who have had experience and are familiar with Floor activities and operations. Names of nominees shall be submitted to the Secretary of the Exchange at least three weeks prior to each annual meeting of the Exchange, and at such other times as the **[Chairman, or the]** Chief Executive Officer **or his designee, or the Chief Regulatory Officer or his designee [if delegated by the Chairman,]** may designate in order to fill a vacancy or to appoint additional Floor Officials. If the number of nominees submitted in accordance with the above provisions shall not be equal to at least fifty percent more than the number of Floor Official positions to be filled at any given time, the **[Chairman, or the]** Chief Executive Officer **or his designee or the Chief Regulatory Officer or his designee [if delegated by the Chairman,]** may request the Senior Floor Officials to submit names of additional nominees so that the total number of nominees is equal to at least fifty percent more than the number of positions to be filled.

Floor Officials appointed pursuant to this rule shall serve until the next annual meeting of the Exchange and until their successors are appointed and take office; provided, however, that a Floor Official who ceases to be active on the Floor shall no longer serve in such capacity, and provided further, that the **[Chairman, or the]** Chief Executive Officer **or his designee, or the Chief Regulatory Officer or his designee [if delegated by the Chairman,]** may at any time, with the approval of the Board, remove any Floor Official from office for cause.

Rule 22. Authority of Floor Officials

(d) Review of Rulings.—Any member wishing a prompt (i.e., prior to scheduled settlement) on-Floor review of a Floor Official's market decision, shall, forthwith and in the presence of the ruling Floor Official, present the matter to an Exchange Official who shall confirm, amend, or overrule the decision. The Exchange Official's decision in a matter may be promptly presented on appeal to a panel of three Senior Floor Officials who have not already ruled on the matter which panel shall confirm, amend, or overrule the decision. The Senior Supervisory Officer on the Floor may serve on a panel as a Senior Floor Official. Any remaining vacancies on the panel may be filled by Exchange Officials (who have not already ruled on the matter) in order of their seniority as Exchange Officials.

Any member wishing a prompt (i.e., prior to scheduled settlement) on-Floor review of a market decision of a Floor Official made with the concurrence of a Senior Floor Official shall, forthwith and in the presence of the ruling Floor Official and Senior Floor Official, present the matter to a panel of three Senior Floor Officials who have not already ruled on the matter which panel shall confirm, amend, or overrule the decision. The Senior Supervisory Officer on the Floor may serve

on a panel as a Senior Floor Official. In the event that three Senior Floor Officials are not available, Exchange Officials who have not already ruled on the matter may serve on a panel in order of their seniority as Exchange Officials.

A member of the regulatory staff shall advise and participate in any review of a Floor Official decision or ruling that required the advice and participation of a member of the regulatory staff in the initial Floor Official ruling.

The decision or ruling of a Floor Official or Officials, Exchange Official, or three Senior Floor Official panel shall be binding on members. Notwithstanding the foregoing, at any point after establishing a loss (or profit) through clearance and complying with the highest decision (if any) made in a matter, either party to the matter may elect to submit it to arbitration pursuant to **the Arbitration Rules of the Exchange [Article VIII of the Constitution]**. The final decision or ruling on the Trading Floor shall not be binding on the arbitrators, but they may give it such weight as they feel is appropriate. Not all decisions or rulings on the Trading Floor may be subject to arbitration.

(e) Two Floor Officials in consultation with a designated senior executive officer of the Exchange may summarily exclude a member or person associated with a member or member organization from the Exchange premises for not longer than the remainder of the trading day for the following violations:

- Physical violence
- Unbusinesslike conduct
- Harassment (as set forth in **Exchange [Amex] Rule 16**)
- Failure to abide by a Floor Official's ruling
- Property damage
- Enabling/Assisting suspended member or associated person to gain improper access to the Floor
- Failure to supervise a visitor

Any action taken by Floor Officials under this paragraph (e) shall not preclude additional disciplinary action under **Exchange Rules [Article V of the Exchange Constitution, or Exchange Rules 345 or 590]**.

Where a member or persons associated with a member or member organization is summarily excluded from the Floor pursuant to this paragraph (e), that member or associated person shall have the right to request reinstatement from Floor Officials after a sufficient "cooling-off" period has elapsed. If, in the judgment of two Floor Officials (at least one of whom must have participated in the initial decision to exclude), the member or associated person no longer poses an immediate threat to the safety of persons or property, or the orderly conduct of business, the member or associated person shall be permitted to return to the Floor.

Rule 25. Cabinet Trading of Equity and Derivative Securities

(a) The Exchange may designate to be traded in a Cabinet System those equity securities and derivative products which in the judgment of a **Senior Floor Official [Floor Governor]** with the concurrence of the Exchange's Market Operations & Trading Floor Systems Division do not warrant their retention in the specialist system. Cabinet trading under the following terms and conditions shall be available for designated securities admitted to trading on the Exchange:

- (i) Trading shall be conducted in accordance with other Exchange rules except as otherwise provided herein or unless the context otherwise requires.
- (ii) The specialist registered in each such designated security shall supervise the operation of the cabinet in that security.
- (iii) Only limit orders priced at the rate of \$1 per 1,000 shares (.001 per share) may be placed in the cabinet.
- (iv) All orders placed in the cabinet shall be assigned priority based upon the sequence in which such orders are received by the specialist.
- (v) All such buy (sell) orders must be submitted to the specialist in writing and the specialist shall effect all cabinet transactions by pairing such orders placed with him with sell (buy) orders received by him or represented in the trading crowd.
- (vi) Specialists shall not be subject to the requirements of Rule 170 and Traders shall not be subject to any similar market making requirements in respect of orders placed pursuant to this rule. Cabinet transactions shall not be reported on the ticker.
- (vii) All cabinet transactions shall be so marked and reported to the Exchange following the close of business each day.

Rule 26. Performance Committee

(a) The Committee on Floor Member Performance (the "Performance Committee") shall consist of twelve persons comprised as follows: three representatives of upstairs member firms and nine Floor members divided as equally as possible among specialists, registered traders and brokers provided, however, that in situations where specialist relations with listed companies or sponsors of Exchange Traded Funds ("ETFs") are in issue a representative of issuers or ETF sponsors as applicable shall be substituted for one of the nine Floor members. The Performance Committee shall be drawn from a roster of not less than 32 persons representing issuers and ETF sponsors, upstairs member firms, specialists, registered traders and brokers. The minimum quorum for the transaction of business by the Performance Committee shall be seven persons including at least one representative of an upstairs member firm. The Performance Committee shall be chaired by a **Senior Floor Official [Floor Governor]** who may not vote except to make or break a tie. **[In the event that no Floor Governor is able to chair the Committee, a Senior Floor Official may chair the Committee.]**

The Performance Committee may delegate any or all of its responsibilities to one or more subcommittees consisting of four persons including at least one representative of an upstairs member firm, provided, however, that a subcommittee only may take the following actions: (1) send admonitory letters, (2) refer matters to the full Performance Committee with or without a recommendation, (3) prohibit registered options traders from effecting opening transactions for

specific periods of time for failing to meet zone requirements, or (4) counsel members on how to improve their performance. The minimum quorum for the transaction of business by a subcommittee shall be three persons including one representative of an upstairs member firm.

(e) The Performance Committee may meet with one or more specialists, specialist units, registered traders or brokers that may have failed to meet minimum performance standards, capital requirements, or the "early warning level" set forth in Commentary .06 to Rule 171. In such an event, the member or members shall be notified in writing of the grounds to be considered by the Performance Committee and afforded an opportunity to make a presentation of relevant information in rebuttal. Such member or members shall deliver to the **Exchange [Amex]** staff coordinator for the Performance Committee copies of all materials that they will provide to the Performance Committee and the names of any persons that they intend to present to the Performance Committee at least three business days prior to the meeting. Such member or members, likewise, shall be given access to all written material to be provided by the **Exchange [Amex]** staff to the Performance Committee and the names of all persons that the staff will present to the Committee at least three business days prior to the meeting. All persons appearing before the Performance Committee may be represented by counsel. However, formal rules of evidence shall not apply in Performance Committee meetings. A failure to meet minimum performance standards, capital requirements, or early warning level may form the basis for Performance Committee remedial action against one or more specialists, specialist units, registered traders or brokers. Any member or member organization affected by a decision of the Performance Committee shall be informed in writing of the decision, which decision shall include the findings, conclusions, any remedial action to be taken (hereinafter "written notification").

(h) A member or member organization aggrieved by a decision of the full Performance Committee may appeal such decision to the **Board of Directors [Amex Adjudicatory Council]**. An application for review must be submitted to the Secretary of the Exchange within five business days of receipt of the written notification. The decision of the Performance Committee is stayed upon the filing of a timely application for review. Any written statement and documents in support of an appeal to the **Board of Directors [Adjudicatory Council]** must be submitted to the Secretary of the Exchange within 25 calendar days of receipt of the written notification. The Performance Committee shall have 20 calendar days from receipt by the Secretary of the Exchange of the statement in support of the appeal to submit a rebuttal statement together with supporting documents. The **Board of Directors [Adjudicatory Council]** may (1) limit its review of the appeal to the record created by the Performance Committee together with the written statements and supporting documents submitted by the appellant and Committee in connection with the appeal, (2) consider additional information that was not included in the record, or (3) hear the matter "de novo," as the **Board of Directors [Council]** determines is appropriate to render a fair decision on the appeal. A verbatim record of the **Board of Directors [Adjudicatory Council]** proceeding shall be kept and a written decision of the **Board of Directors [Amex Adjudicatory Council]** shall be rendered as soon as reasonably possible after the hearing. The decision of the **Board of Directors [Amex Adjudicatory Council]** shall constitute final action by the Exchange.

••• Commentary -----

.01 Auto-Ex Performance Standards. Any registered options trader who participates in trading during a break-out situation in an equity option, who has previously signed on to Auto-Ex for either that equity option or any other equity option for a period of two or more days over the ten previous business days, must sign on Auto-Ex for that designated option. (An associated LEAP is exempt from this standard.) All registered options traders who sign on to Auto-Ex must remain on Auto-Ex for the duration of the break-out. Traders will only be permitted to sign-off Auto-Ex during a break-out with a **Senior Floor Official [Floor Governor]**'s approval. Traders are permitted to leave the crowd for very short periods of time to verify positions, place orders for stock hedging, and to care for other personal needs but will be required to remain on Auto-Ex for these periods. The Performance Committee may prohibit a registered options trader or his or her firm from participating in Auto-Ex for up to six months for deviations of the above standards.

Rule 27. Allocations Committee

(a) The Allocations Committee allocates equity securities of operating companies, **Exchange Traded Funds and Structured Products [equity options admitted to dealings on the Exchange and all other securities to be admitted for trading on the Exchange]**. It consists of eight persons drawn from a roster of approximately 75 persons and is comprised as follows: the Chief Executive Officer (or his or her designee), a representative of an upstairs member firm and either (i) six (6) brokers **for equity securities of operating companies [equities and other securities admitted to trading on the Exchange except for Exchange Traded Funds and options];** or (ii) three (3) brokers and three (3) Registered Traders for Exchange Traded Funds **and Structured Products[; or (iii) three (3) brokers and three (3) Registered Options Traders for options]**. The Allocations Committee is chaired by the Chief Executive Officer (or his or her designee) who does not vote except to make or break a tie. In the absence of the Chief Executive Officer (or his or her designee), **[a Floor Governor or]** a Senior Floor Official may chair the Committee. The minimum quorum for the transaction of business by the Allocations Committee shall be four persons. The upstairs member firm representative may attend meetings by telephone.

(c) All eligible equity specialists are automatically deemed to have applied for all new equity listings and may also submit an application for specific new listings. **[Option,]** Exchange Traded Fund and Structured Product specialists must submit an application to the Exchange to be considered for a new allocation of these securities. Specialists that are eligible for an allocation must report in writing to the Exchange prior to the meeting of the Allocations Committee any shareholdings, directorships, officerships, or business transactions that they, or any of their officers, employees or approved persons, have, or have had within the last six months, with a newly listed company or sponsor of an Exchange Traded Fund and the officers, directors, 10% shareholders or affiliates of such newly listed company or sponsor. Specialists also must confirm in writing to the Exchange prior to the meeting of the Allocations Committee if they, or any of their officers, employees or approved persons, have not had any shareholdings, directorships, officerships, or business transactions within the last six months, with a newly listed company or sponsor of an Exchange Traded Fund and the officers, directors, 10% shareholders or affiliates of such newly listed company or sponsor of an Exchange Traded Fund.

Each specialist applicant shall be given an opportunity to present to the Allocations Committee relevant information which it desires the Committee to consider in connection with the allocation decision. The Allocations Committee also may permit members of a trading crowd to present relevant information to the Committee. The Allocations Committee may require presentations to be solely or partially in writing, and may require the submission of additional information from an applicant or any person associated with the applicant.

[(d) At regular intervals, the Allocations Committee shall prepare a list (the "pre-allocation list") of the most qualified option specialists on the Exchange based upon criteria enumerated in paragraph (b) of this Rule and interviews of all interested specialists conducted by the persons on the roster of the Allocations Committee. In the event that the Exchange determines to list an option following its designation by another exchange, that option shall be allocated to the next specialist on the pre-allocation list unless, in the opinion of a majority of available Floor Governors, a material performance situation or another relevant matter has developed with respect to that specialist since the preparation of the pre-allocation list in which case the specialist shall be bypassed and the Allocations Committee shall be convened as soon as possible to determine if the specialist should be removed from the pre-allocation list.]

(d) [(e)] (i) If the issuer of an equity security to be initially listed on the Exchange chooses to participate in the allocation process, the Allocations Committee shall prepare a list of qualified specialists based on the criteria set forth in paragraph (b). In the case of an equity security, Exchange Traded Fund or Structured Product, the list shall consist of six specialists. The issuer may request that one or more specialists be placed on the list of eligible specialists. The Allocations Committee, however, is not obligated to honor such requests. Specialists that are subject to a preclusion on new allocations as a result of a disciplinary proceeding or action by the Performance Committee only are eligible for allocations of "related securities" as described in Commentary .05 of this Rule. The issuer may ask to meet with representatives of the specialists units on the list.

The issuer shall select its specialist from the list within five business days of receiving the list by providing the Exchange with a letter signed by person of Secretary rank or higher indicating the issuer's choice of specialist. In the case of an Exchange Traded Fund or Structured Product, the selection may be made by a senior officer of the sponsor or issuer who has been authorized to make such selection. If the issuer does not make its selection in a timely manner, the Allocations Committee may select the specialist as provided in paragraph (b) of this Rule. This procedure only applies to issuers of equity securities, and sponsors of Exchange Traded Funds and Structured Products that initially list on the Exchange.

(ii) A listed company may file with the Corporate Secretary of the Exchange a written notice (the "Issuer Notice"), signed by the company's chief executive officer, that it wishes to request a change of specialist firm. The Issuer Notice shall indicate the specific issues prompting this request. The Corporate Secretary shall provide copies of the Issuer Notice to the specialist firm currently registered in the security, the Exchange's Global Corporate Client Group, and the Chief Regulatory Officer ("CRO") of the Exchange. After said written notice and completion of the CRO's review, the security shall be put up for allocation pursuant to Exchange Rule 27(e)(i).

The CRO shall review the Issuer Notice and any specialist response and may determine to conduct a regulatory review. No change of specialist firm may occur until the CRO makes a final determination that it is appropriate to permit such change. In making such determination, CRO may consider all relevant regulatory issues, including without limitation whether the requested change appears to be in aid or furtherance of conduct that is illegal or violates Exchange rules, or in retaliation for a refusal by a specialist to engage in conduct that is illegal or violates Exchange rules. Notwithstanding the CRO's review of any matter raised during the process described herein, the Exchange may at any time take any regulatory action that it may determine to be warranted.

(a) The issuer of any listed equity security or Structured Product or the Exchange Traded Fund sponsor, may, at any time after 120 days from the start of trading on the Exchange, file a written notice ("Notice") with the officer in charge of Equities Administration or the officer in charge of the Exchange Traded Fund Marketplace, as applicable, signed by the issuer's or sponsor's chief executive officer, requesting a change of specialist unit for "good cause," as defined below. The issuer or sponsor is afforded one opportunity to do so. The Notice shall indicate the specific issues prompting this request, and what steps, if any, have been taken to try to address them before the filing of the Notice. The officer in charge of Equities Administration or the officer in charge of the Exchange Traded Fund Marketplace, as applicable, shall provide copies of the Notice to the Chief Regulatory Officer ("CRO") and the Committee on Floor Member Performance.

(b) "Good cause," for the purposes of (e)(ii)(a), shall consist of the failure of the specialist to make competitive markets; the failure of the specialist unit to risk capital commensurate with the type of security; the failure of the specialist unit to assign competent personnel to the stock; or any statements made publicly by the specialist unit that substantially denigrate the security. The Committee on Floor Member Performance shall make any determination that "good cause" does not exist, as defined herein. Such a determination shall be made prior to the commencement of an Issuer or Sponsor Change of Specialist Mediation ("Mediation"). In this circumstance the issuer or sponsor may appeal the decision of the Committee on Floor Member Performance to the Amex Adjudicatory Council. If the decision of the Committee on Floor Member Performance is upheld, there shall be no Mediation, and the security shall not be reallocated.

(iii) The officer in charge of Equities Administration or the officer in charge of the Exchange Traded Fund Marketplace, as applicable, shall notify the subject specialist unit that Mediation is being commenced pursuant to this provision, and shall provide the specialist with a copy of the Notice. Within two weeks, the specialist unit may submit a written response to either the officer in charge of Equities Administration or the officer in charge of the Exchange Traded Fund Marketplace, as applicable. The officer in charge of Equities Administration or the officer in charge of the Exchange Traded Fund Marketplace, as applicable, shall provide copies of any such written response to the CRO, and the Committee on Floor Member Performance. The date the specialist submits a response shall be referred to herein as the "Specialist Response Date." If the specialist does not submit a response, there shall be no Mediation, and the Allocation Committee shall be convened to reallocate securities pursuant to paragraph (b) of this Rule.

(iv) The CRO shall review the Notice and any specialist response, and may request a review of the matter by the Regulatory Oversight Committee ("ROC") of the Exchange's Board of Directors. In addition, the Committee on Floor Member Performance shall review the Notice and any specialist response. The Mediation process described hereunder may

continue during the CRO's reviews, however, where a review by the ROC has been requested, no change of specialist unit may occur until the ROC makes a final determination that it is appropriate to permit such change. In making such determination, the ROC may consider all relevant regulatory issues, including without limitation whether the requested change appears to be in aid or furtherance of conduct that is illegal or violates Exchange rules, or is in retaliation for a refusal by a specialist to engage in conduct that is illegal or violates Exchange rules. The ROC may request a statement from the issuer or sponsor confirming that the request does not stem in whole or in part from the specialists' refusal or failure to engage in any wrongful action. Notwithstanding the CRO, ROC and/or Committee on Floor Member Performance reviews of any matter raised during the process described herein, the Amex Division of Regulation and Compliance (including Listing Qualifications) and/or the NASD Amex Division may at any time take any regulatory action that it may determine to be warranted.

(v) The Exchange shall facilitate a mediation of the issues that have arisen between the issuer or sponsor and the specialist unit. The Exchange shall appoint a committee consisting of at least one floor broker, one senior floor official, one upstairs governor, and two independent governors for each Mediation ("the Mediation Committee").

(vi) As soon as practicable after the Specialist Response Date, the Mediation Committee shall commence to meet with representatives of the issuer or sponsor and the specialist unit in an attempt to mediate the matters indicated in the Notice.

(vii) Any time after the filing of the Notice, the issuer or sponsor may file with the officer in charge of Equities Administration or the officer in charge of the Exchange Traded Fund Marketplace, as applicable, a written notice, signed by the issuer's or sponsor's chief executive officer, that it is concluding the Mediation because it wishes to continue with the same specialist unit.

(viii) After the expiration of one month from the Specialist Response Date, subject to the conclusion of any review by the CRO and ROC, the issuer and sponsor may file with the officer in charge of Equities Administration or the officer in charge of the Exchange Traded Fund Marketplace a written notice, signed by the issuer's or sponsor's chief executive officer, that it wishes to proceed with the change of specialist unit. Subject to paragraph (c) above, as soon as practicable thereafter, the security shall be put up for allocation following the procedures described in paragraph (b) of this Rule.]

(e) [(f)] The Allocations Committee shall be convened to reallocate securities when (1) the Committee on Floor Member Performance directs reallocation, (2) a specialist requests to be relieved of a particular security for good cause, (3) an issuer [or sponsor] files a written notice requesting a change of specialist unit and the CRO [Mediation Committee] orders reallocation pursuant to paragraph (d)(ii) [(e)(viii)] of this Rule, or an issuer [or sponsor] files a written notice requesting a change of specialist unit and the specialist unit does not submit a response, or (4) a specialist's registration in a security is canceled due to disciplinary action. Whenever the Allocations Committee reallocates a security for the reasons stated in (1) through (4) of this paragraph, the Allocations Committee shall follow the procedures described in paragraph (b) of this Rule. The Allocations Committee also shall be convened to reallocate securities when (5) a specialist dissolves or recombines, (6) a specialist has been determined to be in such financial or operating condition that it cannot be permitted to continue to specialize in

one or more of its specialty securities with safety to investors, its creditors or other members, or (7) a specialist has become subject to the pre-borrowing requirement of Rule 203(b)(3) of Regulation SHO under the Securities Exchange Act of 1934 with respect to one of its specialty securities [**or, in the case of an options specialist, with respect to the underlying security**]. The Allocations Committee shall follow the procedures described in paragraphs **(f)**[(**g**)] or **(g)** [(**h**)] of this Rule, as appropriate, whenever it reallocates securities for the reasons stated in (5) through (7) of this paragraph.

(f)[(**g**)]

(g) [(**h**)] In the case where the Chief Executive Officer or the Senior Supervisory Officer on the Floor (or the next available most senior officer of the Exchange if neither is available), in consultation with all available **Senior Floor Officials [Floor Governors]**, determines that a specialist (i) cannot be permitted to continue to specialize in one or more of its specialty securities with safety to investors, its creditors, or other members due to its financial or operating condition or (ii) has become subject to the pre-borrowing requirement of Rule 203(b)(3) of Regulation SHO under the Securities Exchange Act of 1934 with respect to one of its specialty securities [**or, in the case of an options specialist, with respect to the underlying security**], the Chief Executive Officer or the Senior Supervisory Officer on the Floor (or the next available most senior officer of the Exchange if neither is available), may, on notice to the specialist, request the Allocations Committee to convene to reallocate one or more of the securities on an emergency basis. In such an emergency meeting, it is not necessary for [**an upstairs**] **a** member firm representative to attend the meeting to achieve a quorum. If time and circumstances permit, the specialist shall be given an opportunity to appear before the Allocations Committee. However, if due to the nature of the emergency and time constraints involved, it is not reasonably feasible to provide a prior hearing, the Allocations Committee may proceed with the reallocation, and the specialist shall be granted a hearing by the Allocations Committee as soon as reasonably possible after the reallocation. If the conditions which led to the reallocation are corrected or no longer exist, the Chief Executive Officer, in consultation with the **Senior Supervisory Officers [Floor Governors]**, or the specialist may request the Allocations Committee to reconvene to consider whether the security or securities subject to the reallocation should be restored to the specialist. If the original reallocation was made due to the financial or operating condition of the specialist as described in (i) above, then the Allocations Committee is obligated to consider the equities of all parties involved, and it may, in its discretion, restore the security or securities to the specialist or allow the original reallocation to remain undisturbed. If the original reallocation was made due to the specialist becoming subject to the pre-borrowing requirement described in (ii) above, then the Allocations Committee shall restore the security or securities to the specialist if the specialist is no longer subject to the pre-borrowing requirement. The procedures set forth above in no way abrogate or limit the authority of the Exchange to take action in accordance with **Rules 475 through 477 [the provisions of Article V, Section 3 and Article IV, Section 5 of the Exchange Constitution]**.

(h) [(**i**)] The decision of the Allocations Committee to allocate or reallocate a security to a particular specialist may be appealed to the **Board of Directors [Amex Adjudicatory Council]** upon submission of a timely application for review by an aggrieved specialist. Such application must be submitted to the Secretary of the Exchange within five business days of the time that the aggrieved party is notified of the Committee's decision. A specialist will be deemed to have been notified of the Committee's decision upon the earlier of (1) receipt of written notice of the

Committee's decision, or (2) the Exchange posts on one of its web sites a notice that includes the identity of the specialist that was selected. The filing of an application for review does not stay the decision of the Allocations Committee. Any written statement and documents in support of an appeal to the **Board of Directors [Adjudicatory Council]** must be submitted to the Secretary of the Exchange within 20 calendar days of the submission of a timely application for review. The Allocations Committee shall have 20 calendar days from receipt by the Secretary of the Exchange of the statement in support of the appeal to submit a rebuttal statement together with supporting documents. The **Board of Directors [Adjudicatory Council]** may (1) limit its review of the appeal to the record created by the Allocations Committee together with the written statements and supporting documents submitted by the appellant and Committee in connection with the appeal, or (2) consider additional information that was not included in the record, as the Council determines is appropriate to render a fair decision on the appeal. A verbatim record of the proceeding shall be kept and a written decision of the **Board of Directors [Amex Adjudicatory Council]** shall be rendered as soon as reasonably possible after the hearing. The decision of the **Board of Directors [Amex Adjudicatory Council]** shall constitute final action by the Exchange.

••• *Commentary* -----

.04 Relisted Securities. A specialist shall be automatically allocated a security in which the specialist previously was registered only if all of the following conditions are met: (1) the company relists within one year of delisting, (2) the company is substantially the same entity as prior to delisting, (3) the company has no objection, and (4) the specialist is not subject to an allocation prohibition. **[A relisted option shall be allocated automatically to the previously registered specialist unless (1) that specialist is subject to a prohibition on the allocation of options at the time that the option is relisted, (2) the Exchange relists the option more than one year after it was delisted, or (3) the specialist declines the allocation in writing. If any of these conditions exist, the Allocations Committee will allocate the relisted option pursuant to the Exchange's regular options allocations procedures.]**

[Options on related securities shall be automatically allocated to the specialist that is already registered in the options on the issuer's securities unless the specialist is subject to a preclusion on new allocations. In such an event, the Allocations Committee may, nonetheless, allocate the options on a related security to the current specialist if the Committee determines that the trading characteristics of the newly listed option are closely related to the currently listed option. The Exchange staff shall provide the Allocations Committee with a recommendation as to whether the newly listed options should be allocated the current specialist.]

Rule 27A. Allocation of Options

(a) The Exchange allocates options admitted to dealings on the Exchange.

(b) The Exchange shall select the specialist that appears best able to perform the functions of a specialist in the security to be allocated. Factors to be considered in the allocation may include, but are not limited to: (1) quality of markets made by the specialist, (2) experience with trading the security or similar securities, (3) willingness to promote the Exchange as a marketplace, (4) operational capacity including number and quality of professional staff, (5) number and quality of support personnel, (6) record of disciplinary and cautionary actions including significant pending enforcement matters, (7) evaluations, (8) Specialist Floor Broker Questionnaire ratings and data, (9) the degree of interest expressed by a specialist in receiving the allocation in question, (10) undertakings by specialist applicants with respect to market quality, (11) order flow statistics, (12) the existence of a common ownership or similar economic interest among one or more specialists, and (13) a recommendation by the specialist to list the options.

Specialists that are subject to a preclusion on new allocations as a result of a disciplinary proceeding or action by the Exchange's Enforcement Department only are eligible for allocations of "related securities" as described in Commentary .01 of this Rule.

(c) Option specialists must submit an application to the Exchange to be considered for a new allocation of these securities.

(d) At regular intervals, the Exchange shall prepare a list (the "pre-allocation list") of the most qualified option specialists on the Exchange based upon criteria enumerated in paragraph (b) of this Rule. In the event that the Exchange determines to list an option following its designation by another exchange, that option shall be allocated to the next specialist on the pre-allocation list unless, in the opinion of the Exchange, a material performance situation or another relevant matter has developed with respect to that specialist since the preparation of the pre-allocation list in which case the specialist shall be bypassed and the Exchange will determine if the specialist should be removed from the pre-allocation list.

(e) The Exchange shall reallocate an option class when (1) recommended by the Exchange's Enforcement Department, (2) a specialist requests to be relieved of a particular security for good cause, (3) a specialist's registration in a security is canceled due to disciplinary action, (4) a specialist dissolves or recombines, (5) a specialist has been determined to be in such financial or operating condition that it cannot be permitted to continue to specialize in one or more of its specialty securities with safety to investors, its creditors or other members, or (6) a specialist has become subject to the pre-borrowing requirement of Rule 203(b)(3) of Regulation SHO under the Securities Exchange Act of 1934 with respect to one of its underlying securities. The Exchange may determine to restore an option class to a specialist which had been subject to a reallocation if the conditions which led to the reallocation are corrected or no longer exist. If the original reallocation was made due to the financial or operating condition of the specialist as described in (5) above,

then the Exchange may consider the equities of all parties involved, and it may, in its discretion, restore the security or securities to the specialist or allow the original reallocation to remain undisturbed. If the original reallocation was made due to the specialist becoming subject to the pre-borrowing requirement described in (6) above, then the Exchange shall restore the security or securities to the specialist if the specialist is no longer subject to the pre-borrowing requirement. The procedures set forth above in no way abrogate or limit the authority of the Exchange to take action in accordance with Rules 475 through 477.

(f) The decision of the Exchange to allocate or reallocate a security to a particular specialist may be appealed to the Board of Directors upon submission of a timely application for review by an aggrieved specialist. Such application must be submitted to the Secretary of the Exchange within five business days of the time that the aggrieved party is notified of the decision. A specialist will be deemed to have been notified of the Exchange's decision upon the earlier of (1) receipt of written notice of the decision, or (2) the Exchange posts on one of its web sites a notice that includes the identity of the specialist that was selected. The filing of an application for review does not stay the decision of the Exchange. Any written statement and documents in support of an appeal to the Board of Directors must be submitted to the Secretary of the Exchange within 20 calendar days of the submission of a timely application for review. Exchange staff shall have 20 calendar days from receipt by the Secretary of the Exchange of the statement in support of the appeal to submit a rebuttal statement together with supporting documents. The Board of Directors may (1) limit its review of the appeal to the record created by Exchange staff together with the written statements and supporting documents submitted by the appellant and staff in connection with the appeal, or (2) consider additional information that was not included in the record, as the Board of Directors determines is appropriate to render a fair decision on the appeal. A verbatim record of the proceeding shall be kept and a written decision of the Board of Directors shall be rendered as soon as reasonably possible after the hearing. The decision of the Board of Directors shall constitute final action by the Exchange.

••• Commentary -----

.01 Related Securities. Options on related securities shall be automatically allocated to the specialist that is already registered in the options on the issuer's securities unless the specialist is subject to a preclusion on new allocations. In such an event, the Exchange may, nonetheless, allocate the options on a related security to the current specialist if it is determined that the trading characteristics of the newly listed option are closely related to the currently listed option.

For purposes of this Commentary, the term "related securities" means the securities of a partially or wholly owned subsidiary, securities that are convertible into the securities of the issuer, contingent value rights, a "tracking" stock designed to track the performance of the issuer or a corporate affiliate of the issuer, securities created in connection with the merger or acquisition of one or more companies, securities

created in connection with a "spin-off" transaction, convertible or non-convertible senior securities, securities into which a listed security is convertible. The term "related securities" does not include Exchange Traded Funds.

Rule 28. Allocation of Securities Admitted to Dealings on an Unlisted Trading Privileges ("UTP") Basis

(a) The UTP Allocations Committee shall allocate securities admitted to dealings on an unlisted basis. The UTP Allocations Committee shall consist of the Chief Executive Officer of the Exchange who shall serve as the Chairman of the Committee, three members (selected from among Exchange Officials[,], **and** Senior Floor Officials [**and Floor Governors**]), and three members of the Exchange's senior management as designated by the Chief Executive Officer of the Exchange. The Committee shall make its decisions by majority vote. The Chairman of the Committee may only vote to create or break a tie.

Rule 29. Market Quality Committee

(a) The Market Quality Committee shall consist of seven persons comprised as follows: the Chief Executive Officer of the Exchange (or his or her designee), three members of the Exchange's senior management selected by the Chief Executive Officer, and three members (selected by the Chief Executive Officer from among Exchange Officials[,], **and** Senior Floor Officials [**and Floor Governors**]). The minimum quorum for the transaction of business by the Market Quality Committee shall be four persons. The Chief Executive Officer shall chair meetings of the Market Quality Committee. The Chief Executive Officer may designate a member of the Market Quality Committee to chair meetings in the Chief Executive Officer's absence. The chairman of the Market Quality Committee shall not vote except to make or break a tie. Exchange Officials on the Market Quality Committee that do not spend a substantial portion of their time on the Floor may attend meetings by telephone.

(b) The Market Quality Committee shall evaluate the performance of specialists registered in securities admitted to dealings on an unlisted basis ("UTP Specialists") with respect to, among other things: (1) quality of markets, (2) competition with other market centers, (3) administrative matters, and (4) willingness to promote the Exchange as a marketplace. The Market Quality Committee may consider any relevant information, including but not limited to trading data, order flow statistics, market quality statistics, and such other factors and data pertaining to both the **Exchange [Amex]** and other market centers as may be relevant in the circumstances. The Market Quality Committee also may review specialists, individually and/or collectively as units, with respect to capital requirements and the "early warning level" set forth in Commentary .06 to Rule 171. The Market Quality Committee may take one or more of the following actions if it finds that the performance of the UTP Specialist is inadequate relative to one or more of the above factors: (1) send advisory letters, (2) counsel UTP Specialists on how to improve their market quality, (3) require UTP Specialists to adopt a performance improvement plan, (4) require the reallocation of securities, (5) suspend a UTP Specialist's registration as a specialist for a specific period of time, or (6) prohibit a UTP Specialist from receiving allocations in a particular situation or for a specified period of time.

(d) The Market Quality Committee may meet with a UTP Specialist that may have failed to meet minimum performance standards with respect to UTP Securities, capital requirements, or the "early warning level" set forth in Commentary .06 to Rule 171. In such an event, the UTP Specialist shall be notified in writing of the grounds to be considered by the Market Quality Committee and afforded an opportunity to make a presentation of relevant information. Such UTP Specialist shall deliver to the **Exchange [Amex]** staff coordinator for the Market Quality Committee copies of all materials that they will provide to the Market Quality Committee and the names of any persons that they intend to present to the Market Quality Committee at least three business days prior to the meeting. Such UTP Specialist, likewise, shall be given access to all written material to be provided by the **Exchange [Amex]** staff to the Market Quality Committee and the names of all persons that the staff will present to the Committee at least three business days prior to the meeting. All persons appearing before the Market Quality Committee may be represented by counsel. However, formal rules of evidence shall not apply in meetings of the Market Quality Committee. A failure to meet minimum standards relating to: (1) quality of markets, (2) competition with other market centers, (3) administrative matters, (4) willingness to promote the Exchange as a marketplace, or (5) capital requirements, or early warning level may form the basis for remedial action by the Market Quality Committee against a UTP Specialist. Any UTP Specialist affected by a decision of the Market Quality Committee shall be informed in writing of the decision, which decision shall include the findings, conclusions, and any remedial action to be taken (hereinafter "written notification").

(f) A UTP Specialist aggrieved by a decision of the Market Quality Committee may appeal such decision to the **Board of Directors [Amex Adjudicatory Council]**. An application for review must be submitted to the Secretary of the Exchange within five business days of receipt of the written notification. The decision of the Market Quality Committee is stayed upon the filing of a timely application for review. Any written statement and documents in support of an appeal to the **Board of Directors [Adjudicatory Council]** must be submitted to the Secretary of the Exchange within 25 calendar days of receipt of the written notification. The Market Quality Committee shall have 20 calendar days from receipt by the Secretary of the Exchange of the statement in support of the appeal to submit a rebuttal statement together with supporting documents. The **Board of Directors [Adjudicatory Council]** may (1) limit its review of the appeal to the record created by the Market Quality Committee together with the written statements and supporting documents submitted by the appellant and Committee in connection with the appeal, (2) consider additional information that was not included in the record, or (3) hear the matter "de novo," as the **Board of Directors [Council]** determines is appropriate to render a fair decision on the appeal. A verbatim record of the **Board of Directors [Adjudicatory Council]** proceeding shall be kept and a written decision of the **Board of Directors [Amex Adjudicatory Council]** shall be rendered as soon as reasonably possible after the hearing. The decision of the **Board of Directors [Amex Adjudicatory Council]** shall constitute final action by the Exchange.

Rule 30. Periodic Reports

Every member and member organization shall file with the Exchange such periodic or special reports as the Board of **Directors [Governors]** may, by rule or otherwise, from time to time authorize. All such reports shall be filed at such time or times and in such form as the Exchange may prescribe.

Rule 30A. Periodic Reports— Short Positions

••• *Commentary* -----

.01 Short positions.— Member organizations are required to report "short" positions, including odd lots, in each **Exchange [Amex]**-listed stock, warrant or other security treated as an equity, and in each other stock, warrant or other security treated as an equity not listed on the Exchange (and not otherwise reported to another self-regulatory organization), using such format and method as prescribed by the Exchange. Such reports must include customer and proprietary positions and must be made at such times and cover such time periods as may be designated by the Exchange.

Rule 40. Denial of 86 Trinity Permit [a Membership]

(a) In any proceeding by the Exchange to determine whether a person **or entity** shall be **[denied membership in the Exchange,]** prohibited from **receiving [owning an Exchange] an 86 Trinity Permit [membership]**, barred from becoming associated with a member or member organization, or prohibited or limited with respect to access to services offered by the Exchange or by any member or member organization, such person shall be given notice of, and provided an opportunity to be heard upon, the specific grounds for such denial, bar, or prohibition or limitation. A written record shall be kept of any such proceeding. Any final determination to deny **an 86 Trinity Permit [membership]** to a person, bar a person from becoming associated with a member or member organization, or prohibit or limit a person with respect to access to services offered by the Exchange or by any member or member organization, shall be supported by a statement setting forth the specific grounds on which the denial, bar, or prohibition or limitation is based.

(b) If any **[provision of the Constitution or of any other]** Exchange rule shall specifically set forth the procedures to be followed in connection with a particular proceeding, hearing or appeal, such specific procedures shall be controlling.

(c) Paragraph (a) of this Rule 40 shall not prohibit or in any way restrict the Exchange, the Board of **Directors [Governors]**, or any officer, committee or panel of the Exchange from exercising authority pursuant to any **[provision of the Constitution or]** rules of the Exchange from summarily (i) suspending a member or member organization or person associated with a member or member organization who has been and is expelled or suspended from any other national securities exchange, registered securities association or registered clearing agency (a "Self-regulatory Agency") or barred or suspended from being associated with a member of any Self-regulatory Agency, (ii) suspending a member or member organization who is in such financial or operating difficulty that the Exchange, the Board or such officer, committee or panel, determines that such member or member organization cannot be permitted to continue to do business as a member with safety to investors, creditors, other members of the Exchange, or (iii) limiting or prohibiting any person with respect to access to services offered by the Exchange or by members if the Exchange, the Board or such officer, committee or panel determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors,

creditors, members or the Exchange; provided, however, that any person aggrieved by any such summary action shall be promptly afforded an opportunity for a hearing by the Exchange in the manner specified in paragraph (a) of this rule.

Rule 50. Training and Examination Requirements

(a) Every applicant for **an 86 Trinity Permit**, [regular, options principal, associate or allied membership or for approval as a general partner or officer of an associate member organization] shall pass a qualifying examination prescribed by the Exchange prior to undertaking any active duties in the capacity for which application has been made, unless the examination is waived by the Exchange.

Each such applicant shall, prior to his approval, agree with the Exchange that he will, within three months after either failing to pass the examination within one year of approval or failing the examination three times, whichever occurs first, **surrender [dispose of] his 86 Trinity Permit [regular or options principal membership]** or resign as an allied member and sever such business relations with his member organization as require him to be an allied member[, or retire as a general partner or officer of his associate member organization].

Each prior active member shall be deemed to have passed any examination(s) prescribed by the Exchange qualifying him to undertake such activities as he was qualified to undertake immediately prior to the Merger.

(b) Without Exchange consent no applicant for **an 86 Trinity Permit** [regular, options principal, associate] or allied membership [or for approval as a general partner or officer in an associate member organization] shall be permitted to take any examination prescribed by the Exchange more than three times.

••• *Commentary* -----

.01 **An 86 Trinity Permit Holder who is a natural person** [A regular or options principal member] who is to be active on the **F[f]loor** must, in addition to passing the **F[f]loor** member examination, and successfully completing the New Member training program, be trained under the supervision of an experienced **F[f]loor** member before being permitted to execute orders without supervision. **Prior active members shall be deemed to have satisfied such requirement.**

An 86 Trinity Permit Holder who is a natural person [A regular member] who applies to register as a specialist must also successfully complete a mandatory Exchange-sponsored training program, including participation in any Exchange testing in connection with this mandatory training program, before the member will be permitted to act as a specialist on the Floor of the Exchange. **Prior active members who were registered as a specialist immediately prior to the Merger shall be deemed to have satisfied such requirement.**

.02 **An 86 Trinity Permit Holder who is a natural person** [A regular, allied or associate member or a general partner or officer in an associate member organization] who intends to work in the office of a member organization is required to pass the office partner examination before assuming any active duties with the member organization as an office partner. **Prior**

active members who were authorized to work in the office of a member organization immediately prior to the Merger shall be deemed to have satisfied such requirement.

An 86 Trinity Permit Holder who is a natural person [A regular, associate] or allied member [or a general partner or officer in an associate member organization] intending to work in the office of a member organization, who lacks adequate experience in the securities business and who proposes to service customer accounts, may also be required, in addition to passing the office partner examination, to undergo a period of training and to pass the examination for registered representatives. Prior active members who were authorized to work in the office of a member organization immediately prior to the Merger shall be deemed to have satisfied such requirement.

The qualifying office partner examination may be waived for applicants who have satisfied the basic examination requirement of the New York Stock Exchange.

.03 All **86 Trinity Permit Holders who are natural persons [regular members, options principal members and limited trading permit holders]** are required to participate in one or more Exchange-sponsored mandatory regulatory training programs, to be conducted annually and at other such times as the Exchange deems appropriate, including participation in any Exchange testing programs in connection with the mandatory regulatory training programs. Any individual who fails to satisfactorily complete a mandatory regulatory training program will be subject to disciplinary action under the Exchange's Minor Rule Violation Fine System. In addition, the Exchange may preclude such individual from entering the trading floor until such time as the individual satisfies the Exchange requirement(s).

The Exchange may levy a per program fee, as indicated in its Schedule of Fees, for each participant in any of the training and testing programs.

.04 All clerks (post, booth and DK) active in the business of the Exchange trading floor, other than those clerks performing strictly ministerial functions, will be required to participate in one or more Exchange sponsored mandatory regulatory training programs, to be conducted annually and at other such times as the Exchange deems appropriate, including participation in any Exchange testing programs in connection with the mandatory regulatory training programs. Any individual who fails to satisfactorily complete a mandatory regulatory training program will be subject to disciplinary action under the Exchange's Minor Rule Violation Fine System. In addition, the Exchange may preclude such individual from entering the trading floor until such time as the individual satisfies the Exchange requirement(s).

The Exchange may levy a per program fee, as indicated in its Schedule of Fees, for each participant in any of the training and testing programs.

.05 The Exchange will submit any necessary filings to the Commission under Section 19(b) of the Securities Exchange Act of 1934, as amended, should it add any new, or delete any current, testing requirements. In addition, the Exchange will issue a formal notice to its **members and member organizations [membership]** advising of any such changes.

Study guides are published by the Exchange for the assistance of candidates preparing for qualifying examinations.

Rule 60. Responsibility for PER and AMOS Orders; Disclaimer of NYSE Liability for Exchange [Amex] Member Firm Use of NYSE Facilities Licensed by the Exchange [Amex]

The following provisions shall govern all orders, execution reports and administrative messages ("messages") transmitted between member organization offices and the Floor through the Post Execution Reporting ("PER") and NYSE Alternext [Amex] Options Switch ("AMOS") systems:

(c) Pursuant to **Rule 63 [Article IV, Section 1(e) of the Constitution]**, the Exchange shall assume responsibility, to the extent and subject to the conditions provided in this Rule, for (1) failure by its System Clerks to deliver messages received on the Floor through PER or AMOS to the specialist in a timely fashion, and (2) errors or omissions by its System Clerks in entering message responses into PER or AMOS for transmission off the Floor, provided that the specialist communicated instructions as to the message he desired to have transmitted in a clear and accurate manner on such forms as may be required by the Exchange.

(h) All disputed claims shall be referred for binding arbitration to an arbitration panel and the decision of a majority of the arbitrators selected to hear and determine the controversy shall be final and there shall be no appeal to the Board of **Directors [Governors]** from the decision of such panel. The arbitration panel shall be composed of an odd number of panelists. Each of the parties to the dispute shall select one Exchange member to serve as panelist on the arbitration panel. The panelists so selected shall then select one or more additional panelist(s); provided that the additional panelist(s) so selected are members of the Exchange and that no member of the arbitration panel may have any direct or indirect financial interest in the claim. In the event that the initial panelists selected by the parties to the dispute cannot agree on the selection of the additional panelist(s), such additional panelist(s) shall be appointed by a Floor Official chosen by lot who has no direct or indirect financial interest in the claim. Each party to the dispute may make oral and written submissions and present witnesses to the arbitration panel. To the extent not inconsistent with the provisions of this Rule 60, the **Arbitration Rules of the Exchange [provisions governing arbitration contained Article VIII of the Constitution]** shall apply to proceedings under this paragraph.

••• *Commentary* -----

[.01 Electronic Display Book—NYSE Disclaimer

The Amex has entered into an agreement with the New York Stock Exchange licensing its electronic display book for equities for purposes of implementing an electronic display book on the Amex trading floor. In connection with member or member organization use of the display book on the Amex trading floor, the New York Stock Exchange shall not be liable for any damages sustained by a member or member organization growing out of the use or enjoyment of the display book by the member or member organization.]

.01 [.02] On-Line Comparison System and Other NYSE Facilities

The **Exchange [Amex]** has entered into an agreement with the New York Stock Exchange under which **Exchange [Amex]** members and member organizations will be utilizing the NYSE's On-Line Comparison System ("OCS") for the comparison of **Exchange [Amex]** equity and bond

transactions. The **Exchange [Amex]** may enter into additional agreements with the NYSE in the future relating to the use of other NYSE systems, services, or facilities by **Exchange [Amex]** members and member organizations. In connection with member or member organization use of OCS or any such other NYSE system, service, or facility, the New York Stock Exchange shall not be liable for any damages sustained by a member or member organization growing out of the use or enjoyment thereof by the member or member organization.

.02 [.03] *Vendor Liability Disclaimer*

In connection with member or member organization use of any electronic system, service, or facility provided by the Exchange to members for the conduct of their business on the Exchange (i) the Exchange may expressly provide in the contract with any vendor providing all or part of such electronic system, service, or facility to the Exchange, that such vendor and its subcontractors shall not be liable to the member or member organization for any damages sustained by a member or member organization growing out of the use or enjoyment thereof by the member or member organization, and (ii) members and member organizations shall indemnify the Exchange and any vendor and subcontractor covered by subsection (i) above (and their directors, officers, employees and agents) with regard to any and all judgments, damages, costs, or losses of any kind (including reasonable attorneys' fees and expenses), as a result of any claim, action, or proceeding that arises out of or relates to the member or member organization's use of such electronic system, service, or facility.

Rule 61. Exchange's Costs of Defending Legal Proceedings

Any member, member organization, **[limited trading permit holder,]** approved person, or person associated with any of the foregoing who fails to prevail in a lawsuit or other legal proceeding instituted by such person against the Exchange or any of its directors, officers, committee members, employees, or agents, and related to the business of the Exchange, shall pay to the Exchange all reasonable expenses, including attorneys' fees, incurred by the Exchange in the defense of such proceeding, but only in the event that such expenses exceed fifty thousand dollars (\$50,000.00). This provision shall not apply to disciplinary actions by the Exchange, to administrative appeals of Exchange actions or in any specific instance where the Board has granted a waiver of this provision.

Rule 62. Backup Trading Arrangements

(a) **Exchange [Amex]** is Disabled Exchange.

(i) Exchange [("Amex")] Exclusively Listed Options.

(A) For purposes of this Rule 62, the term "exclusively listed option" means an option that is listed exclusively by an exchange (because such exchange has an exclusive license to use, or has proprietary rights in, the interest underlying the option).

(B) The **Exchange [Amex]** may enter into arrangements with one or more other exchanges (each a "Backup Exchange") to permit the **Exchange [Amex]** and its members and associated persons and other personnel to use a portion of the Backup Exchange's facilities to conduct the trading of some or all of the **Exchange [Amex]**'s

exclusively listed options in the event that the functions of the **Exchange [Amex]** are, or are threatened to be, severely and adversely affected by an emergency or extraordinary circumstances (a "Disabling Event"). Such options shall trade as listings of the **Exchange [Amex]**. The facility of the Backup Exchange used by the **Exchange [Amex]** for this purpose will be deemed to be a facility of the **Exchange [Amex]**.

- (C) Trading of **Exchange [Amex]** exclusively listed options shall be conducted in accordance with the rules of the Backup Exchange, except that such trading shall be subject to **Exchange [Amex]** rules with respect to doing business with the public, margin requirements, net capital requirements, listing requirements, and position limits. In addition, the **Exchange [Amex]** and the Backup Exchange may agree that other rules of the **Exchange [Amex]** will apply to such trading. The **Exchange [Amex]** and the Back-up Exchange have agreed to communicate to their respective members which rules apply in advance of trading. The Backup Exchange rules that govern trading on the **Exchange [Amex]**'s facility at the Back-up Exchange shall be deemed to be **Exchange [Amex]** rules for purposes of such trading.
- (D) The Back-up Exchange has agreed to perform the related regulatory functions with respect to trading of **Exchange [Amex]** exclusively listed options on the **Exchange [Amex]**'s facility at the Back-up Exchange, in each case except as the **Exchange [Amex]** and the Back-up Exchange may specifically agree otherwise. The Back-up Exchange and **Exchange [Amex]** have agreed to coordinate with each other regarding surveillance and enforcement respecting trading of **Exchange [Amex]** exclusively listed options on the **Exchange [Amex]**'s facility at the Back-up Exchange. The **Exchange [Amex]** shall retain the ultimate legal responsibility for the performance of its self-regulatory obligations with respect to **Exchange [Amex]**'s facility at the Back-up Exchange.
- (E) If the Backup Exchange is unable to accommodate all **Exchange [Amex]** members that desire to trade on the **Exchange [Amex]**'s facility at the Backup Exchange pursuant to paragraph (a)(i)(A), the **Exchange [Amex]** may determine which members shall be eligible to trade at that facility. Factors to be considered in making such determinations may include, but are not limited to, any one or more of the following: whether the member is a specialist in the applicable product(s), the number of contracts traded by the member or member organization in the applicable product(s), market performance, and other factors relating to a member's contribution to the market in the applicable product(s) during a specific period.
- (F) Members of the Backup Exchange shall not be authorized to trade in any **Exchange [Amex]** exclusively listed options, except that (i) the **Exchange [Amex]** may deputize willing floor brokers of the Back-up Exchange as temporary **Exchange [Amex]** members to permit them to execute orders as brokers in **Exchange [Amex]** exclusively options traded on the **Exchange [Amex]**'s facility at the Back-up Exchange; and (ii) the Back-up Exchange has agreed that it will, at the instruction of **Exchange [Amex]**, select members of the Back-up Exchange that are willing to be deputized by the **Exchange [Amex]** as temporary **Exchange [Amex]** members authorized to trade **Exchange [Amex]** exclusively listed options on the **Exchange [Amex]**'s facility at the Back-up Exchange for such period of time following a Disabling Event as the **Exchange [Amex]** determines to be appropriate, and the

Exchange [Amex] may deputize such members of the Back-up Exchange as temporary **Exchange [Amex]** members for that purpose.

(ii) **Exchange [Amex]** Singly Listed Options.

- (A) For purposes of this Rule 62, the term "singly listed option" means an option that is not an "exclusively listed option" but that is listed by an exchange and not by any other national securities exchange.
- (B) The Exchange may enter into arrangements with a Backup Exchange under which the Backup Exchange will agree, in the event of a Disabling Event, to list for trading singly listed options that are then singly listed only by the **Exchange [Amex]** and not by the Backup Exchange. Any such options listed by the Backup Exchange shall trade on the Backup Exchange and in accordance with the rules of the Backup Exchange. Such options shall be traded by members of the Backup Exchange and by **Exchange [Amex]** members selected by the **Exchange [Amex]** to the extent the Backup Exchange can accommodate **Exchange [Amex]** members in the capacity of temporary members of the Backup Exchange. If the Back-up Exchange is unable to accommodate all the **Exchange [Amex]** members that desire to trade at the Back-up Exchange pursuant to paragraph (a)(i)(A), the **Exchange [Amex]** may determine which members shall be eligible to trade at the Back-up Exchange. Factors to be considered in making such determinations may include, but are not limited to, any one or more of the following: whether the member is a specialist in the applicable product(s), the number of contracts traded by the member or specialist unit in the applicable product(s), market performance, and other factors relating to a member's contribution to the market in the applicable product(s).

Any **Exchange [Amex]** member who is granted temporary access to the Backup Exchange pursuant to this paragraph shall only be permitted (i) to act in those Backup Exchange capacities that are authorized by the Backup Exchange and that are comparable to capacities in which the temporary member has been authorized to act on the **Exchange [Amex]** and (ii) to trade in those options in which the temporary member is authorized to trade on the **Exchange [Amex]**.

- (C) Any options listed by the Backup Exchange pursuant to paragraph (a)(ii)(B) that does not satisfy the standard listing and maintenance criteria of the Backup Exchange will be subject, upon listing by the Backup Exchange, to delisting (and, thus, restrictions on opening new series, and engaging in opening transactions in those series with open interest, as may be provided in the rules of the Backup Exchange).
- (b) **Exchange [Amex]** is Backup Exchange.
- (i) Disabled Exchange Exclusively Listed Options.
- (A) The Exchange may enter into arrangements with one or more other exchanges (each a "Disabled Exchange") to permit the Disabled Exchange and its members to use a portion of the **Exchange [Amex]**'s facilities to conduct the trading of some or all of the Disabled Exchange's Exclusively Listed Securities in the event of a Disabling Event. The facility of the **Exchange [Amex]** used by the Disabled Exchange for this purpose will be deemed to be a facility of the Disabled Exchange.

- (B) Trading of the Disabled Exchange's exclusively listed options on the Disabled Exchange's facility at the **Exchange [Amex]** shall be conducted in accordance with **Exchange [Amex]** rules, except that (1) such trading shall be subject to the Disabled Exchange's rules with respect to doing business with the public, margin requirements, net capital requirements, listing requirements, and position limits, and (2) members of the Disabled Exchange that are trading on the Disabled Exchange's facility at **Exchange [Amex]** (not including **Exchange [Amex]** members who become temporary members of the Disabled Exchange pursuant to paragraph (b)(i)(D)) will be subject to the rules of the Disabled Exchange governing or applying to the maintenance of a person's or a firm's status as a member of the Disabled Exchange. In addition, the Disabled Exchange and the **Exchange [Amex]** may agree that other Disabled Exchange rules will apply to such trading. The Disabled Exchange and the **Exchange [Amex]** have agreed to communicate to their respective members which rules apply in advance of trading.
- (C) The **Exchange [Amex]** will perform the related regulatory functions with respect to trading of the Disabled Exchange's exclusively listed options on the Disabled Exchange's facility at the **Exchange [Amex]**, in each case except as the Disabled Exchange and **Exchange [Amex]** may specifically agree otherwise. The **Exchange [Amex]** and the Disabled Exchange have agreed to coordinate with each other regarding surveillance and enforcement respecting trading of the Disabled Exchange's exclusively listed options on the Disabled Exchange's facility at the **Exchange [Amex]**. The Disabled Exchange has agreed that it shall retain the ultimate legal responsibility for the performance of its self-regulatory obligations with respect to the Disabled Exchange's facility at the **Exchange [Amex]**.
- (D) **Exchange [Amex]** members shall not be authorized to trade in any exclusively listed options of the Disabled Exchange, except that: (1) the Disabled Exchange may deputize willing **Exchange [Amex]** floor brokers as temporary members of the Disabled Exchange to permit them to execute orders as brokers in exclusively listed options of the Disabled Exchange traded on the facility of the Disabled Exchange at the **Exchange [Amex]**; and (2) at the instruction of the Disabled Exchange, the **Exchange [Amex]** shall select **Exchange [Amex]** members that are willing to be deputized by the Disabled Exchange as temporary members of the Disabled Exchange authorized to trade the Disabled Exchange's exclusively listed options on the facility of the Disabled Exchange at the **Exchange [Amex]** for such period of time following a Disabling Event as the Disabled Exchange determines to be appropriate, and the Disabled Exchange may deputize such **Exchange [Amex]** members as temporary members of the Disabled Exchange for that purpose.
- (ii) Disabled Exchange Singly Listed Options.
- (A) The **Exchange [Amex]** may enter into arrangements with a Disabled Exchange under which the **Exchange [Amex]** will agree, in the event of a Disabling Event, to list for trading options that are then singly listed only by the Disabled Exchange and not by the **Exchange [Amex]**. Any such options listed by the **Exchange [Amex]** shall trade on the **Exchange [Amex]** and in accordance with **Exchange [Amex]** rules. Such options shall be traded by **Exchange [Amex]** members and by members of the Disabled Exchange selected by the Disabled Exchange to the extent the **Exchange [Amex]** can accommodate members of the Disabled Exchange in the capacity of temporary members of the **Exchange [Amex]**. Any member of a Disabled Exchange

granted temporary access to conduct business on the Exchange [Amex] under this paragraph shall only be permitted (i) to act in those Exchange [Amex] capacities that are authorized by the Exchange [Amex] and that are comparable to capacities in which the temporary member has been authorized to act on the Disabled Exchange and (ii) to trade in those options in which the temporary member is authorized to trade on the Disabled Exchange. The Exchange [Amex] may allocate such options to an Exchange [Amex] specialist in advance of a Disabling Event, without utilizing the allocation process under Exchange [Amex] Rule 27, to enable the Exchange [Amex] to quickly list such options upon the occurrence of a Disabling Event.

- (B) Any class of options listed by the Exchange [Amex] pursuant to paragraph (b)(ii)(A) that does not satisfy the listing and maintenance criteria under Exchange [Amex] Rules 915 and 916 will be subject, upon listing by the Exchange [Amex], to delisting (and, thus, restrictions on opening new series, and engaging in opening transactions in those series with open interest, as may be provided in Exchange [Amex] rules).
- (c) *Member Obligations.*
 - (i) Temporary Members of a Disabled Exchange
 - (A) An Exchange [Amex] member acting as a temporary member of the Disabled Exchange pursuant to paragraph (b)(i)(D) shall be subject to, and obligated to comply with, the rules that govern the operation of the facility of the Disabled Exchange at the Exchange [Amex] to the extent applicable during the period of such trading. Additionally, (1) such Exchange [Amex] member shall be deemed to have satisfied, and the Disabled Exchange has agreed to waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as a member of the Disabled Exchange, including all dues, fees and charges imposed generally upon members of the Disabled Exchange based on their status as such; (2) such Exchange [Amex] member shall have none of the rights of a member of the Disabled Exchange except the right to conduct business on the facility of the Disabled Exchange at Exchange [Amex] to the extent described in this Rule; (3) the member organization associated with such Exchange [Amex] member, if any, shall be responsible for all obligations arising out of that Exchange [Amex] member's activities on or relating to the Disabled Exchange; and (4) the clearing member of such Exchange [Amex] member shall guarantee and clear the transactions of such Exchange [Amex] member on the Disabled Exchange.
 - (B) A member of a Back-up Exchange acting in the capacity of a temporary member of the Exchange [Amex] pursuant to paragraph (a)(i)(F) shall be subject to, and obligated to comply with, the rules that govern the operation of the facility of the Exchange [Amex] at the Back-up Exchange, including Exchange [Amex] rules to the extent applicable during the period of such trading. Additionally, (1) such temporary member shall be deemed to have satisfied, and the Exchange [Amex] will waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as a member of the Exchange [Amex], including all dues, fees and charges imposed generally upon Exchange [Amex] members based on their status as such; (2) such temporary member shall have none of the rights of an Exchange [Amex] member except the right to conduct business on the facility of the Exchange [Amex] at the Back-up Exchange to the extent described in this Rule; (3) the member organization associated with such temporary member, if any, shall be

responsible for all obligations arising out of that temporary member's activities on or relating to the Exchange [Amex]; and (4) the clearing member of such temporary member shall guarantee and clear the transactions on the Exchange [Amex] of such temporary member.

(ii) Temporary Members of the Backup Exchange

- (A) An Exchange [Amex] member acting in the capacity of a temporary member of the Back-up Exchange pursuant to paragraph (a)(ii)(B) shall be subject to, and obligated to comply with, the rules of the Back-up Exchange that are applicable to the Backup Exchange's own members. Additionally, (1) such Exchange [Amex] member shall be deemed to have satisfied, and the Back-up Exchange has agreed to waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as a member of the Back-up Exchange, including all dues, fees and charges imposed generally upon members of the Back-up Exchange based on their status as such, (2) such Exchange [Amex] member shall have none of the rights of a member of the Back-up Exchange except the right to conduct business on the Back-up Exchange to the extent described in this Rule; (3) the member organization associated with such Exchange [Amex] member, if any, shall be responsible for all obligations arising out of that Exchange [Amex] member's activities on or relating to the Backup Exchange; (4) the clearing member of such Exchange [Amex] member shall guarantee and clear the transactions of such Exchange [Amex] member on the Back-up Exchange; and (5) such Exchange [Amex] member shall only be permitted (x) to act in those capacities on the Back-up Exchange that are authorized by the Back-up Exchange and that are comparable to capacities in which the Exchange [Amex] member has been authorized to act on the Exchange [Amex], and (y) to trade in those options in which the Exchange [Amex] member is authorized to trade on the Exchange [Amex].
- (B) A member of a Disabled Exchange acting in the capacity of a temporary member of the Exchange [Amex] pursuant to paragraph (b)(ii)(A) shall be subject to, and obligated to comply with Exchange [Amex] rules that are applicable to the Exchange [Amex]'s own members. Additionally, (1) such temporary member shall be deemed to have satisfied, and the Exchange [Amex] will waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as a member of the Exchange [Amex], including all dues, fees and charges imposed generally upon Exchange [Amex] members based on their status as such; (2) such temporary member shall have none of the rights of an Exchange [Amex] member except the right to conduct business on the Exchange [Amex] to the extent described in this Rule; (3) the member organization associated with such temporary member, if any, shall be responsible for all obligations arising out of that temporary member's activities on or relating to the Exchange [Amex]; (4) the clearing member of such temporary member shall guarantee and clear the transactions of such temporary member on the Exchange [Amex]; and (5) such temporary member shall only be permitted (x) to act in those Exchange [Amex] capacities that are authorized by the Exchange [Amex] and that are comparable to capacities in which the temporary member has been authorized to act on the Disabled Exchange, and (y) to trade in those option classes in which the temporary member is authorized to trade on the Disabled Exchange.

(d) *Member Proceedings.*

(i) If the **Exchange [Amex]** initiates an enforcement proceeding with respect to the trading during a back-up period of the singly or multiply listed options of the Disabled Exchange by a temporary member of the **Exchange [Amex]** or the exclusively listed options of the Disabled Exchange by a member of the Disabled Exchange (other than an **Exchange [Amex]** member who is a temporary member of the Disabled Exchange), and such proceeding is in process upon the conclusion of the backup period, the **Exchange [Amex]** may transfer responsibility for such proceeding to the Disabled Exchange following the conclusion of the backup period. Arbitration of any disputes with respect to any trading during a backup period of singly or multiply listed options of the Disabled Exchange or of exclusively listed options of the Disabled Exchange on the Disabled Exchange's facility at the **Exchange [Amex]** will be conducted in accordance with **Exchange [Amex]** rules, unless the parties to an arbitration agree that it shall be conducted in accordance with the rules of the Disabled Exchange.

(ii) If the Backup Exchange initiates an enforcement proceeding with respect to the trading during a backup period of **Exchange [Amex]** singly or multiply listed options by a temporary member of the Backup Exchange or **Exchange [Amex]** exclusively listed options by an **Exchange [Amex]** member (other than a member of the Backup Exchange who is a temporary member of the **Exchange [Amex]**), and such proceeding is in process upon the conclusion of the backup period, the Backup Exchange may transfer responsibility for such proceeding to the **Exchange [Amex]** following the conclusion of the backup period. Arbitration of any disputes with respect to any trading during a backup period of **Exchange [Amex]** singly or multiply listed options on the Backup Exchange or of the **Exchange [Amex]** exclusively listed options on the facility of the **Exchange [Amex]** at the Backup Exchange will be conducted in accordance with the rules of the Backup Exchange, unless the parties to an arbitration agree that it shall be conducted in accordance with the **Exchange [Amex]** rules.

(e) *Member Preparations.*

Exchange [Amex] members are required to take appropriate actions as instructed by the Exchange to accommodate the **Exchange [Amex]**'s backup trading arrangements.

Rule 63. Exchange Liability

Except insofar as the Board of Directors may specifically provide by rule with respect to Exchange facilities which implement the electronic transmission of orders for the purchase or sale of securities traded on the Exchange to the Floor or between the Floor and other markets, neither the Exchange nor any of its affiliates nor any of its or their respective officers, directors, committee members, employees or agents shall be liable to a member or member organization of the Exchange, or a person associated with a member or a member organization for any loss, expense, damages or claims that arise out of the use or enjoyment of the facilities or services afforded by the Exchange, any interruption in or failure or unavailability of any such facilities or services, or any action taken or omitted to be taken in respect to the business of the Exchange except to the extent such loss, expense, damages or claims are attributable to the willful misconduct, gross negligence, bad faith or fraudulent or criminal acts of the Exchange or its officers, employees or agent acting within the scope of their authority.

Rule 64. Controlled Corporations and Associations

Broker for Securities Corporation

Unless the prior written consent of the Exchange is obtained, no member or member organization shall act as a broker for any non-member corporation or association in the purchase or sale of securities if such non-member corporation or association is controlled directly or indirectly through stock ownership or otherwise by such member or member organization and is itself engaged in the business of buying and selling securities as broker for others.

Participation in Corporate Commissions

If a member or an officer, director or employee of a member organization is an officer, director or employee of any non-member corporation or association engaged in the business of buying and selling securities for its own account or as broker for others, or if he or his member organization is a stockholder in any such non-member corporation or association, neither he nor the member organization shall participate in any commission paid by such non-member corporation or association unless either he or the member organization is engaged in a general brokerage business and in connection with such business actively participates in the transaction on which such commission is paid, or such member is actively engaged in business as a Floor broker.

Corporate Use of Member Office; Corporate Use of Member Name

Unless the prior written consent of the Exchange is obtained, no member or member organization shall suffer or permit any non-member corporation or association engaged in the business of buying and selling securities for its own account or as broker or agent for others to use as its office the office or any branch office of such member or member organization or to employ in its business the same business organization as that employed by such member or member organization or voluntarily suffer or permit any such organization to conduct its business under a name that does not clearly differentiate such corporation or association from such member or member organization.

Responsibility for Corporate Subsidiary; Duty to Produce Books

If a member or member organization controls, directly or indirectly, through stock ownership or otherwise, a non-member corporation or association engaged in the business of buying and selling securities for its own account or as broker or agent for others, such member or member organization shall be responsible for any fraud committed by such non-member corporation or association or for any conduct or proceeding of such non-member corporation or association inconsistent with just and equitable principles of trade or any act detrimental to the interest or welfare of the Exchange or tending to defeat the purpose of any rule of the Exchange, to the same extent and in the same manner as though such fraud or conduct or proceeding or act had been the fraud, conduct or proceeding or act of such member or member organization, and such member or member organization shall be under the same duty to produce the books, records and papers of any such non-member corporation or association for examination and inspection and to furnish evidence in regard to the acts and proceedings of such non-member corporation or association and shall be subject to the same penalties for the neglect of such duty as if such books, records, papers, acts and proceedings were the books, records, papers, acts and proceedings of such member or member organization.

Rule 65. Suspended Members

A member shall not become associated with a suspended member or member organization of the Exchange, a person or entity who has been expelled therefrom, an insolvent person or entity, a minor, or a person or entity who may have previously been a member of the Exchange and against whom a member holds a claim arising out of transactions made during the time of such membership, which has not been released or settled.

Except with the consent of the Exchange and subject to such conditions as it may impose, no member shall continue to be a member of the Exchange if he remains associated, or permits his member organization to remain associated, in any manner with a person whose 86 Trinity Permit has been revoked and who is expelled from the Exchange. No member shall continue to be a member of the Exchange if he permits a member whose 86 Trinity Permit is suspended pursuant to Rule 475 to participate in the profits of or to act in any capacity for such member or his member organization during the period of such suspension.

PART II – Rules Principally Applicable to Floor Transactions

Rule 103. General Floor Prohibitions

No **86 Trinity Permit Holder who is a natural person** [regular or options principal member], while on the Floor, shall:

Dealing when option granted or held

(a) Initiate the purchase or sale on the Exchange for his own account or for any account in which he, his member organization or any member, limited partner, officer, employee, approved person or party approved pursuant to **the Rules of the Exchange [Article IV, Section 1(g) of the Constitution therein]** is directly or indirectly interested, including by means of the issuance or acceptance of a commitment or obligation to trade, of any stock in which he holds or has granted any put, call, straddle or other option or in which he has knowledge that his member organization or any of the above-mentioned accounts holds or has granted any put, call, straddle or other option, except that the provisions of this rule shall not apply in the case of any such options that are listed or traded on a national securities exchange, although the Exchange may at any time, and from time to time, require reports relating to transactions in options effected by a member or member organization, and the activities of a stock specialist trading options on his specialty stocks are limited by the "Guidelines for Specialists' Specialty Stock Options Transactions Pursuant to Rule 175"; or

Initiation of transaction for joint-account

(b) Without the prior approval of a Floor Official, initiate the purchase or sale on the Exchange, including by means of the issuance or acceptance of a commitment or obligation to trade, of a stock for any joint account in which **such member or his [he or his]** member organization or any member, limited partner, officer, employee, approved person or party approved pursuant to **the Rules of the Exchange [Article IV, Section 1(g) of the Constitution therein]** is directly or indirectly interested unless the other parties to the joint account are either

members, limited partners, officers, employees, approved persons or parties approved pursuant to **the Rules of the Exchange [Article IV, Section 1(g) of the Constitution]**; however, the provisions of this paragraph shall not apply to any purchase or sale (1) by any such member for any joint-account maintained solely for effecting bona fide domestic or foreign arbitrage transaction, or (2) by an odd-lot dealer or a specialist for any joint-account in which he is expressly permitted to have an interest or participation by Rules 175(a)(2) or 203, or

Rule 111. Restrictions on Registered Traders

••• *Commentary* -----

.03

[(d) Members who are not regular members (as described in Article IV of the Exchange Constitution) may enter orders in accordance with this Commentary .03 only in securities which members of their class are otherwise entitled to trade while on the Floor of the Exchange.]

.12 Transactions on the Floor in (i) index warrants, (ii) currency warrants and (iii) derivative products **[(as defined in Article I, Section 3(d) of the Exchange Constitution)]** which are otherwise traded under the Exchange's equity trading rules, by a member for an account in which he has an interest shall be governed by the provisions of Rule 958. (See Commentary .10 of Rule 958.)

Rule 112. Suspension of Registration of Registered Trader

The Exchange may suspend the registration of any Registered Trader who is found to have violated the provisions of Rules 108, 109, 110 or 111. Such suspension may be imposed in addition to or in lieu of any penalty which may be imposed under **Rules 475 through 477 [Article V of the Constitution]**.

Rule 114. Registered Equity Market Makers

(d) The Exchange may suspend the registration of a Registered Equity Market Maker in any one or all of his registered securities, if he has been found to have violated the provisions of this Rule. Such suspension may be imposed in addition to or in lieu of any penalty which may be imposed under **the Rules 475 through 477 [Article V of the Constitution]**.

••• *Commentary* -----

.14 Transactions on the Floor in (i) index warrants, (ii) currency warrants and (iii) derivative products [(as defined in Article I, Section 3(d) of the Exchange Constitution)] which are otherwise traded under the Exchange's equity trading rules, by a member for an account in which he has an interest shall be governed by the provisions of Rule 958. (See Commentary .10 of Rule 958.)

Rule 118. Trading in Nasdaq Securities

(b) Except to the extent that the provisions of Rule 118 govern, or unless the context otherwise requires, the [provisions of the Constitution and] Rules of the Exchange are applicable to trading in Nasdaq securities.

(h) Non-Liability of Exchange- **Rule 63 [Article IV, Section 1(e) of the Exchange Constitution]** shall apply to trading of Nasdaq securities on the Exchange pursuant to Exchange Rule 118, and the Exchange, its affiliates, and any of its or their respective officers, **directors [governors]**, committee members, employees or agents shall not be liable to a member of the Exchange, a member organization, or a person associated with a member or member organization to the extent provided in **Rule 63 [Article IV, Section 1(e)]**.

(j) Odd-Lot Orders—Odd lot orders in Nasdaq securities, except for Portfolio Depositary Receipts or Index Fund Shares (collectively known as Exchange Traded Funds), shall be executed in the following manner:

- (i) Market and Executable Limit Orders—A market or executable limit order shall be executed, unless otherwise provided herein, at the price of the qualified national best offer (in the case of an order to buy) or qualified national best bid (in the case of an order to sell) in the security at the time the order has been received at the trading post or through the **Exchange [Amex]** Order File. An order entered through the **Exchange [Amex]** Order File shall receive automatic execution at such price.

(k) Expiration Day Auxiliary Procedures for the Opening—The Exchange has adopted auxiliary procedures for expiration days in order to integrate stock orders in Nasdaq securities relating to expiring index contracts into the **Exchange [Amex]**'s opening procedures in a manner that will assure an efficient market opening in each stock as close to 9:30 a.m. as possible. An expiration day is a trading day prior to the expiration of index-related derivative products (futures, options or options on futures), whose settlement pricing is based upon opening or closing prices in the underlying security, as identified by a qualified clearing corporation (e.g., the Options Clearing Corporation) and the four end-of-calendar-quarter trading days when index

options expire. The twelve expiration Fridays are "Expiration Fridays" which fall on the third Friday in every month. If that Friday is an Exchange holiday, there will be an expiration Thursday in such a month. Orders relating to index contracts whose settlement pricing is based upon the "Expiration Friday's" or the end-of-calendar-quarter trading day's opening prices must be received by the **Exchange [Amex]** Order File ("AOF") or by the specialist by 9:00 a.m. These orders may be cancelled or reduced in size. Firms canceling these orders or reducing them in size shall prepare contemporaneously a written record describing the rationale for the change and shall preserve it as Rule 153 provides. Stock orders relating to index contracts whose settlement pricing is not based upon the "Expiration Friday's" or the end-of-calendar-quarter trading day's opening prices may be entered before or after 9:00 a.m. To facilitate early order entry, AOF (a) will begin accepting orders at 7:30 a.m. and (b) will accept orders of 99,900 shares or less.

"Limit at the opening" ("limit OPG") orders are permitted, including delivery through Exchange systems. Ordinary limit orders may also be entered.

Order Identification

Stock orders relating to opening-price settling contracts must be identified "OPG". Firms entering these orders through AOF, but unable to identify orders as "OPG," may use a unique branch code or firm identifier (mnemonic) to identify these orders. Firms unable to identify these orders in either way, and firms not using AOF, must submit a list of all these orders and related details to the **Exchange [Amex]** Market Surveillance Department.

Dissemination of Order Imbalances

On expiration days, for any stocks having a market order imbalance of 25,000 shares or more at 9:00 a.m., the Exchange will disseminate the size of the order imbalance via a structured communication process established with major news vendors as promptly as practicable after 9:00 a.m. Imbalances of less than 25,000 shares may be disseminated at that time with Floor Official approval. A "no imbalance" status will not be published for any stock.

Except for the auxiliary procedures described above, all stocks are subject to the regular **Exchange [Amex]** opening procedures, including price indications where a substantial price change is anticipated. Ten minutes must elapse between a first indication and a stock's opening. However, when more than one indication is necessary, a stock may open five minutes after the last indication provided that ten minutes must have elapsed from the dissemination of the first indication.

Indications

Indications before the opening should be disseminated at 9:15 a.m., if possible, but any indications disseminated prior to 9:30 a.m. require the approval of a **Senior Floor Official [Floor Governor]** or Exchange Official, or the approval of a Floor Official if it relates to a spin-off or if trading had been halted and not resumed the prior day. Indications will be disseminated via a structured communication process established with major news vendors.

(m) Market-on-Close and Limit-on-Close Orders—The following procedures apply to market-on-close (MOC) and limit-on-close (LOC) orders in Nasdaq securities. Notwithstanding the foregoing, the following procedures will not apply to any Nasdaq security the pricing of which is based on another security or an index (e.g., Exchange Traded Funds).

- (i) A market at the close (MOC) order is an order to buy or sell a stated amount of a security at the Exchange's closing price. If the MOC order cannot be executed in its entirety at the Exchange closing price it will be cancelled. A limit at the close (LOC) order is an order to buy or sell a stated amount of a security at the Exchange's closing price if that closing price is at the order's limit price, or better. If the LOC order can not be so executed, in whole or in part, the amount of the order not so executed is to be cancelled. Cancellation of MOC and LOC orders will only occur in certain circumstances such as (1) when trading has been halted in the security and does not reopen prior to the close of the market; (2) for tick sensitive orders whose execution will violate customer instructions (i.e., to buy only on a minus or zero minus tick or to sell only on a plus or zero plus tick) or Exchange Rule 7; (3) for LOC orders, when the **Exchange [Amex]** closing price is not at the limit price or better, or (4) for tick sensitive MOC/LOC orders and LOC orders, all of which are limited to the closing price, the limited quantity of shares to be traded and the rules of priority as to which orders would trade first left these orders unexecuted in whole or in part.

(ii)

Between 3:00 and 3:40 p.m. (Eastern Time), imbalances of any size may be published with Floor Official approval. These are informational only and do not limit MOC/LOC order entry before 3:40 p.m.

- (b) Prohibition of Tick-Sensitive Orders -Tick-sensitive MOC and LOC orders (e.g., buy "minus" or sell "plus") shall not be entered. (Sell short MOC and LOC orders in Nasdaq securities are exempt from tick restrictions on the **Exchange [Amex]** and may be entered.)

- (vi) A Nasdaq UTP specialist is required to notify an **Exchange [Amex]** Floor Supervisor between 4:00 p.m. and 4:15 p.m. whenever the specialist (1) reports a trade at or after 4:00 p.m. that does not involve the execution of an MOC or LOC order, or (2), after reporting an MOC or LOC transaction(s) at or after 4:00 p.m., reports a trade after 4:00 p.m. (e.g., report of a "sold" sale) that is not, of course, a transaction involving the execution of MOC or LOC orders. This notification will be on an Exchange-approved form, with a duplicate copy for the specialist's records.

(n)

- (iii) In the event of (1) a disruption or malfunction in the use or operation of any facility of the Exchange, (2) a disruption or malfunction in the use or operation of any facility of Nasdaq that results in Nasdaq nullifying or modifying trades in the Nasdaq market pursuant to its rules, or (3) extraordinary market conditions or other circumstances in which the nullification or modification of transactions executed on the Exchange in Nasdaq securities may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, a Senior Floor

Official may review any transactions arising out of or reported through any facility of the Exchange; provided, however, that a Senior Floor Official may not review transactions arising out of the use or operation of any execution or communication system owned or operated by Nasdaq. A Senior Floor Official shall review the transaction with the advice and participation of a member of the regulatory staff. Prior to the nullification or modification of transactions as a result of a disruption or malfunction in the use or operation of any facility of Nasdaq, the Exchange must receive confirmation from FINRA [NASD] or Nasdaq that there is a disruption or malfunction on Nasdaq's market that has resulted in the nullification or modification of trades in that market. A Senior Floor Official acting pursuant to this subsection may declare any Exchange [Amex] transaction null and void or modify the terms of any such transactions if the Senior Floor Official determines that (1) the transaction is clearly erroneous, or (2) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest; provided, however, that, in the absence of extraordinary circumstances, the Senior Floor Official must take action pursuant to this subsection within thirty (30) minutes of detection of the transaction, but in no event later than 3:00 p.m., Eastern Time, on the next trading day following the date of the trade at issue. A member may seek review of a Senior Floor Official's ruling from a three Senior Floor Official Panel as described in Rule 22(d) and Commentary .02 to Rule 22 without first seeking review of the ruling from a Floor Official or Exchange Official.

(p) Rule 390 shall not preclude an 86 Trinity Permit Holder, [a member, member organization,] allied member, registered representative, or officer from sharing or agreeing to share in any losses in any customer's account with respect to Nasdaq securities after the member organization has established that the loss was caused in whole or in part by the action or inaction of such 86 Trinity Permit Holder, [member, member organization,] allied member, registered representative or officer, provided, however, that this provision shall not permit an 86 Trinity Permit Holder, [a member, member organization,] allied member, registered representative or officer to guarantee any customer against loss in his or its account.

Rule 119. Indications, Opening and Reopenings

Except as provided elsewhere in the [Constitution and] Rules of the Exchange, this Rule shall govern indications, openings and (re)openings of securities traded on the Exchange.

(1) **Mandatory Indications: When Commencement is Permitted**—A specialist is required to disseminate indications of interest prior to (re)opening trading in a previously halted stock or in the event of a delayed opening as follows:

(ii) **Non-Regulatory Halts**—A specialist may commence disseminating indications of interest in a stock subject to a Non-Regulatory Halt when an Exchange Official or Senior Floor Official [Floor Governor] approves such dissemination, in consultation with a Floor Official when appropriate. In the case of an inter-day Non-Regulatory Halt, such approval may include disseminations of interest before the Exchange opens for business.

- (iii) Delayed Openings—A specialist may commence disseminating indications of interest in a stock subject to delayed opening other than by reason of an inter-day Regulatory Halt, when an Exchange Official or **Senior Floor Official [Floor Governor]** approves.

- (v) "Circuit Breaker" Halts—Dissemination of an indication shall be mandatory prior to the reopening of trading following a "circuit breaker" halt under Rule 117 if such reopening will result in a price change constituting the lesser of 10% or three points from the last sale reported on the **Exchange [Amex]**, or five points if the previous reported last sale is \$100 or higher. No indications would be required if the price change is less than one point. If, on any day that Rule 117 halt is in effect, trading in a security has not reopened by one-half hour after resumption of trading on the Exchange, the matter should be treated as a delayed opening, and would require an indication as well as a Floor Official's supervision.

(2) Optional Indications

(a) Spin-Offs, IPOs, Etc.—Prior to the commencement of trading in a stock for which there has been no prior public market, the specialist in the stock may disseminate indications of interest for the stock if an Exchange Official or **Senior Floor Official [Floor Governor]** approves. In the case of a spin-off, any Floor Official may approve such dissemination which may include dissemination before the Exchange opens for business.

(b) Other Opening Situations—In any opening situation not specified above, the specialist in the affected stock may disseminate indications of interest for the stock before the Exchange opens for business if an Exchange Official or **Senior Floor Official [Floor Governor]** approves, and thereafter if any Floor Official approves.

(3) Waiting Periods Before (Re)Opening

(a) Periods Specified—The specialist may not (re)open a stock that has been the subject of an indication pursuant to paragraphs (1) and (2) above until:

- (i) Ten minutes after an indication is displayed, except that the minimum halt period shall be five minutes after an indication is displayed in the case of an equipment change over halt condition, in each case, unless clause ii applies;
- (ii) Five minutes after an indication is displayed if one or more indications preceded it. However, regardless of the number of indications disseminated, the minimum waiting period is ten minutes. For example, if only 3 minutes elapsed from the time of the first indication to the second indication, the minimum waiting period after the second indication would be 7 minutes.
- (iii) With respect to a post-opening trading halt, a minimum of five minutes must elapse between the first indication and a stock's reopening. However, where more than one indication is disseminated, a stock may re-open three minutes after the last indication, provided that at least five minutes must have elapsed from the dissemination of the first indication.

In the case of inter-day Non-Regulatory Halts, the Exchange Official or **Senior Floor Official [Floor Governor]** involved may dispense with the waiting period if no unusual situation exists prior to the opening of the affected stock. In the case of indications made pursuant to paragraph 2(b), the Exchange Official or **Senior Floor Official [Floor Governor]** involved may alter the applicable waiting periods to take into account the circumstances of the particular opening situation.

Rule 119A. Contingency Trading Procedures—Alternative Trading Facility

(b) Except to the extent that the provisions of Rule 119A govern, or unless the context otherwise requires, the provisions of the **[Constitution and]** Rules of the Exchange are applicable to trading conducted on the ATF.

(c) The **Exchange [Executive Vice President for Market Operations and Trading Floor Systems or his or her designee(s)]** shall have authority to designate the individuals who will be allowed to conduct a securities business on the ATF from among those members, member organizations and persons associated with members and member organizations who are entitled to trade and support trading at the Exchange's facility at 86 Trinity Place. One or more individuals from each broker and specialist unit shall be allowed to conduct business on the ATF. Registered **Options Traders** will be allowed to conduct business on the ATF to the extent that there is space in the ATF to accommodate them based upon their volume of trading.

Rule 126. Precedence of Bids and Offers

••• *Commentary* -----

[.03 Orders Delivered Electronically to the Specialist. At all times other than an opening or a reopening (Rule 108) or a block sold at a "clean-up" price (Rule 155), a round lot, regular way order for the common stock of a business corporation admitted to dealings on the Exchange that is sent to the specialist electronically and is executable according to its terms in whole or in part shall be handled in the following manner. Upon receipt of the electronic order by the specialist's order book, the specialist shall announce the order to the crowd, and the order shall establish priority with respect to all other bids and offers except with respect to bids and offers that already established priority before the electronic order was represented in the crowd. Once the specialist has announced the order, members who have bids or offers incorporated in the Amex Published Quote ("APQ") shall not be permitted to withdraw or modify their interest except to provide price improvement (i.e., an execution between the APQ) to the incoming order. Following the announcement of the order, the specialist and members in the crowd shall have a brief opportunity to provide price improvement to the incoming order. In the event that the incoming order is price improved but not entirely filled at the improved price, the sale shall not remove all bids and offers, and the incoming order shall retain priority over other bids and offers up to the full

size of the APQ that was displayed at the time of the announcement of the order less any interest that provided price improvement to the order. In the event that the incoming order is larger than the size displayed in APQ, the order shall be executed according to these procedures and any unfilled balance of the order shall be handled according to the Exchange's customary auction market processes.

This commentary .03 will expire on October 11, 2002 (Amex -2002-72).]

Rule 128. Contract Made on Acceptance of Bid or Offer

All bids and offers made and accepted in accordance with these Rules shall constitute binding contracts but shall be subject to the exercise by the Board of **Directors** [**Governors**] of the powers in respect thereto vested in said Board by [the Constitution of the Exchange and to] the Rules of the Exchange.

[Rule 128A. Automatic Execution

(a) An Auto-Ex Eligible Order for an Auto-Ex Eligible Security will be executed automatically in accordance with the provisions of this rule.

(b) **Definitions: Amex Published Quote ("APQ").** The Amex Published Quote is the highest bid and lowest offer disseminated by the American Stock Exchange.

Best Bid and Offer ("BBO"). The Best Bid and Offer is the highest bid and lowest offer disseminated by the national securities exchanges and facilities of national securities associations other than the Amex. Auto-Ex will disregard a bid or offer of less than 200 shares disseminated by any national securities exchange or facility of a national securities association in determining the BBO.

Auto-Ex Eligible Order. An Auto-Ex Eligible Order is a round lot or partial round lot market or marketable limit order delivered to the order book electronically. An Auto-Ex Eligible Order does not include an order update (e.g., a "cancel/replace" and "cancel/leaves" order). An Auto-Ex Eligible order does not include an order entered into the order book by the specialist. Orders on the book may be automatically matched against incoming Auto-Ex Eligible Orders as provided in this Rule.

Auto-Ex Eligible Security. Auto-Ex Eligible Securities consist of Portfolio Depository Receipts, Index Fund Shares, Trust Issued Receipts and Nasdaq securities traded on the Exchange together with such other securities as may be designated as Auto-Ex Eligible Securities from time to time by the Exchange.

Auto-Ex. Auto-Ex is the system for automatically executing Auto-Ex Eligible Orders.

Auto-Ex Step-Up. Auto-Ex Step-Up is a functionality that allows Auto-Ex Eligible Orders to be automatically executed against the Specialist/Registered Trader Quantity at the APQ plus (in the case of a bid) or minus (in the case of an offer) a specified number of trading increments designated by the Auto-Ex Enhancements Committee necessary to match the

BBO when the APQ is inferior to the BBO. Auto-Ex Step-Up is not available to orders for the proprietary account of a broker-dealer.

Auto-Ex Step-Up Amount. The Auto-Ex Step-Up Amount is the specified maximum number of trading increments necessary to attempt to match the BBO when the APQ is inferior to the BBO.

Auto-Ex Step-Up Size: The Auto-Ex Step-Up Size is the maximum size of an Auto-Ex Eligible Order that is eligible for Auto-Ex Step-Up.

Specialist/Registered Trader Quantity: The Specialist/Registered Trader Quantity is the number of shares that the specialist and registered traders in a crowd signed on to Auto-Ex will purchase or sell through Auto-Ex executions

Available Book Quantity: The Available Book Quantity is the number of shares on the order book at the APQ plus additional orders on the book that can be executed at or within the APQ minus shares on the book priced at or within the APQ that cannot be executed by their terms (e.g., tick sensitive orders).

Trade Threshold: The Trade Threshold is the number of Auto-Ex trades that the specialist and crowd will execute through Auto-Ex.

Maximum Spread Value: The Maximum Spread Value is the size of the spread at which Auto-Ex is automatically turned-off because the quote is too wide.

(c) **Hours of Operation:** Auto-Ex will be available for an Auto-Ex Eligible Security following the opening or reopening of a security on the Exchange once a trade has occurred and a quote has been disseminated in the security. Auto Ex will be turned-off at 3:59 p.m.. For securities that trade until 4:15 p.m., Auto-Ex will be re-enabled at 4:01 p.m. and will continue to be available until 4:14 p.m..

(d) **Interaction of Auto-Ex and Auction Market.**

- (i) A bid or offer incorporated in the APQ shall not be deemed accepted by a member in the trading crowd and, as the result, no contract shall be created, until the specialist begins to enter the member's acceptance into the order book.
- (ii) Auto-Ex will be turned-off on the bid or offer side of the market (as appropriate) in the event that (1) one or more brokers or registered traders in the trading crowd make a bid or offer within the APQ (a priority bid or offer), or (2) one or more brokers in the crowd make a bid or offer that is on parity with the APQ (a parity bid or offer). Auto-Ex will be turned-on again when all members signed-on to Auto-Ex in the crowd are on parity and no broker is making a parity bid or offer.

(e) **Auto-Ex Enhancements Committee.** The Auto-Ex Enhancements Committee will review, approve, disapprove, or conditionally approve specialist requests to take the following actions:

- (i) Establish the Trade Threshold;
- (ii) Establish the Specialist/Registered Trader Quantity;

- (iii) **Limit the size of Available Book Quantity;**
- (iv) **Establish the Auto-Ex-Step-Up Size and Auto-Ex-Step-Up Amount in securities where there are Registered Traders in the crowd;**
- (v) **Establish the Maximum Spread Value;**
- (vi) **Establish the di-minimis trade through amount for securities that are listed in markets that have trade through rules.**

The Committee will balance the interests of investors, the specialist, registered traders signed on to Auto-Ex, and the Exchange in considering such requests. In the event that the Committee changes one or more Auto-Ex parameters, the minutes of the Committee's meetings will state the change in market conditions, competitive environment or other circumstance(s) that caused the Committee to change the parameter(s). The Committee may delegate its authority to one or more Floor Governors. The Committee will meet promptly to review a Governor's decision in the event that a Governor acts pursuant to delegated authority.

(f) Determination of Execution Price: The price at which an Auto-Ex Eligible Order will be executed by Auto-Ex will be determined as follows:

- (i) **Auto-Ex will execute an Auto-Ex eligible order at the APQ (or better, as provided for in this Rule) when the APQ is equal to or better than the BBO as determined by the Exchange's order processing systems. Auto-Ex will not execute an order, and the order will be routed to the specialist for execution, if execution of the order at the APQ would result in a trade through of the BBO;**
- (ii) **In the event that Auto-Ex Step-Up is engaged to match the BBO, Auto Ex will execute an Auto-Ex eligible order against the available Specialist/Registered Trader Quantity at the APQ plus (in the case of a bid) or minus (in the case of an offer) the lesser of (1) the Auto-Ex Step-Up Amount, or (2) the minimum number of trading increments necessary to match the BBO where the APQ is inferior to the BBO as determined by the Exchange's order processing systems. Auto-Ex will not execute an order, and the order will be routed to the specialist for execution, if (1) execution of the order at the APQ plus (or minus) the Auto-Ex Step-Up amount would result in a trade through of the BBO, or (2) the incoming order is larger than the Auto-Ex Step-Up size;**
- (iii) **If programmed to do so, Auto-Ex will execute an Auto-Ex eligible order at the APQ when the APQ is inferior to the BBO as determined by the Exchange's order processing systems by a specified number of trading increments (the "di-minimis trade through amount"). Auto-Ex will not execute an order, and the order will be routed to the specialist for execution, if execution of the order at the APQ would result in a trade through of the BBO by more than the di-minimis trade through amount.**

Notwithstanding the foregoing, in the event that there are one or more executable limit orders on the order book on the opposite side of an Auto-Ex Eligible Order priced between the APQ, Auto-Ex will execute the incoming order against the order(s) on the order book at their limit price(s). In the event that there are one or more executable market orders in the order book on the opposite side of the incoming Auto-Ex-Eligible Order and the APQ

spread is greater than the minimum trading variation, Auto-Ex will execute the incoming order against the resident market order(s) at the mid point between the best limit bid and offer or APQ (whichever is better), and, if this mid point value is not a trading interval, the price will be rounded up to the nearest trading interval.

(g) **Auto-Ex Coming out of an Order Book Pause.** During an Order Book Pause, messages coming into the order book (e.g., orders, status requests, cancels, cancel/replaces) queue and do not enter the order book. When the Order Book Pause ends, Auto-Ex will be re-enabled immediately if all incoming orders are on the same side of the market. Auto-Ex will not be re-enabled, however, if there are orders on both sides of the market to allow the specialist to pair-off the orders to the extent possible. Automatic execution will resume once all messages in the queue are processed.

(h) **Auto-Ex Size:** Auto-Ex will execute Auto-Ex Eligible Orders up to the lesser of: (1) the size displayed in the APQ plus executable orders on the book within the APQ, or (2) the sum of the remaining Specialist/Registered Trader Quantity and Available Book Quantity. Notwithstanding the foregoing, Auto-Ex trades executed by the Auto-Ex Step-Up functionality are limited to the Auto-Ex Step-Up Size.

The round lot portion of a partial round lot order will be executed as if it were a round lot order and the odd lot portion of the order will be executed as if it were an odd lot order.

(i) **Contra Parties to Auto-Ex Trades.** Auto-Ex will first allocate the contra side to an Auto-Ex trade to the Available Book Quantity in price/time priority. Auto-Ex will then allocate any portion of the Auto-Ex Eligible Order that remains unexecuted to the available Specialist/Registered Trader Quantity in accordance with participation percentages ("target ratios") determined by the ETF Trading Committee.

At the start of each trading day, the sequence in which shares will be allocated to the specialist and Registered Traders signed-on to Auto-Ex will be randomly determined. Auto-Ex shares then will be automatically allocated in sequence on a rotating basis to the specialist and to the Registered Traders that have signed-on to the system so that the specialist and the crowd achieve their "target ratios" over the course of a trading session. If an Auto-Ex eligible order is greater than 100 shares, Auto-Ex will divide the trade into lots of 100 shares each. Each lot will be considered a separate trade for purposes of determining target ratios and allocating shares within Auto-Ex.

(j) **Auto-Ex Unavailability.** Auto-Ex will be unavailable in the following situations.

- (i) Auto-Ex will not occur when the APQ is crossed with the BBO unless Auto-Ex is programmed to disregard the BBO in the case of a "di-minimis trade through" amount.
- (ii) Auto-Ex will not occur when the Trade Threshold is exhausted and there is no Available Book Quantity.
- (iii) Auto-Ex will not occur when the Specialist/Registered Trader Quantity is exhausted and there is no Available Book Quantity.
- (iv) Auto-Ex will not occur when there is an open outgoing ITS commitment on behalf of a customer order.

- (v) **Auto-Ex will not occur on the Amex bid or offer (as appropriate) in the event that (1) one or more brokers or registered traders in the trading crowd make a bid or offer within the APQ (a priority bid or offer), or (2) one or more brokers in the crowd make a bid or offer that is on parity with the APQ (a parity bid or offer). Auto-Ex will be turned-on again when all members signed-on to Auto-Ex in the crowd are on parity and no broker is making a parity bid or offer.**
- (vi) **Auto-Ex will not occur on the bid or offer (as appropriate) in the event that the APQ on that side of the market is for less than 200 shares.**
- (vii) **Auto-Ex will not occur when the order book on the Amex is locked or crossed with the APQ.**
- (viii) **Auto-Ex will not occur with respect to an incoming Auto-Ex Eligible Institutional Order in the event that there is insufficient size to execute the order in full at one price.**
- (ix) **Auto-Ex will not occur if the execution of the incoming order would elect a stop order on the order book.**
- (x) **Auto-Ex will not occur if the specialist is in the process of executing an order in the security.**
- (xi) **Auto-Ex will not occur in one or more securities when the specialist and either a Floor Governor or two Floor Officials determine that (1) quotes are not reliable, (2) the Exchange is experiencing communications or systems problems, "Unusual Market Conditions" as described in Amex Rule 115, or delays in the dissemination of quotes, or (3) the market(s) where the underlying securities trade (or Nasdaq with respect to Nasdaq securities) are experiencing communications or systems problems, "Unusual Market Conditions" as described in Rule 602 of Regulation NMS, or delays in the dissemination of quotes.**
- (xii) **Auto-Ex will not occur if there are orders on both sides of the market when the order book comes out of a Freeze condition to allow the specialist to pair-off the orders.**
- (xiii) **Auto-Ex will not occur if the spread exceeds the Maximum Spread Value.**

Auto-Ex Eligible Orders that are not automatically executed will be routed to the specialist for handling.

••• Commentary -----

.01 An Intermarket Trading System ("ITS") commitment shall be handled in the same manner as an order from the trading crowd in accordance with subsection (d)(i) of this Rule 128A, and, as a result, no contract for the execution of an ITS commitment shall be created, until the specialist begins to enter the acceptance of such ITS commitment into the order book.]

Rule 131. Types of Orders

(e) A market at the close (MOC) order is an order to buy or sell a stated amount of a security at the Exchange's closing price. If the MOC order cannot be executed in its entirety at the Exchange closing price it will be cancelled. A limit at the close (LOC) order is an order to buy or sell a stated amount of a security at the Exchange's closing price if that closing price is at the order's limit price, or better. If the LOC order cannot be so executed, in whole or in part, the amount of the order not so executed is to be cancelled. Cancellation of MOC and LOC orders will only occur in certain circumstances such as (1) when trading has been halted in the security and does not reopen prior to the close of the market; (2) for tick sensitive orders whose execution will violate customer instructions (i.e., to buy only on a minus or zero minus tick or to sell only on a plus or zero plus tick) or Exchange Rule 7; (3) for LOC orders, when the Exchange [Amex] closing price is not at the limit price or better, or (4) for tick sensitive MOC/LOC orders and LOC orders, all of which are limited to an execution at the closing price, the limited quantity of shares to be traded and the rules of priority as to which orders would trade first left these orders unexecuted in whole or in part.

Rule 131A. Market on Close Policy and Expiration Procedures

(d) Auxiliary Opening Procedures

For each expiration settlement value day on which derivative, index-related products (e.g., options, futures, options on futures) settle against opening prices, several auxiliary procedures are necessary to integrate stock orders relating to expiring contracts into Exchange [Amex]'s opening procedures in a manner that assures an efficient market opening in each stock as close to 9:30 a.m. as possible. An expiration settlement value day is a trading day prior to the expiration of index-related derivative products whose settlement value is based upon opening prices on the Exchange, as identified by a qualified clearing corporation (e.g., the Options Clearing Corporation). There are twelve expiration days known as "Expiration Fridays" which generally fall on the third Friday in every month. Additionally, the Exchange may have Short Term Option Expiration Dates, which shall fall on the Friday following the Short Term Option Opening Date. If that Friday is an Exchange holiday, there will be an expiration Thursday.

Order Entry

Stock orders relating to index-related derivative contracts whose settlement pricing is based upon opening prices must be received by the Exchange [Amex] Order File (AOF) or by the specialist by 9:00 a.m. These orders may be cancelled or reduced in size. (Firms canceling these orders or reducing them in size shall prepare contemporaneously a written record describing the rationale for the change and shall preserve it as Rule 153 provides.) All other orders may be entered before or after 9:00 a.m.

To facilitate early order entry, AOF will begin accepting orders at 7:30 a.m. and will accept market orders of 99,900 shares or less. "Limit-at-the-opening" ("limit OPG") orders are permitted, including delivery through Exchange systems. Ordinary limit and market orders may also be entered.

Order Identification

Stock orders relating to expiring derivatives whose settlement pricing is based on opening prices must be identified "OPG".

Firms entering these orders through AOF, but unable to use "OPG" in the order instructions, may use a unique AOF branch code or a separate AOF subscription mnemonic to identify these orders. The **Exchange [Amex]** Market Surveillance Department must be advised in writing of the branch code or subscription mnemonics by the business day following the expiration trade date.

Firms unable to identify these orders in any of the above three ways, and firms not using AOF, must submit a list of all these orders and related details to the **Exchange [Amex]** Market Surveillance Department by the business day following the expiration trade date.

Rule 135. Cancellations of, and Revisions in, Transactions Where both the Buying and Selling Members Agree to the Cancellation or Revision

(b) Rule 390 shall not preclude **an 86 Trinity Permit Holder, [a member, member organization,]** allied member, registered representative, or officer from sharing or agreeing to share in any losses in any customer's account with respect to securities admitted to dealings on the Exchange after the member organization has established that the loss was caused in whole or in part by the action or inaction of such **86 Trinity Permit Holder, [member, member organization,]** allied member, registered representative or officer, provided, however, that this provision shall not permit **an 86 Trinity Permit Holder, [a member, member organization,]** allied member, registered representative or officer to guarantee any customer against loss in his or her **or its** account.

Rule 135A. Cancellations of, and Revisions in, Transactions Where both the Buying and Selling Members Do Not Agree to the Cancellation or Revision

(c) In the event of (1) a disruption or malfunction in the use or operation of any facility of the Exchange or (2) extraordinary market conditions or other circumstances in which the nullification or modification of transactions executed on the Exchange may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, a Senior Floor Official may review any transactions arising out of or reported through any facility of the Exchange (other than transactions in Nasdaq securities which are covered by Rule 118 or transactions in listed options). A member of the regulatory staff shall advise and participate in all steps of the Floor Official's review of the transaction. A Senior Floor Official acting pursuant to this paragraph may declare any **Exchange [Amex]** transaction null and void or modify the terms of any such transactions if the Senior Floor Official determines that (1) the transaction is clearly erroneous, or (2) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest; provided, however, that, in the absence of extraordinary circumstances, the Senior Floor Official shall take action pursuant to this subsection within 30 minutes of detection of the transaction, but in no event later than 3:00 p.m.,

Eastern Time, on the next trading day following the date of the trades at issue. A member may seek review of a Senior Floor Official's ruling from a three Senior Floor Official Panel as described in Rule 22(d) and Commentary .02 to Rule 22 without first seeking review of the ruling from a Floor Official or Exchange Official.g review of the ruling from a Floor Official or Exchange Official.

(d) Rule 390 shall not preclude **an 86 Trinity Permit Holder**, [a member, member organization,] allied member, registered representative, or officer from sharing or agreeing to share in any losses in any customer's account with respect to securities admitted to dealings on the Exchange after the member organization has established that the loss was caused in whole or in part by the action or inaction of such **86 Trinity Permit Holder**, [member, member organization,] allied member, registered representative or officer, provided, however, that this provision shall not permit **an 86 Trinity Permit Holder**, [member, member organization,] allied member, registered representative or officer to guarantee any customer against loss in his or her **or its** account.

Rule 153. Record of Orders

• • *Commentary* -----

.01 Consolidated Options Audit Trail System Requirements—Non-System Orders—COATS Phase V. —The Exchange has undertaken with the other options exchanges to build a Consolidated Options Audit Trail System (COATS) which, when fully implemented, will provide an accurate, time-sequenced record of electronic and other orders, quotations and transactions in listed options on the exchanges. Rule 153(b) currently requires members and member organizations to systematize "immediately upon receipt" orders "that are eligible for input into the Exchange's electronic order processing facilities" if such orders are not already systematized in the Exchange's electronic order processing facilities. **[Commencing on January 10, 2005,]** **M**[m]embers and member organizations must systematize in BARS those options orders and modifications and cancellations of such orders that are not already systematized in an **Exchange** **[Amex]** system prior to representing the orders in the crowd. Members and member organizations also must record in BARS immediately upon receipt information pertaining to the execution of option orders.

Any proprietary system approved by the Exchange on the Exchange's trading floor which receives orders will be considered an Exchange system for the purpose of systematizing those options orders and modifications and cancellations of such orders that are not already systematized in an **Exchange** **[Amex]** system prior to representing the orders in the crowd. Any proprietary system approved by the Exchange shall have the functionality to comply with the requirements of COATS.

Rule 155. Precedence Accorded to Orders Entrusted to Specialists

••• *Commentary* -----

.05 (i) If a specialist elects to take or supply for his own account the securities named in an order entrusted to him by another member or member organization, such member or organization shall be so notified as follows:

- (a) If such securities were named in an order received by the specialist through the Post Execution Reporting ("PER") System or the **NYSE Alternext [Amex]** Options Switch ("AMOS") System, the Exchange shall furnish a report of the transaction; or
- (b) If such securities were named in an order received by the specialist in any other manner, the specialist shall indicate on the copy of the order ticket to be returned to the member or member organization that he executed the order as principal.

Rule 156. Representation of Orders

(c) The acceptance of a market at the close (MOC) order by a broker makes the broker responsible for an execution at the Exchange's closing price, and if the order can not be so executed, it is to be cancelled. A broker handling a limit at the close (LOC) order is to use due diligence to execute the order at the Exchange's closing price if that closing price is at the order's limit price, or better, and if the order can not be so executed, in whole or in part, the amount of the order not so executed is to be cancelled. Cancellation of MOC and LOC orders will only occur in certain circumstances such as (1) when trading has been halted in the security and does not reopen prior to the close of the market; (2) for tick sensitive orders whose execution will violate customer instructions (i.e., to buy only on a minus or zero minus tick or to sell only on a plus or zero plus tick) or Exchange Rule 7; (3) for LOC orders, when the **Exchange [Amex]** closing price is not at the limit price or better, or (4) for tick sensitive MOC/LOC orders and LOC orders, all of which are limited to an execution at the closing price, the limited quantity of shares to be traded and the rules of priority as to which orders would trade first left these orders unexecuted in whole or in part.

Rule 170. Registration and Functions of Specialists

(b) As a condition of a member's being registered as a specialist in one or more securities, it is to be understood that, in addition to the execution of commission orders entrusted to him and the performance of his obligations as an odd-lot dealer (if he is so registered) in such securities, a specialist is to engage in a course of dealings for his own account to assist in the maintenance, insofar as reasonably practicable, of a fair and orderly market on the Exchange in such securities in accordance with and when viewed in relation to the criteria set forth in paragraphs (c) and (d) of this rule and the commentary thereto. If the Exchange shall have found any substantial or continued failure by a specialist to engage in such a course of dealings, the registration of such specialist shall be subject to suspension or cancellation by the Exchange in one or more of the

securities in which he is registered. Nothing herein shall limit any other power of the Board of **Directors** [Governors] under [the Constitution or] any rule of the Exchange with respect to the registration of a specialist or in respect of any violation by a specialist of the provisions of this rule.

Rule 174. Disclosures by Specialists Prohibited

••• *Commentary* -----

.03

(b) The depth indication may be disseminated only when there is market interest, consisting of the specialist's proprietary interest as well as interest reflected by orders represented by the specialist as agent (including percentage orders), aggregating such minimum number of shares and range of prices below the published bid or above the published offer as the Exchange deems appropriate and communicates to its **members and member organizations** [membership].

Rule 184. Specialist Clerks

(a) A specialist or specialist unit shall regularly employ, subject to such rules and regulations as the Board of **Directors** [Governors] may adopt an adequate number of clerks to aid such specialist or specialist unit on the floor of the Exchange and to enable the unit to efficiently handle actual and reasonably anticipated volume in the unit's registered securities, provided each such clerk receives the approval of the Exchange. A yearly fee, as imposed by the Exchange and payable as directed by the Exchange, shall be charged the specialist or specialist unit for each clerk. No rebate shall be given with respect to the fee in the event that a specialist or specialist unit discontinues the services of such a clerk during any period.

Rule 205. Manner of Executing Odd-Lot Orders

A. Market, limited and stop orders, etc.

(1) Market Orders

[(a) A market order to buy shall be filled, unless otherwise provided herein, at the price of the adjusted ITS offer (in the case of an order to buy) or the adjusted ITS bid (in the case of an order to sell) in the security at the time the order has been received at the trading post or through the PER system. In instances in which quotation information is not available, e.g. the quotation collection or dissemination facilities are inoperable, standard, regular way

odd-lot market orders will be executed at the price of the prevailing offer (in the case of an order to buy) or bid (in the case of an order to sell) in the security in the round-lot market on the Floor of the Exchange at the time the order has been received at the trading post or through the PER system; or will be executed by the odd-lot dealer at a price deemed appropriate under prevailing market conditions.

Unless otherwise provided herein, all odd-lot market orders entered prior to the opening of trading will receive the opening price.

These procedures also shall apply to market orders to buy on the offer and market orders to sell on the bid marked "long" or "short exempt."]

[(b)] A market order to sell marked "short" shall be filled at the price of the next transaction in the round-lot market on the Floor of the Exchange following receipt of the order at the trading post or through the PER system which is higher than the last different round-lot price (i.e., a "plus" or "zero plus" tick).

••• *Commentary* -----

[.04 For the purposes of paragraph A(1)(a) of this Rule, the term "adjusted ITS bid" and "adjusted ITS offer" for a stock shall mean the highest bid and lowest offer, respectively, disseminated (i) by the Exchange or (ii) by another market center participating in the "Intermarket Trading System," as that term is defined in Rule 230; provided, however, that the bid and offer in another ITS market center will be considered in determining the adjusted ITS bid and adjusted ITS offer in a stock only if (A) the stock is included in ITS in that market center, (B) the size of the quotation is greater than 100 shares, (C) the bid or offer is no more than 25 cents away from the bid or offer, respectively, disseminated by the Exchange, (D) the quotation conforms to the requirements of Rule 127 ("Minimum Price Variations"), (E) the quotation does not result in a locked market, as the term is defined in Rule 236, (F) the market center is not experiencing operational or system problems with respect to the dissemination of quotation information, and (G) the bid or offer is "firm", that is, members of the market center disseminating the bid or offer are not relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 602 of Regulation NMS pursuant to the "unusual market" exception of paragraph (a)(3) of Rule 602 of Regulation NMS.]

Rule 220. Communications to and on the Floor

••• *Commentary* -----

.04 *Hand Held Terminal ("HHT") Policy.*

There have been significant developments in data transmission technology since the Exchange formalized its communications policies. In light of these changes, the Exchange promulgated its Hand Held Terminal Policy and built a data communications infrastructure (the "Infrastructure"). The Exchange undertook these regulatory and systems initiatives in order to: (i) facilitate the execution of orders on the Exchange, (ii) facilitate the execution by Exchange [Amex] members of hedging and other permitted transactions in other markets, (iii) facilitate risk management, trade comparison and transaction reporting, (iv) facilitate the transmission of options analytics to Exchange [Amex] members, (v) provide appropriate oversight of data communications, (vi) ensure the safety and efficient operation of the Exchange's trading systems, (vii) provide fair access for all members and the Exchange to the finite supply of available radio frequencies and system capacity, and (viii) promote a fair, orderly and efficient market for securities on the Exchange.

To further advance the policy objectives underlying the Hand Held Terminal Policy and the Infrastructure, the Exchange will require all members acting as brokers and all Registered Options Traders ("ROTs") to use HHTs in conducting business on the Exchange Floor. (Specialists acting as broker in their specialty securities will not be required to use HHTs.) The Exchange currently is developing a standard application that will reside on an HHT that it will issue to brokers for their use. Once this Exchange provided HHT system is operational, all brokers will be required to use it at all times. The Exchange, moreover, will require all ROTs to use HHTs to conduct their business. Since the Exchange does not currently plan to develop an HHT application for ROTs, ROTs must either develop or secure HHTs for their own use at such time as may be specified by the Exchange with the following minimum capabilities:

- ROTs must be able to capture the following audit trail data on their HHTs with respect to all trades they execute on the Exchange [Amex]: (1) time of trade (the clocking mechanism must be seconds), (2) executing broker badge number, (3) contra broker badge number, (4) open or closing transaction, (5) clearing member, (6) contra clearing member. ROTs must be able to report this audit trail information to their clearing agents during a trading session within time limits prescribed by the Exchange.

Sanctions for Violations of the Hand Held Terminal Policy

Violations of any aspect of the foregoing Hand Held Terminal Policy may result in disciplinary action pursuant to **[the Article V of the Exchange Constitution or]** Exchange Rules **[345 or 590]** as appropriate.

[.06 *Facilities or Services of other Exchanges on the Amex Floor for Routing Options Orders.* With the prior written approval of the Exchange, a member or member organization may use a facility or service of another registered exchange on the Amex Floor that provides a direct electronic link to the other exchange to transmit orders electronically

from the Amex Floor to the other exchanges and/or to receive orders transmitted electronically to the Amex Floor from the other exchange for the purchase or sale of Amex listed options until the permanent Options Linkage is established. Such facility or service may not be used for transmitting orders for listed equities and ETFs as the Intermarket Trading System serves as the mechanism for routing trading interest in these securities between exchanges.]

Rule 222. Revocation of Floor Wire Privilege

The Exchange may to the extent not inconsistent with the Securities Exchange Act of 1934, as amended, deny, limit or revoke approval of any telephonic or electronic communication between the Floor and any other location whenever it determines, in accordance with the procedures set forth in Rule 40, that such communication is inconsistent with the public interest, the protection of investors, or just and equitable principles of trade, or such communication has been or is being used to facilitate any violation of the Securities Exchange Act of 1934, as amended, or rules thereunder, or the Exchange [Constitution or] rules.

[Section 7. Intermarket Trading System Plan

Rule 230. Definitions

The following terms as used in the Rules of this Section 7 shall, unless the context otherwise indicates, be construed as follows:

- (a) The term "Plan" shall mean the plan providing for an intermarket communications system (the System) agreed upon by the participating market centers and approved by the Securities and Exchange Commission pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934, as amended (the Act). The purpose of the Plan is to enable the participating market centers to act jointly in planning, developing, operating and regulating the System and its applications so as to further the objectives of Congress as set forth in Section 11A(a) of the Act. By subscribing to the Plan and filing it with the Securities and Exchange Commission for approval, the Exchange has agreed to comply to the best of its ability and, absent reasonable justification or excuse, to enforce compliance by its members, with the provisions of the Plan.**
- (b) The term "System" shall mean the communications network and related equipment that link electronically the participating market centers as described in the Plan.**
- (c) The term "Eligible Security" shall mean any security admitted to dealings on a participating market center which has been designated as eligible to be traded through the System.**
- (d) The term "Intermarket Trading System" (ITS) shall mean the application of the System which permits trading in Eligible Securities between participating market centers as set forth in the Plan.**
- (e) The term "Pre-Opening Application" shall mean the application of the System which permits a specialist in one participating market center, who wishes to open his market in an Eligible Security, to obtain from other specialists registered in that security in other**

participating market centers any pre-opening interest such other specialists might decide to disclose as set forth in the Plan.

Rule 231. Intermarket Trading System Application

(a) The Intermarket Trading System (ITS) permits persons situated in different participating market centers to effect a trade in an Eligible Security admitted to dealings in both market centers by means of the issuance and acceptance of commitments to trade.

(b) A "commitment to trade" is a firm commitment to purchase or sell, as the case may be, a specified number of shares of a specified Eligible Security which is transmitted between participating market centers through the System.

(c) Any commitment to trade which is transmitted by a member to another participating market center shall be firm and irrevocable for the period of time following transmission as was chosen by the sender of the commitment, and shall, at a minimum:

- (1) identify the member transmitting the commitment and the member through whom the transaction will be cleared;
- (2) direct the commitment to a particular participating market center;
- (3) specify the security which is the subject of the commitment;
- (4) designate the commitment as either a commitment to buy or a commitment to sell;
- (5) specify the amount of the security to be bought or sold, which amount shall be for one unit of trading or any multiple thereof;
- (6) specify the price at or below which the security is to be bought or the price at or above which the security is to be sold, or specify that the commitment is a commitment to trade "at the market";
- (7) designate the commitment "short" or "short exempt" whenever it is a commitment to sell short (this will permit the short sale rule as in effect on the receiving participating market center to apply);
- (8) specify the time period during which the commitment shall be irrevocable, but if the time period is not specified in the commitment, the longer of the two options available under the Plan shall be applicable.

(d) Each commitment to trade sent through ITS (other than a commitment to trade "at the market"), if a commitment to buy, shall be priced at the offer price then being displayed from the market center to which the commitment is sent and, if a commitment to sell, shall be priced at the bid price then being displayed from such market center.

(e) The member on the Floor who made the bid or offer which is sought by a commitment to trade received on the Floor shall accept such commitment to trade up to the amount of the bid or offer, unless such bid or offer is no longer available on the Floor when the commitment to trade is received by such member or acceptance is precluded by the Rules of

the Exchange. In the event that the bid or offer which is sought by a commitment to trade is no longer available on the Floor when the commitment is received, but a new bid or offer is available on the Floor which would enable the commitment to trade to be executed at a price which is as, or more, favorable than the price specified in such commitment, then the member who has made such new bid or offer shall accept such commitment at the price, and up to the amount of, his bid or offer, unless acceptance is precluded by the Rules of the Exchange.

(f) All transactions effected through ITS shall be on a "regular way" basis. Each transaction effected through ITS shall be cleared and settled through a clearing agency registered with the Securities and Exchange Commission which maintains facilities through which ITS transactions may be compared and settled and which agrees to supply each participating market center with data reasonably requested in order to permit such market center to enforce compliance by its members with the provisions of the Act, the rules and regulations thereunder, and the rules of such market center.

(g) Any member to whom a commitment to trade received through ITS is communicated and who intends to reject that commitment shall notify the market center from which the commitment was sent of such rejection as promptly as possible.

(h) Any member who wishes to accept a commitment to trade received on the Floor shall issue a response thereto through the System. Such response must represent the contra side of the commitment and shall, at a minimum:

- (1) identify the member transmitting the response and the member through whom the transaction will be cleared;
- (2) direct the response to the market center from which the commitment was issued;
- (3) specify the amount of the security bought or sold, which amount must be equal to or less than the committed amount;
- (4) specify the price at which the commitment was accepted, which price must equal or better the committed price.

Rule 232. Pre-Opening Application Rule

(a) Definitions

- (i) "CTA Plan" means the plan filed with the Securities and Exchange Commission ("SEC") pursuant to SEC Rule 17a-15 (subsequently amended and redesignated as Rule 11Aa3-1), approved by the SEC and declared effective as of May 17, 1974, as from time to time amended.
- (ii) "Eligible Listed Security" means any security listed on the Exchange that can be traded through the System.

- (iii) **"Intermarket Trading System" ("ITS")** means the application of the System that permits intra-day trading in Eligible Listed Securities between Participant markets as set forth in the ITS Plan.
 - (iv) **"ITS Plan"** means the plan pursuant to which the Exchange, other national securities exchanges and the National Association of Securities Dealers, Inc. ("NASD") (collectively, the "Participants") act jointly in planning, developing and operating the System and its applications, as from time to time amended in accordance with its provisions, and that has been approved by the SEC pursuant to section 11A(a)(3)(B) of the Securities Exchange Act of 1934, as amended, and SEC Rule 11Aa3-2.
 - (v) **"Network A Eligible Security"** has the meaning assigned to that term in the CTA Plan.
 - (vi) **"Network B Eligible Security"** has the meaning assigned to that term in the CTA Plan.
 - (vii) **"Participant('s) Market"** means each Exchange Market and the ITS/CAES Third Market.
 - (viii) **"Pre-Opening Application"** means the application of the System that permits a market maker in one Participant market who wishes to open his market in an Eligible Listed Security to obtain from other market makers registered in that security in other Participant markets any pre-opening interests such other market makers might decide to disclose as set forth in the ITS Plan.
 - (ix) **"Previous day's consolidated closing price"** means the last price at which a transaction in a security was reported by the consolidated last sale reporting system on the last previous day on which transactions in the security were reported by such system; provided, however, that the Exchange may specify that the "previous day's consolidated closing price" for all network B Eligible Securities shall be the last price at which a transaction in the stock was reported by the Amex, if because of unusual market conditions, the Amex price is designated as such pursuant to the ITS Plan.
 - (x) **"System"** means the communications network and related equipment that links electronically the Participant markets as described in the ITS Plan.
- (b) **Openings on the Exchange**
- (i) **Notification Requirements**
 - (A) **Applicable Price Change**
 - (1) **Initial Notification**—Whenever an Exchange specialist, in arranging an opening transaction on the Exchange in any Eligible Listed Security, anticipates that the opening transaction on the Exchange will be at a price that represents a change from the security's previous day's consolidated closing price of more than the "applicable price change" (as defined below), he shall notify the other Participant markets of the situation by sending a "pre-opening notification" through the System. Thereafter, the specialist shall not open the

security in his market until not less than three minutes after his transmission of the pre-opening notification. The "applicable price changes" are:

Consolidated	Applicable Price
Closing Price	Change \$ (More Than)
Network A Under \$15	1/8 point or, for stocks trading in decimals, .10.
\$15 or over *	1/4 point or, for stocks trading in decimals, .25.
Network B Under \$5	1/8 point or, for stocks trading in decimals, .10
\$5 or over	1/4 point or, for stocks trading in decimals, .25.**

* If the previous day's consolidated closing price of a Network A eligible Security exceeded \$100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the "applicable price change" is one dollar.

** If the previous day's consolidated closing price of a Network B Eligible Security exceeded \$75 and the security is not a Portfolio Depositary Receipt, Index Fund Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the "applicable price change" is one dollar.

—A pre-opening notification shall

- (A) be designated as a pre-opening notification ("IND"),
- (B) identify the Exchange ("X"), the Exchange specialist and the security ("XYZ"), and
- (C) indicate the "applicable price range" by being formatted as a standardized pre-opening administrative message as follows:

IND X /XYZ [RANGE]

The price range shall not exceed the "applicable price range" shown below:

<i>Security</i>	<i>Consolidated Closing Price</i>	<i>Applicable Price Range</i>
Network A	Under \$50	1/2 point or, for stocks trading in decimals, .50
	\$50 or over ***	1 point or, for stocks trading in decimals, \$1
Network B	Under \$10	1/2 point or, for stocks trading in decimals, .50
	\$10 or over	1 point or, for stocks trading in decimals, \$1 ****

***** If the previous day's consolidated closing price of a Network A Eligible Security exceeded \$100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the "applicable price range" is two dollars.**

****** If the previous day's consolidated closing price of a Network B Eligible Security exceeded \$75 and the security is not a Portfolio Depositary Receipt, Index Fund Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the "applicable price range" is two dollars.**

The price range also shall not straddle the previous day's consolidated closing price, although it may include it as an endpoint (e.g. a 1/8~5/8 or, for stocks trading in decimals, 40.15-40.65 price range would be permissible if the previous day's consolidated closing price were 1/8 or 5/8 or, for stocks trading in decimals, 40.15-40.65 but not if the closing price were 1/4, 3/8 or 1/2 or, for stocks trading in decimals, a price range of 40.16-40.64).

(2) Subsequent Notifications—If, after sending a pre-opening notification, the situation in an Exchange specialist's market changes, he may have to issue a subsequent pre-opening notification. The three situations requiring subsequent notifications are described below. Subsequent pre-opening notifications shall be standardized pre-opening administrative messages. After sending a subsequent notification, the specialist shall wait either (A) one minute or (B) until the balance of the original three-minute waiting period expires, whichever is longer, before opening his market (i.e., if more than one minute of the initial waiting period has not yet expired at the time the subsequent notification is sent, the specialist must wait for the rest of the period to pass before opening his market).

(I) Increase or Decrease in Applicable Price Range—Where, prior to the specialist's opening of his market in the security, his anticipated opening price shifts so that it (1) is outside of the price range specified in his pre-opening notification but (2) still represents a change from the previous day's consolidated closing price of more than the applicable price change, he shall issue a replacement pre-opening notification (an "additional" notification) through the System before opening his market in the security. An additional notification contains the same kind of information as is required in an original pre-opening notification.

(II) Shift to within Applicable Price Change Parameter—(a) The specialist shall, by issuing a "cancellation" notification through the System, notify the Participant market(s) of the receiving market maker(s) prior to opening the security if the price at which he anticipates opening his market shifts so that it (1) is outside of the price range specified in his pre-opening notification but (2) does not represent a change from the previous day's consolidated closing price of more than the applicable price change.

(b) Notwithstanding the preceding sentence, in situations where the price range in an initial or additional, notification includes price variations equal to or less than the applicable price change parameters, the "cancellation" notification signifies that the anticipated opening price: (1) may or may not be outside of the price range specified in the pre-opening notification and (2) does not represent a change from the previous day's consolidated closing price of more than the applicable price change. ****

(III) Participation as Principal Precluded ("Second Look")—If a responding market maker who has shown in his pre-opening response interest as principal at a price better than the anticipated opening price would be precluded from participation as principal in the opening transaction (e.g., his responding principal interest is to sell at a price 1/8 or more, or, for stocks trading in decimals, .01 or more below the opening price established by paired agency orders), the specialist shall send a "second look" notification through the System notifying such responding market maker of the price and size at which he could participate as principal (i.e., in the parenthetical example above, the total amount of the security that he would have to sell at the 1/8-better price to permit the opening transaction to occur at that price). Any Amex System security whose issuer is domiciled in Canada and that is listed on any Canadian stock exchange shall be exempted from this "second look" notification requirement.

(B) Tape Indications—If the CTA Plan or the Exchange's rules require or permit that an "indication of interest" (i.e., an anticipated opening price range) in a security be furnished to the consolidated last sale reporting system prior to the opening of trading, or the reopening of trading following a halt or suspension in trading in one or more Eligible Listed Securities, then the furnishing of an indication of interest, in such situations shall, without any other additional action required of the specialist, (1) initiate the Pre-Opening process, and, (2) if applicable, substitute for and satisfy the requirements of paragraphs (b)(i)(A)(1), (b)(i)(A)(2)(I) and (b)(i)(A)(2)(II). (While the furnishing of an indication of interest to the consolidated last sale reporting system satisfies the notification requirements of this rule, a specialist should also transmit the indication through the System in the format of a standardized pre-opening administrative message.) In any such situation the specialist shall not open or reopen the security until not less than three minutes after his transmission of the opening or reopening indication of interest. For the purposes of paragraphs (b)(ii)(A), (b)(ii)(B), (b)(iii) and (c), "pre-opening notification" includes an indication of interest furnished to the consolidated last sale reporting service.

(ii) Pre-Opening Responses

(A) Decision on Opening Transaction—Subject to paragraph (b)(ii)(B), if an Exchange specialist who has issued a pre-opening notification receives "pre-opening responses" through the System containing "obligations to trade" from market makers in other Participant markets ("responding market makers"), he shall combine those obligations with orders he already holds in the security and, on the basis of this aggregated information, decide upon the opening transaction in the security. If the specialist has received more than one pre-opening response from a Participant market, he shall include in such combination only those obligations to trade from such Participant market as are specified in the most recent response, whether or not the most recent response expressly cancels the preceding response(s). An original or revised response received after the specialist has effected his opening transaction shall be to no effect.

(B) Pre-Opening Responses from Open Markets—An Exchange specialist must accept only those pre-opening responses sent to the Exchange by market makers in other Participant markets prior to the opening of their markets for trading in the security. Following a halt or suspension in trading on the Exchange, a specialist must accept only those pre-opening responses sent by market makers to the Exchange from other Participant markets that halted trading in the security contemporaneously with the Exchange and that had not resumed trading in the security at the time the pre-opening response is sent.

In the event that one or more market makers from Participant markets that have already opened trading in a security or, with respect to a halt or suspension in trading either did not halt trading in a security contemporaneously with the Exchange, or has already resumed trading in a security, respond to a pre-opening notification in that security, the specialist need not, but may in his discretion, accept such responses for the purpose of inclusion in the opening or reopening transaction. In the event that a Participant market opens or, with respect to a halt or suspension in trading resumes trading in a security subsequent to a market maker in that Participant market sending a pre-opening response but prior to the opening or reopening transaction on the Exchange, the market maker who sent the pre-opening response to the Exchange must confirm the pre-opening response by sending an administrative message through the System stating that the response remains valid; if the market maker fails to so confirm the pre-opening response, the specialist need not, but may in his discretion, accept the original response for the purpose of inclusion in the opening or reopening transaction.

(C) Allocation of Imbalances—Whenever pre-opening responses from one or more responding market makers include obligations to take or supply as principal more than 50 percent of the opening imbalance, the Exchange specialist may take or supply as principal 50 percent of the imbalance at the opening price, rounded up or down as may be necessary to avoid the allocation of odd lots. In any such case, where the pre-opening response is from more than one responding market maker, the specialist shall allocate the remaining imbalance (which may be greater than 50 percent if the specialist elects to take or supply less than 50 percent of the imbalance) among them in proportion to the amount each obligated himself to take or supply as principal at the opening price in his pre-opening response, rounded up or down as may be necessary to avoid the allocation of odd lots. For the purpose of this paragraph (b)(ii)(C), multiple responding market makers in the same Eligible Listed Security in the same Participant market shall be deemed to be a single responding market maker.

(D) Treatment of Obligations to Trade—In receiving a pre-opening response, an Exchange specialist shall accord to any obligation to trade as agent included in the response the same treatment as he would to an order entrusted to him as agent on the Exchange at the same time such obligation was received.

(E) Responses Increasing the Imbalance—An Exchange specialist shall not reject a pre-opening response that has the effect of further increasing the existing imbalance for that reason alone.

(iii) Reports of Participation—Promptly following the opening in any security as to which an Exchange specialist issued a pre-opening notification, the specialist shall report to each Participant responsible for a market in which one or more responding market makers are located (A) the amount of the security purchased and/or sold, if any, by the responding market maker(s) in the opening transaction and the price thereof or (B) if the responding market maker(s)'s response included agency or principal interest at the opening price that did not participate in the opening transaction, the fact that such interest did not so participate.

(c) Openings in Other Participant Markets

(i) Pre-Opening Responses—Subject to paragraph (c)(ii), whenever an Exchange specialist who has received a pre-opening notification as provided in the ITS Plan in any

Eligible Listed Security as to which he is registered as a specialist wishes to participate in the opening of that security in the Participant market from which the pre-opening notification was issued, he may do so by sending obligations to trade through the System to such Participant market in a pre-opening response. A pre-opening response shall

- (A) be designated as a pre-opening response ("RES"),
- (B) identify the Exchange ("X") the specialist and the security ("XYZ"), and
- (C) show the specialist's interest (if any), both as principal for his own account ("P") and as agent for orders left with him ("A"), at each price level within the price-range indicated in the pre-opening notification (e.g., 403/8 or, for stocks trading in decimals, 40.40), reflected on a netted share basis

by being formatted as a standardized pre-opening administrative message as follows:

RES X/XYZ BUY [SELL] A—P 403/8 (or, for stocks trading in decimals, 40.40)

The response may also show market orders separately.

(ii) **Responses When the Exchange is Open**—Notwithstanding paragraph (c)(i), an Exchange specialist who has received a pre-opening notification in any Eligible Listed Security in which he is registered as a specialist should not send a pre-opening response to the originator of such notification if (A) the market for trading in the security is open on the Exchange or (B) the Participant market from which the notification emanated had declared a halt or suspension in trading in such security, and the Exchange either had not halted trading in the security contemporaneously with the Participant market or had resumed trading during the halt or suspension in trading.

(iii) **Revised Responses**—An Exchange specialist may cancel or modify his pre-opening response by sending through the System a revised response that cancels the obligations to trade contained in his original response and, if a modification is desired, that substitutes new obligations to trade stating the specialist's aggregate interest (i.e., his interest reflected in the original response plus any additional interest and/or minus any withdrawn interest) at each price level. Each succeeding response, even if it fails to expressly cancel its predecessor response, shall supersede the predecessor response in its entirety. Any revised response shall be to no effect if received in the Participant market from which the pre-opening notification was issued after the security has opened in such Participant market.

(iv) **Sole Means of Pre-Opening Routing**—Once a pre-opening notification as to any security is received on the Exchange, the one or more Exchange specialists in such security shall submit any obligations to trade that security as principal for his or their own accounts to the Participant market from which the pre-opening notification was issued only through the Pre-Opening Application and shall not send orders to trade that security for his or their own accounts to such Participant market for participation at the opening in that market by any other means. The foregoing sentence shall have no application to orders sent to that market by the specialist(s) prior to the issuance of a pre-opening notification.

(v) **Use of System before Opening or Reopening**—No Exchange member, whether acting as principal or agent, shall send an obligation to trade, commitment to trade or order in any security from the Exchange through the System to any other Participant market prior to the opening of trading in the security in the Participant market (or prior to the resumption

of trading in the security in the Participant market following the initiation of a halt or suspension in trading in the security) until a pre-opening notification in the security has been issued from the other Participant market, or, if no pre-opening notification is required, until the market in the security has opened in such other Participant market.

(vi) **Duration of Obligations to Trade**—Responses to pre-opening notifications shall be voluntary, but each obligation to trade that an Exchange specialist includes in any pre-opening response, or in any modification of a pre-opening response, shall remain binding on him, and on any person for whom he is acting, until the security has opened in the Participant market from which the pre-opening notification was issued or until a cancellation or modification of such obligation has been received in such Participant market, and any such modification shall itself be binding on the Exchange specialist or such person until a subsequent cancellation or modification thereof has been received in such Participant market. The preceding sentence applies to obligations to trade even if included in pre-opening responses contravening paragraph (c)(ii).

(vii) **Request for Participation Reports**—The ITS Plan anticipates that an Exchange member who has sent one or more obligations to trade in response to a pre-opening notification will request a report through the System as to his participation if he does not receive a report as required promptly following the opening. If, on or following trade date, he does request a report through the System as to his participation before 4:00 p.m. Eastern Time, and he does not receive a response by 9:30 a.m. Eastern Time on the next day, he need not accept a later report. If he fails to so request a report, he must accept a report until 4:00 p.m. Eastern Time on the third trading day following the trade date (i.e., on T+3). The Exchange does not intend this paragraph (c)(vii) to relieve him of the obligation, when he does not receive a report, to request a report as soon as he reasonably should expect to have received it.

••• *Commentary* -----

.10 For purposes of this rule, the market in a security is opened (or reopened) with either a trade or quotation, if trades are being reported to the Consolidated Tape and quotes are being disseminated to the Consolidated Quotation System.

Rule 233. Application of Exchange Rules

Any commitment or obligation to trade received on the Floor through ITS or any other application of the System, and any execution thereof and any commitment to trade issued by a member through ITS shall be subject to such rules as the Exchange may from time to time determine.

••• *Commentary* -----

.10 No member shall accept a commitment or obligation to sell designated as "short" which is received on the Floor through ITS or any other application of the System if the resulting transaction would violate the short selling rules applicable on the Exchange.

.20 Any acceptance of a commitment or obligation to trade received on the Floor through ITS or any other application of the System shall comply with the rules applicable to the making of bids and offers and transactions on the Floor, except where the context otherwise requires. In addition, the following rules shall be applicable in the case where commitments or obligations to trade are issued (transmitted) from the Floor of the Exchange: Rules 22,

24, 100, 101, 103, 104, 105, 110, 150, 153, 155, 170(e), 175(b), 177, 180, 190(c) and (e), 191, 203, 701, and 720.

.30 Exchange rules concerning members' responsibility in the execution of orders require that where an order is to be executed on the Floor, it must be represented in the Trading Crowd and executed at the post at which the security is traded. These rules apply to members seeking to issue commitments to trade from the floor, and members are thereby required to make the existence of a bid or offer generally known and represent an order in the Trading Crowd, prior to directing that a commitment to trade be issued from the Floor.

Rule 234. Clearing of System Transactions

(a) As used in this Rule 234 and Rule 235 the term "System trade" shall mean any purchase or sale of a security which results from the acceptance of a commitment or obligation to trade received on the Floor through ITS or the Pre-Opening Application or from the acceptance in another market of a commitment or obligation to trade sent from the Floor through ITS or the Pre-Opening Application.

(b) Each System trade shall be reported on the clearing tape generated by the System at the end of each trading day. Such tape shall also identify one or more clearing members who will clear and settle each System trade. The member on the Floor who instructed the ITS Clerk (defined in Rule 235) to issue or accept the commitment or obligation to trade which resulted in the System trade reported on the clearing tape ("instructing member") shall also be identified in Exchange records.

(c) Clearing members shall report each day's System trades to the agency through which they clear, along with all other trade input for that trade date. The participating market center which supplied the contra side of the System trade shall be designated by the clearing member as the contra party to the trade.

(d)(1) Whenever any System trade as reported by the clearing tape continues to be unresolved at the opening of the first business day following the trade date, notwithstanding the routine comparison procedures employed by the clearing agency to which such System trade was reported, the Exchange shall be notified of the uncomparing System trade so as to be able to conduct appropriate inquiries on the Floor. The instructing member shall cooperate with the Exchange in the course of its on-Floor inquiries and shall comply with such procedures as the Exchange may from time to time prescribe in an attempt to identify the member or member organization who knows the uncomparing System trade. If the on-Floor inquiries conducted by the Exchange fail to identify the member or member organization who knows the uncomparing System trade, but the inquiries confirm to the satisfaction of the Exchange that Exchange records were accurate in their identification of the instructing member, and that the instructing member did instruct the ITS Clerk to issue or accept the commitment or obligation to trade which resulted in the uncomparing System trade as included on the clearing tape, then the instructing member shall accept and honor the trade or shall cause a member organization to do so in his behalf.

(2) If the on-Floor inquiries conducted by the Exchange identify to the satisfaction of the Exchange a member, other than the member indicated on Exchange records as the instructing member, as the person who instructed the ITS Clerk to issue or accept the commitment or obligation to trade which resulted in the uncomparing System trade as

included on the clearing tape, then such other member shall accept and honor the trade or shall cause a member organization to do so in his behalf.

(3) If the on-Floor inquiries conducted by the Exchange fail to identify the member or member organization who knows the uncomparing System trade, and also fail to satisfy the Exchange as to the identity of the member who instructed the ITS Clerk to issue or accept the commitment or obligation to trade which resulted in the uncomparing System trade as included on the clearing tape, then the Exchange shall, for its own account, accept and honor the uncomparing System trade and may take such action in the market to close out or offset its position as it may deem appropriate.

(e) Whenever a clearing agency to which a System trade has been reported excludes such System trade from the clearance procedures conducted by such agency, either because such agency ceases to act (either with respect to transactions generally or as to a particular transaction) for a member or member organization, or because of the insolvency of such member or member organization, the Exchange may, but shall not be obligated to, assume and honor any one or more or all of such excluded System trades for the account of and on behalf of the member or member organization for which the clearing agency ceased to act or which is insolvent and the Exchange may take such action in the market to close out or offset its position as it may deem appropriate. In any such case, the Exchange shall have a claim against such member or member organization in the amount of the loss incurred by the Exchange as a result of such assumption of such excluded System trades. The Exchange may assert such claim against such member or member organization in any appropriate forum and, without limiting the generality of the foregoing, in connection with the transfer of any membership by such member, or by any member who is associated with such member organization, such claim shall be entitled to priority in payment as a sum due the Exchange under the provisions of Section 4(e) of Article IV of the Constitution.

Rule 235. Transmission and Reception of System Messages; Exchange Liability

(a) For the convenience of members on the Floor, the Exchange shall furnish employees ("ITS Clerks") who shall, on behalf of such members, send and receive through the System commitments and obligations to trade, pre-opening notifications and responses thereto. The Exchange shall not be liable for any loss, expense or damage resulting from or claimed to have resulted from the errors or omissions of its ITS Clerks except in accordance with the provisions of and subject to the limitations set forth in this Rule 235.

(b) All errors and omissions made by one or more ITS Clerks with respect to any single System trade or proposed System trade shall give rise to a single claim against the Exchange by the on-Floor member who instructed the ITS Clerk or Clerks who made the errors or omissions for all lost, cost, damage or expense (hereinafter called "loss") suffered by such member, or any other member organization for which he acted, as a result of such errors and omissions, but only to the extent and as provided in this Rule 235, and the Exchange shall be free to assert any defense to such claim it may have.

(c)(i) A member is responsible for communicating instructions to the ITS Clerk as to the message he desires to have transmitted through the System in a clear and accurate manner, on such forms as the Exchange may provide for that purpose. Such member (the "instructing member") shall be responsible for ensuring that his message is entered into the System correctly and for discovering and correcting any error or omission in entry of the

message. No claim shall arise as to errors or omissions which are found to have resulted from any failure by a member (whether or not such member is a party to the claim against the Exchange pursuant to this Rule 235) to place or cancel a message clearly and accurately with the ITS Clerk on a timely basis, in writing on such form or forms as the Exchange may provide for such purpose, and containing such information as may be required by the Exchange from time to time in connection with such message.

(ii) It shall be the responsibility of the instructing member to keep abreast of the status of the message. The ITS Clerk shall not be responsible for keeping the instructing member advised as to the status of his message, except that the ITS Clerk shall be responsible for responding as promptly as possible to the instructing member's inquiry concerning his message.

(iii) No claim shall be allowed if, in the opinion of the arbitration panel provided for in subparagraph (e) of this Rule 235, the member making such claim did not, promptly on discovery of the error or omission, take all proper steps to correct such error or omission and to establish and mitigate the loss resulting therefrom.

(d) Any claim for loss arising from errors or omissions of an ITS Clerk or Clerks shall be presented in writing to the Exchange no later than the opening of trading on the next business day following the day on which the error or omission giving rise to the loss occurred or within such longer period as the Exchange shall consider equitable under the circumstances.

(e) All disputed claims shall be referred for binding arbitration to an arbitration panel and the decision of a majority of the arbitrators selected to hear and determine the controversy shall be final and there shall be no appeal to the Board of Governors from the decision of such panel. The arbitration panel shall be composed of an odd number of panelists. Each of the parties to the dispute shall select one member or allied member to serve as panelist on the arbitration panel. The panelists so selected shall then select one or more additional panelist(s); provided that the additional panelist(s) so selected are either members or allied members of the Exchange, and provided further that no member of the arbitration panel may have any direct or indirect financial interest in the claim. In the event that the initial panelists selected by the parties to the dispute cannot agree on the selection of the additional panelist(s), such additional panelist(s) shall be appointed by a Floor Official, selected by lot from a roster of Floor officials having no direct or indirect financial interest in the claim. Each party to the dispute may make oral and written submissions and present witnesses to the arbitration panel. To the extent not inconsistent with the provisions of this Rule 235 the provisions governing arbitration contained in Article VIII of the Constitution shall apply to proceedings under this subparagraph (e).

(f) The Exchange shall not be liable for any loss, resulting from or claimed to have resulted from the errors or omissions of its ITS Clerks except with respect to claims against it under this Rule and to the extent provided in this subparagraph (f).

(i) As to any single claim, the Exchange shall not be liable in excess of the larger of \$10,000 or the amount of the recovery obtained by the Exchange as a result of the errors or omissions giving rise to such claim under any applicable insurance maintained by the Exchange; or

(ii) As to any number of single claims by any one or more members growing out of errors or omissions made by any one or more, or all, ITS Clerks, in the aggregate, on a single

trading day, the Exchange shall not be liable in excess of the larger of \$50,000 or the amount of the recovery obtained by the Exchange as a result of the errors or omissions giving rise to all such claims under any applicable insurance maintained by the Exchange.

(iii) As to any number of single claims by any one or more members growing out of errors or omissions made by any one or more, or all, ITS Clerks, in the aggregate, during a single calendar month, the Exchange shall not be liable in excess of the larger of \$100,000 or the amount of the recovery obtained by the Exchange as a result of the errors or omissions giving rise to such claim under any applicable insurance maintained by the Exchange.

If the number of claims growing out of errors or omissions made by any one or more, or all, ITS Clerks, in the aggregate, during a single calendar month, cannot be fully satisfied because any single claim or all such claims in the aggregate exceed the maximum amount of liability provided for in subparagraph (iii) above, then such maximum amount shall be allocated among all such claims based upon the proportion that each such claim bears to the sum of all such claims. Thereafter, if all claims arising on a single trading day (reduced to reflect any allocation made in accordance with the preceding sentence) cannot be fully satisfied because any single claim or all such claims in the aggregate exceed the maximum amount of liability provided for in subparagraph (ii) above, then such maximum amount shall be allocated among all such claims based upon the proportion that each such claim bears to the sum of all such claims.

Rule 236. Trade Through Rule

(a) Definitions

(1) An "Exchange trade-through", as that term is used in this Rule, occurs whenever a member on the Exchange initiates the purchase on the Exchange of a security traded through ITS (an "ITS Security") at a price which is higher than the price at which the security is being offered (or initiates the sale on the Exchange of such a security at a price which is lower than the price at which the security is being bid for) at the time of the purchase (or sale) in another ITS participating market center as reflected by the offer (bid) then being displayed on the Exchange from such other market center. The member described in the foregoing sentence is referred to in this Rule as the "member who initiated an Exchange trade-through".

(2) A "third participating market center trade-through", as that term is used in this Rule, occurs whenever a member on the Exchange initiates the purchase of an ITS Security by sending a commitment to trade through the System and such commitment results in an execution at a price which is higher than the price at which the security is being offered (or initiates the sale of such a security by sending a commitment to trade through the System and such commitment results in an execution at a price which is lower than the price at which the security is being bid for) at the time of the purchase (or sale) in another ITS participating market center as reflected by the offer (bid) then being displayed on the Exchange from such other market center. The member described in the foregoing sentence is referred to in this Rule as the "member who initiated a third participating market center trade-through".

(3) A "trade-through", as that term is used in this Rule, means either an Exchange trade-through or a third participating market center trade-through.

(4) A "locked market", as that term is used in this Rule, occurs whenever the Exchange disseminates a bid (offer) for an ITS Security at a price that equals or exceeds (is less than) the price of the offer (bid) for the security then being displayed from another ITS participating market center (the "locked offer (bid)"). This Rule refers to the bid (offer) that causes the locked market as the "locking bid (offer)".

••• *Commentary* -----

.01 The terms "Exchange trade-through" and "third participating market center trade-through" do not include the situation where a member who initiates the purchase (sale) of an ITS Security, at a price which is higher (lower) than the price at which the security is being offered (bid) in another ITS participating market, sends contemporaneously through ITS to such ITS participating market a commitment to trade at such offer (bid) price or better and for at least the number of shares displayed with that market center's better-priced offer (bid). A trade-through complaint sent in these circumstances is not valid, even if the commitment sent in satisfaction cancels or expires, and even if there is more stock behind the quote in the other market.

.02 The term "locked market" does not include the situation where a member responsible for the dissemination of a bid (offer) for an ITS Security, at a price that equals or exceeds (is less than) the price of the offer (bid) for the security then being displayed from another ITS participating market, sends contemporaneously through ITS to such ITS participating market a commitment to trade at such offer (bid) price or better and for at least the number of shares displayed with that market center's offer (bid). A locked market complaint sent in these circumstances is not valid, even if the commitment sent in satisfaction cancels or expires, and even if there is more stock behind the quote in the other market.

(5) As used in this Rule in reference to the Cincinnati Stock Exchange, Inc. ("CSE"), a *contra* party shall be "within another ITS participating market center" if he is a "User" (which has the meaning assigned to it in CSE Rule 11.9 as in effect on January 26, 1981) participating in the transaction through the CSE's "National Securities Trading System".

(6) "ITS/CAES Market Maker", as that term is used in this Rule, means a NASD member that is registered as a market maker with the NASD for the purposes of the Applications with respect to one or more specified System securities.

(b) Trade-Throughs

(1) When purchasing or selling, either as principal or agent, any ITS Security on the Exchange or by issuing a commitment to trade through the System, members on the Exchange should avoid initiating a trade-through unless one or more of the provisions of paragraph (b)(3) below are applicable.

(2)(A) Except as provided in paragraph (b)(3) below, if a trade-through occurs and a complaint thereof is received by the Exchange through the System from the party whose bid or offer was traded-through (the "aggrieved party"), then:

- (a) except as provided in paragraph (b)(2)(A)(ii) below, (a) the member who initiated the trade-through shall satisfy, or cause to be satisfied, through the System the bid or offer traded-through in its entirety either at the price of such bid or offer or at the price that caused the trade-through (as determined in accordance with

paragraph (b)(2)(B) below) or (b) if he elects not to do so (and, in the case of a third participating market center trade-through, he obtains the agreement of the *contra* party within the ITS participating market center that received the commitment that caused the trade-through), then the price of the transaction that constituted the trade-through shall be corrected to a price at which a trade-through would not have occurred and the price correction shall be reported through the consolidated last sale reporting system; or

- (b) in the case of an Exchange trade-through only, if the member who initiated the trade-through and the member on the *contra* side of the transaction had each originated his side of the transaction while on the Exchange for his own account or for any account in which he has an interest, the transaction shall be deemed void and a cancellation thereof shall be reported through the consolidated last sale reporting system.

(B) The price at which the bid or offer traded-through shall be satisfied pursuant to clause (a) of paragraph (b)(2)(A)(i) shall be the price of such bid or offer except if (i) the transaction that constituted the trade-through was of "block size" but did not constitute a "block trade" (as those terms are defined in the Exchange's ITS Block Trade Policy) and (ii) the member who initiated the trade-through did not make every reasonable effort to satisfy, or cause to be satisfied, through the System the bid or offer traded-through at its price and in its entirety within two (2) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system. In the case of such exception, the price at which the bid or offer traded-through shall be satisfied shall be the price that caused the trade-through.

(C) Whenever paragraph (b)(2)(A)(i) applies, if the member who initiated the trade-through, or the member (or the broker-dealer within another ITS participating market center) on the *contra* side of the transaction, was, or if both such parties were, executing (in whole or in part) orders that originated from off their respective floors (or, in the case of a *contra* party who is a User or an ITS/CAES Market Maker, as to which he acts as agent for another person), each such order or portion thereof that was executed in the transaction that constituted the trade-through (whether such order or portion thereof was executed by the member who initiated the trade-through or by the member) or the broker-dealer within another ITS participating market center) on the *contra* side of the transaction) shall receive the price that caused the trade-through, or the price at which the bid or offer traded-through was satisfied, if it was satisfied, pursuant to clause (a) of paragraph (b)(2)(A)(i), or the adjusted price, if there was an adjustment, pursuant to clause (b) of paragraph (b)(2)(A)(i), whichever price is most beneficial to the order or portion. Resulting money differences shall be the liability of the member who initiated the trade-through.

(3) Paragraph (b)(2) above shall not apply under the following conditions:

- (A) the size of the bid or offer traded-through was for 100 shares;
- (B) the member who initiated the trade-through made every reasonable effort to avoid the trade-through, but was unable to because of a systems/equipment failure or malfunction;
- (C) the transaction which constituted the trade-through was not a "regular way" contract;

- (D) the trade-through was an Exchange trade-through and occurred during a period when, with respect to the ITS Security which was the subject of the trade-through, members on the Exchange were relieved of their obligations under paragraph (c)(2) of the Rule 11Ac1-1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1-1; provided, however, that, unless one of the conditions of paragraph (b)(3) of this Rule (other than that of this subparagraph (D)) applies, during any such period members shall make every reasonable effort to avoid trading-through any bid or offer displayed on the Exchange from another ITS participating market center whose members are not so relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1-1;
 - (E) the bid or offer traded-through was being displayed from another ITS participating market center whose members were relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1-1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1-1;
 - (F) the bid or offer traded-through had caused a locked market in the ITS Security which was the subject of such bid or offer;
 - (G) in the case of an Exchange trade-through, a complaint with respect to the trade-through was not received by the Exchange through the System from the aggrieved party promptly following the trade-through and, in any event, within five (5) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system; or
 - (H) in the case of a third participating market-center trade-through, either:
 - (i) the member who initiated the trade-through (a) had sent a commitment to trade promptly following the trade-through that satisfies the bid or offer traded-through and (b) preceded the commitment with an administrative message stating that the commitment was in satisfaction of a third participating market center trade-through, or
 - (ii) a complaint with respect to the trade-through was not received by the Exchange through the System from the aggrieved party promptly following the trade-through, and, in any event, within ten (10) minutes from the time the aggrieved party sent a complaint through the system to the ITS participating market center that received the commitment to trade that caused the trade-through, which first complaint must have been received within five (5) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system.
- (c) Responsibilities and Rights following Trade-Through Complaints
- (1) When a trade-through complaint is received by the Exchange, the member who initiated the trade-through shall respond as promptly as practicable to the aggrieved party. Such a response shall notify the aggrieved party either

- (A) that one of the conditions specified in paragraph (b)(3) of this Rule is applicable (specifying the particular condition), or
- (B) that the complaint is valid and appropriate corrective action is being taken pursuant to paragraph (b)(2) of this Rule.

(2) If it is ultimately determined that there was a trade-through, that the corrective action required by either paragraph (b)(2)(A)(i) or (b)(2)(A)(ii) above was not taken, and that none of the conditions of paragraph (b)(3) above was applicable, the member who initiated the trade-through shall be liable to the aggrieved party for the lesser of:

- (A) the amount of the actual loss proximately caused by the trade-through and suffered by the aggrieved party, and
- (B) the loss proximately caused by the trade-through that would have been suffered by the aggrieved party had he purchased or sold the security subject to the trade-through so as to mitigate his loss and had such purchase or sale been effected at the "loss basis price".

For purposes of this paragraph (c)(2), the "loss basis price" shall be the price of the next transaction, as reported by the high speed line of the consolidated last sale reporting system, in the security in question after one hour has elapsed from the time the complaint is received by the Exchange (or, if the complaint is so received within the last hour of trading on the Exchange on any day, then the price of the opening transaction in that security on the Exchange on the next day on which the Exchange trades that security).

(3) Any member who is an aggrieved party under the trade-through rule of another ITS participating market center may at any time at his discretion take steps to establish and mitigate any loss he might incur as a result of the trade-through of his bid or offer. If so, he shall give prompt notice to such other market center of any such action.

(4) If a complaint of a purported trade-through is received by the Exchange and the complained-of transaction resulted from a member's execution on the Exchange of a commitment to trade received from another ITS participating market center, the member should, if circumstances permit, make reasonable efforts to notify the complaining party, as promptly as practicable following receipt of the complaint, (A) that the transaction was not initiated on the Exchange and (B) of the identity of the ITS participating market center that originated the commitment. Neither compliance nor non-compliance with the preceding sentence shall be the basis for any liability of the member for any loss associated with the complained-of transaction.

(5) If a transaction that resulted from a member's execution on the Exchange of a commitment to trade constitutes a trade-through under the rules of the originating ITS participating market center, then:

- (A) if the broker-dealer on such market center who initiated the transaction requests that the Exchange member correct the price of such transaction in accordance with the counterpart in such market center's trade-through rule to paragraph (b)(2)(A)(i)(b) of this Rule, the Exchange member may, but need not, acquiesce and so correct the price; and

(B) paragraph (b)(2)(C) of this Rule shall apply as if the Exchange member were a *contra* party within the meaning of that paragraph.

(d) Locked Markets

(1)(A) Except as provided in paragraphs (d)(1)(B) and (d)(2) below, if a locked market occurs and the Exchange receives a complaint through the System from the party whose bid (offer) was locked (the "aggrieved party"), the member responsible for the locking offer (bid) (the "locking member") shall, as specified in the complaint, either promptly "ship" (i.e., satisfy through the System the locked bid (offer) up to the size of his locking offer (bid) or "unlock" (i.e., adjust his locking offer (bid) so as not to cause a locked market). If the complaint specifies "unlock," he may nevertheless ship instead.

(B) If there is an error in a locking bid or offer that relieves the locking member from his obligations under paragraph (c)(2) of Rule 11Ac1-1 and if the Exchange receives a "ship" complaint through the System from the aggrieved party, the locking member shall promptly cause the quotation to be corrected and, except as provided in paragraph (d)(2) below, he shall notify the aggrieved party through the System of the error within two minutes of receipt of the complaint on the Floor. If the locking member fails to so notify the aggrieved party, he shall promptly ship.

(2) Paragraph (d)(1) above shall not apply under the following conditions:

- (A) the locked bid or offer was for 100 shares;**
- (B) the locking bid or offer no longer prevails on the Floor at the time the complaint is received on the Floor;**
- (C) the rules of the Exchange would prohibit the issuance of a commitment to trade to satisfy the locked bid or offer;**
- (D) the locking member makes every reasonable effort to comply with paragraph (d)(1) above, but is unable to comply because of a system/equipment failure or malfunction;**
- (E) the locking bid or offer was not for a "regular way" contract; or**
- (F) the locked market occurred at a time when, with respect to the affected ITS Security, members either on the Exchange or in the ITS participating market center in which the aggrieved member is located were relieved of their obligations under paragraph (c)(2) of Rule 11Ac1-1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1-1.**

(3) Nothing in paragraph (d)(2)(B) above is intended to discourage a locking member from electing to ship if the complaint requests him to do so.

(e) Opening and Block Trades—This Rule shall not apply to (1) purchases and sales effected by members participating in an opening (or re-opening) transaction on the Exchange in an ITS Security or (2) any "block trade" as defined in the Exchange's ITS Block Trade Policy.

Block Trade Policy

(a) Definitions

(1) A "block trade", as that term is used in this Rule, means a trade on the Exchange that

(A) involves 10,000 or more shares of a common stock traded through ITS (an "ITS Security") or a quantity of any such security having a market value of \$200,000 or more ("block size");

(B) is effected at a price outside the bid or offer displayed from another ITS participating market center; and

(C) involves either

(i) a cross of block size (where the member represents all of one side of the transaction and all or a portion of the other side), or

(ii) any other transaction of block size (i.e., in which the member represents an order of block size on one side of the transaction only) that is not the result of an execution at the current bid or offer on the Exchange.

Contemporaneous transactions at the same price filling an order or orders then or theretofore represented on the Exchange by a member (including transactions resulting from commitments to trade sent by the member pursuant to paragraph (b) below) shall be deemed to constitute a single transaction for the purpose of this definition.

(2) A "current bid or offer on the Exchange," as that term is used in paragraph (a)(1)(C)(ii) above, means the price of the current quotation on the floor of the Exchange established independently of the order to buy or sell that is represented by the member.

(3) A "bid or offer displayed from another ITS participating market center" (or any derivative phrase), as that term is used in this Rule, means the current quotation from another ITS participating market center displayed on the floor of the Exchange as required by the ITS Plan, and does not include "away-from-the-market" limit orders or other interests that may be represented in such other ITS participating market center.

(b) Obligation to Send Commitments—Unless one or more of the conditions described in paragraph (c) below exist, the member representing the block-size order(s) shall at the time of execution of a block trade send, or cause to be sent, through ITS to each other ITS participating market center displaying a bid (offer) superior to the execution price a commitment to trade at the execution price and for the number of shares displayed with that market center's better-priced bid (offer).

(c) Inapplicability—Paragraph (b) above shall not apply under the following conditions:

(1) the size of the better-priced bid or offer displayed by another ITS participating market center was for 100 shares;

(2) the member representing the block-size order(s) made every reasonable effort to satisfy through ITS a better-priced bid or offer displayed by another ITS

participating market center but was unable to because of a systems/equipment failure or malfunction;

- (3) the block trade was not a "regular way" contract;
- (4) the block trade was executed during a period when, with respect to the ITS Security that was the subject of the block trade, members on the Exchange were relieved of their obligations under paragraph (c)(2) of Rule 11Ac1-1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1-1; provided, however, that, unless one of the conditions of this paragraph (c) (other than that of this subparagraph (4)) applies, members shall nevertheless make every reasonable effort during any such period to satisfy through ITS any better-priced bid or offer displayed on the Exchange from another ITS participating market center whose members are not so relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1-1;
- (5) the better-priced bid or offer was being displayed from an ITS participating market center whose members were relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1-1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1-1; or
- (6) the better-priced bid or offer had caused a "locked market", as that term is defined in Exchange Rule 236, in the ITS Security that was the subject of the block trade.

••• *Supplementary Material* -----

.10 A transaction not subject to this Rule may be subject to the trade-through provisions of Rule 236. A member who makes a bid or offer on the Exchange otherwise than in connection with a block trade may be subject to the locked markets provisions of Rule 236.

⁵⁸ For example, while the risk of a short stock position might theoretically be reduced by a "deep-out-of-the-money" long call position, there generally would not be any realistic expectation that the call would offset any appreciable amount of the risk assumed in the short stock position. In such a case the two positions would not involve a bona fide hedge for purposes of Section 11(a)(1)(D). At the same time, a transaction establishing an "in-the-money" or "near-the-money" long call position covering 100 underlying shares of stock could be a hedge transaction for purposes of Section 11(a)(1)(D) for part of a preexisting short stock position of much greater size.

The question whether particular combinations of stock positions and options positions result in risk reduction in each of the positions involves subjective judgments as to the volatility and risk characteristics of those positions. For example, "ratio" hedges are frequently used when the risk involved in a stock position is offset by the writing of options. In such ratio hedges, the number of underlying shares deliverable upon exercise of the options exceeds the number of shares in the stock position that is being hedged. The hedge ratio reflects a calculation of the relative degree of risk involved in each position. In establishing a suitable ratio, some industry participants use the "delta factor" derived from

the Black-Scholes pricing formula; the delta factor predicts price movements in an option as a function of movements in the underlying stock. Other industry participants have developed their own models. The Commission recognizes that the calculation of volatility and risk can only be approximate, and believes that, for purposes of Section 11(a)(1)(D), the determination of what constitutes an offset may be made by the use of any responsible method of calculating the risk of stock and options positions.

⁵⁹ For example, a bona fide hedge may involve essentially contemporaneous transactions in a stock and in one or more options to buy or sell that stock where the stock and option positions so acquired reduce the risks of each other. Where a bona fide hedge position is established by contemporaneous transactions, each such transaction qualifies for the hedge exemption.

In addition, the Commission recognizes that the "legging in" technique discussed above is used also in establishing hedges and that a similar "legging out" technique is used in liquidating some hedges. The Commission believes that, where either technique is used, the hedging exemption should apply on the same basis as is discussed above in connection with bona fide arbitrage. See text accompanying nn. 51-53, *supra*.

⁶⁰ A transaction to hedge a previously established position does not retroactively confer a hedge exemption on the transaction that established the original position. For example, a short stock position that had been established on February 1 could be hedged by a long call transaction on March 1. In that example, only the March 1 long call transaction could qualify as a bona fide hedge transaction. The February 1 short stock transaction would not, even though it later became involved in a hedge; if the transaction establishing the February 1 position had violated Section 11(a), the violation would not be cured by the March 1 transaction.

⁶¹ When a hedge is liquidated, the hedge exemption applies to the transaction or transactions that eliminate the hedge, regardless of whether the transaction that originally established the position being liquidated was an exempt bona fide hedge transaction. If a hedge is eliminated by liquidating all the positions at the same time, or by legging them out, each liquidating transaction qualifies for the hedge exemption. For example, where a short stock position established on February 1 was hedged contemporaneously by a long call position, or was hedged at a later time (e.g., on March 1) by such a position, both positions could be liquidated, or "legged out," under the hedge exemptions. If, on the other hand, a hedge is eliminated by liquidating only one of the positions that constitute the hedge, only that liquidating transaction qualifies for the hedge exemption; transactions liquidating the remaining positions that had formerly been, but were no longer, part of an existing hedge would not qualify for the hedge exemption (unless a hedge had been reestablished involving those positions). For example, where the hedge referred to above was eliminated by the liquidation of only the February 1 short stock position, that transaction would qualify for the hedge exemption, but the later liquidation of the March 1 long call position would not qualify under the hedge exemption (unless a hedge had been reestablished by acquiring a third position — e.g., another short stock position).

* "Dow Jones Industrial Average" is a service mark of Dow Jones & Company, Inc.

* An "approved person" is an individual or corporation, partnership or other entity which controls a member or member organization, or which is engaged in the securities business and is under common control with, or controlled by, a member or member organization or

which is the owner of a membership held subject to a special transfer agreement. (The term "approved person" is defined in Article I, Section 3(g) of the Exchange Constitution and the term "control" is defined by Exchange Definitional Rule 13).

***** Example: CTA close in a Network B security at 30. Pre-Opening Notification sent with any one of the following price ranges: 30-31; 301/8-311/8 (for securities traded in decimals, 30.10~31.10); or, 301/4-311/4 (30.25~31.25). It is then determined that the security will open at 293/4 (29.75) or 297/8 (29.85). Under paragraph (II)(a), the specialist "shall" send a cancellation notification. If it is subsequently determined that the security will open at 30, 301/8 (30.10), or 301/4 (30.25), the specialist need not reindicate the security pursuant to paragraph (II)(b).]

Office Rules

Rule 300. Filing Partnership Agreement

(a) No member shall conduct business under a firm name unless he is associated with a partnership and no member shall be associated with a member firm doing business with the public unless such member firm has at least two general partners who are active in the business; provided, however, that if by death or otherwise a member firm is reduced to one general partner, such general partner may continue business under the firm name for such period as may be allowed by the Exchange.

When a firm applies to become a member organization [or a membership owner], an 86 Trinity Permit Holder who is a natural person [regular, options principal or associate member] intends to form a firm or to become associated with an existing firm, or when an applicant for an 86 Trinity Permit [membership] is associated with a firm, other than a member firm, such member or such applicant shall file with the Exchange for its consideration and approval a copy of the partnership agreement of such firm and a statement of its financial condition in such detail as the Exchange shall require. Such financial statement shall be signed by each general partner of such firm, unless for good cause shown the signature of one or more partners shall have been waived by the Exchange.

Rule 310. Formation of or Admission to Member Organization [or Membership Owner]

Notice to Exchange

(a) Any organization which proposes to become a member organization [or membership owner], any person who proposes to form a member organization, or who proposes to become a member or allied member in an organization and any member organization which proposes to admit therein any member, allied member or approved person shall notify the Exchange in writing before any such formation or admission, and shall submit such information as may be required by the rules of the Exchange.

Filing member corporation documents

(b) The charter or certificate of incorporation and all amendments thereto, the by-laws and all amendments thereto, forms of stock certificates, any and all agreements or other documents and amendments thereto relating to the business or affairs of the member corporation [**or membership owner**] between a member corporation [**or membership owner**] and any of its stockholders or between any of the members or approved persons of a member corporation [**or membership owner**] (other than agreements relating to ordinary securities and commodities transactions), a statement of financial condition and such other information concerning a member corporation [**or membership owner**] as the Exchange shall require, shall be submitted to and be acceptable to the Exchange prior to becoming effective.

Lists to be submitted to the Exchange

(c) In the case of existing corporations making application to become member corporations [**or membership owners**], there shall be submitted to the Exchange:

- (1) A certified list of all holders of record of each class of stock, giving the name and address of the holder and the number of shares of each class of such stock held;
- (2) A certified list of all persons who are to become members, directors or approved persons; and
- (3) A certified list of all persons designated as principal executive officers of the corporation.

In the case of corporations proposed to be organized, similar information shall be submitted to the Exchange.

(d) Any person who is not a member or allied member or an employee of a member organization and who controls a member or member organization, or who engages in a securities or kindred business and is controlled by or under common control with a member or member organization, [**or who is the owner of a membership held or to be held subject to a special transfer agreement, or who is an individual who is either (i) the owner of a membership as to which a nominee has been designated, or (ii) a person who controls a pension plan which is an approved person,**] and who meets such additional requirements as the Exchange may require shall apply for approval by the Exchange as an approved person by furnishing the Exchange with such information with respect to such applicant, its history and business, its stockholders, officers, partners, trustees, and directors, any person controlling such applicant, and such other information as the Exchange may require. Each applicant shall agree:

- (1) to supply the Exchange with information with respect to such applicant's relationship and dealings with the member[, **member organization or membership owner**] with which it is associated as the Exchange may reasonably require to ascertain whether the applicant is in compliance with applicable provisions of Federal Securities Laws, the rules and regulations thereunder, and the rules of the Exchange; and
- (2) to supply the Exchange with information relating to the existence of any statutory disqualification to which the applicant or any person associated with the applicant may be subject, as defined in the Securities Exchange Act of 1934; and

- (3) to abide by such **[provisions of the Constitution and]** rules of the Exchange relating to approved persons as shall from time to time be in effect; and
- (4) to permit examinations by the Exchange, or any person designated by it, at any time or from time to time, of its books and records to verify the accuracy of the information required to be supplied herein and by the rules of the Exchange.

Rule 311. Member Organization Changes

Giving notice to Exchange

(a) Each member organization **[and membership owner]** shall give prompt written notice to the Exchange: (1) of the death, retirement or other termination of any party therein required to be approved by the Exchange; (2) of the dissolution of the member organization **[or membership owner]**; **[(3) of any acquisition or disposition of ownership of a membership which is subject to a special transfer agreement;]** **(3)** **[(4)]** of the proposed issue, redemption, retirement, purchase or sale by a member corporation **[or membership owner]** of any share of stock therein; **(4)** **[(5)]** if any of the conditions for approval of such organization as a member corporation specified in **Rule 356 [Section 2(d) and (e) of Article IV of the Constitution]** has ceased to be complied with; **(5)** **[(6)]** of any proposed change in the holdings of any stock issued by such member corporation **[or membership owner]** (other than any share of stock which is a freely transferable security) or of any subordinated debt instrument issued by such member corporation **[or membership owner]** (other than a debt instrument which is a freely transferable security); **(6)** **[(7)]** of any material change in the stockholdings of any member or approved person of such member corporation **[or membership owner]**; **(7)** **[(8)]** of any proposed change in or amendment to the charter, certificate of incorporation, by-laws or other documents or agreements of or relating to such member corporation **[or membership owner]** and its stockholders which the Exchange requires to be submitted to or filed with it; **(8)** **[(9)]** of any proposed change or amendment to the trust agreement; or **(9)** **[(10)]** any other information required by the Exchange.

Every member and member organization shall register with the Exchange an address and subsequent changes thereof where notices may be served. Any notice mailed to a member or member organization at the last address registered at the Exchange shall be presumed to have been received by such member or member organization.

A member organization shall promptly notify the Exchange in writing if it intends to designate or terminate the designation of a nominee. A member shall promptly notify the Exchange in writing if he intends to organize a member organization or to qualify an organization as a member organization. A member shall promptly notify the Exchange in writing if his member organization intends to permit another person to become a member or an approved person of such member organization. Upon receipt of such notification, the Secretary of the Exchange shall disseminate or make available to the members and member organizations by posting or other appropriate means for such period as the Board of Directors may determine: the name of the member organization intending to designate or terminate the designation of a nominee and the name of the proposed nominee or an indication that the 86 Trinity Permit is reverting to the member organization; or the names of all proposed members and all proposed approved persons of such member organization.

Giving notice to member corporation **[or membership owner]**

(b) Each member and approved person of a member corporation [**or membership owner**] shall promptly notify his member corporation [**or membership owner**] of any material acquisition or disposition of shares of stock of such corporation.

Approval of officer or director

(c) No person shall be appointed an officer or serve as a director of a member corporation [**or membership owner**] without the prior written approval of the Exchange. Principal executive officers of a member corporation [**or membership owner**] shall be persons who have been designated by the directors as having senior principal executive responsibility for one or more areas of the corporation's business, including operations, compliance with rules and regulations of regulatory bodies, finances and credit, sales, underwriting, research and administration.

••• *Commentary* -----

.10 For purposes of Sections (a) and (b) of this Rule a material acquisition or disposition of stock shall be:

(1) A transaction as a result of which any member or approved person of a member corporation [**or membership owner**] becomes or ceases to be the owner of 1% of the outstanding shares of stock of such corporation;

(2) A transaction on behalf of a member or approved person of a member corporation [**or membership owner**] involving 1% or more of the outstanding shares of stock of such corporation.

Rule 312. Capital Stock of Member Corporation

(b) Whenever a member organization shall offer or sell any security, as defined under the Securities Act of 1933, as amended, or the General Rules and Regulations thereunder (the 1933 Act), or under the blue sky law or the regulations thereunder of any state in which it is proposed that the security be offered, which security is issued by the member organization for the purpose of raising capital under Rules 470 and 471 [**of the Board of Governors of the Exchange**], the member organization must furnish the Exchange with an opinion of counsel in form and substance satisfactory to the Exchange as to whether or not the securities being offered or sold need be registered under the 1933 Act and a survey of the type customarily prepared in respect of the underwriting of securities, but not an opinion, as to what action, if any, need be taken with respect to such offer or sale under any applicable state blue sky law. If, in counsel's opinion, the securities need not be registered under the 1933 Act, his opinion shall state the exemption from the registration requirements of the 1933 Act upon which he is relying and the basis for such reliance. If the securities are required to be registered under the 1933 Act, counsel's opinion shall include, in addition to such other statements as the Exchange in any particular case may require, a statement substantially to the effect that at the time the registration statement became effective, the registration statement and the prospectus (other than the financial statements contained therein) complied as to form in all material respects with the requirements of the 1933 Act (and with the Trust Indenture Act of 1939, as amended, if applicable) and that nothing has come to counsel's attention that would lead counsel to believe that the registration statement at the time it became effective contained an untrue statement of a material fact or omitted to state a material

fact required to be stated therein or necessary to make the statements therein not misleading or that the prospectus at the time the registration statement became effective or at the time of sale of the security contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Prior to the consummation of the sale of the security, counsel shall furnish a statement to the Exchange as to the action taken in order to comply with the state blue sky law of any state in which the security is offered or sold.

Without limiting the generality of the foregoing, counsel, among other things, is expected to give appropriate consideration to (a) any other transactions pursuant to which the member organization has raised capital in the past, or expects to do so in the future, (b) the disclosure of material information regarding the member organization to offerees of the security, and (c) the need for representation by the purchaser of the securities as to his intention to hold the securities for investment.

(e)

(3) No member corporation shall issue any publicly held security in the form of non-voting common stock unless the Exchange determines that the non-voting common stock has normal and appropriate preferences which entitle it to be regarded as preferred stock.

(j) Whenever a party who is required to be approved by the Exchange as a member or approved person fails or ceases to be so approved, each member corporation shall promptly redeem or convert to a fixed income security such of its outstanding voting stock as may be necessary to reduce such party's ownership of voting stock in the member corporation below that level which enables such party to exercise controlling influence over the management or policies of such member corporation.

Each member corporation and each member and approved person of the corporation shall agree with the Exchange that if any person required to be approved by the Exchange as a member or approved person fails or ceases to be so approved, the corporation may be deprived by the Exchange of all the privileges of a member corporation unless the corporation redeems or converts the stock held by such person as required above [by Section 2(h) of Article IV of the Constitution].

Rule 313. Ownership of Interest in Another Member Organization

(a) One or more **86 Trinity Permit Holders that are member organizations** [regular or options principal member organizations] may, with the approval of the Board of **Directors** [Governors], own all of the voting stock of another **86 Trinity Permit Holder that is a member corporation** [regular, options principal or associated member corporation].

[An associate member organization may, with the approval of the Exchange, own all of the voting stock of a regular, options principal or associate member corporation.]

Members in each parent member organization referred to in this paragraph (a) may be approved as members in the controlled member corporation owned by such parent member organization, but no **86 Trinity Permit Holder who is a natural person** [regular, options principal or associate member] shall qualify more than one organization for membership.

Except as may be permitted by a rule or otherwise specifically permitted by the Board of Directors, no party shall at the same time be a member in more than one member organization.

Rule 317. Formation of Corporate Affiliates

••• *Commentary* -----

.10 Requirements for Affiliated Companies of Member Organizations.

(4) Capitalization.—Not less than 25% of the total capital of the corporate affiliate shall be in the form of capital stock. The [regular, options principal, allied and associate] members in the member organization or the member organization itself shall at all times own beneficially at least 40% of the total capitalization of the corporate affiliate, except that where the member organization is a member corporation having outstanding any freely transferable security, such ownership shall be by the member corporation itself. Such ownership shall comprise all the voting stock (except as otherwise approved by the Exchange) and may include nonvoting stocks, debentures and subordinated borrowings.

Holders of non-voting stock, debentures or notes who are not [regular, options principal, allied or associate] members of the Exchange may not receive in the aggregate in excess of 45% of the direct or indirect profits of the corporate affiliate.

(6) Participating securities—Fixed interest of members.— Since **Rule 300 [Article IV, Section 2(s), of the Constitution]** provides that each partner in a member firm and each stockholder in a member corporation must have a fixed interest in its entire business, it follows that the fixed interest of each such partner or stockholder must extend to the member organization's corporate affiliate.

Where all of the voting stock of a corporate affiliate is owned by a member corporation which has outstanding any freely transferable security, no [regular, options principal, allied or associate] member, director or employee of such member corporation shall have any direct or indirect interest in the profits of the corporate affiliate except as otherwise approved by the Exchange.

(11) Agreement of security holders.—Each holder of securities issued by a corporate affiliate must agree in writing with the corporation that whenever such holder (1) proposes to sell or dispose of any such securities, (2) retires from the member organization, (3) dies, (4) is declared incompetent or (5) terminates his employment with the member organization and the affiliate, the member organization, the **[regular, options principal or associate members and the allied]** members therein, the corporate affiliate or its stockholders, or all of them, shall have the prior right to purchase such holder's securities at the price at which they are proposed to be sold or at a price to be determined by a prescribed formula and, further, that so long as the corporation continues as a corporate affiliate such holder will not, without the prior approval of the Exchange, transfer, sell, assign, pledge or otherwise create, or permit to be created, any lien, charge or encumbrance upon his securities in the corporation.

The corporate affiliate and/or the holders of its securities must further agree with the Exchange that, if any of the corporate affiliate's voting stock which is not held by its parent member organization should at any time be acquired, held or owned by a person other than a **[regular, options principal, allied or associate]** member in good standing, or any of its other securities should at any time be held by a person not approved by the Exchange, or if any security holder should violate the agreement entered into by him pursuant to the foregoing paragraph, the member organization may be required by the Exchange to sever any and all connections with the corporate affiliate.

(14) Directors, officers and employees.—A person shall not be elected a director or appointed an officer without the prior specific approval of the Exchange and shall retain such position only so long as he shall continue to be approved by the Exchange. The directors and the president and executive vice president of a corporate affiliate should be **[regular, options principal, allied or associate]** members in the member organization in good standing and each other officer who is not a **[regular, options principal, allied or associate]** member shall file a Form U-4 with the Exchange. No employee whose duties with the corporate affiliate correspond to those of a registered representative shall be employed by such affiliate unless such person has been and continues to be approved by the Exchange as a registered representative. With the approval of the Exchange, an employee may function with both the member organization and the affiliate.

Filing With Agent—Any filing or submission required under this rule which is made with a properly authorized agent acting on behalf of the Exchange shall for purposes of this Rule be deemed to be a filing with the Exchange.

(18) Endorsement or guarantee.—No member organization or **[regular, options principal, allied or associate]** member thereof shall endorse or guarantee any obligations of the organization's corporate affiliate or voluntarily assume directly or indirectly any of the liabilities of any such affiliate.

No affiliate shall become liable jointly, or jointly and severally with any member organization with which it is affiliated or any member or allied member in any such organization.

Rule 318. Formation of Guaranteed Corporate Subsidiaries

••• *Commentary* -----

.10 Requirements for Guaranteed Corporate Subsidiaries of Member Organizations.

(1) Authority to form. —A member organization will be required to show adequate reason for forming a corporate subsidiary. All subsidiaries formed hereunder shall be fully subject to the **[Constitution,]** rules, policies, and practices of the Exchange as if they were member organizations of the Exchange. Each corporate subsidiary formed hereunder shall be required to meet the requirements of Rule 470 separately, except that the net capital required for such a subsidiary shall be not less than \$10,000. However, if such a subsidiary is a broker or dealer, the minimum net capital dollar amount requirement under Rule 470 shall apply. All obligations and liabilities of a corporate subsidiary formed hereunder shall be assumed or guaranteed by the member organization with which it is connected and the member organization shall be fully responsible for all acts of the subsidiary.

Rule 320. Offices—Approval, Supervision and Control

(a) **[No office shall be established by a member or member organization without the prior approval of the Exchange. Applications for permission to establish an office must be in a form approved by the Exchange.]**

Members and member organizations may establish offices other than main offices. Such member or member organization shall file with the Exchange and keep current a list of each of its branch offices showing the location of each such office and the name of the manager of each such office.

••• *Commentary* -----

.01 Registered representative operating from residence.—**[With the prior approval of the Exchange,]** a registered representative may operate from his residence. His home address and telephone number may be advertised in any normal manner (such as business cards, local newspapers, stationery, etc.) but, in such event, the residence address shall be considered as constituting an office of his employer.

.02 Foreign branch offices.— **[With prior approval and under conditions set by the Exchange, a]** A member or member organization may establish a foreign branch office in corporate form, provided that all the voting stock of the corporation is owned by the member or member organization. (See ASE Rule 318) The Membership Services Division will furnish information concerning these conditions. Continuance of the arrangement is subject to any changes in the **[Constitution,]** Rules and Regulations of the Exchange as may be thereafter adopted.

Rule 323. Keeping Copies of the Rules [Guide]

Members and member organizations shall keep and maintain a current copy of the **Rules [American Stock Exchange Guide]** in a place accessible for ready reference. Readily available electronic access to the contents of the **Rules [Guide]** shall satisfy this requirement.

Rule 324. Books and Records

Members and member organizations shall keep true and complete books of account and records adequately setting forth the transactions of such members and member organizations in accordance with the requirements of the **[Constitution and]** rules of the Exchange and the Securities Exchange Act of 1934 and the rules thereunder.

Rule 340. Disapproval of Employees

The Exchange may require at any time that the name, remuneration, term of employment and actual duties of any employee of a member of the Exchange or of a member organization or any officer of a member corporation shall be stated to the Exchange, together with such other information with respect to such employee or officer as the Exchange may deem requisite, and it may require that no branch office manager, senior customers' man, junior customers' man, service man, securities salesman, securities trader or traveling representative shall be employed by a member of the Exchange or a member organization without the prior approval of the Exchange.

The Exchange may disapprove the employment, remuneration or term of employment of any employee **or officer** of a member or member organization or require the termination of employment of any employee **or officer** of a member or member organization.

••• *Commentary* -----

.05 Transition to Web CRD. —Members and member organizations must electronically file a Form U-4 with **FINRA's [NASD's]** Web-based Central Registration Depository (CRD) system on or before such time as may be specified by the Exchange for each of their employees (including members) who have access to the trading floor.

Rule 341. Approval of Registered Employees and Officers

••• *Commentary* -----

.01 Natural Persons Required to be Registered or Approved.— Although the employment of each employee of a member or member organization is subject to disapproval by the Exchange, only (i) registered representatives, (ii) securities lending representatives, (iii) securities traders or (iv) a direct supervisor of (i), (ii) or (iii) above (see definitions 6,7 and 8, General and Floor Rules), must be registered and approved. Note that a natural person who performs the duties normally performed by a (i) registered representative, (ii) securities lending representative or (iii)

securities trader is also subject to this Rule, notwithstanding such natural person's assertion of "independent contractor" status. (See Rule 341B). The requirements for persons seeking Exchange approval as **members, [regular member, options principal members, allied members]** partners, approved persons and subordinated lenders are set forth in **[Article IV, Section 2 of the Constitution and]** Rules 300, 301, 310, 311, 312, 317, 318, **353, 354, 355, 356** and 470. Such persons must file forms prescribed by the Exchange.

[Any person who prior to June 1, 1970, was an allied member of the Exchange, in good standing, and who as of June 1, 1970, ceases to meet the definition of an allied member shall automatically cease his status as an allied member and may upon execution of such agreements as may be required by the Exchange qualify as a registered representative, supervisory person or officer. Any person who was an allied member in good standing prior to June 1, 1970, but does not meet the definition of allied member as of June 1, 1970, may continue to perform those functions for his member corporation which he was performing on June 1, 1970.]

A "securities lending representative" is defined as any person who has discretion to commit a member or member organization with which he is associated, as an employee or otherwise, to any contract or agreement (written or oral) involving securities lending or borrowing activities with any other person.

A "securities trader" is defined as any person engaged in the purchase or sale of securities or other similar instruments for the account of a member or member organization with which he is associated, as an employee or otherwise, and who does not transact any business with the public.

.02 How to Register Employees or Obtain Approval of Officers.— To register an employee or obtain the approval of an officer, the employer must electronically file an application on the Uniform Application for Securities Industry Registration or Transfer ("Form U-4") and any amendment thereto with **FINRA's [NASD's]** Central Registration Depository.

If the employer is a member of the New York Stock Exchange **LLC [Inc.]**, and application for the registration of an employee or the approval of an officer is made to that exchange, an **NYSE Alternext US LLC [the American Stock Exchange Inc.]** application should be submitted concurrently with the submission of an application to the New York Stock Exchange **LLC [Inc.]** and prompt notice should be furnished to the Exchange of any action taken by the New York Stock Exchange **LLC [Inc.]** with respect to such application.

.08 Agreement of Registered Employee or Officer.—The Exchange requires, as a condition of registration of an employee or approval of an officer, that each prospective registered employee or officer sign an agreement, as part of the appropriate application form to the following effect:

In consideration of **NYSE Alternext US LLC [the American Stock Exchange, Inc.]**'s receiving and considering my application, I submit myself to the jurisdiction of such Exchange and I agree as follows:

- (1) I authorize and request any and all of my former employers and any other person to furnish to **NYSE Alternext US LLC [the American Stock Exchange Inc.]** and any agent acting on its behalf any information that they may have concerning my character, general reputation, personal characteristics, mode of living and credit worthiness. Moreover, I hereby release each such employer and each such other

person from any and all liability of whatever nature by reason of furnishing such information to **NYSE Alternext US LLC [the American Stock Exchange Inc.]**, and any agent acting on its behalf. Further, I recognize that I will be the subject of an investigative consumer report ordered by **NYSE Alternext US LLC [the American Stock Exchange Inc.]**, and I understand that, upon written request within a reasonable period of time, additional disclosure concerning the nature and scope of the investigation will be provided by the Exchange.

- (2) I authorize **NYSE Alternext US LLC [the American Stock Exchange Inc.]** to make available to any employer or prospective employer, to any other exchange or securities organization, to any federal, state or municipal agency, or to any other person or organization, any information it may have concerning me, and I hereby release **NYSE Alternext US LLC [the American Stock Exchange Inc.]** from any and all liability of whatever nature by reason of furnishing such information.
- (3) I agree that the decision of **NYSE Alternext US LLC [the American Stock Exchange Inc.]** as to the results of any examination it may require me to take will be accepted by me as final.
- (4) I agree that the approval of my employment may be denied or, if granted, may be suspended or withdrawn by **NYSE Alternext US LLC [the American Stock Exchange Inc.]** at any time if, in the opinion of the Exchange, I have or shall hereafter have:

- (5) I agree that if for any reason my employment by a member or member organization of **NYSE Alternext US LLC [the American Stock Exchange Inc.]** is terminated and the Exchange shall thereafter find that at any time during or prior to such employment I have been guilty of any act or conduct enumerated in Paragraph (4) above, I will be bound by and comply with any determination which the Exchange may make with respect thereto.

Further, and in consideration of **NYSE Alternext US LLC [the American Stock Exchange Inc.]**'s approving my application, I agree and state as follows:

- (1) I have read [**the Constitution of the American Stock Exchange, Inc. and**] the Rules of **the [its] Board of Directors [Governors]**, and, if my application is approved, I hereby pledge myself to abide by [**the Constitution and**] the Rules of the Board of **Directors [Governors]** of **NYSE Alternext US LLC [the American Stock Exchange Inc.]** as the same have been or shall be from time to time amended[, **and by all rules and regulations adopted pursuant to the Constitution,**] and by all practices and requirements of the Exchange, in the same manner and to the same extent as though I were a member of the Exchange, and I agree to be subject to the procedure of the Exchange relating to the disapproval of employees provided for pursuant to authorization of the Board of **Directors [Governors]** of the Exchange, as the same has been or shall be from time to time amended.

- (5) I will not, either directly or indirectly, rebate to any person or organization any part of the compensation I receive as a registered employee, and I will not pay such

compensation, or any part thereof, directly or indirectly, to any person or organization, as a bonus, commission, fee or other consideration for business sought or procured for me or any member or member organization of **NYSE Alternext US LLC [the American Stock Exchange Inc.]**.

- (7) At any time upon request, I will appear before the Board of **Directors [Governors]** or any officer, employee, representative, committee or panel of **NYSE Alternext US LLC [the American Stock Exchange Inc.]** and testify upon any subject under consideration or investigation by such Board, officer, employee, representative, committee or panel of the Exchange, and I will produce and submit all of my books, papers and records.
- (8) I understand that any changes in compensation in any form or additional compensation in any form may be subject to disapproval by **NYSE Alternext US LLC [the American Stock Exchange Inc.]**.
- (9) I will notify **NYSE Alternext US LLC [the American Stock Exchange Inc.]** and my employer promptly if, while an employee registered with the Exchange or an officer of a member corporation, I become involved in any litigation or in any administrative proceeding or if any judgment is obtained against me; or if my registration or license to sell or deal in securities or to function as an investment advisor is ever refused, suspended or revoked; or if I become enjoined, temporarily or otherwise, from selling or dealing in securities or from functioning as an investment advisor; or if I am arrested, summoned, arraigned or indicted for a criminal offense; or if I become involved in bankruptcy proceedings.
- (10) I agree that any controversy between me and any member or member organization of **NYSE Alternext US LLC [the American Stock Exchange Inc.]** arising out of my employment or the termination of my employment by and with such member or member organization or any successor thereto shall be settled by arbitration at the instance of any such party in accordance with the **[Constitution and]** rules then obtaining of **NYSE Alternext US LLC [the American Stock Exchange Inc.]** or, if the employer be a member or member organization of the New York Stock Exchange, **LLC [Inc.]** in accordance with the **[Constitution and]** rules of that exchange.

If this is an application for approval of me as an officer of a member corporation, I further agree that if while I am employed as such officer I become involved in any controversy referred to in **Rules 600 and 624 of the Exchange [Section 1 of Article VIII of the Constitution of the American Stock Exchange, Inc.]**, I will fully comply with and abide by the arbitration requirements then obtaining under the **[Constitution and]** rules of **NYSE Alternext US LLC [the American Stock Exchange Inc.]**

Rule 341A. Continuing Education For Registered Persons

(a)

(3) In-Firm Delivery of the Regulatory Element—Members and member organizations will be permitted to administer the continuing education Regulatory Element program to their registered persons by instituting an in-firm program acceptable to the Exchange.

(F) Administration

(vi) Before commencing in-firm delivery of the Regulatory Element continuing education, members are required to file with their Designated Examining Authority ("DEA"), a letter of attestation (*as specified below) signed by a principal/officer-in-charge executive officer or executive representative, attesting to the establishment of required procedures addressing principal/officer-in-charge, supervision, site technology proctors and administrative requirements. Letters filed with Exchange should be sent to NYSE Alternext US [American Stock Exchange] LLC, 86 Trinity Place, New York, New York, 10006.

Rule 341B. Independent Contractors

The Exchange will not object to the assertion by a natural person who is a (i) registered representative, (ii) securities lending representative or (iii) securities trader of "independent contractor" status if such status will not preclude his or her characterization and treatment as an "employee" for the purposes of the **[Constitution and]** Rules of the Exchange. Such natural person and the member organization must agree that the natural person is subject to the organization's direct, detailed supervision, control and discipline and, if required by Exchange Rule 330, is covered by its fidelity bond.

Once a member organization approves a registered person's status of "independent contractor" the following conditions must be met:

2. The member organization submits to the Exchange a copy of a written agreement between the "independent contractor" and the member organization which provides that the "independent contractor" will engage in securities related activities solely on behalf of the member organization (except as otherwise explicitly may be permitted by the member organization in writing), that such securities related activities will be subject to the direct, detailed supervision, control and discipline of the member organization, that such person is not subject to a "statutory disqualification" (as defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended) and that nothing therein will negate any of the foregoing;

Rule 342. Association of Members, Member Organizations, and Persons Associated With Member Organizations

••• *Commentary* -----

.20 In connection with paragraph (a) above, the Exchange will permit a member, allied member, registered representative or officer of a member or member organization who is assigned or delegated any responsibility or authority pursuant to **[Article IV, Section 2(e)(5) of the Constitution or]** Rule 320 to devote less than his entire time during business hours to the business of the member or member organization in instances where such permission will not impair the protection of investors or the public interest.

[Rule 345. Determinations Involving Employees and Prospective Employees

(a) If the Exchange determines that any employee of a member or member organization has been guilty of:

- (1) any conduct which if he were a member of the Exchange would be a violation of any provision of the Constitution or of any rule of the Board of Governors of the Exchange;**
- (2) making any misstatement to the Exchange;**
- (3) violating any of his agreements with the Exchange;**
- (4) any conduct or proceeding inconsistent with just and equitable principles of trade;**
- (5) any act detrimental to the interest or welfare of the Exchange;**
- (6) any failure to adhere to the principles of good business practice in the conduct of his business affairs; or**
- (7) any other act or conduct rendering him unfit or unsuitable to be an employee of a member or member organization of the Exchange; the Exchange may disapprove or suspend or withdraw its approval of his employment by a member or member organization and the Exchange may, in addition to or in lieu of any such action, (a) censure him; (b) declare him ineligible for employment in specified capacities; and/or (c) assess a fine against them.**

(b) If the Exchange determines that any prospective employee of a member or member organization has been guilty of any offense specified in subparagraphs (2) through (7) of paragraph (a) of this rule, or if such prospective employee was formerly employed by a member or member organization and the Exchange determines that during the period of such former employment he was guilty of any offense specified in subparagraph (1) of paragraph (a) of this rule, the Exchange may disapprove of his employment by a member or member organization or declare him ineligible for employment in specified capacities.

(c) If, during the period of one year immediately following receipt by the Exchange of (a) written notification of termination of a person's status as an allied member, approved

person, or registered or non-registered employee of a member or member organization, or (b) any amendment to such termination notice, the Exchange gives written notice to such person that it is making inquiry into any specified matter or matters occurring prior to termination of such person's employment, the Exchange may thereafter require such person to appear and testify, submit records, respond to written requests, attend hearings, and accept disciplinary charges or penalties with respect to the matter or matters specified in such notice in every respect in conformance with the Constitution and Rules and practices of the Exchange, in the same manner and to the same extent as such person would have been required to do if such person had remained an employee. If such person refuses or fails to comply with any such request of the Exchange, such person agrees that such refusal or failure may, in the discretion of the Exchange, act as a bar to future Exchange approval of such person's employment until such time as the Exchange has completed its investigation into the matter or matters specified in such notice; has determined a penalty, if any, to be imposed against such person and until the penalty, if any, has been carried out.

(d) Except as provided in paragraph (j) of this rule, Exchange Disciplinary proceedings against an employee or a prospective employee of a member or member organization shall be conducted in the following manner. An accusation charging an employee or prospective employee of a member or member organization with having committed an offense shall be in writing; it shall specify the charge or charges against such employee or prospective employee with reasonable detail; it shall inform the person charged that he is entitled to be present at the hearing of the charge or charges before an Exchange Disciplinary Panel selected in accordance with the provisions of Sections 1(b) of Article V of the Constitution; and it shall be signed by an officer of the Exchange or a director or manager in the division bringing the charge or charges. A copy of such charge or charges shall be served upon the employee or prospective employee either personally, or by leaving the same at his office address during business hours, or by mailing it to him at his office address or place of residence. He shall have twenty days from the date of such service to answer such charge or charges, or such further time as the Exchange in its discretion may deem proper. An answer shall be in writing, signed by or on behalf of the person charged, and shall be filed with the Secretary of the Exchange. If so expressly required in the charge or charges, the answer shall specifically indicate which statements, or portions thereof, contained in the charge or charges are denied and which are admitted, and any such statements or portions thereof in the charge or charges which are not specifically denied shall be deemed to be admitted. The answer shall also contain in reasonable detail any affirmative defense which the accused wishes to submit and shall include any documents which the accused wishes to submit in support of the answer.

(e) Upon the answer being filed, or if the person charged shall refuse or neglect to make answer as hereinbefore required, the Disciplinary Panel shall, at a hearing called for that purpose, proceed to consider the charge or charges. The Exchange shall cause copies of the charge or charges and of the answer, if any, and of any documents submitted in support thereof by the person charged, to be mailed or otherwise delivered to each member of the Disciplinary Panel at least five days before such hearing. Notice of such hearing shall be sent to the person charged; he shall be entitled to be present personally at the hearing, and shall be permitted to examine and cross-examine all witnesses produced at the hearing and also to present such testimony, defense or explanation as may be deemed responsive to the charge or charges. Any witnesses produced by the person charged shall be subject to cross-examination. After hearing all witnesses produced at the hearing and after hearing the person charged, the Disciplinary Panel shall by a majority vote determine whether or not the employee or prospective employee is guilty of the offense or offenses charged. If it

determines that the person charged is guilty, the Disciplinary Panel shall by a majority vote impose the penalty or prescribe the action to be taken by the Exchange in accordance with paragraph (a) or (b) of this rule. Any such determination shall be supported by a written statement setting forth (i) any act or practice in which such employee or prospective employee is found to have engaged or which such employee or prospective employee has been found to have omitted, (ii) the specific provision of the Securities Exchange Act of 1934, as amended, the rules and regulations thereunder, the Constitution or rules, procedures or policies of the Exchange, which any such act, practice or omission to act is deemed to violate and (iii) the penalty imposed or other action prescribed and the reasons therefor. Such written statement shall be served upon the person charged in the manner hereinbefore provided, and a copy thereof shall be sent to each member of the Amex Adjudicatory Council. The determination of the Disciplinary Panel and any penalty or other action prescribed shall become final and conclusive twenty days after notification thereof to the person charged, provided, however, that if a request for review of such determination, or of any penalty or other action prescribed by the Disciplinary Panel, is filed in writing with the Secretary of the Exchange as provided in paragraph (e) of this rule, the penalty or other action prescribed by the Disciplinary Panel shall be stayed pending the result of such review.

(f) Any person determined to be guilty of a charge or charges before an Exchange Disciplinary Panel pursuant to this rule, or the division or department of the Exchange which brought the charges, may obtain a review of such determination or of any penalty or other action prescribed by the Disciplinary Panel in accordance with paragraph (a) or (b) of this rule, or of both the determination and such penalty or other action. Upon the request of any member of the Amex Adjudicatory Council, any determination by a Disciplinary Panel pursuant to this rule or any penalty or other action prescribed by such Disciplinary Panel, or both, shall be subject to review as hereinafter provided. A request for review of such determination, penalty or other action shall be made in writing and filed with the Secretary of the Exchange within twenty days after notification of the determination and penalty, if any, is served upon the person charged. The review of any disciplinary proceeding as herein provided shall be conducted by the Amex Adjudicatory Council. In connection with any such review, the Amex Adjudicatory Council may affirm any determination by the Disciplinary Panel or sustain any penalty or other action prescribed, or both, may modify or reverse any such determination, or may increase, decrease or eliminate any penalty or other action prescribed in accordance with paragraph (a) or (b) of this rule, or impose any penalty or prescribe any action permitted under paragraph (a) or (b) of this rule, as it deems appropriate; or if the Amex Adjudicatory Council shall determine that the Disciplinary Panel has not adequately considered all of the matters which should have been considered in connection with the charge or charges, or has improperly applied or interpreted the Constitution, rules, requirements and policies of the Exchange, the Amex Adjudicatory Council may remand the matter to the Disciplinary Panel for further consideration consistent with such determination. Upon such remand, the Disciplinary Panel shall conduct a further hearing in accordance with the provisions of this rule and may as a result thereof modify, reverse or reaffirm its previous determination or prescribe any action or impose any penalty permitted under paragraph (a) or (b) of this rule regardless of whether such action or penalty shall be greater than the action prescribed or penalty imposed as a result of the original hearing. Any determination, action prescribed or penalty imposed by the Disciplinary Panel as a result of a remand from the Amex Adjudicatory Council shall be subject to further review upon request as hereinabove provided.

The Amex Adjudicatory Council shall transmit its proposed written decision to each member of the Board of Governors. The Board may call the proceeding for review pursuant to paragraph (g) of this rule. If the Board does not call the proceeding for review, the proposed written decision of the Amex Adjudicatory Council shall become final. Unless the Amex Adjudicatory Council remands the proceeding, the decision shall constitute the final action of the Exchange.

(g) Upon the request of any four of its members, the Board of Governors may review a proposed written decision of the Amex Adjudicatory Council. Such a request for review shall be made not later than the next meeting of the Board of Governors that is at least 15 days after that date on which the proposed written decision of the Amex Adjudicatory Council is transmitted to the Board. By a unanimous vote of the Board of Governors, the Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the Board then in office, the Board may, during the 15 day period, vote to extend the period to more than 15 days. The review by the Board of Governors shall occur not later than the next regularly scheduled meeting of the Board following the request for review. Ten Governors shall be required to constitute a quorum for any meeting of the Board at which the Board shall review a disciplinary proceeding as herein provided, and any action taken pursuant to the vote of a majority of the Governors present at such meeting shall be deemed to be the action of the Board.

After review, the Board of Governors may (i) affirm, modify, or reverse the proposed written decision of the Amex Adjudicatory Council; and (ii) sustain, increase or eliminate any penalty imposed, or impose any lesser penalty permitted under the provisions of paragraphs (a) or (b) of this Rule. Alternatively, the Board of Governors may remand the proceeding with instructions. The decision of the Board of Governors shall constitute the final action of the Exchange, unless the Board remands the proceedings.

(h) If any employee or prospective employee of a member or member organization is suspended or expelled from any other securities exchange or any national securities association, or is suspended or barred from being associated with any member of such exchange or association, or is suspended or barred by any governmental securities agency from dealing in securities or being associated with any broker or dealer in securities, the Exchange may, in view of such suspension, expulsion or bar, suspend or withdraw its approval of, or disapprove, his employment by a member or member organization, but no such suspension imposed by the Exchange shall commence before or expire after the suspension imposed by such other exchange, association or agency, and no such withdrawal of approval and no such disapproval shall be imposed by the Exchange unless such employee or prospective employee has been expelled or barred by such other exchange, association or agency. Nothing in this paragraph (h) shall preclude any proceeding against any employee or prospective employee under the foregoing provisions of this Rule 345. In any proceeding under this paragraph (h), the method of procedure required by paragraphs (c) and (d) of this rule shall not apply, but the employee or prospective employee shall be given not less than ten days' notice in writing of a hearing before an Exchange Disciplinary Panel to determine whether or not the Exchange shall suspend or withdraw its approval of, or disapprove, as the case may be, his employment by a member or member organization, as provided herein. At such hearing, the employee or prospective employee shall be afforded an opportunity to explain why it would be inappropriate for the Exchange to accept the finding of such other exchange, association or agency or to suspend or withdraw its approval of, or disapprove, his employment, notwithstanding his suspension, expulsion or bar by such other exchange, association or agency. The

Disciplinary Panel shall thereupon on behalf of the Exchange determine the matter by a majority vote. In the event that the Disciplinary Panel determines that the Exchange should not accept the finding of guilt by such other exchange, association or agency, it may order a proceeding under any other paragraph of this rule. In the event that the employee or prospective employee fails or refuses to appear at such hearing, the Disciplinary Panel may nevertheless determine the matter and suspend or withdraw Exchange approval of, or disapprove, his employment or prospective employment as provided herein. If the Disciplinary Panel determines to accept the finding by such other exchange, association or agency and to suspend or withdraw its approval of, or disapprove, the employment of such employee or prospective employee by a member or member organization, such determination shall be supported by a written statement setting forth the specific grounds for such action. Such written statement shall be served upon the employee or prospective employee in the matter hereinbefore provided by paragraph (c) of this rule and a copy thereof shall be sent to each member of the Amex Adjudicatory Council. Any action by an Exchange Disciplinary Panel pursuant to this paragraph (h) shall be subject to review in accordance with the procedures specified in paragraph (f) and (g) of this rule. In the event no request for review is filed within twenty days after the employee or prospective employee is notified of the determination of the Disciplinary Panel, such determination shall become final and conclusive. Notwithstanding the foregoing, the employee or prospective employee may, nevertheless, consent to the penalty that the Exchange suspend or withdraw its approval of, or disapprove, his employment or prospective employment by a member or member organization solely by reason of the imposition of such penalty by such other exchange, association or agency, and without either the separate determination of an Exchange Disciplinary Panel as provided above in this paragraph (h) or the procedure provided for in the foregoing paragraphs of this rule. Such consent shall be in writing, signed by the employee or prospective employee, and shall be delivered to the Exchange not later than two business days after the Exchange gives notice in writing to him that it intends to proceed under Rule 345(h). The consent shall take effect immediately upon approval by the Exchange.

(i) In accordance with rules adopted by the Board of Governors, the Exchange may publicly disclose its disapproval or suspension or withdrawal of approval of the employment of any employee or prospective employee of a member or member organization and it may publicly disclose any fine, censure or other determination, provided, however, that no such disclosure shall be permitted until there has been a final determination of the matter.

(j) Unless otherwise directed by the Amex Adjudicatory Council, a copy of any accusation under paragraph (c) of this rule or a copy of any notice of hearing under paragraph (h) of this rule served on an employee or a prospective employee of a member or member organization shall be furnished to his employer or prospective employer and a representative of the employer or prospective employer may be present at the hearing of the matter.

(k) In lieu of the procedures set forth in paragraph (d) of this rule, a hearing officer, selected in accordance with the provisions of Section 1(b)(3) of Article V of the Constitution, may, without conducting a formal hearing, determine whether an employee or prospective employee of a member or member organization has committed an offense or offenses on the basis of a written stipulation of facts and consent to a specified penalty proposed to be entered into between such employee or prospective employee and any authorized officer of the Exchange (a "Stipulation"), and may (i) fix and impose the penalty or prescribe such

other action to be taken by the Exchange in accordance with paragraph (a) or (b) of this rule as shall be agreed to in such Stipulation or (ii) reject the Stipulation. A written notice of the hearing officer's determination shall be served upon the employee or prospective employee in the manner provided in paragraph (c) of this rule and a copy thereof shall be sent to each member of the Amex Adjudicatory Council. The determination of the hearing officer shall become final and conclusive ten days after notification thereof to the employee or prospective employee, provided, however, that if a request for review of such determination is filed as hereinafter provided, any penalty or other action prescribed by the hearing officer shall be stayed pending the result of such review. If the hearing officer rejects the Stipulation, the matter shall proceed as if the Stipulation had not been entered into, and such Stipulation shall be disregarded in any subsequent proceeding.

Upon the written request of any member of the Amex Adjudicatory Council, the Amex Adjudicatory Council shall review the determination of a hearing officer in connection with a Stipulation. Any such request shall be filed with the Secretary of the Exchange within ten days after notification of the determination is served upon the employee or prospective employee. Upon review, the Amex Adjudicatory Council may fix and impose the penalty or prescribe such action to be taken by the Exchange in accordance with paragraph (a) or (b) of this rule as shall have been agreed to in such Stipulation, impose any lesser penalty or prescribe any lesser action permitted under paragraph (a) or (b) of this rule, or reject such Stipulation entirely, as it deems appropriate.

(l) An employee of a member or member organization who fails to pay a fine within thirty (30) days after the same becomes due and payable may, after written notice mailed to such person at either his office or last place of residence as reflected in the Exchange's records, be summarily suspended from association in any capacity with a member or member organization, or have his approval as a registered employee withdrawn, until such fine is paid.]

ADMISSION OF MEMBERS AND MEMBER ORGANIZATIONS

86 TRINITY PERMITS [REGULAR AND OPTIONS PRINCIPAL MEMBERSHIPS]

Rule 350. Ownership Requirements

There is no limit to the number of 86 Trinity Permits that may be issued by the Exchange.

An individual or organization may **apply for [purchase]** one or more **86 Trinity Permits [regular or options principal memberships]**, and must file an application with Membership Services to become the owner of such **86 Trinity Permit(s) [membership(s)]** and either a member[,] **or** member organization [**or approved person**]. **An individual must file an application with Membership Services to become an approved person.** [Applicants desiring only to own a membership nonetheless shall be subject to the same requirements and procedures as are specified below for members or member organizations, as the case may be, except for the requirements to be registered as or associated with a broker-dealer and to pass the physical examination. In addition, the initial Gratuity Fund contribution requirement applies only to individuals who will be Participants in the Gratuity Fund.

All arrangements for the transfer of ownership of a regular or options principal membership must be made through Membership Services, where a record of bids for and offers of memberships is maintained.

Rule 351. Gratuity Fund Election

Any individual who is entitled to make an election to be or not to be a Participant in the Gratuity Fund, pursuant to Article IX, Section 23(b) or (c) of the Exchange Constitution, must make such election, in a manner prescribed by the Exchange, no later than March 29, 1996. Any individual who fails to make an election by such date will be conclusively deemed to have elected not to be a Participant in the Gratuity Fund.]

MEMBERSHIP REQUIREMENTS AND ADMISSIONS PROCEDURE

Rule 353. 86 Trinity Permit [Regular and Options Principal Membership and Limited Trading Permit Holders] Requirements

[Arrangements for the transfer of a regular or an options principal membership or limited trading permit must be made through Membership Services, where a record of bids for and offers of memberships is maintained.]

The following requirements are applicable to any person seeking status as **an 86 Trinity Permit Holder** [a regular or options principal member or LTP holder, regardless of whether such person will own the membership, is a lessee, or interim member].

An applicant **for an 86 Trinity Permit** [for regular or options principal membership or as a limited trading permit holder] must be at least the minimum age of majority required to be responsible for his contracts in each jurisdiction in which he conducts business. He must be of good character and reputation and must meet Exchange standards regarding financial responsibility.

An applicant who plans to become an independent member must file an application with the SEC to be registered as a broker-dealer. All other applicants for **an 86 Trinity Permit** [membership] must be associated with a broker-dealer registered with the SEC.

A detailed membership application must be filed **with all applicable documents as prescribed by the Exchange. Every applicant and all persons associated with the applicant may be investigated by the Exchange. The applicant shall file with the Exchange such additional documents as may be requested by the Exchange.**

T[and t]he applicant other than a prior active member must pass a physical examination prescribed by the Exchange physician. Applicants may either take the examination at the Exchange or have it administered by any qualified physician, who forwards his certificate of good health in a form prescribed by the Exchange to the Exchange physician for his review.

Letters of reference from two responsible persons must be furnished; **provided, however, such requirement shall be waived for prior active members.**

The Exchange requires that the applicant have adequate experience to qualify him to be active in the phase of the securities business in which he proposes to engage as a member. If the candidate is to be active on the Floor of the Exchange, he must pass an examination before being permitted to execute orders on the Floor; **provided, however, such requirement shall be waived for a prior active member who was authorized to execute orders on the Floor of the Exchange immediately prior to the Merger.** In addition, pursuant to Rule 50, Specialist candidates **other than prior active members who were authorized as specialists immediately prior to the Merger** must successfully complete a mandatory Exchange-sponsored training program including participation in any Exchange testing programs in connection with this mandatory training program.

An applicant must be sponsored by two Floor members of the Exchange who have been acquainted with the applicant for a sufficient length of time; **provided, however, such requirement shall be waived for a prior active member.** Sponsors undertake the obligation to accompany the applicant (upon his election to membership) on the Floor of the Exchange and to witness all of his executions of orders for such period of time as the Exchange may determine in order that the new member may be thoroughly acquainted with Floor procedures and practices.

An applicant **other than a prior active member** must successfully complete the New Member training program before being permitted to execute orders on the Floor without the supervision of an experienced Floor member.

An applicant **other than a prior active member** who is associated with an organization in the securities business must take the required steps to qualify his organization as a member organization. See **Rule 356 [Article IV §2 of the Exchange Constitution.]**

[Each applicant whose application has been approved by the Exchange must sign the Exchange Constitution before being admitted to membership privileges.

Prior to his approval for regular or options principal membership or as a limited trading permit holder, an applicant must pay an initiation and processing fee to the Exchange. The amount of the fee is set forth in Article VII of the Exchange Constitution.

Prior to his admission to the privileges of regular or options principal membership, an applicant who will be a Participant in the Gratuity Fund must make an initial contribution to the Gratuity Fund. The amount of the contribution is set forth in Article IX of the Exchange Constitution.]

A member shall cease to be a member and shall **surrender his 86 Trinity Permit [dispose of his membership]** if he becomes subject to any "statutory disqualification" as defined in Section 3(a)(39) of the Securities Exchange Act of 1934.

Admissions Procedure

These steps are followed in connection with application for **an 86 Trinity Permit [regular or options principal membership or as a limited trading permit holder on the Exchange]:**

- (1) The requirements for **an 86 Trinity Permit** [membership] are reviewed by the Exchange staff with any person **or entity** requesting an application.
- (2) **[The risk of placing a bid for a membership before all facts are known to the Exchange is pointed out. The approval of an application for the purpose of**

filing a bid is not assurance that a favorable recommendation will be made regarding the applicant's election to membership.]

There is a minimum posting period of 7 days for any applicant. However, the posting period may be extended by the Exchange when necessary. Notice of proposed **issuance of the 86 Trinity Permit [admission to membership of regular or options principal members or limited trading permit holder]** shall be posted on the Bulletin Board in the Exchange upon the submission, in proper form, of all required documents. **The minimum posting period will be waived for prior active members.**

[(3) After negotiating a seat purchase and signing the transfer agreement, an applicant seeking to purchase a membership must deposit with the Exchange 20% of the purchase price and sign an indemnification agreement. This deposit is used to indemnify the seller against loss if the applicant is later unable to perform and the seat market has fallen. A guarantee of 20% of the purchase price from a member or member organization under a similar agreement will be accepted in lieu of the deposit.]

(3) [(4)] The Exchange staff has an investigation of the applicant conducted in order to verify the information contained on his application.

The applicant may be requested to meet with representatives of the Membership Admissions Department to discuss any questions that have arisen during the investigation.

The Exchange may waive such investigation and/or meeting with the Membership Admissions Department for prior active members.

(4) [(5)] Membership Services then either approves the applicant or, if it decides not to approve, notifies the applicant of its reasons for disapproval and that the applicant is entitled to a hearing under **[Article IV, Section 1 (g) of the Constitution and]** Exchange Rule 40.

Designation of Nominee

(1) Any **[individual member or]** member organization may, in accordance with the Rules, authorize an individual to act as **[his or]** its nominee with respect to **[his or]** its **86 Trinity Permit(s) [membership(s)]**. A nominee of a **[member or]** member organization shall be permitted to transact business for such **[member or]** member organization on the Floor of the Exchange and otherwise represent such **[member or]** member organization in all matters relating to the Exchange. Contracts made on the Floor of the Exchange by a nominee shall be considered contracts made by his **[member or]** member organization, and such **[member or]** member organization shall be responsible therefor. Such **[member or]** member organization shall also be responsible for all obligations to the Exchange and all obligations to other **[member or]** member organizations resulting from Exchange transactions or transactions in other securities.

(2) The authorization of a nominee hereunder shall be on a form or forms prescribed by the Exchange.

(3) The following requirements shall apply to all nominees:

- (a) A nominee shall be subject to the same requirements for approval as if he were himself applying for **an 86 Trinity Permit [membership]** as an individual member.
- (b) A nominee may perform Floor functions only on behalf of the **[member or]** member organization for which he is authorized.
- (c) A nominee shall agree to abide **[by the Constitution as amended from time to time and]** by all rules and regulations, orders, directives and decisions adopted or made in accordance therewith.

[(4) In any case in which a member has authorized a nominee pursuant to this Rule, such member will not himself be permitted to transact business on the Floor of the Exchange on behalf of the membership for which such nominee is authorized.]

Designation of Interim Member

(1) Any individual member or member organization may, in accordance with the rules, designate one or more interim members to temporarily allocate his or its membership to this prequalified individual when the member is absent from the Trading Floor. Each interim member is eligible to receive such allocation for a minimum of one (1) day to a maximum of fifteen (15) aggregate days which may be used by the interim member consecutively or non-consecutively during the course of a one (1) year period beginning on the approval date. The one year period will be measured from the date the interim member is approved by the Exchange. The member or member organization shall pay a maintenance fee for each interim member qualified by the Exchange, as determined by the Exchange, in accordance with Article VII, Section 1(g) of the Exchange Constitution for the privilege of maintaining interim member eligibility. Upon submission of the appropriate form to and approval by the Membership Services Department, an interim member will become effective.

Once an interim member has exhausted the fifteen (15) day period per year, or has failed to use the fifteen (15) days within the one year period beginning on the approval date, the member or member organization no longer will have the privilege of maintaining interim member status with that particular member. The member or member organization may regain interim member status by designating another interim member, or redesignating the same interim member, to the seat, by filing documents required by the Membership Services Department and paying the maintenance fee in accordance with Article VII, Section 1(g). Upon such action, the member or member organization may designate another, or redesignate the same, interim member for a minimum of one (1) day to a maximum of fifteen (15) aggregate days to be used consecutively or intermittently during the course of another one (1) year period.

Any member or member organization who maintained interim member status may have the initiation fee set forth in Article VII, Section 1(c) and Article IV, Section 1(f) of the Exchange Constitution waived so long as he has filed a special transfer agreement with the Exchange to be effective within two weeks following the designation as an interim member for a fifteenth (15th) day.

(2) The owner of the membership, rather than the interim member, shall be deemed to be the regular or options principal member, as the case may be, for purposes of participating in any distribution of the assets and funds of the Exchange, in the event of any voluntary or

involuntary final liquidation, dissolution or winding up of the affairs of the Exchange. The owner of the membership and/or active member, rather than an interim member, shall be the "Participant", as defined in Article IX of the Exchange Constitution, in the Gratuity Fund, and entitled to the benefits described therein.

(3) The designation of an interim member hereunder shall be on a form or forms prescribed by the Exchange.

(4) The following requirements shall apply to interim members:

(a) To be eligible for interim membership status, an individual must be approved for membership in accordance with the Constitution and rules of the Exchange.

(c) Contracts made on the Trading Floor of the Exchange by an interim member shall be considered contracts made by the active member or member organization, and such active member or member organization shall be responsible therefor. Such active member or member organization shall also be responsible for all obligations to the Exchange and all obligations to other members or member organizations resulting from Exchange transactions or transactions in other securities transacted by the interim member.

(d) Interim memberships will require prior written approval by lessor.

(e) If an interim membership does not become effective with one (1) year of approval by the Exchange's Membership Services Department, the individual's eligibility for membership will be terminated. In order to again become eligible for interim membership status, the individual must requalify for membership pursuant to Article IV of the Exchange Constitution by repaying all fees, passing the written test and updating the application.]

Rule 353A. Revocable Privilege; Termination of an 86 Trinity Permit

(a) The issuance of an 86 Trinity Permit constitutes only a revocable privilege and confers on its holder no right or interest of any nature to continue as an 86 Trinity Permit Holder.

An 86 Trinity Permit will terminate upon the occurrence of any one of the following conditions:

(1) the expulsion of the 86 Trinity Permit Holder from the Exchange's Floor;

(2) the suspension of the 86 Trinity Permit Holder where such 86 Trinity Permit Holder failed to be reinstated at the expiration of the period of suspension, including any extension of such period which may have been granted by the Exchange;

(3) the formal or informal dissolution or winding up of an 86 Trinity Permit Holder;

(4) the death of an 86 Trinity Permit Holder who is a natural person; or

(5) the declaration of legal incompetence of an 86 Trinity Permit Holder who is a natural person.

(b) Every 86 Trinity Permit Holder and any successor-in-interest thereto, and each 86 Trinity Permit Holder whose 86 Trinity Permit are terminated due to expulsion, suspension without reinstatement, death, declaration of incompetency, dissolution, winding up, or other cessation of business, must be current in all filings and payments of dues, fees and charges relating to that 86 Trinity Permit, including, without limitation, filing fees and charges required by the Securities and Exchange Commission and the Securities Investor Protection Corporation. If any 86 Trinity Permit Holder or any successor-in-interest thereto, fails to make all such filings, or to pay all such dues, fees and charges, the Secretary of the Exchange shall retain such jurisdiction over such former 86 Trinity Permit Holder to require such filings and collect such outstanding dues, fines and charges until such time as they have been filed and/or paid.

[Rule 354. Associate Membership

Requirements

An applicant must be at least the minimum age of majority required to be responsible for his contracts in each jurisdiction in which he conducts business.

A detailed membership application must be filed. The applicant must be of good character and reputation and must have adequate experience in the securities business and pass the appropriate examination.

Each applicant for associate membership must agree that if elected to associate membership he will comply with the Exchange Constitution and Rules and any amendments thereto.

Prior to his approval for associate membership, an applicant must pay an initiation and processing fee to the Exchange. The amount of the fee is set forth in Article VII of the Exchange Constitution.

The required steps must be taken by the applicant to qualify his firm or corporation as an associate member organization. See Article IV §2 of the Exchange Constitution.

Admissions Procedure

These steps are followed in connection with application for associate membership:

(1) There is a 7 day posting period for associate membership applicants. Notice of proposed admission to membership of associate members shall be posted on the Bulletin Board in the Exchange upon the submission, in proper form, of all required documents.

(2) The Exchange staff has an investigation of the applicant conducted in order to verify the information contained on his application. The candidate may be requested to meet with the representatives of Membership Services to discuss any questions that have arisen during the investigation.

(3) Membership Services then either approves the applicant or, if it decides not to approve, notifies the applicant of its reasons for disapproval and that the applicant is entitled to a hearing under Article IV, Section 1(g) of the Constitution.]

Rule 355. Allied Membership

Any person who becomes an allied member shall have all the rights and privileges and shall be under all the duties and obligations of an allied member of the Exchange. An allied member status shall not be transferable. An allied member may go upon the Floor but shall have no right to effect securities transaction thereon.

Requirements

Any person shall, upon approval by the Exchange, become an allied member of the Exchange by pledging himself to abide by all rules, and by becoming either:

- (1) a general partner in a member firm that is an 86 Trinity Permit Holder or an employee who controls such member firm who is not an 86 Trinity Permit Holder;**
- (2) an employee of a member corporation that is an 86 Trinity Permit Holder who does not hold an 86 Trinity Permit, and who is either:**
 - (i) a principal executive officer of such corporation, or**
 - (ii) a person who controls such corporation; or**
- (3) an employee of any other entity permitted by the Exchange to become a member organization who controls such organization.**

An allied membership application must be filed with the Exchange. The applicant must have adequate experience in the securities business and pass the appropriate examination.

[An allied membership applicant must meet the membership requirements set forth in Article IV, Section 1(c) of the Exchange Constitution.]

The Exchange must be notified in writing of the member organization's intention to admit any person required to become an allied member **[under the provisions of Article IV, Section 1 (c) of the Constitution]**.

Admissions Procedure

These steps are followed in connection with application for allied membership:

[(1) There is a 7 day posting period for allied membership applicants. Notice of proposed admission of an allied membership applicant shall be posted on the Bulletin Board in the Exchange upon the submission, in proper form, of all required documents.]

(1) [(2)] Following an investigation authorized by the Exchange staff, an applicant for allied membership may be requested to meet with representatives of Membership Services to discuss any questions that may have arisen during the investigation.

(2) [(3)] The Membership Services then either approves the applicant or, if it decides not to approve, notifies the applicant of its reasons for disapproval and that the applicant is entitled to a hearing under **the Rules of the Exchange [Article IV, Section 1(g) of the Constitution]**.

Termination of Allied Membership

When an allied member dies or is expelled, his allied membership shall terminate.

When an allied member ceases or fails to meet the requirements of an allied member in his member organization, as provided above, and does not forthwith qualify as an allied member in a member organization continuing the business of the first member organization, his allied membership shall terminate.

When the Treasurer shall report to the Chief Executive Officer that an allied member has neglected to pay a fine for 30 days after the fine became payable, the allied member status of such allied member shall terminate, unless the Exchange shall have granted the extension of time for payment of such fine.

[Designation of Nominee

(1) Any owner of a regular or options principal membership may, in accordance with the Rules, authorize an individual to act as his or its nominee with respect to his or its membership(s). A nominee of such owner shall be permitted to transact business for such owner on the Floor of the Exchange and otherwise represent such owner in all matters relating to the Exchange. Contracts made on the Floor of the Exchange by a nominee shall be considered contracts made by the owner of such membership, and such owner shall be responsible therefor. All of the nominee's obligations to the Exchange and all of the nominee's obligations to other members or member organizations resulting from Exchange transactions or transactions in other securities made in the name of the nominee as member, shall be obligations of the owner, and such owner shall be responsible for all such obligations.

(2) The authorization of a nominee hereunder shall be on a form or forms prescribed by the Exchange.

(3) The following requirements shall apply to all nominees.

(a) A nominee shall be subject to the same requirements for approval as if he were himself applying for membership as an individual member.

(b) A nominee may perform Floor functions only on behalf of the member or member organization for which he is authorized.

(c) A nominee shall agree to abide by the Constitution as amended from time to time and by all rules and regulations, orders, directives and decisions adopted or made in accordance therewith.

(4) In any case in which a member has authorized a nominee pursuant to this Rule, such member will not himself be permitted to transact business on the Floor of the Exchange on behalf of the membership for which such nominee is authorized.]

Rule 356. Member Organizations

Requirements

No partnership, corporation or other entity shall become or remain a member organization and no person associated with an organization shall become or remain an allied member or approved person unless such organization, allied member or approved person meets and continues to meet the standards prescribed in the Rules of the Exchange.

Without the prior approval of the Exchange, in order to protect investors and the public interest or to facilitate the administration of the Exchange, no member shall be associated with a member organization unless all members associated with and approved persons of such member organization who are required to be approved by the Exchange are so approved.

The Exchange shall not approve an organization as a member organization unless the organization transacts business as a broker or dealer in securities, and:

- (1) The organization holds an 86 Trinity Permit or an 86 Trinity Permit Holder who is a natural person is associated with the organization;
- (2) (i) in the case of a partnership, every general partner in the firm is an 86 Trinity Permit Holder who is a natural person or allied member of the Exchange, or
(ii) in the case of a corporation, every director of such corporation is an 86 Trinity Permit Holder, allied member or approved person;
- (3) every party required by the Exchange to be an allied member or approved person of the organization has qualified as such; and
- (4) the organization complies with such additional requirements as the Rules of the Exchange may prescribe.

Every member organization shall be created or organized under the laws of, and shall maintain its principal place of business in, the United States or any State thereof.

Approval of a member organization shall be withdrawn if the Exchange shall determine any of the conditions for approval contained in this paragraph ceases to be maintained. The Exchange may withdraw approval of a member organization if such organization violates any of its, or any member or approved person in such organization violates any of his, agreements with the Exchange, or if such organization fails to comply with the rules of the Exchange and the requirements and practices of the Exchange as the same may be amended from time to time.

The approval of an organization as a member organization or the approval of a party as an approved person constitutes only a revocable privilege and confers on the organization or party no right or interest of any nature whatsoever to continue as a member organization or approved person.

An organization shall cease to be a member organization and shall dispose of its membership if it becomes subject to any "statutory disqualification" as defined in Section 3(a)(39) of the Securities Exchange Act of 1934.

For **additional** information regarding admission of an organization as a member organization, refer to **[Article IV, Section 2 of the Exchange Constitution and]** Exchange Rules 300-312 and contact Membership Services where a checklist of applicable requirements is available.

Partnership

A firm applying to become a member organization must submit executed copies of the partnership agreement and all amendments thereto; if applicable, an executed copy of the certificate of limited partnership, as certified by the County Clerk or a copy of the certificate of authority for limited partnerships organized outside New York State; and all documents and information otherwise required by the Exchange. See Exchange Rules 300 and 302 for provisions to be included in the partnership agreement.

All general partners of such firm must become members or allied members of the Exchange. Any limited partners of such firm who control the firm must become approved persons of the Exchange.

Corporation

A corporation seeking to become a member organization must submit an executed copy of the charter or certificate of incorporation and all amendments thereto, certified by the Secretary of State; an executed copy of the by-laws and all amendments thereto certified by the Secretary of the corporation or other executive officer; forms of stock certificates; certified list of officers, directors and stockholders pursuant to Exchange Rule 310; and all documents and information otherwise required by the Exchange. See Exchange Rule 312 for provisions to be included in the certificate of incorporation and legend on the stock certificates.

In addition, the **b[B]**oard of **d[D]**irectors of such corporation must designate its "principal executive officers" who shall be members or allied members and shall exercise senior principal executive responsibility over the various areas of the business of such corporation in such areas as the rules of the Exchange may prescribe, including: operations, compliance with rules and regulations of regulatory bodies, finance and credit sales, underwriting, research and administration. Any shareholder of such corporation who controls the corporation must become an approved person of the Exchange.

[Trusts

Custodial Accounts

A pension plan seeking to become a member organization must establish that its sponsor is either an active member, or where the sponsor is a member organization, that at least fifty percent of the pension plan's participants are active members or the Floor employees of the sponsor. The pension plan must designate its trustee to represent it with respect to its membership, must ensure that its trustee is an allied member or approved person, as the case may be, and must ensure that every party required by the Exchange to be an approved person of the pension plan has qualified as such.

A pension plan seeking to become a member organization must agree that:

- (i) the pension plan and related trust take the membership subject to the Constitution and Rules of the Exchange; (ii) the interests in the membership that inure to the participants of the pension plan and their beneficiaries shall be subject to the Constitution and Rules of the Exchange, and subject to any agreements made by the trustee in connection with the membership, including, without limitation, any agreements made in connection with qualification of a member organization with respect to the membership or any special transfer agreement made in connection with a lease of the membership; (iii) the membership cannot be encumbered and the trustee cannot pledge the membership, nor create or permit to be created thereon any lien, charge or other encumbrance; (iv) all controversies arising in connection with the membership, including controversies with the lessee or nominee thereof, shall be subject to arbitration pursuant to the Constitution and Rules of the Exchange; (v) the trustee shall have all necessary powers to act in connection with the membership; (vi) the Exchange shall have no liability to the participants in the pension plan and their beneficiaries in the event the purchase, operation or disposition of the Exchange membership results in loss to the pension plan and related trust (The plan sponsor and trustee each shall indemnify and hold the Exchange harmless from all claims, losses, expenses (including all attorney's fees) and taxes arising out of the purchase, operation and disposition of the Exchange membership); (vii) the plan sponsor and trustee have been advised by their legal counsel as to the requirements of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and the Internal Revenue Code of 1986, as amended (the "Code") with respect to the trust's purchase, operation and disposition of an Exchange membership and any income earned by the trust from the membership; (viii) the plan sponsor is either: (a) an active member of the Exchange, or (b) if the plan sponsor is a member organization, at least fifty percent of the pension plan's participants are active members of the Exchange or Floor employees of the plan sponsor; (ix) the plan sponsor has designated the plan trustee to represent the trust in all dealings with the Exchange with respect to the membership; (x) the trustee and every party required by the Exchange to become an allied member or approved person of the Exchange will qualify as such; (xi) the decision to invest assets of the trust in an Exchange membership was made by fiduciaries of the pension plan independent of the Exchange and its officers and employees and such fiduciaries have not relied on any advice or recommendation of the Exchange or any of its officers and employees, and with regard to ERISA, tax and other legal considerations related to the investment in the membership, the plan sponsor and the trustee have relied exclusively on the advice of their own professional advisors; (xii) the trust has the financial ability to bear the economic risk of an investment in an Exchange membership, has adequate means for providing for current benefit needs and has no need for liquidity with respect to the sale or other transfer of the membership; (xiii) the plan sponsor and the trustee are aware that an investment in an Exchange membership involves substantial risks and they have determined that a membership is a suitable investment for the trust and that the trust could bear a loss that would exceed its investment in the membership; and (xiv) the trust associated with the pension plan is exempt from federal income taxes under either Section 501(a) or 408(e) of the Internal Revenue Code of 1986, as amended.

In addition, the trustee must submit to the Exchange a legal opinion in form and substance and from counsel satisfactory to the Exchange as to the following: (a) that the pension plan and related trust were validly created and have not been terminated; and that any amendments have been validly adopted; (b) that the trust is authorized to own an Exchange membership; (c) that the trustee has authority on behalf of the trust to enter into the agreement described in clauses (i) through (xiv) in the preceding paragraph, and that the representations and agreements by the trustee referred to in such agreement have been duly adopted and are binding on and enforceable against the sponsoring employer, the trust and the participants in the pension plan; (d) that the trustee is authorized to either (i) appoint a nominee to engage in business on the Exchange in the name of the trust and be responsible for all transactions and obligations of the nominee, or (ii) lease the membership to the party to whom the membership will be leased; and (e) that the pension plan is described in either Section 401(a) or 408 of the Internal Revenue Code and the trust is tax exempt under either Section 501(a) or Section 408(e).

Grantor Trusts

(a) A trust may acquire one or more membership, either by a transfer from an owner of a membership or a direct purchase.

(b) Prior to a trust becoming a member organization, the grantor (as defined below) and/or the trustee or trustees (hereinafter the "trustee") on behalf of the trust, as the case may be, must agree that:

- (i) The membership owner transferring a membership in trust or the grantor of the trust purchasing a membership (in either case, the "grantor"), must during the grantor's lifetime or existence be a beneficiary of the trust.
- (ii) The trustee, grantor and every party required by the Exchange to become an allied member or approved person of the Exchange will qualify as such.
- (iii) The trust takes the membership subject to the Constitution and Rules of the Exchange, and the grantor and trustee shall remain subject to the Constitution and Rules of the Exchange.
- (iv) The interests in the membership that inure to the grantor and the beneficiaries of the trust shall be subject to the Constitution and Rules of the Exchange, and subject to any agreements made by the trustee in connection with the membership, including, without limitation, any agreements made in connection with qualification of a member organization with respect to the membership or an special transfer agreement made in connection with a lease of the membership.
- (v) The Exchange shall have no liability to the trustees of the trust or the beneficiaries of the trust in the event the purchase, operation or disposition of the Exchange membership results in loss to the trust. The grantor, individually, and the trustees, on behalf of the trust, shall indemnify and hold harmless the Exchange for all claims, losses, expenses (including all attorney's fees) and taxes arising out of the purchase, operation and disposition of the membership.

- (vi) **The grantor and trustee have been advised by legal counsel with respect to the trust's purchase, operation and disposition of an Exchange membership and any income earned or loss incurred by the trust from the membership.**
 - (vii) **The decision to invest assets of the trust in an Exchange membership and/or to continue to hold an Exchange membership was made by the trustees of the trust independent of the Exchange and its officers and employees and such trustees have not relied on any advice or recommendation of the Exchange or any of its officers and employees. With respect to tax and other legal considerations related to the investment in the membership, the grantor and the trustees have relied exclusively on the advice of their own professional advisors.**
 - (viii) **A membership held in trust may be transferred during the lifetime or existence of the grantor or at the grantor's death or ceasing to exist in accordance with the provisions of Article IV, Section 4 of the Constitution and the Rules of the Exchange. Additionally, an Authorization to Sell may be granted with respect to a membership held in trust, in which case the provisions of Article IV, Section 4 of the Constitution and the Rules of the Exchange shall be applicable.**
 - (ix) **A membership held in trust may be transferred to the grantor, subject to the Constitution and Rules of the Exchange.**
 - (x) **Distributions in accordance with paragraphs (viii) and (ix) of this Rule shall be subject to the Constitution and Rules of the Exchange, and subject to any agreements made by the trustees in connection with the membership, including, without limitation, any agreements made in connection with qualification of a member organization with respect to the membership or any special transfer agreement made in connection with a lease of the membership.**
 - (xi) **The membership shall not be encumbered and the trustees shall not pledge the membership, nor create or permit to be created thereon any lien, charge or other encumbrance.**
 - (xii) **All controversies arising in connection with the membership, including controversies with the lessee or nominee thereof, shall be subject to arbitration pursuant to the Constitution and Rules of the Exchange.**
 - (xiii) **The trustees shall have all necessary powers to act in connection with the membership.**
 - (xiv) **The trust shall have (a) the financial ability to bear the economic risk of an investment in a membership, and (b) no need for liquidity with respect to the sale or other transfer of the membership.**
 - (xv) **The grantor and the trustees are aware that an investment in a membership involves substantial risks, and they have determined that a membership is a suitable investment for the trust and that the trust could bear a loss that would exceed its investment in the membership.**
- (c) **The grantor must submit to the Exchange, in a form and manner prescribed by the Exchange, (i) an application to transfer the membership into trust or to authorize the trust to purchase the membership; (ii) a copy of the trust agreement; (iii) the agreement specified**

in paragraph (b) of this Rule; (iv) a legal opinion that meets the requirements of paragraph (d) of this Rule; and (v) such other documents or information as the Exchange may require.

(d) The trustee must submit to the Exchange a legal opinion in form and substance and from counsel satisfactory to the Exchange as to the following: (a) that the trust was validly created and has not been terminated; (b) that the trust is authorized to own an Exchange membership; (c) that the trustees have authority on behalf of the trust to enter into the agreement described in paragraph (b) of this Rule; (d) that the representations and agreements made by the grantor and the trustees, referred to in such agreement and as required by this Rule, have been duly adopted and are binding and enforceable against the trust, trustees, grantor and beneficiaries of the trust; and (e) that the trustees are authorized either (1) to appoint a nominee to engage in business on the Exchange in the name of the trust and be responsible for all transactions and obligations of the nominee, or (2) to lease the membership to the party to whom the membership will be leased.

(e) After the transfer of a membership in trust or the purchase of a membership by a trust, as the case may be, has been approved by the Exchange, the grantor and trustees must promptly submit to the Exchange any amendments to the trust agreement and must promptly notify the Exchange in writing of any changes in the information set forth in the application to transfer the membership in trust or to authorize the trust to purchase the membership, any changes in successor trustee, any release of the membership out of the trust, and any termination of the trust. In the event that the membership is released from the trust, the trust terminates, or the trust agreement is amended so that it no longer complies with the requirements of this Rule, the Exchange shall deem the membership to have reverted to the grantor to be held directly and not in trust.

All prospective member organizations must also submit a financial statement required by the Exchange Examinations Divisions; an executed copy of the Uniform Application for Broker Dealer Registration and any amendments thereto as filed with the Securities and Exchange Commission, together with a copy of the order of approval, if applicable; an opinion of counsel that the organization is duly organized in the state of its incorporation and either (1) authorized to engage in the business of buying and selling securities as a broker and dealer in the state of New York, if applicable, or (2) authorized to buy and sell seats on the American Stock Exchange, Inc. and to lease them out; an opinion of counsel to the effect that every person required to become an approved person pursuant to Article IV, Section 2(j) and Rule 310(a) has applied for approval by the Exchange as such; and a copy of offering circulars or private placement memoranda prepared by the organization for the purpose of raising capital and an opinion of counsel as required by Rule 312(b), if applicable.

The Exchange shall not approve an organization as a member organization unless every party required to be an allied member or approved person of the organization has qualified as such. See Article I, Section 3(c) and (g) for definitions of "allied member" and "approved person."

Except for Custodial Accounts, Grantor Trusts and other member organizations which own Exchange seats but do not conduct broker-dealer activities on the floor of the Exchange, the Exchange shall not approve an organization as a member organization unless such organization is registered with the SEC as a broker-dealer, and submits an executed agreement signed by an individual associated with the organization and authorized to act in

this regard, that the organization is bound by and agrees to abide by the provisions of the Constitution of the Exchange as amended from time to time and by all rules and regulations, orders, directives and decisions adopted or made in accordance therewith.

An organization shall cease to be a member organization and shall dispose of its membership if it becomes subject to any "statutory disqualification" as defined in Section 3(a)(39) of the Securities Exchange Act of 1934.]

Admissions Procedure

The steps followed in connection with an organization's application for an 86 Trinity Permit [regular or options principal membership] are enumerated in Rule 353 [Paragraph 9176]. [There is a minimum posting period of 7 days for member organizations or approved person applicants. Notice of proposed admission shall be posted on the Bulletin Board in the Exchange upon the submission, in proper form, of all required documents.]

Entities that were member organizations immediately prior to the Merger will be deemed to satisfy the qualification requirements in this Rule and will be issued one or more 86 Trinity Permit(s) upon submitting an application.

Rule 358. Processing Fees and Other Charges Associated with 86 Trinity Permit

(a) The processing fee for all applications for 86 Trinity Permits [regular, options principal and associate membership, trading permits, memberships/permits which are held subject to special transfer agreements (i.e., lease agreements), and authorized representatives [and interim memberships] shall be \$2,000; provided, however, such fee shall be waived in the case of applications for 86 Trinity Permits by prior active members [that if an applicant has previously been processed and approved in one of the above capacities, and has been active in such category during the preceding twelve months, he will not be required to pay another processing fee].

(b) Other Charges: In addition to transaction fees and the Securities and Exchange Commission registration fee, the Exchange may from time to time fix and impose other charges or fees to be paid by 86 Trinity Permit Holders for the use of equipment or facilities or for services or privileges granted.

Rule 358A. Special Charge and Charge Upon Options Transactions

(a) Special Charge: The Board of Directors may impose upon 86 Trinity Permit Holders a charge on each securities transaction effected through the facilities of the Exchange, and may change, remove, and reimpose such charge. In fixing the amount of such charge, the Board of Directors may establish different rates for transactions effected for non-members, for members and member organizations, or may omit such charge for any members or member organizations and may establish different rates for transactions effected in different securities or through different mechanisms. Such charges shall be payable at such times and shall be collected in such manner as the Board of Directors may determine, and the proceeds thereof shall be deposited among the general funds of the Exchange.

(b) Options Transactions. In lieu of the charge authorized by the paragraph above, the Board of Directors may impose upon 86 Trinity Permit Holders in respect of options transactions effected on the Exchange a charge for each such options transaction, and may from time to time change, remove, and reimpose such charge. In fixing the amount of such charge, the Board of Directors may establish different rates for options transactions effected for non-members, for members and member organizations and may establish different rates for transactions effected in different securities or through different mechanisms. Such charge shall be applicable to both the writing and the purchase of options on the Exchange and shall be payable at such times and shall be collected in such manner as the Board of Directors may determine and the proceeds thereof shall be deposited among the general funds of the Exchange.

Rule 359. Application and Termination Forms (Forms U-4 and U-5)

(a) An individual who (i) seeks to become **an 86 Trinity Permit Holder** [a regular, options principal, or associate member,] **or** (ii) [seeks to become a limited trading permit holder, (iii) seeks to own a regular, options principal, associate membership or limited trading permit, or (iv)] is or should be an approved person or allied member shall electronically file a Uniform Application for Securities Industry Registration or Transfer (Form U-4) and any amendments thereto with Central Registration Depository. A member or member organization that terminates **a member** [regular member, options principal member, associate member, allied member, limited trading permit holder] or approved person shall electronically file within 10 days of such termination a Uniform Termination Notice for Securities Industry Registration (Form U-5) with the Central Registration Depository. A member or member organization shall electronically file with the Central Registration Depository any amendments to Form U-5 within 10 days of the discovery of the information requiring the amendment.

(b) Transition to Web CRD— **86 Trinity Permit Holders who are natural persons** [Regular members, options principal members, and limited trading permit holders] must electronically file a Form U-4 with **FINRA's** [NASD's] Central Registration Depository system on or before such time as may be specified by the Exchange.

Rule 359B. Limited Transferability

(a) Transfer by Purchase, Sale or Lease Prohibited. 86 Trinity Permits may not be purchased, sold or leased. Any purported purchase, sale or lease of an 86 Trinity Permit shall be void ab initio without further action by the Exchange.

(b) Private Transfer Void: An 86 Trinity Permit Holder which attempts to transfer an 86 Trinity Permit by private sale or lease, or otherwise, may be adjudged guilty of conduct detrimental to the interest and welfare of the Exchange, and any purported transfer shall be void ab initio without further action by the Exchange and will confer no rights upon the purported transferee.

(c) Intra-Firm Transfer. A member organization may transfer its 86 Trinity Permit from the name of one nominee employee to that of another nominee employed by the member organization. The name of the proposed transferee nominee shall be submitted to the Exchange and approved by the Exchange prior to exercising trading privileges on the

Exchange's Floor. Unless the proposed nominee is a previously approved person or approved allied member of the member organization, the member organization shall provide all information required for the Exchange to conduct an investigation of the proposed nominee prior to his or her approval as a nominee.

Rule 393. Monthly Activity Assessment Fee

(a) The Activity Assessment Fee is assessed by the Exchange to each member and member organization for sales of securities on the Exchange with respect to which the Exchange is obligated to pay a fee to the Securities and Exchange Commission pursuant to Section 31 of the Securities Exchange Act of 1934. Such transactions are defined in Section 31 as "covered sales" of securities. The Exchange shall calculate the Activity Assessment Fee by multiplying the aggregate dollar amount of covered sales effected on the Exchange by the member or member organization during the appropriate computational period by the Section 31(b) fee rate in effect during that computational period. The Activity Assessment Fee shall be due and payable at such times and intervals as prescribed by the Exchange in the Fee Schedule. Members and member organizations that cease to effect securities transactions on the Exchange shall promptly pay to the Exchange any sum due pursuant to this rule.

Notwithstanding the foregoing, covered sales resulting from the execution of Aggregated Price-Coupled orders executed in the Exchange's After-Hours Trading program will not be included in the calculation of the Activity Assessment Fee. Members and member organizations will continue to be required to self-report on the [Amex] Exchange Rule 393 Form the aggregate volume and the aggregate sales price of covered sales resulting from the execution of Aggregate Price-Coupled orders.

Rule 401. Exchange Does Not Establish Nor Require Fixed Rates of Commission

The Exchange does not require its members to charge fixed or minimum rates of commission in connection with transactions effected on, or effected by the use of the facilities of, the Exchange and nothing in the [Constitution,] rules or practices of the Exchange shall be construed as conferring authority upon members, or persons associated with members, to agree or arrange, directly or indirectly, for the charging of fixed rates of commission.

Rule 417. Transactions Involving Exchange Employees

(c) No member or member organization shall directly or indirectly give, or permit to be given, anything of more than nominal value to any Exchange employee who has responsibility for a regulatory matter that involves the member or member organization. For purposes of this subsection, the term "regulatory matter" includes, but is not limited to, examinations, disciplinary proceedings, 86 Trinity Permit [membership] applications, listing applications, delisting proceedings, and dispute resolution proceedings that involve the member or member organization. Members and member organizations may not otherwise give business gifts or courtesies to Exchange employees other than to the extent Exchange employees are permitted to

accept such gifts and courtesies under the Code of Conduct applicable to Exchange employees. Records of all gifts and courtesies shall be kept and retained by the member or member organization for the period specified in SEC Rule 17a-4.

Rule 420. Mailing Statements, Confirmations and Communications to Customers

(b) No member organization shall address and mail statements, confirmations or other communications to a non-member customer in care of any member or member organization or person associated with **an 86 Trinity Permit Holder that is a member organization [a regular or options principal member organization]**, unless the customer so directs in writing and duplicate copies are sent to such customer at some other address. The Exchange may, on written request, waive the requirement of sending duplicate copies.

(d) The provisions of this Rule shall not apply to a member organization if such member organization is a member organization of another exchange having comparable rules and regulations to which such member organization is subject and complies, unless the **[American Stock]** Exchange otherwise directs.

Rule 441. Organizations Doing Customer Business Must File Financial Reports

Every member organization which has not on file with the Exchange a statement made pursuant to Rule 440 and every individual member of the Exchange who is a clearing member of a registered clearing agency (as defined in Rule 700) shall file with the Exchange at such times as the Exchange may direct, a statement in a form prescribed by the Exchange of its financial condition and the condition of its accounts, including free credit balances and securities in safekeeping. The statement shall be signed by such person or persons as the Exchange may direct. The provisions of this rule shall not apply to a member organization subject to the jurisdiction of another exchange unless the **[American Stock]** Exchange so directs.

Rule 443. Independent Audits

Each member and member organization transacting a business in securities directly with or for other than members of a national securities exchange, and carrying any margin account, credit balance or security for any customer shall file an annual audit of his or its financial statements prepared by an independent public accountant in accordance with the requirements of the Securities Exchange Act of 1934 and the rules thereunder. The Exchange may require any member or member organization to file with it additional audits as of any date fixed by the Exchange and in such form as the Exchange may prescribe. The provisions of this rule shall not apply to a member organization for which the Exchange is not the designated examining authority unless the **[American Stock]** Exchange so directs.

Rule 444. Reports of Member Indebtedness and Loans

(c) Exception

The provisions of paragraphs (a) and (b) of this rule shall not apply to any loan transactions of a member or member organization required to report loan transactions to the New York Stock Exchange; provided, however, that this exception shall not be deemed to exempt the reporting by members and member organizations of any loans to or borrowings from any **[regular]** member of the **[American Stock]** Exchange which are reportable under this Rule.

••• *Commentary* -----

.70 Reports in letter form should include: names of lender and borrower, amount (if securities, list and give current market value), interest rate, date made, maturity date, description of collateral if any, copy of agreement or note if any, statement as to whether proceeds are to be used for a capital or non-capital purpose. These reports should also include disclosure as to any understanding to maintain a cash balance with the lender.

[(The terms "member" and "member organization" are defined in Article I, Section 3, of the Constitution.)]

Rule 462. Minimum Margins

(d) Definitions

10. Fixed Return OptionsSM ("Fixed Return Option" and "FRO" are service marks of the **[American Stock]** Exchange.)

Rule 464. Record of Margin Calls and Receipt of Margin

(a) Each member organization carrying margin accounts for customers shall make each day a record of every case in which, pursuant to the Rules of the Exchange or the Regulations of the Board of Governors of the Federal Reserve System, initial or additional margin must be obtained in a customer's account. Such record shall be preserved for at least twelve months, and shall show, for each such account, the amount of margin so required and the time when and manner in which such margin is furnished or obtained. Such record shall be in a form approved by the Exchange and shall contain such additional information as the Exchange may from time to time prescribe. The provisions of this paragraph with respect to the form in which such record shall be kept shall not apply to member organizations who are member organizations of another exchange, which exchange has comparable rules or regulations to which such organizations are subject and comply, unless the **[American Stock]** Exchange so directs.

Rule 470. Capital Requirements for Members and Member Organizations

[(d) A member who acts as a floor broker on the Exchange and places funds in escrow with an independent agent for the purpose of satisfying the elective financial responsibility requirements of SEC Rule 15c3-1(b)(2) shall provide in the escrow agreement with such agent that, upon transfer of the floor broker's membership, the funds held in escrow shall be turned over to the Exchange by the escrow agent, and that the Exchange is authorized to treat such funds in all respects the same as the proceeds obtained upon the transfer of such membership, to be distributed in accordance with the provisions of, and subject to the payment of claims filed pursuant to, Article IV, Section 4(d) of the Exchange Constitution. The escrow agreement shall be in a form approved by the Exchange, and a copy thereof shall be filed with the Exchange promptly upon entering into such agreement.]

Rule 475. Prohibition or Limitation with Respect to Access to Services Offered by the Exchange or a Member or Member Organization—Summary Proceedings

(a) Except as provided in subsection (b) of this Rule, the Exchange shall not prohibit or limit any person with respect to access to services offered by the Exchange or any member or member organization thereof unless the Exchange shall have notified such person in writing of, and shall have given such person, upon not less than 15 days prior written notice, an opportunity to be heard upon, the specific grounds for such prohibition or limitation. The Exchange shall keep a record of any proceeding pursuant to this Rule. Any determination by the Exchange to prohibit or limit any person with respect to access to services offered by the Exchange or a member or member organization thereof shall be supported by a statement setting forth the specific grounds on which the prohibition or limitation is based.

(b) The Exchange may summarily—

(i) suspend a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization who has been and is expelled or suspended from any other self-regulatory organization, as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, or barred or suspended from being associated with a member or any such self-regulatory organization provided, however, that any such summary suspension imposed by the Exchange shall not exceed the termination of the suspension imposed by such other self-regulatory organization on such member, member organization, allied member, approved person, or registered or non-registered employee;

(ii) suspend a member or member organization who is in such financial or operating difficulty that the Exchange determines and so notifies the Securities and Exchange Commission that the member or member organization cannot be permitted to continue to do business as a member or member organization with safety to investors, creditors, other members or member organizations, or the Exchange;

(iii) limit or prohibit any person with respect to access to services offered by the Exchange if subparagraph (i) or (ii) of this subsection is applicable to such person or, in the case of a person who is not a member or member organization, if the Exchange determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, member organizations, or the Exchange.

Any person aggrieved by any such summary action shall be notified in writing of, and shall be promptly afforded an opportunity to be heard by the Exchange upon, the specific grounds for such summary action. The Exchange shall keep a record of any proceeding pursuant to the Rule. Any determination by the Exchange with respect to such summary action shall be supported by a statement setting forth the specific grounds on which the summary action is based. The Commission, by order, may stay any such summary action in accordance with the provisions of the Securities Exchange Act of 1934.

(c) Hearings and proceedings pursuant to subsections (a) and (b) of this Rule shall be under the jurisdiction of a Hearing Officer, appointed by the Exchange Board of Directors, acting alone. The Hearing Officer shall schedule and conduct Hearings promptly and, in doing so, provide such discovery to the person whose access or suspension is the subject of the Hearing and to the Exchange officers and employees as provided for under Rule 476(c). The Hearing Officer shall render determinations based upon the record at such Hearings. No determinations by the Hearing Officer shall be effective to modify, reverse or terminate a summary action until and unless (i) ten days have elapsed after the determination has been rendered and (ii) during such ten days, no request for review has been filed with the Secretary of the Exchange pursuant to the next sentence. Any member of the Exchange Board of Directors, any member of the committee of NYSE Regulation which is authorized to review disciplinary decisions on behalf of the Exchange Board of Directors and advise the Exchange Board of Directors thereon (the "NYSE Regulation Committee"), and either the Exchange or the respondent may require a review by the Exchange Board of Directors of any determination by the Hearing Officer by filing with the Secretary of the Exchange a written request therefor within ten days following such determination. The Exchange Board of Directors, with the advice of the NYSE Regulation Committee, shall have power to affirm, modify or reverse any such determination, or remand the matter to the Hearing Officer for further proceedings. Unless the Exchange Board of Directors otherwise specifically directs, the determination and penalty, if any, of the Exchange Board of Directors after review shall be final and conclusive subject to the provisions for review of the Securities Exchange Act of 1934.

(d) Whenever a member or member organization fails to perform its contracts, becomes insolvent, or is in such financial or operating difficulty that it cannot be permitted to continue to do business as a member or member organization with safety to investors, creditors, other members or member organizations, or the Exchange, such member or member organization shall promptly give written notice thereof to the Secretary of the Exchange.

(e) Any person suspended under the provisions of this Rule shall, at the request of the Exchange, submit to the Exchange its books and records (including those books and records

with respect to which such person has access or control) or the books and records of any employee thereof and furnish information to or to appear or testify before or cause any such employee to appear or testify before the Exchange.

(f) Any person suspended under the provisions of this Rule may, at any time, be reinstated by the Exchange Board of Directors.

(g) Any person suspended under the provisions of this Rule may be disciplined in accordance with the Rules of the Exchange for any offense committed by it either before or after its suspension in all respects as if it were not under such suspension.

(h) A member suspended under the provisions of this Rule shall be deprived during the term of the member's suspension of all rights and privileges of membership. Any suspension under the provisions of this Rule of a member or allied member shall create a vacancy in any office or position held by such member or allied member.

(i) The limitations on the Chief Executive Officer contained in Rule 476(l) shall apply to all matters under this Rule.

(j) Any member of the Board of Directors, any member of the NYSE Regulation Committee, the Exchange, and the respondent may require a review by the Exchange Board of any determination under this rule by filing with the Secretary of the Exchange a written request thereof within ten days following such determination. The Exchange Board, with the advice of the NYSE Regulation Committee, shall have the power to affirm, modify or reverse any such determination, or remand the matter for further proceedings. Unless the Exchange Board of Directors otherwise specifically directs, the determination and penalty, if any, of the Exchange Board of Directors after review shall be final and conclusive subject to the provisions for review of the Securities Exchange Act of 1934.

Rule 476. Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Allied Members, Approved Persons, Employees, or Others

(a) If a member, member organization, allied member, approved person, registered or non-registered employee of a member or member organization or person otherwise subject to the jurisdiction of the Exchange is adjudged guilty in a proceeding under this Rule of any of the following offenses-

- (1) violating any provision of the Securities Exchange Act of 1934 or any rule or regulation thereunder;
- (2) violating any of its agreements with the Exchange;
- (3) violating any provision of any Rule adopted by the Exchange Board of Directors;
- (4) making a material misstatement to the Exchange;
- (5) fraud or fraudulent acts;

- (6) conduct or proceeding inconsistent with just and equitable principles of trade;
- (7) acts detrimental to the interest or welfare of the Exchange;
- (8) making a fictitious bid, offer or transaction or giving an order for the purchase or sale of securities the execution of which would involve no change of beneficial ownership or executing such an order with knowledge of its character;
- (9) making any purchases or sales or offers of purchase or sale of securities for the purpose of upsetting the equilibrium of the market or bringing about a condition in which prices will not fairly reflect market values, or assisting in making any such purchases or sales with knowledge of such purpose, or being, with such knowledge, a party to or assisting in carrying out any plan or scheme for the making of such purchases or sales or offers of purchase or sale;
- (10) having made a misstatement or omission of fact on its application for membership or approval, or on any financial statement, report, or other submission filed with the Exchange; or
- (11) refusing or failing to comply with a request of the Exchange to submit its books and records (including those books and records with respect to which such member, member organization, allied member, approved person, registered or non-registered employee or person otherwise subject to the jurisdiction of the Exchange has access and control) to the Exchange, any other self-regulatory organization, as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, any contract market, as referenced in Section 6(a) of the Commodities Exchange Act, any registered futures association, as referenced in Section 17 of the Commodities Exchange Act, or any foreign self-regulatory organization or association with which the Exchange has entered into an agreement or to furnish information to or to appear or testify before the Exchange or such other organization or association, as specified above, or failing to take any of the foregoing actions on the date or within the time period that the Exchange requires; or if a member who is registered as a specialist is adjudged guilty in a proceeding under this Rule of substantial or continued failure to engage in a course of dealings for the member's own account to assist in the maintenance, so far as practicable, of a fair and orderly market in any security in which the member is registered; then, in any such event, the Hearing Panel or, when authorized by this Rule, a Hearing Officer shall, in accordance with the Exchange Sanctions Guidelines (Rule 476.10) and the procedures set forth in this Rule, impose one or more of the following disciplinary sanctions on such member, member organization, allied member, approved person, or registered or non-registered employee or person otherwise subject to the jurisdiction of the Exchange: expulsion; suspension; limitation as to activities, functions, and operations, including the suspension or cancellation of a registration in, or assignment of, one or more stocks; fine; censure; suspension or bar from being associated with any member or member organization; or any other fitting sanction.

(b) All proceedings under this Rule, except as to matters which are resolved by a Hearing Officer when authorized by this Rule, shall be conducted at a Hearing in accordance with the provisions of this Rule and shall be held before a Hearing Panel consisting of at least

three persons of integrity and judgment: a Hearing Officer, who shall chair the Panel, and at least two members of the Hearing Board, at least one of whom shall be engaged in securities activities differing from that of the respondent or, if retired, was so engaged in differing activities at the time of retirement. In any disciplinary proceeding involving activities on the Floor of the Exchange, no more than one of the persons serving on the Hearing Panel shall be, or if retired, shall have been, active on the Floor of the Exchange. A Hearing Panel can include only one retired person.

The Chairman of the Exchange Board of Directors, subject to the approval of the Exchange Board of Directors, shall from time to time appoint a Hearing Board to be composed of such number of members and allied members of the Exchange who are not members of the Exchange Board of Directors, and registered employees and non-registered employees of members and member organizations, and such other persons as set forth in the rules as the Chairman of the Exchange Board of Directors shall deem necessary. Former members, allied members, or registered and non-registered employees of members and member organizations who have retired from the securities industry can be appointed to the Hearing Board within five years of their retirement. The members of the Hearing Board shall be appointed annually and shall serve at the pleasure of the Exchange Board of Directors. The Chairman of the Exchange Board of Directors, subject to the approval of the Exchange Board of Directors, shall also designate a Chief Hearing Officer and one or more other Hearing Officers who shall have no Exchange duties or functions relating to the investigation or preparation of disciplinary matters and who shall be appointed annually and shall serve as Hearing Officers at the pleasure of the Exchange Board of Directors. An individual cannot be a Hearing Officer (including the Chief Hearing Officer) if he or she is, or within the last three years was, a member, allied member, or registered or non-registered employee of a member or member organization.

For all purposes of this Rule, the decision of a majority of the Panel shall be the decision of the Panel and shall be final and conclusive, unless a request to the Exchange Board of Directors for review is filed as provided in this Rule.

(c) Upon application to the Chief Hearing Officer by either party to a proceeding, the Chief Hearing Officer, or any Hearing Officer designated by the Chief Hearing Officer, shall resolve any and all procedural and evidentiary matters and substantive legal motions, and may require the Exchange to permit the respondent to inspect and copy documents or records in the possession of the Exchange which are material to the preparation of the defense or are intended for use by the Exchange as evidence in chief at the Hearing. The respondent may be required to provide discovery of non-privileged documents and records to the Exchange. This provision does not authorize the discovery or inspection of reports, memoranda, or other internal Exchange documents prepared by the Exchange in connection with the proceeding. There shall be no interlocutory appeal to the Exchange Board of Directors of any determination as to which this provision applies.

(d) Except as provided in paragraph (g), in any proceeding under this Rule before a Hearing Panel, or Hearing Officer as provided by this rule, the specific charges against the respondent shall be in the form of a written statement (Charge Memorandum) and shall be signed by an authorized officer or employee of the Exchange, or an authorized employee of another self-regulatory organization with which the Exchange has entered into an agreement to provide regulatory services to the Exchange pursuant to Rule 1B, on behalf of the Exchange. A copy of such Charge Memorandum (including any exhibits attached thereto) shall be filed with the Hearing Board at the same time it is served upon the

respondent. Service shall be deemed effective by personal service of such Charge Memorandum, or by leaving same either at the respondent's last known office address during business hours or respondent's last place of residence as reflected in Exchange records, or upon mailing same to the respondent at the aforesaid office address or place of residence. The Hearing Board shall assume jurisdiction upon receipt of the Charge Memorandum.

An Answer to the Charge Memorandum shall be filed not later than twenty-five days from the date of service or within such longer period of time as the Hearing Officer may deem proper.

The Answer shall be in writing, signed by or on behalf of the respondent and filed with the Hearing Board, with a copy served on the Exchange. The Answer shall indicate specifically which assertions of fact and charges in the Charge Memorandum are denied and which are admitted; and shall also contain any specific facts in contradiction of the charges and any affirmative defenses. A general denial without more shall not be deemed to satisfy this requirement. Any assertions of fact not specifically denied in the Answer may be deemed admitted and failure to file an Answer may be deemed an admission of any facts asserted in the Charge Memorandum.

The Hearing Board shall set a schedule for filing of motions and shall establish Hearing dates. If the respondent has failed to file an Answer, the Exchange, by motion, accompanied by proof of notice to the respondent, may request a determination of guilt by default, and may recommend a penalty to be imposed. If the respondent opposes the motion, the Hearing Officer, on a determination that respondent had adequate reason to fail to file an Answer, may adjourn the Hearing date and direct the respondent to promptly file an Answer. If the default motion is unopposed, or respondent did not have adequate reason to fail to file an Answer, or respondent failed to file an Answer after being given an opportunity to do so, the Hearing Officer, on a determination that respondent has had notice of the charges and that the Exchange has jurisdiction in the matter, may find guilt and determine penalty.

Notice of the Hearing to be held for the purpose of considering the charges shall be served upon the Exchange and the respondent as provided above. The respondent shall be entitled to be personally present thereat if a natural person, and if other than a natural person, by a designee. The Hearing Officer shall determine the specific facts in issue, and with respect to those facts only, both the Exchange and the respondent may produce witnesses and any other evidence and they may examine and cross-examine any witnesses so produced. After hearing all the witnesses and considering all the evidence, the Hearing Panel shall determine whether the respondent is guilty of the charges. If the Hearing Panel determines that the respondent is guilty, it shall fix and impose the penalty or penalties.

(e) The Exchange shall keep a record of any Hearing conducted under this Rule and a written notice of the result setting forth the requirements contained in Section 6(d)(1) of the Securities Exchange Act of 1934 shall be served upon the respondent and the Exchange.

The determination of the Hearing Panel, or of the Hearing Officer on a determination of default, and any penalty imposed, shall be final and conclusive twenty-five days after notice thereof has been served upon the respondent in the manner provided in paragraph (d) above, unless a request to the Exchange Board of Directors for review of such determination and/or penalty is filed as hereinafter provided. If such a request to the

Exchange Board of Directors for review is filed as hereinafter provided, any penalty imposed shall be stayed pending the outcome of such review.

(f) The Exchange, the respondent, any member of the Exchange Board of Directors, and any member of the NYSE Regulation Committee may require a review by the Exchange Board of Directors of any determination or penalty, or both, imposed by a Hearing Panel or Hearing Officer. A request for review shall be made by filing with the Secretary of the Exchange a written request therefor, which states the basis and reasons for such review, within twenty-five days after notice of the determination and/or penalty is served upon the respondent. The Secretary of the Exchange shall give notice of any such request for review to the Exchange and any respondent affected thereby.

Any review shall be conducted by the Exchange Board of Directors or the NYSE Regulation Committee, in the sole discretion of the Exchange Board of Directors, and shall be based on oral arguments and written briefs, and be limited to consideration of the record before the Hearing Panel or Hearing Officer. Upon review, and with the advice of the NYSE Regulation Committee, the Exchange Board of Directors, by the affirmative vote of a majority of the Exchange Board of Directors then in office, may sustain any determination or penalty imposed, or both, may modify or reverse any such determination, and may increase, decrease or eliminate any such penalty, or impose any penalty permitted under the provisions of this Rule. Unless the Exchange Board of Directors otherwise specifically directs, the determination and penalty, if any, of the Exchange Board of Directors after review shall be final and conclusive subject to the provisions for review of the Securities Exchange Act of 1934.

Notwithstanding the foregoing, if either party upon review applies for leave to adduce additional evidence, and shows to the satisfaction of the Exchange Board of Directors, with the advice of the NYSE Regulation Committee, that the additional evidence is material and that there was reasonable ground for failure to adduce it before the Hearing Panel or Hearing Officer, the Exchange Board of Directors, with the advice of the NYSE Regulation Committee, may remand the case for further proceedings, in whatever manner and on whatever conditions the Exchange Board of Directors considers appropriate.

(g) In lieu of the procedures set forth in paragraph (d) above, a Hearing Officer acting alone shall also determine whether a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization has committed any one or more of the offenses specified in paragraph (a) above, on the basis of a written Stipulation and Consent entered into between the respondent and any authorized officer or employee of the Exchange or of another self-regulatory organization with which the Exchange has entered into an agreement to provide regulatory services to the Exchange pursuant to Rule 1B on behalf of the Exchange. Any such Stipulation and Consent shall contain a stipulation with respect to the facts, or the basis for findings of fact by the Hearing Officer; a consent to findings of fact by the Hearing Officer, including a finding that a specified offense had been committed; and a consent to the imposition of a specified penalty.

A Hearing Officer shall convene a Hearing Panel, if the Hearing Officer requires clarification or further information on the Stipulation and Consent, or if either party requests a Hearing before a Hearing Panel. A Hearing Officer, acting alone, may not reject a Stipulation or Consent, but shall convene a Hearing Panel to consider such action.

Notice of any Hearing held for the purpose of considering a Stipulation and Consent shall be served upon the respondent as provided in paragraph (d) above. In any such Hearing, if the Hearing Panel determines that the respondent has committed an offense, it may impose the penalty agreed to in such Stipulation and Consent. In addition, a Hearing Panel may reject such Stipulation and Consent.

Such rejection shall not preclude the parties to the proceeding from entering into a modified Stipulation and Consent which shall be presented to a Hearing Panel in accordance with the provisions of this subsection, nor shall such rejection preclude the Exchange from bringing or presenting the same or different charges to a Hearing Panel in accordance with the provisions of paragraph (d) above. The Exchange shall keep a record of any Hearing conducted under this Rule and a written notice of the result setting forth the requirements contained in Section 6(d)(1) of the Securities Exchange Act of 1934 shall be served on the parties to the proceeding.

The determination of the Hearing Panel or Hearing Officer and any penalty imposed shall be final and conclusive, twenty-five days after notice thereof has been served upon the respondent in the manner provided in paragraph (d) above, unless a request to the Exchange Board of Directors for review of such determination and/or penalty is filed as hereinafter provided. If such a request to the Exchange Board of Directors for review is filed as hereinafter provided, any penalty imposed shall be stayed pending the outcome of such review.

Any member of the Exchange Board of Directors and any member of the NYSE Regulation Committee may require a review by the Exchange Board of Directors of any determination or penalty, or both, imposed by a Hearing Panel or Hearing Officer in connection with a Stipulation and Consent. The respondent or the Division which entered into the written consent may require a review by the Exchange Board of Directors of any rejection of a Stipulation and Consent by the Hearing Panel.

A request for review shall be made by filing with the Secretary of the Exchange a written request therefor, which states the basis and reasons for such review, within twenty-five days after notice of the determination and/or penalty is served on the respondent. The Secretary of the Exchange shall give notice of any such request for review to the Exchange involved in the proceeding and any respondent affected thereby.

Any review shall be conducted by the Exchange Board of Directors or the NYSE Regulation Committee, in the sole discretion of the Exchange Board of Directors, and shall consist of oral arguments and written briefs, and be limited to consideration of the record before the Hearing Panel or Hearing Officer. Upon review, and with the advice of the NYSE Regulation Committee, the Exchange Board of Directors, by the affirmative vote of a majority of the Exchange Board of Directors then in office, may fix and impose the penalty agreed to in such Stipulation and Consent or any penalty which is less severe than the stipulated penalty, or may remand for further proceedings. Unless the Exchange Board of Directors otherwise specifically directs, the determination and penalty, if any, of the Exchange Board of Directors after review shall be final and conclusive subject to the provisions for review of the Securities Exchange Act of 1934.

(h) A member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization, or any other person shall have the right to be represented by legal counsel or other representative in any Hearing or

review held pursuant to the provisions of this Rule and in any investigation before any committee, officer, or employee of the Exchange. A Hearing Officer may impose a fine or any other appropriate sanction on any party or the party's representative for improper conduct in connection with a matter before the Hearing Board, and may, if appropriate, exclude any participant, including any party, witness, attorney or representative from a Hearing on the basis of such conduct.

(i) A member or allied member of the Exchange who is associated with a member organization is liable to the same discipline and penalties for any act or omission of such member organization as for the member or allied member's own personal act or omission. The Hearing Panel which considers the charges against such member, or allied member, or the Exchange Board of Directors upon any review thereof, may relieve him from the penalty therefor or may remit or reduce such penalty on such terms and conditions as the Panel or the Exchange Board of Directors, with the advice of the NYSE Regulation Committee, shall deem fair and equitable.

(j) When a member is suspended under the provisions of this Rule, such member shall be deprived during the term of the member's suspension of all rights and privileges of membership. The expulsion of a member shall terminate all rights and privileges arising out of said membership.

(k) Any approved person or registered or non-registered employee who shall neglect to pay any fine within forty-five days after the same shall become payable may, after written notice mailed to such person at either the member's office or last place of residence as reflected in Exchange records, be summarily suspended from association in any capacity with a member organization or have the member's approval withdrawn until such fine is paid.

Any member, member organization or allied member who shall not pay a fine, or any other sums due to the Exchange, within forty-five days after the same shall become payable, shall be reported by the Exchange Treasurer to the Chairman of the Exchange Board of Directors and, after written notice mailed to such member, member organization or allied member of such arrearages, may be suspended by the Exchange Board of Directors until payment is made.

Whenever a member, member organization, allied member, approved person or registered or non-registered employee of a member or member organization is suspended under the provisions of this Rule, that person or organization may be proceeded against for any offense other than that for which such member, member organization, allied member, approved person or registered or non-registered employee was suspended.

The suspension or expulsion of a member or allied member under the provisions of this Rule shall create a vacancy in any office or position held by the member or allied member.

(l) Notwithstanding any other provisions of this Rule, the Chief Executive Officer (a) may not require a review by the Board under this Rule and (b) shall be recused from deliberations and actions of the Board with respect to matters to be reviewed by the Board under this Rule.

••• Supplementary Material:

.10 Sanctions Guidelines.

A. Overview

The mission of the Exchange is to provide a securities market place in which high standards of honor and integrity prevail and to promote and maintain just and equitable principles of trade and business. To this end, as a regulator, the Exchange seeks to protect investors and strengthen market integrity through vigorous, even-handed, and cost-effective self-regulation. The Exchange embraces self-regulation as the most effective means of infusing a balance of industry and non-industry expertise into the regulatory process. To build public confidence in the financial markets, and as part of the Exchange's regulatory mission, the Exchange must stand ready to discipline members, member organizations, their employees, and approved persons by imposing sanctions when necessary and appropriate to protect investors, members, member organizations and the market place as a whole and to promote the public interest.

The Exchange has developed these Sanction Guidelines for use by the various bodies with responsibility for the adjudication of disciplinary actions, including Hearing Panels, Hearing Officers, the NYSE Regulation Committee, and the Board of Directors (collectively, "Adjudicatory Bodies" or "Adjudicators"), in determining appropriate remedial sanctions. These Guidelines also may be used by parties to a disciplinary action in entering into a Stipulation of Facts and Consent to Penalty.

These Guidelines do not prescribe fixed sanctions for particular violations. Rather, they provide direction for Adjudicatory Bodies to assist them in imposing sanctions consistently and fairly. The Guidelines recommend ranges for sanctions and suggest factors (called "Principal Considerations") that Adjudicatory Bodies may consider in determining, for each case, where within the range the sanctions should fall or whether sanctions should be above or below the recommended range. These Guidelines are not intended to be absolute. Based on the facts and circumstances presented in each case, Adjudicatory Bodies may impose sanctions that fall outside the ranges recommended and may consider aggravating and mitigating factors in addition to those listed in these Guidelines.

To promote consistency and uniformity in the imposition of penalties, the following factors should be considered in connection with the imposition of sanctions in all cases. In addition, a list of Principal Considerations in Determining Sanctions, which enumerates generic factors that could be aggravating or mitigating in any given case, is included.

B. General Principles Applicable to All Sanction Determinations

(1) Disciplinary sanctions are remedial in nature. Adjudicatory Bodies should design sanctions to prevent and deter future misconduct by the wrongdoer, to discourage others from engaging in similar misconduct, and to improve overall business standards of Exchange members. The concept of remediation calls for the imposition of the least burdensome sanction necessary effectively to address the misconduct. The concept of deterrence requires the imposition of a remedial sanction of sufficient weight to discourage the violator and others similarly situated from repeating or engaging in the misconduct. Disciplinary sanctions should not be designed to punish for past misconduct. Rather, Adjudicatory Bodies should seek to achieve remediation and deterrence in imposing sanctions.

(2) An important objective of the disciplinary process is to deter future misconduct by imposing progressively escalating sanctions on recidivists. Repeated acts of misconduct call for increasingly serious sanctions.¹ Adjudicatory Bodies should consider a

named party's relevant disciplinary history in determining sanctions. Relevant history may include past misconduct similar to the misconduct at issue or past misconduct that, while unrelated, evidences prior disregard for regulatory requirements, investor protection, or the integrity of the industry as a whole.²

(3) Adjudicatory Bodies should tailor sanctions to address the misconduct at issue. In order to achieve remediation, Adjudicatory Bodies should impose sanctions tailored to the misconduct at issue. While adhering to the limitations with respect to sanctions imposed by the Securities Exchange Act of 1934 and the Exchange's own rules, Adjudicatory Bodies may consider imposing somewhat unique sanctions if necessary to address the specific misconduct at issue. For example, an Adjudicatory Body may require a member or member organization to: retain a qualified independent consultant to improve future compliance with regulatory requirements; disclose disciplinary history to new and/or existing clients; or implement heightened supervision of certain employees.

(4) Aggregation or "batching" of violations may be appropriate in certain instances for purposes of determining sanctions. Adjudicatory Bodies may treat several acts of misconduct as one "violation" for purposes of determining sanctions if the misconduct meets certain objective parameters. The parameters are intended to describe the circumstances in which Adjudicatory Bodies may choose to aggregate violations and are not intended to require that Adjudicators aggregate multiple violations in every instance in which the violations meet the parameters. Multiple violations may be treated individually such that a sanction is imposed for each violation, and multiple violations may be treated as aggravating and warrant higher sanctions. In determining whether to aggregate, Adjudicatory Bodies should consider the following factors:

- (A) Whether the violations involved related activity and the same or similar interrelated rules or regulations. (If aggregated, the violations should not have involved materially different types of misconduct.)
- (B) Whether the violations involved unintentional or negligent misconduct or manipulative, fraudulent, or deceptive intent. (If aggregated, the violations should not have involved manipulative, fraudulent, or deceptive intent.)
- (C) Whether the misconduct resulted in injury to investors. (If investors were injured, but the misconduct did not involve manipulative, fraudulent, or deceptive intent and full restitution has been paid to all injured parties, an Adjudicatory Body may consider aggregating violations. Otherwise, violations involving customer harm should not be aggregated.)
- (D) Whether the violations resulted from a single systematic problem or underlying cause that has been corrected. (If aggregated, the violations should have resulted from one cause and the cause should have been corrected.)
- (E) Whether the violations were uncovered as the result of a comprehensive surveillance review conducted by the Exchange or the member firm. (It may be appropriate to aggregate violations if they were uncovered as a result of a comprehensive surveillance review.),

(5) Adjudicatory Bodies should order restitution if necessary to remediate misconduct. Adjudicatory Bodies should order restitution when an identifiable party has suffered a quantifiable loss as a result of a named party's misconduct.³ Adjudicatory Bodies

should calculate orders of restitution based on the actual amount of loss sustained by the injured party, as demonstrated by record evidence. Orders of restitution may exceed the amount of the named party's ill-gotten gain. It is imperative that Adjudicatory Bodies include in written decisions a description of the method used to calculate restitution.

(6) Adjudicatory Bodies should consider the amount of a named party's ill-gotten gain when determining the amount of a disciplinary fine. In cases in which the record demonstrates that a named party obtained a financial benefit from its misconduct, Adjudicatory Bodies should require disgorgement of the ill-gotten gain by fining away the amount of the financial benefit in addition to any other sanction that might apply.

(7) Adjudicatory bodies may require approved persons and other registered employees of members or member organizations to requalify in any or all registered capacities or to obtain additional training before continuing as floor officials. The remedial purpose of disciplinary sanctions may be served best by requiring a named party who is a registered employee of a member or member organization to requalify by examination as a condition of continued employment in the securities industry. Similarly, it may be appropriate to require a named party to receive additional training before allowing the party to continue to act as a floor official. These types of sanctions are particularly appropriate in cases in which a named party's actions demonstrate a lack of knowledge or familiarity with the rules and laws governing the securities industry.

(8) Adjudicatory Bodies may consider a named party's inability to pay in connection with the imposition of monetary sanctions when the party raises this issue. When raised by a named party, Adjudicatory Bodies may consider a proven bona fide inability to pay when determining monetary sanctions. The burden is on the named party to raise the issue of inability to pay and to provide evidence of inability. Proof of inability to pay need not result in a reduction or waiver of monetary sanctions, but could instead result in the imposition of an alternate payment option or alternate sanction.

These General Principles are applicable to all sanctions determinations and should be considered by Adjudicatory Bodies in all cases. Consistency and uniformity are important in the application of disciplinary sanctions and, for this reason, these guiding principles are extremely important to the continued fairness of the Exchange disciplinary process.

¹ It should be noted, however, that even if a named party has no history of misconduct, the misconduct at issue may be so egregious as to justify sanctions beyond the range recommended in these Guidelines.

² Certain regulatory incidents are not relevant to the determination of disciplinary sanctions. Examples of incidents not relevant to the determination of disciplinary sanctions are: settlements containing an express agreement prohibiting consideration of the action for purposes of enhancement of sanctions in subsequent actions; arbitration proceedings, whether pending, settled or fully litigated; and pending regulatory investigations or the existence of ongoing regulatory proceedings prior to the issuance of a decision.

³ Restitution is particularly appropriate when a named party has benefited from the misconduct. Furthermore, while restitution is an appropriate method of depriving a wrongdoer of ill-gotten gain, as discussed in the sixth principle, the amount of ill-gotten gain also may be used to determine the amount of a disciplinary fine.

C. Principal Considerations In Determining Sanctions

The following list of factors should be considered in conjunction with the imposition of sanctions. Individual guidelines may list other factors. As appropriate, Adjudicatory Bodies should consider case-specific factors in addition to those listed here and in individual guidelines.

(1) The named party's relevant disciplinary history including any fines imposed under a Minor Rule Violation Fine Plan. (See General Principle No. 2).

(2) Whether the named party accepted responsibility for and acknowledged the misconduct to an employer (in the case of an employee of a member or member organization or an approved person) or a regulator prior to detection and intervention by the employer or regulator.

(3) Whether the named party voluntarily employed subsequent corrective measures, prior to detection or intervention by an employer (in the case of an employee of a member or member organization or an approved person) or a regulator, to revise general and/or specific procedures to avoid recurrence of misconduct.

(4) Whether the named party voluntarily and reasonably attempted, prior to detection and intervention, to pay restitution or otherwise remedy the misconduct.

(5) Whether the named party demonstrated reasonable reliance on competent legal or accounting advice.

(6) Whether the named party engaged in numerous acts and/or a pattern of misconduct.

(7) Whether the named party engaged in the misconduct over an extended period of time.

(8) Whether the named party attempted to conceal misconduct or to lull into inactivity, mislead, deceive, or intimidate a customer, regulatory authorities, or an employer (in the case of an employee of a member or member organization or an approved person).

(9) With respect to other parties, including the investing public and/or other market participants, (a) whether the named party's misconduct resulted directly or indirectly in injury to such other parties; and (b) the extent of the injury.

(10) Whether the named party provided substantial assistance to regulators in its examination and/or investigation of the underlying misconduct, or whether the named party attempted to delay an investigation, to conceal information, or to provide inaccurate or misleading testimony or documentary information to the Exchange or another regulator.

(11) Whether the named party's misconduct was the result of an intentional act, recklessness, or negligence.

(12) Whether the named party engaged in the misconduct at issue notwithstanding prior warnings from Exchange staff, another regulator, or a supervisor (in the case of an approved person or employee of a member or member organization) that the conduct violated Exchange rules or applicable securities laws or regulations.

(13) Whether the named party's misconduct resulted in the potential for monetary or other gain.

(14) The number, size, and character of the transactions at issue.

(15) The level of sophistication of the injured or affected customer. (Generally a violation affecting an unsophisticated customer should be considered as an aggravating factor.)

(16) Whether, at the time of the violation, the named member or member organization had developed reasonable supervisory, operational, and/or technical procedures or controls that were properly implemented.

(17) Whether, at the time of the violation, the named member or member organization had developed adequate training and educational initiatives.

(18) Whether the named member or member organization can demonstrate that the misconduct at issue was aberrant or not otherwise reflective of its historical compliance record.

(19) Whether the member or member organization with which a named party is/was associated disciplined the party for the misconduct at issue prior to regulatory detection.

Firm Quotes—Specialist Options Transactions

Exchange Rule 958A

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Expulsion, or Other Sanctions</u>
<u>See List of Principal Considerations Applicable to All Guidelines</u>	<u>First Disciplinary Action</u> ⁴ <u>Fine of \$500 to \$1,000.</u>	<u>In egregious cases, consider suspending the named party with respect to any or all activities or functions for up to two years.</u>
<u>Additional Considerations</u>	<u>Second Disciplinary Action</u> <u>Fine of \$1,000 to \$10,000.</u>	
<u>1) Whether named party remediated the failures to execute.</u>	<u>Subsequent Disciplinary Actions</u> <u>Fine of \$3,000 to \$50,000.</u>	

⁴To determine if an action is the first disciplinary action, consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. As indicated in the General Principles, recent acts of similar misconduct may be considered to be aggravating factors.

Limit Order Display—Specialist Options Transactions

Exchange Rule 958APrincipal Considerations in Determining SanctionsSee List of Principal Considerations Applicable to All GuidelinesAdditional Considerations1) Whether customer limit order was executed during the period of non-compliance.2) Whether other transactions were executed at prices equal to or better than the customer limit order.3) Whether misconduct had a significant adverse impact on market transparency and availability of price information.4) Amount of time beyond 30 seconds that elapsed before limit order was displayed.⁵ To determine if an action is the first disciplinary action, consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. As indicated in the General Principles, recent acts of similar misconduct may be considered to be aggravating factors.Monetary SanctionFirst Disciplinary Action ⁵
Fine of \$1,000 to \$2,000.Second Disciplinary
Action Fine of \$2,000 to
\$10,000.Subsequent Disciplinary
Actions Fine of \$5,000 to
\$50,000.Suspension, Bar, or Other SanctionsIn egregious cases, consider suspending the named party with respect to any or all activities or functions for up to two years. In particularly egregious cases involving a pattern of misconduct, consider expelling the member or member organization, withdrawing approval of the responsible approved person, and/or permanently barring a named party from employment or association with any member or member organization.Priority Rules—Restrictions on Transactions of Registered Traders, Precedence of Bids and Offers, and Precedence of Orders Entrusted to SpecialistsExchange Rules 111, 126, 155, 950, and 958Principal Considerations in Determining SanctionsSee List of PrincipalMonetary SanctionFirst Disciplinary Action ⁶Suspension, Bar, or Other SanctionsIn egregious cases,

<u>Considerations Applicable to All Guidelines</u>	<u>Fine of \$1,000 to \$5,000.</u>	<u>consider suspending the named party with respect to any or all activities or functions for up to two years. In particularly egregious cases involving a pattern of misconduct and/or customer harm, consider expelling the member or member organization, withdrawing approval of the responsible approved person, and/or permanently barring a named party from employment or association with any member or member organization.</u>
<u>Additional Considerations</u>	<u>Second Disciplinary Action Fine of \$2,000 to \$20,000.</u>	
1) <u>Whether the misconduct involved violations of rules intended to provide protection to customer orders.</u>	<u>Subsequent Disciplinary Actions Fine of \$5,000 to \$50,000.</u>	
2) <u>Whether misconduct resulted in the failure to execute a customer order and, if so, whether the named party remediated the misconduct.</u>		

⁶ To determine if an action is the first disciplinary action, consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. As indicated in the General Principles, recent acts of similar misconduct may be considered to be aggravating factors.

Rule Regarding Anti-Competitive Behavior and Harassment

Exchange Rule 16

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar, or Other Sanctions</u>
See <u>List of Principal Considerations Applicable to All Guidelines</u>	<u>First Disciplinary Action ⁷ Fine of \$1,000 to \$5,000.</u>	<u>In egregious cases, consider expelling the member or member organization, withdrawing approval of the responsible approved person, and/or permanently barring a named party from employment or association with any member or member organization.</u>
<u>Additional Considerations</u>	<u>Second Disciplinary Action Fine of \$2,000 to \$20,000.</u>	
1) <u>Whether the behavior also was collusive.</u>	<u>Subsequent Disciplinary Actions Fine of \$5,000 to \$50,000.</u>	
2) <u>Whether the behavior affected publicly disseminated quotes.</u>		
3) <u>Whether the behavior resulted in late or</u>		

inaccurate trade reporting.

4) Whether the behavior resulted in altered prices or quotations.

5) In the case of harassment, nature and content of named party's speech and/or communications.

6) Whether the behavior resulted in harm to public customers.

⁷ To determine if an action is the first disciplinary action, consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. As indicated in the General Principles, recent acts of similar misconduct may be considered to be aggravating factors.

Trade Reporting - Late Reporting; Failing To Report; False, Inaccurate, Or Misleading Reporting

Exchange Rule 992

Principal Considerations in Determining Sanctions
See List of Principal Considerations Applicable to All Guidelines

Additional Considerations

1) Nature of trade-reporting violation.

2) Whether violative conduct affected discovery of information regarding market price.

3) Amount of time beyond 90 seconds that elapsed before trade was reported.

Monetary Sanction

First Disciplinary Action⁸
Fine of \$1,000 to \$2,000.

Second Disciplinary Action
Fine of \$2,000 to \$10,000.

Subsequent Disciplinary Actions
Fine of \$5,000 to \$50,000.

Suspension, Bar, or Other Sanctions

In egregious cases, consider suspending the named party with respect to any or all activities or functions for up to two years. In particularly egregious cases involving a pattern of misconduct, consider expelling the member or member organization, withdrawing approval of the responsible approved person, and/or permanently barring a named party from employment or association

with any member or member organization.

⁸ To determine if an action is the first disciplinary action, consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. As indicated in the General Principles, recent acts of similar misconduct may be considered to be aggravating factors.

Rule 477. Retention of Jurisdiction—Failure to Cooperate

(a) If, prior to termination, or during the period of one year immediately following the receipt by the Exchange of written notice of the termination, of a person's status as a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization, the Exchange serves (as provided in paragraph (d) of Rule 476) written notice on such person that it is making inquiry into, or serves a Charge Memorandum on such person with respect to any matter or matters occurring prior to the termination of such person's status as a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization, the Exchange may thereafter require such person to comply with any requests of the Exchange to appear, testify, submit books, records, papers, or tangible objects, respond to written requests and attend hearings in every respect in conformance with the Rules of the Exchange in the same manner and to the same extent as if such person had remained a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization.

(b) Prior to termination, or during the period of one year immediately following the receipt by the Exchange of written notice of the termination of a person's status as a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization, the Exchange may, through the exercise of its jurisdiction, as described in (a) above, require such person to comply with any requests of an organization or association included in Rule 476(a)(11) to appear, testify, submit books, records, papers, or tangible objects, respond to written requests and attend hearings in every respect in conformance with the Rules of the Exchange in the same manner and to the same extent as if such person had remained a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization with respect to any matter or matters occurring prior to the termination of such person's status as a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization.

(c) If such former member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization, provided such notice or Charge Memorandum is or has been served, is adjudged guilty in a proceeding under Rule 476 of having refused or failed to comply with any such requirement, such person may be barred from being a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization permanently, or for such period of time as may be determined, or until such time as the Exchange has completed its investigation into the matter or matters specified in

such notice or Charge Memorandum, has determined a penalty, if any, to be imposed, and until the penalty, if any, has been carried out.

(d) Following the termination of such person's status as a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization, provided such notice or Charge Memorandum is or has been served, such person may also be charged with having committed, prior to termination, any other offense with which such person might have been charged had such status not been terminated. Any such charges shall be brought and determined in accordance with the provisions set forth in Rule 476.

Rule 570A. Notification Requirements for Offerings of Listed Securities

(a) A member or member organization which acts as the lead underwriter of any offering in a listed security shall notify the Exchange of such offering in such form and within such time frame as may be prescribed by the Exchange and shall provide the information required below:

8. pricing basis (e.g., Exchange [Amex] or Consolidated close)

Minor Rule Violation Fine Systems

Rule 590. Part 1 General Rule Violations

(a) Notwithstanding Rule 476 [Article V, Section 1(b) of the Constitution], a fine not to exceed \$5,000 may be imposed, subject to the requirements set forth herein, on any member, member organization, approved person, or employee of a member or member organization, with respect to those rule violations listed below in Paragraph (g) of Part 1 of this Rule. The Exchange's Enforcement Department is authorized to impose fines for those rule violations listed in Paragraph (g) of this Rule.

(b) In any action taken pursuant to Part 1 of this Rule, any person or entity against whom a fine is imposed shall be served as provided in Rule 476 [Article V, Section 1(b) of the Constitution] with a written statement, signed by an authorized officer of the Exchange's Enforcement Department setting forth: (i) the rule or rules alleged to have been violated, (ii) the act or omission constituting each such violation, (iii) the fine imposed for each violation, and (iv) the date by which such determination becomes final and such fine becomes due and payable to the Exchange, or such determination must be contested as provided below, such date to be not less than 20 days after the date of service of the written statement.

(c) If the person against whom a fine is imposed pays the fine, such payment will be deemed to be a waiver of such person's right to a hearing before an Exchange Hearing Panel [Disciplinary Panel] and to an appeal to the Exchange Board of Directors [Amex Adjudicatory Council].

(d) Any person or entity against whom a fine is imposed pursuant to Part 1 of this Rule may contest the determination by filing with the Secretary of the Exchange not later than the date by which such determination must be contested, a written response meeting the requirements of an

"Answer" as provided in **Rule 476 [Article V, Section 1(b) of the Constitution]**, at which point the matter shall become subject to the provisions of **Rule 476 [Article V, Section 1(b)]**. In any such formal disciplinary proceeding, if the **Hearing Panel [Disciplinary Panel]** determines that the person **or entity** charged is guilty of the rule violation(s) alleged, the Panel shall be free to impose any one or more of the disciplinary sanctions authorized by the Exchange's [**Constitution and**] rules.

(f) The Exchange shall issue an information circular to the **members and member organizations [membership]** from time to time listing the Exchange [**Constitution and**] rule provisions (listed below in paragraph (g)) as to which fines can be imposed as provided in Part 1 of this Rule. Such list shall indicate the specific dollar amount that may be imposed as a fine hereunder with respect to any violation of any such rule.

(g) The Enforcement Department may impose fines according to the following schedule for the rule violations listed below:

- Failure to submit books and records, to furnish information, or to appear and testify within the time period required by the Exchange. (**[Article V, Section (4)(k)]**, Rule 31, [**and**] Rule 153A **and Rule 476**)

- Violation of the Limit Order Display Rule. (SEC Rule 11Ac1-4 and **Exchange [Amex]** Rules 958A(e) and 958A—ANTE(e))

- **[Violation of Intermarket Trading System (ITS) rules relating to Pre-Opening Applications (Rule 232) and Trade Throughs, Locked Markets, and the Block Trade Policy (Rule 236).]**

- Violation of the Exchange's policy with regard to affirmative determination of the availability for borrowing of shares of **Exchange [Amex]**-listed issues prior to effecting short sale transactions. (Circular 90-25)
- **[Effecting or causing to be effected a transaction outside of business hours through the Intermarket Trading System (ITS). (Rule 1, Rule 100, and Rule 233)]**

Part 2 Floor Decorum Violations

(b) Notwithstanding **Rule 476 [Article V, Section 1(b) of the Constitution]**, the Exchange may, subject to the requirements set forth herein, impose the following fines on any member or

member firm for those violations of the Exchange's Floor Decorum Policy by a member or trading floor employee of a member firm listed below:

(c) Notwithstanding **Rule 476 [Article V, Section 1(b) of the Constitution]**, the Exchange may, subject to the requirements set forth herein, impose the following fines on any member or member firm for any violation of the Exchange's Floor Decorum Policy by a member or trading floor employee of a member firm other than a violation set forth in Paragraph (b) above:

(e) In any action taken by the Exchange pursuant to Part 2 of this Rule, any person against whom a fine is imposed shall be served with a written statement, signed by a **Senior Floor Official [Floor Governor]**, Exchange Official, or Floor Official, setting forth (i) the act or omission constituting the violation, (ii) the fine imposed for such violation, and (iii) the date by which such determination becomes final and such fine becomes due and payable to the Exchange, or such determination must be contested as provided below, such date to be not less than 20 days after the date of service of the written statement.

(f) If the person **or entity** against whom a fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person's **or entity's** right to a hearing before an Exchange **Hearing Panel [Disciplinary Panel]** and to an appeal to the **Exchange Board of Directors [Amex Adjudicatory Council]**.

(g) Any person **or entity** against whom a fine is imposed pursuant to Part 2 of this Rule may contest the Exchange's determination by notifying the Secretary of the Exchange not later than the date by which such determination must be contested, at which point the matter shall become subject to **Rule 476 [Article V, Section 1(b) of the Constitution]**. In any such formal disciplinary proceeding, if the **Hearing Panel [Disciplinary Panel]** determines that the person **or entity** charged is guilty of the floor decorum violation, the Panel shall be free to impose any one or more of the disciplinary sanctions authorized by the Exchange's [**Constitution and**] rules.

(h) The \$2,000 maximum fine for any violation set forth in Paragraph (b) above subsequent to a second offense may be imposed for a first or second offense if warranted under the circumstances in the view of **a Senior Floor Official [the Floor Governor]**, Exchange Official, or Floor Official. The **Senior Floor Official [Floor Governor]**, Exchange Official, or Floor Official may also impose a lesser fine of \$500 for a first offense, again if circumstances warrant.

(i) The \$500 maximum fine for any violation set forth in Paragraph (c) above subsequent to a second offense may be imposed for a first or second offense if warranted under the circumstances in the view of **a Senior Floor Official [the Floor Governor]**, Exchange Official, or Floor Official. The **Senior Floor Official [Floor Governor]**, Exchange Official, or Floor Official may also impose a lesser fine of \$50 for a first offense, again if circumstances warrant.

Exchange [Amex] Floor Decorum Policy

12. Visitors

Visitors are permitted on the **[Trading]** Floor between 10:00 a.m. and 3:30 p.m., unless special prior arrangements are made through a **Senior Floor Official [Floor Governor]**. Signed Approval from an Exchange Official or **Senior Floor Official [Floor Governor]** is required for the admission of visitors. These requirements do not apply to visitors from listed companies and other guests of the Exchange.

All visitors must remain with their host at all times and, with the exception of ties, all visitors must comply with dress requirements outlined above.

All visitors must be at least twelve years of age. Children admitted as visitors will be permitted on the Floor only for a limited period of time (not all day).

14. General

Under emergency or unusual circumstances, a **[Floor Governor or]** Senior Floor Official in his discretion may waive certain of the above requirements.

Floor Officials, Exchange Officials, **[Floor Governor,]** and Exchange Supervisory Personnel are all expected to strictly enforce the Exchange's Floor Decorum Policy.

Part 3 Reporting Violations

(a) Notwithstanding **Rule 476 [Article V, Section 1(b) of the Constitution]**, the Exchange may, subject to the requirements set forth herein, impose a fine of \$50 a day on any member or member organization for the late filing of those reports listed in Paragraph (g) of Part 3 of this Rule required to be filed pursuant to Rule 30.

(c) If the person against whom a fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person's right to a hearing before an Exchange **Hearing Panel [Disciplinary Panel]** and to an appeal to the **Exchange Board of Directors [Amex Adjudicatory Council]**.

(d) Any person **or entity** against whom a fine is imposed pursuant to Part 3 of this Rule may contest the Exchange's determination by notifying the Secretary of the Exchange not later than the date by which such determination must be contested, at which point the matter shall become subject to the provisions of **Rule 476 [Article V, Section 1(b) of the Constitution]**. In any such formal disciplinary proceeding, if the **Hearing Panel [Disciplinary Panel]** determines that the person **or entity** charged is guilty of the reporting violation, the Panel shall be free to impose any one or more of the disciplinary sanctions authorized by the Exchange's **[Constitution and]** rules.

(e) The Exchange shall issue an information circular to the **members and member organizations [membership]** from time to time listing the reports (listed below in Paragraph (g)) as to which the Exchange may impose fines as provided in Part 3 of this Rule.

(g) The following is a list of the reports required to be filed with the Exchange as to which the Exchange may impose fines for late filing pursuant to Part 3 of this Rule.

Report	Required to be filed by	Frequency/Due Date
A. EXAMINATIONS		
• Equity Computation *	Sole members and member organizations designated to the Exchange [Amex] NOT subject to SEC Rule 15c3-1 that are engaged solely in the business of acting as registered traders	Monthly—17th business day following month-end
• Net Capital Computation	Sole members and member organizations designated to the Exchange [Amex] subject to SEC Rule 15c3-1	Monthly—17th business day month-end
• X-17A-5 Part II ** (FOCUS Report)	Sole members and member organizations designated to the Exchange [Amex] that self-clear or carry customer accounts that are subject to SEC Rule 15c3-1	Quarterly—17th business day following quarter-end
• X-17A-5 Part I ** (FOCUS Report)	Sole members and member organizations designated to the Exchange [Amex] that self-clear or carry customer accounts that are subject to SEC Rule 15c3-1	Monthly—(Interim to quarterly filings above) 17th business day following interim month-end
• X-17A-5 Part IIA (FOCUS Report)	Sole members and member organizations designated to the Exchange [Amex] that are subject to SEC Rule 15c3-1 but do NOT file FOCUS Parts I or II	Quarterly—17th business day following quarter-end
• X-17A-5 Part IIA (Short Form) (FOCUS Report)	Sole members and member organizations that do not file one of the FOCUS reports listed above	Quarterly - 17th business day following quarter end
• Form 171 (Self-Clearing Specialist financial form)	(3) [(6)]	Daily—Next business day

• MO 14 and MO 15 (Specialist financial reports)	<u>(3)</u> [(6)]	Quarterly
• Written Responses to Financial Regulation Examination Deficiency Letters	Members and Member Organizations	Two weeks from the date on the Deficiency Letter
• ITSFEA Forms I & II	Sole members and member organizations designated to the <u>Exchange</u> [Amex]	Annually--17th business day following calendar year end
• Annual Audited Financial Statements	Sole members and member organizations designated to the <u>Exchange</u> [Amex]	Annually--60 calendar days following the date of the financial statement
B. TRADING ANALYSIS		
• 191 Report (Specialist principal trading)	<u>(3)</u> [(6)]	Daily—Next business day
• Form 958-C (ROT and Specialist Report of orders entered in underlying securities related to Exchange [Amex] options)	[(2)] <u>(3)</u> [(6)] <u>(4)</u> [(7)]	Daily—Next business day
• 114A Report (Registered Equity Market Maker trading)	<u>(5)</u> [(8)]	Daily—Next business day
• 114B Report (Report of situations when Registered Equity Market Maker was asked to bid and/or offer)	(Floor Official/Floor Broker)	Daily—Next business day
• Equity Floor Broker Questionnaire	Designated Equity Floor Brokers	Quarterly—By the date specified by the Exchange
• Option Floor Broker Questionnaire	Designated Option Floor Brokers	Semi-Annual-By the date specified by the Exchange
C. MARKET SURVEILLANCE		
• Form 50 (Short Position-Mid-Month)	<u>(2)</u> [(3) (5)]	Monthly—Varies (usually around the 17th day of each month)

- Form 50 (Short Position - End of Month) (2) [(3)] (3) [(5)] Due Monthly - the first business day of the following month.
- 1-RA (Exchange transactions initiated from off-floor) (1) (2) [(3)] (5) Weekly-Friday following close of the week covered in the Report
- 1-S (Round lot short sales transactions) Clearing Firms Weekly-Friday following close of the week covered in the report

D. MEMBERSHIP SERVICES

- Form U-5 Members and Member Organizations 10 days following termination of a clerk

(1) **86 Trinity Permit Holder who is a natural person** [Regular Member]

[(2) Option Principal Member]

(2) [(3)] **Member Organization** [Regular Member Organization]

[(4) Option Principal Organization]

[(5) Assoc. Member Organization]

(3) [(6)] Specialist

(4) [(7)] Registered Options Trader

(5) [(8)] Registered Equity Market Maker

* No prescribed form

** Also applies to self-clearing firms

• • • *Commentary* -----

.01 Nothing in this Rule shall require the Exchange to impose a fine pursuant to this Rule with respect to any violation covered by the Rule, and the Exchange shall be free to proceed under **Rules 475 through 477** [Article V, Section 1(b) of the Constitution or Rule 345] rather than under this Rule.

Arbitration Rules

Rule 600. Arbitration

(a) Members, member firms, partners of member firms, member corporations and officers of member corporations shall arbitrate all controversies arising in connection with their business between or among themselves or between them and their customers as required by any customer's agreement or, in the absence of a written agreement, if the customer chooses to arbitrate. **[Lessor and lessees shall arbitrate all controversies arising between them in connection with their special transfer agreement.]**

Arbitration shall be conducted pursuant to the FINRA Code of Arbitration Procedure or such other code of arbitration procedures as may be from time to time determined by the Board of Directors by adoption of a resolution approved by a majority of the directors then in office.

Failure on the part of a party who has a duty to arbitrate to submit to arbitration as herein provided, or the institution of a suit in any court by such party, prior to arbitration hereunder, in a case subject to such arbitration, shall constitute an act contrary to just and equitable principles of trade.

(b) Under these Rules, the Board of **Directors** [**Governors**] may decline in any case to permit the use of the arbitration facilities of this Exchange.

(c) Claims which arise out of transactions in a readily identifiable market may, with the consent of the Claimant, be referred to the arbitration forum for that market by the [**American Stock**] Exchange[, **Inc.**].

[(d) Class Action Claims.

- (i) A claim submitted as a class action shall not be eligible for arbitration under the Rules of the American Stock Exchange, Inc.
- (ii) Any claim filed by a member or members of a putative or certified class action is also ineligible for arbitration at the American Stock Exchange, Inc. if the claim is encompassed by a putative or certified class action filed in federal or state court, or is ordered by a court to a non SRO arbitration forum for class-wide arbitration. However, such claims shall be eligible for arbitration in accordance with Rule 600(a) or pursuant to the parties' contractual agreement, if any, if a Claimant demonstrates that it has elected not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.

Disputes concerning whether a particular claim is encompassed by a putative or certified class action shall be referred by the Director of Arbitration to a panel of arbitrators in accordance with Rules 602 or 621, as applicable. Either party may elect instead to petition the court with jurisdiction over the putative or certified class action to resolve such disputes. Any such petition to the court must be filed within ten (10) business days of receipt of notice that the Director of Arbitration is referring the dispute to a panel of arbitrators.

- (iii) No member, allied member, member organization and/or associated person shall seek to enforce any agreement to arbitrate against a customer, member, allied member, member organization and/or associated person that has initiated in court a putative class action or is a member of a putative or certified class with respect to any claims encompassed by the class action unless and until:

- (A) the class certification is denied;
 - (B) the class is decertified;
 - (C) the customer, member, allied member, member organization and/or associated person is excluded from the class by the court; or
 - (D) the customer, member, allied member, member organization and/or associated person elects not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.
- (iv) No member, allied member, member organization and/or person associated with a member or member organization shall be deemed to have waived any of its rights under these Rules or under any agreement to arbitrate to which it is a party except to the extent stated in this paragraph.]

••• *Commentary* -----

.01 [Amex Rules 600 through 624 only apply to arbitrations commenced prior to October 30, 1998 and are otherwise of no force or effect. Article VIII, Sec. 2 of the Exchange Constitution provides that arbitration shall be conducted pursuant to the NASD Code of Arbitration Procedure, except that, if all parties to the controversy are members, allied members or member corporations of the New York Stock Exchange, any party may elect to arbitrate under the arbitration procedures of that exchange.] Any violation of the FINRA [NASD] Code of Arbitration Procedure by members or member organizations arbitrating thereunder would be deemed a violation of Exchange rules and subject the violator to Exchange disciplinary procedures.

[Rule 600A. Director of Arbitration

The Chief Executive Officer of the Exchange, subject to the approval of the Board of Governors, shall designate one of the officers or other employees of the Exchange as Director of Arbitration, and may also designate an officer or employee of the Exchange as Assistant Director of Arbitration to act in the absence or inability to act of the Director. The Arbitration Director shall be charged with the duty of performing all ministerial duties in connection with matters submitted for arbitration pursuant to Article VIII of the Constitution.

Rule 601. Panel of Arbitrators

The Chief Executive Officer of the Exchange shall select a panel of arbitrators divided into two groups, of such size as the Chief Executive Officer may determine, as follows: Group 1, members, and persons associated with members and member organizations; and Group 2, non-members not engaged in the securities business.

Rule 602. Designation of Arbitrators

(a) Public Controversies.—In arbitrations involving public customers, where the matter in controversy exceeds \$10,000, or where the matter in controversy does not involve or disclose a money claim, the Director of Arbitration shall appoint an arbitration panel which shall consist of no less than three arbitrators, at least a majority of whom shall be from Group 2, unless the public customer requests a panel consisting of at least a majority from Group 1.

(b) In arbitrations between members, member organizations, partners thereof, or officers therein where the amount in controversy exceeds \$10,000, an arbitration panel shall consist of no less than three arbitrators, all of whom shall be from Group 1.

(c)(1) An arbitrator will be deemed as being from the securities industry if he or she:

- (i)** is a person associated with a member, or broker/dealer, government securities broker, government securities dealer, municipal securities dealer, or registered investment adviser, or
- (ii)** has been associated with any of the above within the past three (3) years, or
- (iii)** is retired from any of the above, or
- (iv)** is an attorney, accountant or other professional who devoted twenty (20) percent or more of his or her professional work effort to securities industry clients within the last two years, or
- (v)** Is an individual who is registered under the Commodities Exchange Act or is a member of a registered futures association or any commodities exchange or is associated with any such person(s).

(2) An arbitrator who is not from the securities industry shall be deemed a public arbitrator. A person will not be classified as a public arbitrator if he or she has a spouse or other member of the household who is a person associated with a registered broker, dealer, municipal securities dealer, government securities broker, government securities dealer or investment adviser.

(d) Composition of Panels.—The individuals who shall serve on a particular arbitration panel shall be determined by the Director of Arbitration. The Director of Arbitration may name the chairman of each panel.

(e) Notice of Selection of Arbitrators.—The Director of Arbitration shall inform the parties of the arbitrators' names and employment histories of the arbitrators for the past ten (10) years, as well as information disclosed pursuant to Rule 603 at least eight (8) business days prior to the date fixed for the first hearing session. A party may make further inquiry of the Director of Arbitration concerning an arbitrator's background. In the event that prior to the first hearing session, any arbitrator, should become disqualified, resign, die, refuse, or otherwise be unable to perform as an arbitrator, the Director of Arbitration shall appoint a replacement arbitrator to fill the vacancy on the panel. The Director of Arbitration shall inform the parties as soon as possible of the name and employment history of the replacement arbitrator for the past ten years, as well as information disclosed pursuant to Rule 603. A party may make further inquiry of the

Director of Arbitration concerning the replacement arbitrator's background and within the time remaining prior to the first hearing session or the five (5) day period provided under paragraph (f), whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in paragraph (f).

(f) **Peremptory Challenge.**—In any arbitration proceeding, each party shall have the right to one peremptory challenge. In arbitrations where there are multiple Claimants, Respondents and/or Third Party Respondents, the Claimants shall have one peremptory challenge, the Respondents shall have one peremptory challenge and the Third Party Respondents shall have one peremptory challenge, unless the Director of Arbitration determines that the interests of justice would best be served by awarding additional peremptory challenges. Unless extended by the Director of Arbitration, a party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within five (5) business days of notification of the identity of the persons named under Rule 602(e), 607(d) or (e) whichever comes first. There shall be unlimited challenges for cause.

(g) **Disqualification or Other Disability of Arbitrators.**—In the event that any arbitrator, after the commencement of the first hearing session and prior to the rendition of the award, should become disqualified, resign, die, withdraw or otherwise be unable to perform as an arbitrator, the remaining arbitrator(s) may continue with the hearing and determination of the controversy, unless such continuation is objected to by any party within five (5) days of notification of the vacancy on the panel. Upon objection, the Director of Arbitration shall appoint a new member to fill any vacancy. The Director of Arbitration shall inform the parties as soon as possible of the name and employment history for the past ten years of the replacement arbitrator, as well as information disclosed pursuant to Rule 603. A party may make further inquiry of the Director of Arbitration concerning the replacement arbitrator's background and within the time remaining prior to the next scheduled hearing session or the five (5) day period provided under paragraph (f), whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in paragraph (f).

Rule 603. Disclosures Required By Arbitrators

(a) Each arbitrator shall be required to disclose to the Director of Arbitration any circumstances which might preclude such arbitrator from rendering an objective and impartial determination. Each arbitrator shall disclose:

- (1) Any direct or indirect financial or personal interest in the outcome of the arbitration.
- (2) Any existing or past financial, business, professional, family or social relationships that are likely to affect impartiality or might reasonably create an appearance of partiality or bias. Persons requested to serve as arbitrators should disclose any such relationships which they personally have with any party or its counsel, or with any individual whom they have been told will be a witness. They should also disclose any such relationship involving members of their families or their current employers, partners or business associates.

- (b) Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in Paragraph (a) above.**
- (c) The obligation to disclose interests, relationships, or circumstances that might preclude an arbitrator from rendering an objective and impartial determination described in subsection (a) hereof is a continuing duty which requires a person who accepts appointment as an arbitrator to disclose, at any stage of the arbitration, any such interests, relationships, or circumstances which arise, or which are recalled or discovered.**
- (d) Prior to the commencement of the first hearing session, the Director of Arbitration may remove an arbitrator based on information disclosed pursuant to this section. The Director of Arbitration shall also inform the parties of any information disclosed pursuant to this section if the arbitrator who disclosed the information is not removed.**

Rule 604. Hearing Requirements—Waiver of Hearing

- (a) Any dispute, claim or controversy, except as provided in Rules 621 and 622, shall require a hearing unless all parties waive such hearing in writing and request that the matter be resolved solely upon the pleading and documentary evidence.**
- (b) Notwithstanding a written waiver of a hearing by the parties, a majority of the arbitrators may call for and conduct a hearing. In addition, any arbitrator may request the submission of further evidence.**

Rule 605. Submission Limitations

- (a) Time Limitations.—No dispute, claim or controversy shall be eligible for submission to arbitration in any instance where six (6) years shall have elapsed from the occurrence or event giving rise to the act or the dispute, claim or controversy. This section shall not extend applicable statutes of limitation, nor shall it apply to any case which is directed to arbitration by a court of competent jurisdiction.**
- (b) Dismissal or Termination of Proceedings.—At any time during the course of an arbitration, the arbitrators may either upon their own initiative or upon the joint request of the parties, dismiss the proceeding and refer the parties to the remedies provided by law.**
- (c) Settlements.—All settlements upon any matters submitted shall be at the election of the parties.**
- (d) Tolling of Time Limitation(s) for the Institution of Legal Proceedings.—**
 - (1) Where permitted by law, the time limitation(s) which would otherwise run or accrue for the institution of legal proceedings, shall be tolled when a duly executed Submission Agreement is filed by the Claimant(s). The tolling shall continue for such period as the Exchange shall retain jurisdiction upon the matter submitted.**

- (2) **The six (6) year time limitation upon submission to arbitration shall not apply when the parties have submitted the dispute, claim or controversy to a court of competent jurisdiction. The six (6) year time limitation shall not run for such period as the court shall retain jurisdiction upon the matter submitted.**

Rule 606. Initiation of Proceedings

Except as otherwise provided herein, an arbitration proceeding shall be instituted as follows:

(a) Statement of Claim.—The Claimant shall file with the Director of Arbitration an executed Submission Agreement, a Statement of Claim together with documents in support of the claim and the required deposit. Sufficient additional copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and each arbitrator. The Statement of Claim shall specify the relevant facts and the remedies sought. The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim.

(b) Service and Filing with the Director of Arbitration.—For purpose of the Arbitration Rules, service may be effected by mail or other means of delivery. Service and filing are accomplished on the date of mailing either by first-class postage pre-paid or by means of overnight mail service or, in the case of other means of service, on the date of delivery. Filing with the Director of Arbitration shall be made on the same date as service.

(c) Answer-Defenses, Counterclaims and/or Cross-Claims.—

- (1) **Within twenty (20) business days from receipt of the Statement of Claim, the Respondent(s) shall serve each party with an executed Submission Agreement and a copy of Respondent(s) Answer. An executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s), along with any deposit required under the schedule of fees. The Answer shall specify all available defenses and relevant facts that will be relied upon at the hearing and may set forth any related Counterclaim the Respondent(s) may have against the Claimant, any Cross-Claim the Respondent(s) may have against any other named Respondent(s) and any third party claim against any other party or person based upon any existing dispute, claim or controversy subject to arbitration.**

(2)(i) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent or Third Party Respondent who pleads only a general denial as an answer may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting any facts or defenses at the time of the hearing.

- (ii) **A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent or Third Party Respondent who fails to specify all available defenses and relevant facts in such party's answer, may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting such facts or defenses not included in such party's answer at the hearing.**

- (iii) **A Respondent, Responding Claimant, Cross-Claimant or Third Party Respondent who fails to file an answer within twenty (20) business days from receipt of service, or unless the time to answer has been extended pursuant to paragraph (5), in the discretion of the arbitrators, may be barred from presenting any matter, arguments or defenses at the hearing.**
 - (iv) **Respondent(s) shall serve each party with a copy of any Third Party Claim. The Third Party claim shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s), along with any deposit required under the schedule of fees. Third Party Respondent(s) shall respond in the manner provided for response to the Claim, as set forth in paragraph (b)(i-iii) above.**
 - (v) **The Claimant shall serve each party with a reply to a counterclaim within ten (10) business days of receipt of an answer containing a counterclaim. The reply shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s).**
 - (vi) **The time period to file any pleading, whether such be denominated as a Claim, Answer, Counterclaim, Cross-Claim, Reply or Third Party pleading, may be extended for such further periods as may be granted by the Director of Arbitration.**
- (d) **Joining and Consolidation.—Multiple Parties**
- (1) **Permissive Joinder. All persons may join in one action as claimants if they assert any right to relief jointly, severally, or arising out of the same transaction, occurrence or series of transactions or occurrences and if any questions of law or fact common to all these claimants will arise in the action. All persons may be joined in one action as respondents if there is asserted against them jointly or severally, any right to relief arising out of the same transaction, occurrence, or series of transactions or occurrences and if any questions of law or fact common to all respondents will arise in the action. A claimant or respondent need not assert rights to or defend against all the relief demanded. Judgment may be given for one or more of the claimants according to their respective rights to relief, and against one or more respondents according to their respective liabilities.**
 - (2) **In arbitrations where there are multiple Claimants, Respondents and/or Third Party Respondents, the Director of Arbitration shall be authorized to determine preliminarily whether such parties should proceed in the same or separate arbitrations. Such determination will be considered subsequent to the filing of all responsive pleadings.**
 - (3) **The Director of Arbitration shall be authorized to determine preliminarily whether claims filed separately are related and shall be authorized to consolidate such claims for hearing and award purposes.**
 - (4) **Further determinations with respect to joining, consolidation and multiple parties under this subsection may be made by the arbitration panel and shall be deemed final.**

Rule 607. General Provision Governing Prehearing Proceeding

(a) Requests for Documents and Information.—The parties shall cooperate to the fullest extent practicable in the voluntary exchange of documents and information to expedite the arbitration. Any request for documents or other information should be specific, relate to the matter in controversy, and afford the party to whom the request is made a reasonable period of time to respond without interfering with the time set for the hearing.

(b) Document Production and Information Exchange

(1) Any party may serve a written request for information or documents ("information request") upon another party twenty (20) business days or more after service of the Statement of Claim by the Director of Arbitration or upon filing of the Answer, whichever is earlier. The requesting party shall serve the information request on all parties and file a copy with the Director of Arbitration. The parties shall endeavor to resolve disputes regarding an information request prior to serving any objection to the request. Such efforts shall be set forth in the objection.

(2) Unless a greater time is allowed by the requesting party, information requests shall be satisfied or objected to within thirty (30) calendar days from the date of service. Any objection to an information request shall be served by the objecting party on all parties and filed with the Director of Arbitration.

(3) Any response to objections to information requests shall be served on all parties and filed with the Director of Arbitration within ten (10) calendar days of receipt of the objection.

(4) Upon the written request of a party whose information request is unsatisfied, the matter will be referred by the Director of Arbitration to either a pre-hearing conference under paragraph (d) of this section or to a selected arbitrator under paragraph (e) of this section.

(c) Prehearing Exchanges.—At least twenty (20) calendar days prior to the first scheduled hearing date, all parties shall serve on each other copies of documents in their possession that they intend to present at the hearing. The parties may provide a list of those documents that have already been produced pursuant to the other provisions of Rule 607 instead of the actual documents. A list of such documents as well as of any additional documents served under this paragraph shall be served on the Director of Arbitration at the same time and in the same manner as service on the parties. In addition, at least twenty (20) calendar days prior to the first scheduled hearing date, the parties also shall serve on each other a list identifying witnesses they intend to present at the hearing by name, address and business affiliation. A copy of the list of witnesses shall be served on the Director of Arbitration at the same time and in the same manner as service on the parties. The arbitrators may exclude from the arbitration any documents not exchanged or identified or witnesses not identified in accordance with the requirements of this paragraph. This does not require service of copies of documents or of a list identifying witnesses that parties may use for cross-examination or rebuttal.

(d) Pre-Hearing Conference

- (1) Upon the written request of a party, an arbitrator, or at the discretion of the Director of Arbitration, a pre-hearing conference shall be scheduled. The Director of Arbitration shall set the time and place of a pre-hearing conference and appoint a person to preside. The pre-hearing conference may be held by telephone conference call. The presiding person shall seek to achieve agreement among the parties on any issues that relate to the pre-hearing process or to the hearing, including, but not limited to, the exchange of information, exchange or production of documents, identification of witnesses, identification and exchange of hearing documents, stipulation of facts, identification and briefing of contested issues, and any other matters which will expedite the arbitration proceedings.
- (2) Any issues raised at the pre-hearing conference that are not resolved may be referred by the Director of Arbitration to a single public member of the Arbitration Panel for decision.

(e) **Decisions by Selected Arbitrator.**—The Director of Arbitration may appoint a single member of the Arbitration Panel to decide all unresolved issues referred to under this Rule and Rules 610 and 611. In matters involving public customers, such single arbitrator shall be a public arbitrator except that the arbitrator may be either public or industry if the public customer has requested a panel consisting of a majority of arbitrators from the securities industry. Such arbitrator shall be authorized to act on behalf of the panel to issue subpoenas, direct appearances of witnesses and production of documents, set deadlines and issue any other ruling which would expedite the arbitration proceeding or is necessary to permit any party to fully develop its case. Decisions under this paragraph shall be made upon the papers submitted by the parties, unless the arbitrator calls a hearing. The arbitrator may elect to refer any issue under this paragraph to the full panel. In any claim involving a public customer the Selected Arbitrator shall be a public arbitrator unless the public customer demands, in writing, a securities arbitrator.

Rule 608. Rules of General Application

- (a) **Designation of Time and Place of Hearings.**—The time and place for the initial hearing shall be determined by the Director of Arbitration and each hearing thereafter by the arbitrators. Notice of the time and place for the initial hearing shall be given at least eight business days prior to the date fixed for the hearing by personal service, or, registered or certified mail to each of the parties unless the parties shall, by their mutual consent, waive the notice provisions under this section. Notice for each hearing, thereafter, shall be given as the arbitration panel may determine. Attendance at a hearing waives notice thereof.
- (b) **Representation by Counsel.**—All parties shall have the right to representation by counsel at any stage of the proceedings.
- (c) **Attendance at Hearings.**—The attendance or presence of all persons including witnesses shall be determined by the arbitration panel. However, all parties to the arbitration and their counsel shall be entitled to attend all hearings.
- (d) **Failure to Appear.**—If any of the parties, after due notice, fails to appear at a hearing or at any continuation of a hearing session, the arbitrators may, in their discretion, proceed

with the arbitration of the controversy. In such cases, all awards shall be rendered as if each party had entered an appearance in the matter submitted.

(e) **Adjournments.**—The arbitrators may, in their discretion, adjourn any hearing(s) either upon their own initiative or upon the request of any party to the arbitration. A party requesting an adjournment after arbitrators have been appointed shall, if an adjournment is granted, deposit a fee, equal to the initial deposit of hearing session fees for the first adjournment and twice the initial deposit of hearing session fees, not to exceed \$1,000 for a second or subsequent adjournment requested by that party. The arbitrators may waive the deposit of this fee or in their awards may direct the return of the adjournment fee. Upon receiving a third request consented to by all parties for an adjournment, the arbitrators may dismiss the arbitration without prejudice to the claimant filing a new arbitration.

Rule 609. Acknowledgement of Pleadings

The arbitrators shall acknowledge to all parties present that they have read the pleadings filed by the parties.

Rule 610. Subpoena Process

The arbitrators and any counsel of record to the proceeding shall have the power of subpoena process as provided by law. All parties shall be given a copy of the subpoena upon its issuance. However, the parties shall produce witnesses and present proofs to the fullest extent possible without resort to the issuance of subpoena process.

Rule 611. Power to Direct Appearances

The arbitrators shall be empowered without resort to subpoena process to direct the appearance of any person employed or associated with any member or member organization of the Exchange and/or the production of any records in the possession or control of such persons, members or member organizations. Unless the arbitrators direct otherwise, the party requesting the appearance of a person or the production of documents under this section shall bear all reasonable costs of such appearance and/or production.

Rule 612. Interpretation of the Provisions of the Code and Enforcement of Arbitrator(s) Rulings

(a) The arbitrators shall determine the materiality and relevance of any evidence proffered and shall not be bound by rules governing the admissibility of evidence.

(b) The arbitrators shall be empowered to interpret and determine the applicability of all provisions under this Code and to take appropriate action to obtain compliance with any ruling by the arbitrator(s). Such interpretations and actions to obtain compliance shall be final and binding upon the parties.

Rule 613. Determinations of Arbitrators

All rulings and determinations of the panel shall be by a majority of the arbitrators.

Rule 614. Record of Proceedings

A verbatim record by stenographic reporter or tape recording of arbitration hearings shall be kept. If a party or parties to a dispute elect to have the record transcribed, the cost of such transcription shall be borne by the party or parties making the request unless the arbitrators direct otherwise. The arbitrators may also direct that the record be transcribed. If the record is transcribed at the request of any party, a copy shall be provided to the arbitrators.

Rule 615. Oaths of the Arbitrators and Witnesses

Prior to the commencement of the first session, an oath or affirmation shall be administered to the arbitrators. All testimony shall be under oath or affirmation.

Rule 616. Amendments

(a) After the filing of any pleadings, if a party desires to file a new or different pleading, such change must be made in writing and filed with the Director of Arbitration with sufficient additional copies for each arbitrator. The party filing a new or different pleading shall serve upon all other parties a copy of said change in accordance with the provisions set forth in Rule 606. The other parties may, with ten (10) business days from the receipt of service, file a response with all other parties and the Director of Arbitration in accordance with Rule 606.

(b) After a panel has been appointed, no new or different pleading may be filed except for a responsive pleading as provided for in (a) above or with the panel's consent.

Rule 617. Reopening of Hearings

Where permitted by law, the hearings may be reopened by the panel of arbitrators on their own motion or in the discretion of the arbitrators upon application of a party at any time before the award is rendered.

Rule 618. Awards

- (a) All awards shall be in writing and signed by a majority of the arbitrators or in such manner as is required by law. Such awards may be entered as a judgment in any court of competent jurisdiction.
- (b) Unless the law directs otherwise, all awards rendered shall be deemed final and not subject to review or appeal.
- (c) The Director of Arbitration shall endeavor to serve a copy of the award by registered or certified mail upon all parties, or their counsel, at the address of record; or, by personally serving the award upon the parties; or, by filing or delivering the award in such manner as may be authorized by law.
- (d) The arbitrator(s) shall endeavor to render an award within thirty business days from the date the record is closed.
- (e) The award shall contain the names of the parties, name(s) of counsel, if any; a summary of the issues including the type(s) of any security or product in controversy, the damages and/or other relief requested, the damages and/or other relief awarded, a statement of any other issues resolved, the names of the arbitrators, the date the claim was filed and the award rendered, the number and dates of hearing sessions, the locations of the hearings and the signatures of the arbitrators concurring in the award.
- (f) The awards shall be made publicly available, provided however, that the name of any customer party to the arbitration will not be publicly available if he or she so requests in writing.
- (g) All monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. An award shall bear interest from the date of the award (i) if not paid within thirty (30) days of receipt, (ii) if the award is the subject of a motion to vacate which is denied, or (iii) as specified by the arbitrator(s) in the award. Interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrator(s).

Rule 619. Agreement to Arbitrate

Article VIII of the Constitution and the provisions of Rules 600 through 623 shall be deemed a part of and incorporated by reference in every agreement to arbitrate under the Constitution and Rules of the American Stock Exchange.

Rule 620. Schedule of Fees

- (a) At the time of filing a Claim, Counterclaim, Third Party Claim or Cross-Claim, a party shall pay a non-refundable filing fee and shall remit a hearing session deposit with the Exchange in the amounts indicated in the schedules below unless such fee or deposit is specifically waived by the Director of Arbitration.

Where multiple hearing sessions are required, the arbitrator(s) may require any of the parties to make additional hearing deposits for each additional hearing session. In no

event shall the amount deposited by all parties per hearing session exceed the amount of the largest initial hearing deposit made by any party under the schedule below.

(b) A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. The forum fee for a pre-hearing conference with an arbitrator shall be the amount set forth in the schedules below as a hearing session deposit for a hearing with a single arbitrator.

(c) The arbitrators, in their award, may determine the amount chargeable to the parties as forum fees and shall determine who shall pay such forum fees. Forum fees chargeable to the parties shall be assessed on a per hearing session basis and the aggregate for each hearing session may equal but shall not exceed the amount of the largest initial hearing deposit deposited by any party, except in a case where claims have been joined subsequent to filing in which cases hearing session fees shall be computed as provided in paragraph (d). The arbitrators may determine in the award that a party shall reimburse to another party any non-refundable filing fee it has paid.

If a customer is assessed forum fees in connection with an industry claim, forum fees assessed against the customer shall be based on the hearing deposit required under the industry claims schedule for the amount awarded to industry parties to be paid by the customer and not based on the size of the industry claim. No fees shall be assessed against a customer in connection with an industry claim that is dismissed; however, in cases where there is also a customer claim, the customer may be assessed forum fees based on the customer claim under the procedure set out above.

Amounts deposited by a party as hearing deposits shall be applied against forum fees, if any.

In addition to forum fees, the arbitrator(s) may determine in the award the amount of costs incurred pursuant to Rules 607, 608(e), 610 and 614 and, unless applicable law directs otherwise, other costs and expenses of the parties. The arbitrator(s) shall determine by whom such costs shall be borne.

If the hearing session fees are not assessed against a party who had made a hearing deposit, the hearing deposit will be refunded unless the arbitrators determine otherwise.

(d) For claims filed separately and subsequently joined or consolidated under Rule 606(d), the hearing deposit and forum fees assessable per hearing session after joinder or consolidation shall be based on the cumulative amount in dispute. The arbitrator(s) shall determine by whom such forum fees shall be borne.

(e) If the dispute, claim or controversy does not involve, disclose or specify a money claim, the non-refundable filing fee for a public customer will be \$250 and the non-refundable filing fee for an industry party shall be \$500. The hearing session deposit to be remitted by a party shall be \$600 or such greater or lesser amounts as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed \$1,500.

(f) The Exchange shall retain the total initial amount deposited as hearing session deposits by all the parties in any matter submitted and settled or withdrawn within eight (8) business days of the first scheduled hearing session other than a pre-hearing conference.

(g) Any matter submitted and thereafter settled or withdrawn subsequent to the commencement of the first hearing session, including a pre-hearing conference with an arbitrator, shall be subject to an assessment of forum fees and costs incurred pursuant to Rules 607, 608(e), 610 and 614 based on hearing sessions held and scheduled within eight (8) business days of the Exchange receiving notice that the matter has been settled or withdrawn. The arbitrator(s) shall determine by whom such forum fees and costs shall be borne.

(h) The fee for a pre-hearing conference with an arbitrator shall be:

SCHEDULE FOR PRE-HEARING CONFERENCE WITH ARBITRATOR(S):

\$1,000 or less	\$15.00
\$1,001 up to \$2,500	\$25.00
\$2,501 up to \$5,000	\$100.00
\$5,001 up to \$10,000	\$200.00
\$10,001 up to \$30,000	\$300.00
\$30,001 up to \$50,000	\$300.00
\$50,001 up to \$100,000	\$300.00
\$100,001 up to \$500,000	\$300.00
\$500,001 up to \$5 million	\$300.00
\$ Greater than \$5 million	\$300.00

(i) *Schedule of Fees*

For purposes of the schedule of fees the term claim includes Claims, Counterclaims, Third-Party Claims or Cross-Claims. Any such claim submitted by a customer is a customer claim. Any such claim submitted by a member, allied member, registered representative, member or member corporation against a public customer or other non-member is an industry claim.

CUSTOMER CLAIMANT

	Filing Fee	DEPOSIT Simplified	Hearing
Amount of Dispute			
(Exclusive of Interest and Expenses)			
\$1,000 or less	\$15	\$15	\$15

\$1,001 to \$2,500	\$25	\$25	\$25
\$2,501 to \$5,000	\$50	\$75	\$100
\$5,001 to \$10,000	\$75	\$75	\$200
\$10,001 to \$30,000	\$100	N/A	\$400
\$30,001 to \$50,000	\$120	N/A	\$400
\$50,001 to \$100,000	\$150	N/A	\$500
\$100,001 to \$500,000	\$200	N/A	\$750
\$500,001 to \$5,000,000	\$250	N/A	\$1,000
Over \$5,000,000	\$300	N/A	\$1,500

INDUSTRY CLAIMANT***HEARING DEPOSIT**

Amount of Dispute	Filing Fee	1 Arb	3 Arb
(Exclusive of Interest and Expenses)			
\$1,000 or less	\$500	\$300	\$600
\$1,001 to \$2,500	\$500	\$300	\$600
\$2,501 to \$5,000	\$500	\$300	\$600
\$5,001 to \$10,000	\$500	\$300	\$600
\$10,001 to \$30,000	\$500	\$300	\$600
\$30,001 to \$50,000	\$500	\$300	\$600
\$50,001 to \$100,000	\$500	\$300	\$600
\$100,001 to \$500,000	\$500	\$300	\$750
\$500,001 to \$5,000,000	\$500	\$300	\$1,000
Over \$5,000,000	\$500	\$300	\$1,500

* This is the fee schedule for claims submitted by members, member firms, member corporations or allied members against public customers, registered representatives, non-members other than public customers, and for claims submitted by registered representatives or non-members other than public customers against members, member

firms, member corporations allied members or non-members. The one arbitrator column is for pre-hearing conferences and for simplified arbitration where the industry party is a claimant against a public customer.

Rule 621. Simplified Procedure

(a) Any dispute, claim, or controversy, arising between a public customer(s) and an associated person or a member subject to arbitration under this Code involving a dollar amount not exceeding \$10,000 exclusive of attendant costs and interest shall be arbitrated as hereinafter provided.

(b) The Claimant shall file with the Director of Arbitration an executed Submission Agreement and a copy of the Statement of Claim of the controversy in dispute and the required deposit, together with documents in support of the Claim. Sufficient additional copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and the arbitrator. The Statement of Claim shall specify the relevant facts, the remedies sought and whether or not a hearing is demanded.

(c) The Claimant shall pay a filing fee and remit a hearing deposit as specified in Rule 620 upon filing of the Submission Agreement. The final disposition of the sum shall be determined by the arbitrators.

(d) The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim. Within twenty (20) calendar days from receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission Agreement and a copy of Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any deposit required under the schedule of fees for customer disputes. The Answer shall designate all available defenses to the Claim and may set forth any related Counterclaim and/or related Third Party Claim the Respondent(s) may have against the Claimant or any other person. If the Respondent(s) has interposed a Third Party Claim, the Respondent(s) shall serve the Third Party Respondent with an executed Submission Agreement, a copy of Respondent's Answer containing the Third Party Claim and a copy of the original Claim filed by the Claimant. The Third Party Respondent shall respond in the manner herein provided for response to the Claim. If the Respondent(s) files a related Counterclaim exceeding \$10,000 the arbitrator may refer the Claim, Counterclaim and/or Third Party Claim, if any, to a panel of three arbitrators in accordance with Rule 602, or may dismiss the Counterclaim and/or Third Party Claim without prejudice to the Counterclaimant(s) and/or Third Party Claimant(s) pursuing the Counterclaim and/or Third Party Claim in a separate proceeding. The costs to the Claimant under either proceeding shall in no event exceed the total amount specified in Rule 620.

(e) All parties shall serve promptly by mail or otherwise on all other parties and the Director of Arbitration, with sufficient additional copies for the arbitrators, a copy of the Answer, Counterclaim, Third Party Claim, amended claim or other responsive pleading, if any. The Claimant, if a Counterclaim is asserted against him, shall within ten (10) calendar days either (i) serve on each party and on the Director of Arbitration with sufficient additional copies for the arbitrator(s) a reply to any Counterclaim or, (ii) if the amount of

the Counterclaim exceeds the Claim, shall have the right to file a statement withdrawing the Claim. If the Claimant withdraws the Claim, the proceedings will be discontinued without prejudice to the rights of the parties.

(f) The dispute, claim or controversy shall be submitted to a single public arbitrator knowledgeable in the securities industry selected by the Director of Arbitration. Unless the public customer demands or consents to a hearing, or the arbitrator(s) calls a hearing, the arbitrator shall decide the dispute, claim or controversy solely upon the pleadings and evidence filed by the parties. If a hearing is necessary, such hearing shall be held as soon as possible at a locale selected by the Director of Arbitration.

(g) The Director of Arbitration may grant extensions of time to file any pleading upon a showing of good cause.

(h) (i) The arbitrator shall be authorized to require the submission of further documentary evidence as he in his sole discretion deems advisable.

(ii) If a hearing is demanded or consented to in accordance with Rule 621(f), the General Provision Governing a Pre-Hearing Proceeding under Rule 607 shall apply.

(iii) If no hearing is demanded or consented to, all requests for document production shall be submitted in writing to the Director of Arbitration within ten (10) business days of notification of the identity of the arbitrator selected to decide the case. The requesting party shall serve simultaneously its requests for document production on all parties. Any response or objection to the requested document production shall be served on all parties and filed with the Director of Arbitration within five (5) business days of receipt of the requests for production. The selected arbitrator shall resolve all requests under this section on the papers submitted.

(i) Upon the request of the arbitrator, the Director of Arbitration shall appoint two (2) additional arbitrators to the panel which shall decide the matter in controversy.

(j) In any case where there is more than one (1) arbitrator, the majority will be public arbitrators.

(k) In his discretion, the arbitrator may, at the request of any party, permit such party to submit additional documentation relating to the pleadings.

(1) Except as otherwise provided herein, the provisions of Rules 600 through 620 shall be applicable to proceedings instituted under this Rule.

Rule 622 Schedule for Member Controversies

(a) At the time of filing a Claim, Counterclaim, Third-Party Claim or Cross-Claim, a party shall pay a non-refundable filing fee and make a hearing session deposit with the American Stock Exchange, Inc. in the amounts indicated below:

Amount in Dispute	Filing	Hearing Deposit
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\$ 5,000 or less	\$100	\$ 200
\$ 5,001 to \$100,000	\$200	\$ 750
\$100,001 or more	\$300	\$1,000

(b) Where the claim or controversy does not involve or disclose a money claim, or is unspecified, the filing fee will be \$300 and the hearing session deposit shall be \$1,000 per hearing session.

(c) The fee for a Pre-Hearing Conference with an arbitrator in a member controversy shall be as follows:

Amount in Dispute Conference Fee

\$ 5,000 or less	\$150
\$ 5,001 to \$100,000	\$300
\$100,001 or more	\$500

Rule 623. Member Small Claims Procedure

(a) Any dispute, claim or controversy arising between or among members, member organizations, and partners and officers of member organizations required to be arbitrated under the Constitution or Rules of the Exchange, involving a dollar amount not exceeding \$10,000, exclusive of attendant costs and interest, shall be arbitrated by a single arbitrator in accordance with the procedures set forth in this Rule 623, unless both parties request in writing that the matter be arbitrated under the provisions of Rules 600 through 619. The provisions of Rule 621, exclusive of fees which shall be governed by Rule 622, shall govern all arbitrations conducted pursuant to this Rule, except as otherwise provided in paragraphs (b) and (c) below.

(b) All arbitrators appointed under this Rule shall be selected from Group 1, as defined in Rule 601.

(c) Either of the parties to an arbitration conducted pursuant to this Rule shall have the right to a hearing, provided that a request therefor is filed with the Director of Arbitration within ten (10) business days following the filing of the last pleading. Whether or not the parties request a hearing, the arbitrator may call and conduct a hearing if deemed by the arbitrator in his discretion to be necessary for the fair resolution of the matter.]

Rule 624. Failure to Honor Award

Any member, allied member, registered representative or member organization who fails to honor an award of arbitrators appointed in accordance with these rules or who fails to honor an award of

arbitrators rendered under the auspices of any other self-regulatory organization or pursuant to the rules applicable to securities disputes before the American Arbitration Association, shall be subject to disciplinary proceedings in accordance with **the Rules of the Exchange [345, Rule 590 or Article V of the American Stock Exchange Constitution and Rules]**.

Contracts in Securities

Rule 700. References and Definitions

(f) [The term "Member Contracts" is defined in paragraph (j), and the term "Exchange Contracts" is defined in paragraph (k) of Article I, Section 3 of the Constitution.] The terms "**Member Contracts**," "**Exchange Contracts**" "member organization," "delivery," "business day," and "the Exchange" are defined under "Definitions", General and Floor Rules.

[(g) Article (XI), Section 1 of the Constitution provides that the provisions of the Constitution and of the rules adopted pursuant thereto shall be a part of the terms and conditions of all Exchange Contracts.]

Rule 701. Non-Clearing Member

A member of the Exchange who is not a member of a registered clearing agency, shall cause his transactions in "cleared" securities to be cleared for him by a clearing member.

In every Exchange Contract not involving an option contract or the exercise thereof, delivery and payment shall be made through a registered clearing agency, in accordance with the by-laws and rules of such registered clearing agency, unless otherwise stipulated in the bid or offer or it is otherwise agreed by the parties to the contract, or unless such registered clearing agency either in the particular instance or in pursuance of its by-laws and rules, will not act in the matter. If a party to any such contract is not a participant in a registered clearing agency entitled to clear and settle any such contract through such registered clearing agency he shall cause the transaction to be cleared or settled for him by a member organization which is a participant in a registered clearing agency.

In every Exchange Contract involving an option contract or the exercise thereof, settlement and payment shall be made as required by the By-Laws and Rules of The Options Clearing Corporation unless The Options Clearing Corporation, either in the particular instance or in pursuance of its By-Laws and Rules, will not act in the matter. If a party to any such contract is not a Clearing Member as defined in the By-Laws of The Options Clearing Corporation he shall cause the transaction to be cleared or settled for him by a Clearing Member.

Rule 704. Exchange Contracts Include Rules

The By-Laws and Rules of The Options Clearing Corporation and the amendments thereto adopted from time to time shall be a part of the terms and conditions of every contract which is to be cleared or settled by, or shall be made a part of the terms and conditions of every transaction submitted for settlement through The Options Clearing Corporation and all such contracts shall be subject to the exercise by The Options Clearing Corporation of the powers with respect thereto vested in it by its By-Laws and Rules.

Rule 719. Comparison of Exchange Transactions

••• *Commentary* -----

.02

(12) Account type code-equities only. The current account type codes for equity transactions are as follows. Members should use the most restrictive account type code available. Thus, for example, members only should use the "A" account type code for an agency transaction when no other account type code accurately describes the trade. These codes may be changed from time to time as the Exchange may determine:

G—Registered Equity Trader, Registered Equity Market Maker and Registered Options Trader market maker transactions in the equities and ETFs in which they are registered as a market maker regardless of the clearing member, and Registered Options Trader and option specialist transactions in an underlying Paired Security if the underlying Paired Security is an equity other than an ETF (e.g., SPY, DIA, QQQ, HOLDRS, Sector SPDRs)

P—Exchange [Amex] Option Specialist or Market Maker transaction in the underlying of an Exchange [Amex] "paired security" if the underlying of the Paired Security is an ETF (e.g., SPY, DIA, QQQ, HOLDRS, Sector SPDRs) (regardless of the clearing member)

Rule 749. Exchange Contracts Extended or Postponed

Anything contained in the Rules to the contrary notwithstanding, the Board of **Directors** **[Governors]** may extend or postpone the time for the performance of Exchange contracts whenever in its opinion such action is called for by the public interest or by just and equitable principles of trade.

Rule 765. Assignments—By Member Organizations

Member of New York Stock Exchange—Filing of documents

(e) A member organization of the [**American Stock**] Exchange which is a member of a registered clearing agency and is also a member organization of the New York Stock Exchange, and has filed with the New York Stock Exchange the appropriate forms required pursuant to the rules of that exchange to authorize officers or employees of the member organization to assign securities and to guarantee assignments, is not required to file with the [**American Stock**] Exchange the forms required by paragraph (a) or (b) of this Rule with respect to the authorization of such officers or employees.

(f) A member or member organization of the [**American Stock**] Exchange who or which is a member or member organization of the New York Stock Exchange and has filed with the New York Stock Exchange the appropriate forms required pursuant to the rules of that exchange to authorize the use of a particular facsimile signature, is not required to file with the [**American Stock**] Exchange the forms required by paragraph (c) of this Rule with respect to the use of such signature.

Rule 781. Contracts of Suspended Parties [Insolvency]

When announcement is made of the suspension of a member or member organization pursuant to **Rule 475 [the provisions of Article V, Sec. 3, of the Constitution]**, members and member organizations having Exchange contracts with the suspended member or member organization **for the purchase, sale or loan of securities** shall, without unnecessary delay, proceed to close the same on the Exchange or in the best available market, except insofar as the By-Laws and Rules of a registered clearing agency are applicable and provide the method of closing; provided, however, that upon any such suspension the Board may, in its discretion, suspend the mandatory close-out provisions of this rule and may, in its discretion, reinstate such provisions at such time as it may determine. Should a contract not be closed when required to be closed by this rule, the price of settlement [**for the purpose of Article IV, Sec. 4(d) of the Constitution**] shall be fixed by the **fair market value [price current]** at the time when such a contract should have been closed under this Rule.

Trading of Option Contracts

Rule 900. Applicability, Definitions and References

(a) Applicability—The Rules in this Chapter (Trading of Options Contracts) shall be applicable to (i) the trading on the Exchange of option contracts issued by the Options Clearing Corporation and the terms and conditions thereof; and (ii) the exercise and settlement, the handling of orders, and the conduct of accounts and other matters, relating to option contracts dealt in by any member or member organization. Except to the extent that specific Rules in this Chapter govern, or unless the context otherwise requires, the [**provisions of the Constitution**

and of all other] Rules and policies of the Board of **Directors** [**Governors**] shall be applicable to the trading on the Exchange of option contracts. **[Pursuant to the provisions of Article I, Section 3(i) of the Constitution, o]**Option contracts (as defined below) are included within the definition of "security" or "securities" as such terms are used in the [**Constitution and**] the Rules of the Exchange.

(c) References—Exchange Contracts as defined in **the Rules** [**paragraph (k) of Article 1, Section 3 of the Constitution**], include option contracts purchased or sold in Exchange option transactions. **[Article XI, Section 1 of the Constitution provides that the provisions of the Constitution and of the rules adopted pursuant thereto shall be a part of the terms and conditions of all Exchange Contracts.]**

••• *Commentary* -----

.01 The term "security", when used in the [**Constitution or**] Rules of the Exchange, shall be deemed to include certificates of deposit unless the context otherwise requires.

Rule 915. Criteria for Underlying Securities

(b) In addition, the Board of **Directors** [**Governors**] shall from time to time establish guidelines to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions. There are, however, many relevant factors which must be considered in arriving at such a determination. The fact that a particular security may meet the guidelines established by the Board does not necessarily mean that it will be approved as an underlying security. Further, in exceptional circumstances an underlying security may be approved by the Exchange even though it does not meet all of the guidelines. The Exchange may also give consideration to maintaining diversity among various industries and issuers in selecting underlying securities.

••• *Commentary* -----

.01 The Board of **Directors** [**Governors**] has established guidelines to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions. Absent exceptional circumstances with respect to items 1, 2, 3 or 4 listed below, at the time the Exchange selects an underlying security for Exchange options transactions, the following guidelines with respect to the issuer shall be met:

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warranty or representation and has no liability or obligation with respect to such Product. FORTUNE makes no warranty or representation as to the accuracy and/or completeness of the Indexes or the data included therein or the results to be obtained by any person from the use of the Indexes or the data included therein. FORTUNE makes no express or implied warranty of merchantability or fitness for a particular use with respect to the Indexes or any data included therein.

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- (b) Listing Considerations—In determining whether to list and trade an option class proposed pursuant to this Commentary, the Exchange may consider any or all of the following factors:

- (iii) If the underlying security is listed (or is a prospective listed security) on the Exchange [Amex], or an affiliate of the Exchange [Amex], the views of the issuer of such security;

Rule 916. Withdrawal of Approval of Underlying Securities

••• *Commentary* -----

.01 The Board of Directors [Governors] has established guidelines to be considered by the Exchange in determining whether an underlying security previously approved for Exchange option transactions no longer meets its requirements for the continuance of such approval. Absent exceptional circumstances, with respect to items 1, 2, or 3 listed below, an underlying security will not be deemed to meet Exchange's requirements for continued approval whenever any of the following occur:

Rule 922. Supervision of Accounts

(a) Duty to Supervise; Designation of Supervisory Personnel.— The general partners or directors of each member organization which maintains customers' accounts in which transactions in options on equity or debt securities are effected, that conducts a non-member customer business, shall provide for appropriate supervisory control and shall designate and specifically identify to the Exchange a general partner or executive officer, to assume overall authority and responsibility for internal supervision and control of the organization and compliance with the securities laws and regulations. This person, who may be the same individual designated pursuant to substantially similar New York Stock Exchange or FINRA [National Associations of Securities Dealers] rules, shall:

(3) Develop and implement written policies and procedures reasonably designed to independently supervise the activities of accounts serviced by branch office managers, sales managers, regional/district sales managers or any person performing a similar supervisory function. Such supervisory reviews must be performed by a qualified Registered Options Principal who:

- (iv) A member organization that complies with requirements of the New York Stock Exchange or **FINRA [the National Associations of Securities Dealers]** that are substantially similar to the requirements in paragraphs (a)(3)(i), (a)(3)(ii), and (a)(3)(iii) of this Rule will be deemed to have met such requirements.

(c) Internal Controls.

- (ii) A member organization that complies with the requirements of the New York Stock Exchange or **FINRA [the National Associations of Securities Dealers]** that are substantially similar to the requirements in paragraph (c)(i) of this Rule will be deemed to have met such Requirements.

(d) Annual Branch Office Inspections.—The principal supervisor of every branch office of a member organization which transacts options business with the public must be qualified as a Registered Options Principal with regard to options on equity securities; provided that if no more than three Registered Representatives in a branch office engage in options transactions, the principal supervisor of such branch office need not qualify as a Registered Options Principal with regard to equity options, so long as any options activities of such branch office for which the principal supervisor is not qualified as a Registered Options Principal are supervised by an appropriately qualified Registered Options Principal of the member organization. Debt options trading of a branch office may be supervised by any debt qualified Registered Options Principal of member organization.

- (3) A member organization that complies with the requirements of the New York Stock Exchange or **FINRA [the National Associations of Securities Dealers]** that are substantially similar to the requirements in paragraphs (d)(1) and (d)(2) of this Rule as well as related to requirements in paragraphs (e) and (f) of this Rule will be deemed to have met such requirements.

(g) Written Report. By April 1 of each year, each member organization that conducts a non-member customer business shall submit to the Exchange a written report on the member organization's supervision and compliance effort during the preceding year and on the adequacy of the member organization's ongoing compliance processes and procedures. Each member organization that conducts a public customer options business shall also specifically include its options compliance program in the report. The report shall include, but not be limited to, the following:

(5) A certification signed by the member organization's Chief Executive Officer (or equivalent), that:

A member organization that specifically includes its options compliance program in a report that complies with substantially similar requirements of the New York Stock Exchange or **FINRA [the National Associations of Securities Dealers]** will be deemed to have met the requirements of this Rule 922(g) and Rule 922(h).

Rule 933. Automatic Execution of Options Orders

(b) Broker-dealer orders entered through the Exchange's order routing system will not be automatically executed against orders in the limit order book. Broker-dealer orders may interact with orders in the limit order book only after being re-routed to the **NYSE Alternext [Amex]** Options Display Book (AODB) for execution.

(f) (i) Auto-Ex may be disengaged or operated in a manner other than the normal manner in the following circumstances:

- A. Temporary Disengagement of Auto-Ex During Market Data Delays— Senior Market Operations staff, in conjunction with **a Senior Supervisory Officer or Senior Floor Official [the Floor Governors]**, may determine to disengage Auto-Ex due to market data dissemination delays at the Options Price Reporting Authority ("OPRA") or internally at the Exchange. Auto-Ex may be disengaged for one option class, a group of option classes, or all option classes floor-wide;

- C. Temporary Disengagement of Auto-Ex During Unusual Market Conditions—The Market Operations Division, with **[Floor Governor,] Senior Supervisory Officer or Senior Floor Official** approval, may disengage Auto-Ex during unusual market conditions in respect of an option class(es) or their underlying security(ies). Unusual market conditions may include (i) significant or market disruptive order imbalances in the option class or series, or the underlying security; or (ii) unusually wide or market disrupting spreads between the bid and the offer in the underlying security.
- D. Temporary Disengagement of Auto-Ex as the Result of Systems Malfunctions—The Market Operations Division, with **Senior Floor Official [Floor Governor]** or Senior Supervisory Official approval, may disengage Auto-Ex as the result of systems malfunctions that affect the Exchange's ability to (i) disseminate or update market quotes; or (ii) deliver orders to the trading floor in a timely manner;

(g) On occasion the **Exchange [Amex]** must make the determination that the quotes being disseminated by another options exchange are not reliable and exclude those quotes from the calculation of its NBBO. A **Senior Floor Official [Floor Governor]** or Exchange Official may make this determination based on one of the following circumstances: (i) the other options exchange's quotes are not firm based upon direct communication from that exchange or the dissemination through OPRA of a message indicating the quotes are not firm; or (ii) the other options exchange has directly communicated or otherwise confirmed that it is experiencing systems or other problems affecting the reliability of its disseminated quotes. In all cases where a **Senior Floor Official [Floor Governor]** or Exchange Official excludes an exchange or any of its quotes from the Auto-Ex determination of the NBBO due to quote unreliability, Market Operations staff will promptly notify the exchange of the action, continue to monitor the reliability of the excluded quotes in consultation with the **Senior Floor Official [Floor Governor]** or Exchange Official, and maintain records showing the date, time, duration, and reasons for each such action, as well as the identity of the **Senior Floor Official [Floor Governor]** or Exchange Official who authorized the action. Any determination to exclude a market or any of its quotes from the Auto-Ex determination of the NBBO pursuant to the above will expire at the end of the trading day, or at such time as the quotes are confirmed by the exchange to be reliable again—whichever occurs first. Exclusion of an exchange or its quotes from the Auto-Ex determination of the NBBO will be reported to Exchange member firms.

••• *Commentary* -----

.01

(d) Notwithstanding paragraphs (b) and (c) above, orders for automatic price matching series or automatic price improvement series will be routed to the specialist and not automatically executed in situations where: (i) the current best bid or offer for one of the series is crossed (e.g., 4.20 bid, 4 asked) or locked (e.g., 4 bid, 4 asked); (ii) the specialist in conjunction with **[Floor Governor or]** two Floor Officials determined quotes in such options or options exchange(s) are not reliable; or (iii) the Exchange is experiencing communications or systems problems, "fast markets," or delays in the dissemination of quotes by the Options Price Reporting Authority ("OPRA"). Members and member organizations will be notified when the Exchange has determined that quotes are not reliable and prior to one or both Auto-Ex Enhancements being shut off and customer orders being routed to the specialist for execution. The specialist will report the execution or non-execution of such orders to the firm that originally forwarded the order to Auto-Ex.

.02 Auto-Ex eligible orders must be market or marketable limit orders for five hundred (500) or fewer contracts for series subject to Auto-Ex except in the case of options on the Nasdaq-100 Tracking Stock (QQQ) which is limited to 2,000 or fewer contracts in the first two (2) near term expiration months and 1,000 or fewer contracts for all other expiration months. Contract limits will be established on a case by case basis for an individual option class or for all options classes upon the approval of two **[Floor Governors or]** Senior Floor Officials. Notice concerning applicable size and types of Auto-Ex eligible orders will be provided to members periodically via Exchange circulars and/or posted on the Exchange's web site.

.04 The Exchange has adopted an options market data size mitigation policy ("Options Size Mitigation") on a pilot basis that will expire on March 5, 2007. Under Options Size Mitigation, during high options quote volume periods and peaks, incoming market data will be filtered prior to being forwarded to Exchange floor trading systems. When in effect, Options Size Mitigation will filter market data by not processing incoming quotes with size changes below a variable percent. Exchange systems will always maintain and display **Exchange [Amex]** quotations with accurate size regardless of whether Options Size Mitigation is in effect. In addition, the Exchange will also ensure that all options market data (including filtered quotes) is available for regulatory and surveillance purposes.

Rule 936. Cancellation and Adjustment of Equity Options Transactions

(a) Trades Subject to Review. A member or person associated with a member may have a trade cancelled or adjusted if, in addition to satisfying the procedural requirements of paragraph (b) below, one of the following conditions is satisfied:

(1) Obvious Price Error.

(i) Cancellation or Price Adjustment. Obvious Pricing Errors will be cancelled or adjusted as follows.

- Transactions Between **Exchange [Amex]** specialists/registered options traders (ROTs): Where both parties to the transaction are **Exchange [Amex]** specialists/ROTs, the execution price of the transaction will be adjusted by Trading Officials to the prices provided in Paragraphs (A) and (B) below, minus (plus) an adjustment penalty ("adjustment penalty"), unless both parties agree to adjust the transaction to a different price or agree to cancel the trade within fifteen (15) minutes of being notified by Trading Officials of the Obvious Error.

- Transactions Involving at least one non-**Exchange [Amex]** specialist/ROT: Where one of the parties to the transaction is not an **Exchange [Amex]** specialist/ROT, the transactions will be cancelled by Trading Officials unless both parties agree to an adjustment price for the transaction within thirty (30) minutes of being notified by Trading Officials of the Obvious Error.

(6) Transactions Executed Outside of Trading Hours. All equity options transactions that occur outside of the trading hours of the Exchange will be cancelled if it is determined by the Trading Officials that the transaction occurred outside of the Exchange's trading hours, except as set forth in Commentary .02 to **Exchange [Amex]** Rule 1.

(d) Review of Rulings. A member affected by a determination made under this rule may appeal such determination to a Review Panel of at least three (3) Exchange Officials who have not already ruled on the matter. A request for review must be made in writing (in a form and manner prescribed by the Exchange) no later than the close of trading on the next trade date after the member receives verbal notification of such determination by Trading Officials. Notwithstanding other Exchange rules to the contrary (e.g., Rule 22(d)), decisions of the Review Panel are binding on members, subject to any right of appeal pursuant to **the Exchange Rules [Article II, Section 3 of the Constitution]**. The parties may also elect to submit the matter to arbitration pursuant to **the Arbitration Rules of the Exchange [Article VIII of the Constitution]**.

Rule 940. Options Intermarket Linkage

(a) Applicability

The Rules in this Section are applicable only to linkage orders (as defined below). In addition, except to the extent that specific rules in this Section govern, or unless the context otherwise requires, the **[provisions of the Constitution and of all other]** rules and policies of the Board of **Directors [Governors]** shall be applicable to the trading of options on the Exchange.

Rule 945. Liability for the Options Intermarket Linkage

(a) The Linkage as used to send orders and other information to or from the Exchange is a facility or service afforded by the Exchange for purposes of **Rule 63 [Article IV, Section 1(e) of the Amex Constitution]**. It is the responsibility of each member, member organization or associated person of such member or member organization to verify the accuracy of transactions sent and received through the Linkage.

Rule 950. Rules of General Applicability

(c) The provisions of Rule 111 and Commentary thereto, with the exception of paragraphs (a)(1), (b) and (e) of such Rule and the Commentary insofar as it relates to such paragraphs, shall apply to Exchange option transactions. In addition, the following commentary shall also apply:

••• *Commentary* -----

.02 The number of Registered Options Traders in a trading crowd who are establishing or increasing a position for accounts in which they have an interest may temporarily be limited when, in the judgment of two Floor Officials, the interests of a fair and orderly market are served by such limitation.

.03 A Registered Options Trader, in establishing or increasing a position, may retain priority over or have parity with an off-Floor order for the account of a member or broker/dealer which is establishing or increasing a position in the trading crowd. Orders of broker/dealers must be appropriately identified. For purposes of this Rule, the term "broker/dealer" includes foreign broker/dealers.

(d) The provisions of Rule 126, with the exception of subparagraphs (a) and (b) thereof, shall apply to Exchange option transactions and the following additional commentary shall also apply:

••• *Commentary* -----

.05

(d) Floor brokers are able to achieve split price priority in accordance with paragraphs (a) and (b) above. Provided, however, that a floor broker who bids (offers) on behalf of a non-market-maker Exchange [Amex] member broker-dealer ("Exchange [Amex] member BD") must ensure that the Exchange [Amex] member BD qualifies for an exemption from Section 11(a)(1) of the Exchange Act or that the transaction satisfies the requirements of Exchange Act Rule 11a2-2(T), otherwise the floor broker must yield priority to orders for the accounts of non-members.

(n) The provisions of Rule 170 and Commentaries .03 and .04 thereto, shall apply to exchange option transactions. In addition, the following Commentary shall also apply:

••• *Commentary* -----

.02 Specialists and registered options traders are required to compete with each other to improve the quoted markets in all series of option classes which they trade. Unless otherwise provided for in Exchange rules, it shall be a violation of just and equitable principles of trade for specialists and registered options traders to determine by agreement the spreads or prices at which they will trade any option class, or the allocation of orders in any option class. In complying with this Rule, the specialist and registered options traders must make independent decisions to determine the spreads or prices at which they will quote and trade any option class. There are, however, certain specific circumstances where to make fair and orderly markets that are competitive with other exchanges and responsive to the needs and expectations of investors, some communication among the specialist and traders may be necessary and appropriate. Therefore, notwithstanding the foregoing:

(a) Specialists are expected to participate in and support Exchange-sponsored automated systems such as automatic quote and execution systems or Exchange-approved equivalents. The variables in the formula used to generate automatically updated quotations for each option class and or series will be determined independently by the specialist. The specialist shall disclose to all registered options traders in an option class the following variables of the formula used to

generate automatically updated market quotations for each option class and/or series: option pricing calculation model, volatility, interest rate, and dividends (both declared and anticipated). The specialist may receive input from the registered options traders on any one or all of these variables provided, however, it is within the specialist's sole discretion to make the final, independent decision in determining the variables to be used in the automated quote system. The registered options traders, however, are not required to give input on the variables to the specialist. The Exchange shall have the discretion to exempt specialists using an Exchange-approved proprietary automated quotation updating system from having to disclose proprietary information concerning the variables (but not the variables themselves) used by those systems;

Rule 952. Minimum Price Variations

(a) The Exchange's Board of **Directors [Governors]** may establish the minimum price variation ("MPV") for dealings on the Exchange in option contracts for which the underlying security is a stock. When the Board of **Directors [Governors]** determines to change the quoting increments, the Exchange will designate such change as a stated policy, practice, or interpretation with respect to the administration of Rule 952 within the meaning of subparagraph (3)(A) of subsection 19(b) of the Securities Exchange Act of 1934 and will file a rule change to be effective upon filing with the Securities and Exchange Commission; The Board has determined that the MPV for an option on a stock or Exchange-Traded Fund Share shall be as follows: (a) for option issues quoted under \$3 a contract, \$.05 MPV; (b) for option issues quoted at \$3 a contract or greater, \$0.10 MPV.

Rule 953. Acceptance of Bid or Offer

All bids or offers for option contracts dealt in on the Exchange made and accepted in accordance with these Rules shall constitute binding contracts between the parties thereto but shall be subject to the exercise by the Board of **Directors [Governors]** of the powers in respect thereto vested in said Board by the **Rules [Constitution]**, and to the Rules of the Exchange, and said contracts shall also be subject to the rules of The Options Clearing Corporation and to the exercise by The Options Clearing Corporation of the powers reserved to it in the rules of The Options Clearing Corporation.

Rule 957. Accounts, Orders and Records of Registered Traders, Designated NYSE Alternext [Amex] Remote Traders, Specialists and Associated Persons

(a) Associated Persons.—Identification of Accounts —Each Specialist, Designated **NYSE Alternext [Amex]** Remote Trader and Registered Trader in the Exchange-Traded Fund Shares as defined in Commentary .06 to Rule 915, is obligated to conduct all trading in the Exchange-Traded Fund Shares in account(s) that have been reported to the Exchange. In addition, in a manner prescribed by the Exchange, each Specialist, Designated **NYSE Alternext [Amex]** Remote Trader and Registered Trader engaging in options trading shall file with the Exchange and keep current a list identifying all accounts for stock, option, non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, any other derivatives based on such currency, physical commodities, physical commodity options, commodity futures contracts, options on commodity futures contracts, any other derivatives based on such commodity and

other related trading in which the Specialist, Designated **NYSE Alternext [Amex]** Remote Trader or Registered Trader may, directly or indirectly, engage in trading activities or over which he exercises investment discretion. No Specialist, Designated **NYSE Alternext [Amex]** Remote Trader or Registered Trader shall engage in stock, option, non- U.S. currency, non-U.S. currency option, futures, options on futures on such currency, any other derivatives based on such currency, physical commodities, physical commodity options, commodity futures contracts, options on commodity futures contracts, any other derivatives based on such commodity or other related trading in an account which has not been reported pursuant to this Rule.

(d)

(2) A short sale may be designated as short exempt if:

(a) The sale qualifies for an exemption from the short sale bid test established in the **FINRA [NASD]** Rules of Fair Practice; or

(b)

(iii) An options specialist or registered options trader shall be considered a "qualified options market maker" as that term is defined in Article III, Section 46 of the **FINRA [NASD]** Rules of Fair Practice in options on those NM securities or index of NM securities in which the specialist has been allocated or in which the registered options trader has been assigned for purposes of the exemption for qualified options market makers from the bid test established in Article III. Section 46, provided that the status of such specialist or registered options trader as a qualified options market maker may be withdrawn, suspended or modified by the Exchange as the result of action by the Exchange[**'s Enforcement Department**] pursuant to Rule 590.

(3) This Rule may be modified or withdrawn upon termination of the eighteen-month period noted in subparagraph (2)(b)(i) above, provided that if the exemption for options specialists and registered traders from the short sale bid test contained in the **FINRA [NASD]** Rules of Fair Practice continues in effect, this rule will also continue in effect until it is modified or withdrawn.

••• *Commentary* -----

.01 Reports of accounts and orders required to be filed with the Exchange pursuant to paragraphs (a) and (b) of this Rule relate only to accounts in which a Specialist, Designated **NYSE Alternext [Amex]** Remote Trader or Registered Trader, as an individual directly or indirectly, controls trading activities or has a direct interest in the profits or losses of such accounts. Reports are required for accounts over which a Specialist, Designated **NYSE Alternext [Amex]** Remote Trader or Registered Trader exercises investment discretion as well as his proprietary accounts. For purposes of this Rule, the types of trading which shall be

considered to be related to an option on a particular underlying security shall include trading in (i) securities convertible into or exchangeable for such underlying security, (ii) any contract calling for the future delivery of a security which permits delivery of such underlying security, and (iii) any option contract which, following exercise, would require the delivery of such a futures contract.

.03 In addition to the existing obligations under Exchange rules regarding the production of books and records, a specialist, Designated **NYSE Alternext [Amex]** Remote Trader or Registered Trader in non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency, shall make available to the Exchange such books, records or other information pertaining to transactions in the applicable non-U.S. currency, non-U.S.-currency options, futures, or options on futures on such currency, or any other derivatives on such currency, as may be requested by the Exchange.

.04 In addition to the existing obligations under Exchange rules regarding the production of books and records, a specialist, Designated **NYSE Alternext [Amex]** Remote Trader or Registered Trader in commodity futures contracts, options on commodity futures contracts or any other derivatives based on such commodity, shall make available to the Exchange such books, records or other information pertaining to transactions in the applicable physical commodity, physical commodity options, commodity futures contracts, options on commodity futures contracts, or any other derivatives on such commodity, as may be requested by the Exchange.

Rule 958. Options Transactions of Registered Traders

(e) No equity specialist, odd-lot-dealer or NASDAQ marketmaker may act as a registered trader in a class of stock options on a stock in which he is registered in the primary market therefor, provided, however, that an equity specialist may act as a registered trader in a class of stock options on an Exchange-Traded Fund Share or a Trust Issued Receipt in which he is registered in the primary market therefor if the Exchange-Traded Fund Share or Trust Issued Receipt meets the criteria set forth in Commentary .03(a) to **Exchange [Amex]** Rule 1000 or Commentary .02(a) to **Exchange [Amex]** Rule 1000A or approved by the Securities and Exchange Commission as eligible for trading arrangements under this paragraph and Rule 175(c)(2).

••• *Commentary* -----

.10 (a) Transactions on the Floor in index warrants, currency warrants, securities listed pursuant to Section 107 of the Company Guide ("Other Securities"), Trust Issued Receipts listed pursuant to Rules 1200 et seq. and Partnership Units listed pursuant to Rules 1500 et seq. which are otherwise traded under the Exchange's equity trading rules, shall be effected in accordance with the provisions of this rule, and shall only be effected by **86 Trinity Permit Holders authorized to be Registered Traders [who are regular members]**. Transactions by Registered Traders on the

Floor in derivative products [(as defined in Article I, Section 3(d) of the Exchange Constitution)] which are otherwise traded under the Exchange's equity trading rules, shall be effected in accordance with the provisions of this rule. In addition, Rule 111, Commentary .01 shall not apply to such transactions. (See Rule 111, Commentary .12, and Rule 114, Commentary .14.)

Rule 959. Accommodation Transactions

(c) Registered traders seeking to liquidate all or nearly all of their option positions may transfer such positions on the floor of the Exchange as set forth below provided the transfer results in the discontinuation of management or ownership of all or substantially all of the registered trader's assets or options positions. This procedure may be used for lengthy absences from the trading floor such as an extended vacation and are not to be used repeatedly or routinely in circumvention of the normal auction market process.

- (i) **Positions Subject to Transfer Procedure** —In addition to option positions, the registered trader may specify any positions in other securities traded on an exchange or whose bids and offers are reported on the automated quotation system operated by the **FINRA [National Association of Securities Dealers, Inc. ("NASD")]** ("Transfer Positions") to be transferred pursuant to the provisions of this Rule, where those positions are being transferred pursuant to a discontinuation of the management or ownership of the option positions. In offering these transfer portions on the floor, the transferor may offer the transfer positions in any combination of instruments subject to the limitations of a "Transfer Package" below provided that each combination has at least one (1) option position required to be transferred pursuant to paragraph (c) that is a material part of such combination. Such offers must be made in a form and manner as prescribed by the Exchange from time to time.

A "Transfer Package" is the set of options or other financial products being offered as a package, to be bid upon at a net debit or credit. Each Transfer Package may include positions in only one option class. The options position must be a material part of Transfer Package. A Transferor may offer multiple Transfer Packages using these procedures at the same time or on the same trading day.

A "Transferor" is the member or member organization submitting the Transfer Package(s) to the floor.

- (ii) **Transfer Procedures**—

- (5) Acceptance of the best bid or offer ("BBO") creates a binding contract under Rule 153. The Transferor, however, is not obligated to accept the BBO. In the event the Transferor does not accept the BBO, the Transferor may offer the Transfer Package(s) (or the Transfer Positions in any other allowable combination) on the floor the next business day pursuant to the procedures in this Rule. In the event the Transferor decides not to accept a BBO on the second day, the Transferor must request permission from a **Senior Supervisory Officer [Floor Governor]** or the

Chief Executive Officer of the Exchange to offer the Transfer Positions on any subsequent business day.

- (6) The "Request Response Time" for a "Request for Quotes"[""] ("RFQ"[""]) for Transfer Packages shall be two hours. The Transferor may apply to a **Senior Supervisory Officer [Floor Governor]** or the Chief Executive Officer of the Exchange to have a Request Response Time for a transfer procedure that is less than two hours, where the Transfer Package is not complicated, or that is greater than two hours, where the complexity of the particular Transfer Package warrants additional time.
- (7) Any Request for Quotes that is to be submitted later than 2:00 p.m. must have the approval of a **Senior Supervisory Officer [Floor Governor]** or the Chief Executive Officer of the Exchange to have a Request Response Time of less than two hours. In no event may a Request for Quotes be submitted to the floor later than 3:30 p.m.

Rule 972. Option Contracts of Suspended Members

When announcement is made of the suspension of a member or member organization, other than a clearing member of the Options Clearing Corporation, pursuant to **Rules 475 through 477 [the provisions of Article V, Sec. 3 of the Constitution]**, all open short positions of the suspended a member or member organization in option contracts and all open positions resulting from exercise of option contracts, other than positions that are secured in full by a specific deposit or escrow deposit in accordance with the rules of the Options Clearing Corporation, shall be closed without unnecessary delay by all member organizations carrying such positions for the account of the suspended member or member organization; provided, however, that upon any such suspension the Board may, in its discretion, suspend the mandatory close-out provisions of this Rule and may, in its discretion, reinstate such provisions at such time as it may determine. No temporary suspension of the mandatory close-out provisions of this Rule shall relieve the suspended member or member organization of his or its obligations or for any damages incurred by member organizations carrying positions for the account of such suspended member or member organization. **[Should an open short position or an open position resulting from an exercise of an option contract not be closed when required to be closed by this Rule, the price for the purpose of determining claims pursuant to Article IV, Sec. 4(d) of the Constitution shall be fixed by the price current at the time when such position should have been closed under this Rule.]** When a clearing member of the Options Clearing Corporation is suspended pursuant to **Rules 475 through 477 [the provisions of Article V, Sec. 3 of the Constitution]** the positions of such clearing member shall be closed out in accordance with the rules of the Options Clearing Corporation.

Rule 992. Exchange [Amex] Options Market Data System

- (a) A member or member organization initiating an options transaction, whether acting as principal or agent, must report or ensure the transaction is reported within 90 seconds of the execution to the **Exchange [Amex] Options Market Data System** for dissemination to the Options Price Reporting Authority.

Rule 900C. Applicability and Definitions

(a) Applicability—The rules in this Section are applicable only to stock index options (as defined below). In addition, except to the extent that specific rules in this Section govern, or unless the context otherwise requires, the [provisions of the Constitution and of all other] rules and policies of the Board of **Directors** [Governors] shall be applicable to the trading on the Exchange of stock index options. [Pursuant to the provisions of Article 1, Section 3(i) of the Constitution, s]Stock index options are included within the definition of "security" or "securities" as such terms are used in [the Constitution and] the Rules of the Exchange.

Rule 901C. Designation of Stock Index Options

••• *Commentary* -----

.03 Stock Index Industry Groups. The Exchange has received approval, pursuant to the Securities Exchange Act of 1934 ("Act"), to list options on stock industry index groups pursuant to Rule 19b-4(e) of the Act provided each of the following criteria are satisfied:

(a) *Eligibility Criteria for Index Components*—In addition to the criteria set forth in Rule 901C(a) above, each component of a stock industry index group ("index") established pursuant to this Commentary shall meet the following criteria:

- (1) 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;
- (2) 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;
- (3) in a 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;
- (4) 90% of the index's numerical index value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Exchange Rule 915;
- (5) foreign country securities or American Depositary Receipts ("ADRs") thereon that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the index;

- (6) all component stocks will either be listed on the **Exchange [Amex]**, the New York Stock Exchange, or traded through the facilities of the National Association of Securities Dealers Automated Quotation System and reported National Market System securities; and
- (7) no component security will represent more than 30% 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 (65% for an index consisting of fewer than 25 component securities).

.04 The Exchange may split index values from time to time in response to prevailing market conditions upon reasonable advance written notice to the **members and member organizations [membership]**. In effecting an index split, the Exchange will increase the applicable index divisor, proportionally increase the number of contracts outstanding and increase the index option's applicable position and exercise limits. Upon expiration of the furthest non-LEAP index option contract, the position and exercise limit revision to accommodate positions outstanding prior to the index split will revert to their then applicable limit.

Rule 902C. Rights and Obligations of Holders and Writers of Stock Index Option Contracts

(k) The FORTUNE 500 Index and the FORTUNE e-50 Index (the "Indexes") are trademarks of FORTUNE, a division of Time Inc., which are licensed for use by the **[American Stock Exchange [LLC]]** in connection with FORTUNE index options (the "Product"). The Product has not been passed on by FORTUNE for suitability for a particular use. The Product is not sponsored, endorsed, sold or promoted by FORTUNE. FORTUNE makes no warranty or representation and has no liability or obligation with respect to such Product. FORTUNE makes no warranty or representation as to the accuracy and/or completeness of the Indexes or the data included therein or the results to be obtained by any person from the use of the Indexes or the data included therein. FORTUNE makes no express or implied warranty of merchantability or fitness for a particular use with respect to the Indexes or any data included therein.

903C. Series of Stock Index Options

(c) On the business day prior to the expiration of a particular series of index options, such options shall freely trade until 4:00 p.m., unless the Board of **Directors [Governors]** has established different hours of trading for certain index options.

Rule 918C. Trading Rotations, Halts and Suspensions

(b) Trading on the Exchange in options on a stock index group shall be halted or suspended whenever two **Senior Floor Officials [floor governors]** and a senior executive officer of the Exchange deem such action appropriate in the interest of a fair and orderly market or to protect investors. Among the factors that the Exchange may consider in exercising its discretion to halt or suspend trading in options on a stock index group are that:

- (1) the current calculation of the numerical index value derived from the current market prices of the underlying stocks in such stock index group is not available;
- (2) trading in one or more of the underlying stocks comprising such stock index group has been halted in the primary market(s) under circumstances which indicate that such stock or stocks will likely re-open at a price or prices significantly different than the price or prices at which such stock or stocks last traded prior to the trading halt;
- (3) the extent to which trading is not occurring in stocks underlying the index; or
- (4) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Trading in any class or series of stock index options that has been the subject of a halt or suspension by the Exchange may be resumed upon a determination by two **Senior Floor Officials [floor governors]** in consultation with a senior executive officer of the Exchange that in their best judgment such a resumption would be in the interests of a fair and orderly market. Among the factors to be considered in this determination are whether the conditions which led to the halt or suspension are no longer present and the extent to which trading is occurring in stocks underlying the index.

Rule 936C. Cancellation and Adjustment of Index Option Transactions

(d) Review of Rulings. A member affected by a determination made under this rule may appeal such determination to a Review Panel of at least three (3) Exchange Officials who have not already ruled on the matter. A request for review must be made in writing (in a form and manner prescribed by the Exchange) no later than the close of trading on the next trade date after the member receives verbal notification of such determination by Trading Officials. Notwithstanding other Exchange rules to the contrary (e.g., Rule 22(d)), decisions of the Review Panel are binding on members, subject to any right of appeal pursuant to **the Exchange Rules [Article II, Section 3 of the Constitution]**. The parties may also elect to submit the matter to arbitration pursuant to the **Arbitration Rules of the Exchange [Article VIII of the Constitution]**.

Rule 951C. Premium Bids and Offers

Except as provided in Commentary .01, bids and offers for stock index options shall be expressed in terms of a percent expressed (A) in the case of a premium of less than \$300, in a minimum price variation of \$.05, and (B) in the case of a premium greater than \$300, in a minimum price

variation of \$0.10. (E.g., a bid of 5.10 shall represent a bid to pay a premium of \$510.00 for a stock index option with an index multiplier of 100.)

The Exchange's Board of **Directors [Governors]** may establish different percentages than set forth above for bids and offers for stock index options traded on the Exchange. When the Board of **Directors [Governors]** determines to change such percentages, the Exchange will designate such change as a stated policy, practice or interpretation with respect to the administration of Rule 951C within the meaning of subparagraph (3) (A) of subsection 19 (b) of the Securities Exchange Act of 1934 and will file a rule change to be effective upon filing with the Securities and Exchange Commission.

Rule 900D. Applicability and Definitions

The Rules in this Section are applicable solely to Treasury bill options which, under the rules of The Options Clearing Corporation, may be exercised only on or about their expiration dates ("European style Treasury bill options"). Treasury bill options traded on the Exchange under the Rules set forth in Sections 1 through 9 of this Part V, which may be exercised at any time during their lives pursuant to the rules of The Options Clearing Corporation, are referred to herein as "American style Treasury bill options".

Except to the extent that specific rules in this Section govern or unless the context otherwise requires, the **[provisions of the Constitution and of all other]** rules and policies of the Board of **Directors [Governors]** (including the rules applicable to "American" style Treasury bill options set forth in Sections 1 through 9 of this Part) shall be applicable to the trading on the Exchange of "European" style Treasury bill options. **[Pursuant to the provisions of Article 1, Section 3(i) of the Constitution,]** "European" style Treasury bill options are included within the definition of "security" or "securities" as such terms are used in **[the Constitution and]** the Rules of the Exchange.

The following terms, as used in the Rules in this Section, and as applied to "European" style Treasury bill options when used in other Rules of the Exchange, shall have the meanings set forth below:

Rule 900F. Applicability; Definitions

(a) **Applicability.** The Rules in this Section are applicable only to Equity Index Participations. Except to the extent that specific rules in this Section govern, or unless the context otherwise requires, the **[provisions of the Constitution and all other]** rules and policies of the Board of **Directors [Governors]** shall be applicable to the trading on the Exchange of such securities. In addition, the following Options Rules shall be specifically applicable to such trading: 900(b), 902, 907, 908, 909, 920, 921, 922, 923, 924, 925, 926, 930, 932, 950(b), 950(c), 953, 954, 955, 956, 957, 958, 960, 961, 962, 963, 964, 965, 966, 967, 970, 971, 972, 918C. **[Pursuant to the provisions of Article 1, Section 3(i) of the Constitution,]** Equity Index Participations are included within the definition of "security" or "securities" as such terms are used in the **[Constitution and]** Rules of the Exchange.

Compliance with Rules 904, 905, 906 shall be determined as set forth in Rules 907F, 908F, and 909F.

Rule 900G. Applicability and Definitions

(a) Applicability. The Rules in this Section are applicable only to Flexible Exchange Options. Except to the extent that specific rules in this Section govern, or unless the context otherwise requires, the **[provisions of the Constitution and all other]** rules and policies of the Board of **Directors [Governors]** shall be applicable to the trading on the Exchange of such securities. **[Pursuant to the provisions of Article 1, Section 3(i) of the Constitution,]** Flexible Exchange Options are included within the definition of "security" or "securities" as such terms are used in the **[Constitution and]** Rules of the Exchange.

Rule 900H. Applicability; Definitions

(a) Applicability. The Rules in this Section are applicable only to Buy-Write Option Unitary Derivatives ("BOUNDS"). Except to the extent that specific rules in this Section govern, or unless the context otherwise requires, the **[provisions of the Constitution and all other]** rules and policies of the Board of **Directors [Governors]** shall be applicable to the trading of BOUNDS. In addition, the following Options Rules shall be specifically applicable to such trading: 900(b), 907, 909, 915, 916, 918, 920, 921, 922, 923, 924, 925, 926, 927, 928, 930, 932, 950 (except that 950(e)(ii) and 950(e)(iii) shall not apply), 951(a), 951(b), 951(b), 951(c), 952(a), 953, 954, 955, 956, 957, 958, 960, 961, 962, 963, 964, 965, 966, 967, 970, 971, 972, and 991. **[Pursuant to the provisions of Article 1, Section 3(i) of the Constitution,]** BOUNDS are included within the definition of "security" or "securities" as such terms are used in the **[Constitution and]** Rules of the Exchange.

Compliance with Rules 904 and 906 shall be determined as set forth in Rules 904H and 905H.

Rule 900FRO. Applicability; Definitions

(a) Applicability. The Rules in this Section are applicable only to Fixed Return Options. Except to the extent that specific rules in this Section govern, or unless the context otherwise requires, the **[provisions of the Constitution and all other]** rules and policies of the Board of **Directors [Governors]** shall be applicable to the trading of Fixed Return OptionsSM or FROs.SM **[Pursuant to the provisions of Article 1, Section 3(i) of the Constitution,]** Fixed Return Options are included within the definition of "security" or "securities" as such terms are used in the **[Constitution and]** Rules of the Exchange.

ANTE Rules**Rule 900—ANTE Applicability, Definitions and References**

(a) Applicability— The Exchange's new trading system (known as the ANTE System or ANTE) will be rolled-out over a period of time (approximately eighteen months) on a specialist

post-by-specialist post basis. The roll-out began on May 25, 2004 and will continue until June 30, 2006 at which time all equity and index option classes traded by the Exchange will be on the ANTE System. Therefore, during the roll-out period, while the Exchange has option classes trading on both systems, current rules (as they are amended from time to time) will apply to those option classes continuing to trade on its current system while the following ANTE rules will apply to those option classes trading on the new trading system. Once the roll-out of ANTE is complete, the amendments to the Exchange's options rules reflecting the implementation of ANTE set forth below will replace, where applicable, the corresponding provisions in Rules 900 through 958A. The following Trading of Option Contracts Rules shall apply to the trading of option contracts on the ANTE System: 901, 902, 903, 904, 905, 906, 907, 908, 909, 915, 916, 917, 920, 921, 922, 923, 924, 925, 926, 927, 928, 930, 932, 940, 942, 943, 944, 952, 954, 956, 957, 959, 960, 961, 962, 963, 964, 965, 966, 967, 970, 971, 972, 980, 981, 982, 990, 991, and 992. In addition, the following Trading of Option Contract Rules, which have been amended to reflect usage in the ANTE System, shall apply to the trading of options contracts on the ANTE System.

Moreover, the Rules in this Chapter (Trading of Options Contracts) shall be applicable to (i) the trading on and through the facilities of the Exchange of option contracts issued by the Options Clearing Corporation and the terms and conditions thereof; and (ii) the exercise and settlement, the handling of orders, and the conduct of accounts and other matters, relating to option contracts dealt in by any member or member organization. Except to the extent that specific Rules in this Chapter govern, or unless the context otherwise requires, the **[provisions of the Constitution and of all other]** Rules and policies of the Board of **Directors [Governors]** shall be applicable to the trading on the Exchange of option contracts. **[Pursuant to the provisions of Article I, Section 3(i) of the Constitution, o]**Option contracts (as defined below) are included within the definition of "security" or "securities" as such terms are used in the **[Constitution and the]** Rules of the Exchange.

(b) Definitions—The following terms as used in the Rules in this Chapter shall, unless the context otherwise indicates, have the meanings herein specified:

(38) Paired Security —The term "Paired Security" means a security which is the subject of securities trading on the Exchange and Exchange option trading, provided, however, that the term "Paired Security" shall not mean an Exchange-Traded Fund Share or Trust Issued Receipt which is the subject of securities trading on the Exchange and Exchange option trading if the Exchange-Traded Fund Share or Trust Issued Receipt meet the criteria set forth in Commentary .03(a) to **[Amex]** Rule 1000 or Commentary .02(a) to **[Amex]** Rule 1000A or approved by the Securities and Exchange Commission as eligible for trading arrangements under Rule 175(c)(2) and Rule 958—ANTE (e).

(49) Registered Options Trader —The term "Registered Options Trader" or "ROT" means a **[regular]** member of the Exchange **[as defined by Article I, Section 3 of the Amex Constitution]**, located on the trading floor who has permission to trade in options for his or her own account in accordance with Rule 958-ANTE.

(c) References—Exchange Contracts as defined in **the Rules [paragraph (k) of Article 1, Section 3 of the Constitution]**, include option contracts purchased or sold in Exchange option transactions. **[Article XI, Section 1 of the Constitution provides that the provisions of the Constitution and of the rules adopted pursuant thereto shall be a part of the terms and conditions of all Exchange Contracts.]**

••• *Commentary* -----

.01 The term "security", when used in the **[Constitution or]** Rules of the Exchange, shall be deemed to include certificates of deposit unless the context otherwise requires.

Rule 918—ANTE Trading Rotations, Halts and Suspensions

••• *Commentary* -----

.01 Automatic trading rotations shall be conducted in the following manner:

(a) Automated Opening Rotations—Prior to the opening of trading, beginning at 8:00 a.m. each trading day, 7:30 a.m. on Expiration Fridays or at such other time as established by the Exchange and announced to the **members and member organizations [membership]** through an Information Circular or through other appropriate means of communication, the ANTE System will accept orders and quotes for inclusion in the automated opening rotation process. Limit orders remaining on the specialist's book from the previous trading day or session will also be included in the opening rotation process. All ANTE Participants will be able to view the above order and quote information for each class and series they trade. Spread orders and contingency orders will not participate in the automated opening rotation process.

Rule 933—ANTE Automatic Matching and Execution of Options Orders

(f) (i) Orders eligible for automatic matching and execution will not be automatically executed in the following circumstances:

- (A) Market Data Delays—Senior Market Operations staff, in conjunction with the **Senior Floor Official [Floor Governor]**, may determine to prohibit automatic matching and executions due to market data dissemination delays at the Options Price Reporting Authority ("OPRA") or internally at the Exchange. This prohibition may be for one option class, a group of option classes, or all option classes traded through the facilities of the Exchange;
- (B) Unusual Market Exception—Pursuant to procedures set forth in Rule 958A(d), the Market Operations Division in consultation with a Floor Official may determine to prohibit automatic matching and executions if the Exchange is unable to accurately collect, process, and/or disseminate quotation data owing to the high level of trading

activity or the existence of unusual market conditions which result in the suspension of firm quote rule obligations on the Exchange and its members and member organizations as set forth in Exchange Rule 958A—ANTE (d) and Rule 11Ac1-1(b)(3) under the Securities Exchange Act of 1934;

- (C) Unusual Market Condition—The Market Operations Division, with **[Floor Governor]**, Senior Supervisory Officer or Senior Floor Official approval, may prohibit automatic matching and executions during unusual market conditions in respect of an option class(es) or their underlying security(ies). Unusual market conditions may include (i) significant or market disruptive order imbalances in the option class or series, or the underlying security; or (ii) unusually wide or market disrupting spreads between the bid and the offer in the underlying security.
- (D) Systems Malfunctions—The Market Operations Division, with **Senior Floor Official [Floor Governor]** or Senior Supervisory **Officer [Official]** approval, may prohibit automatic matching and executions as the result of systems malfunctions that affect the Exchange's ability to (i) disseminate or update market quotes; or (ii) deliver orders to the trading floor in a timely manner; and
- (E) Certain Market Activity—Orders otherwise eligible for automatic matching and execution may not receive automatic execution during certain market situations. Such situations include: (i) whenever the ABBO crosses or locks the NBBO and causes an inversion in the quote, except as provided in Rule 941—ANTE (e) for orders sent through the Options Intermarket Linkage; or (ii) whenever a better bid or offer is being disseminated by another options exchange and the order is not eligible for automatic price matching as set forth in Commentary .01(b);

(g) On occasion the **Exchange [Amex]** must make the determination that the quotes being disseminated by another options exchange are not reliable and exclude those quotes from the calculation of its NBBO. A **Senior Floor Official [Floor Governor]** or Exchange Official may make this determination based on one of the following circumstances: (i) the other options exchange's quotes are not firm based upon direct communication from that exchange or the dissemination through OPRA of a message indicating the quotes are not firm; or (ii) the other options exchange has directly communicated or otherwise confirmed that it is experiencing systems or other problems affecting the reliability of its disseminated quotes. In all cases where a **Senior Floor Official [Floor Governor]** or Exchange Official excludes an exchange or any of its quotes from the determination of the NBBO due to quote unreliability, Market Operations staff will promptly notify the exchange of the action, continue to monitor the reliability of the excluded quotes in consultation with the **Senior Floor Official [Floor Governor]** or Exchange Official, and maintain records showing the date, time, duration, and reasons for each such action, as well as the identity of the **Senior Floor Official [Floor Governor]** or Exchange Official who authorized the action. Any determination to exclude a market or any of its quotes from the determination of the NBBO pursuant to the above will expire at the end of the trading day, or at such time as the quotes are confirmed by the exchange to be reliable again—whichever occurs first. Exclusion of an exchange or its quotes from the determination of the NBBO will be reported to Exchange member firms.

••• *Commentary* -----

(e) Notwithstanding paragraphs (b) and (c) above, orders for automatic price matching series or automatic price improvement series will be routed to the ABC and not automatically executed in situations where: (i) the current best bid or offer for one of the series is crossed (e.g., 4.20 bid, 4 asked) or locked (e.g., 4 bid, 4 asked); (ii) the ABC in conjunction with **[a Floor Governor or]** two Floor Officials determined quotes in such options or options exchange(s) are not reliable; or (iii) the Exchange is experiencing communications or systems problems, non-firm markets or delays in the dissemination of quotes by the Options Price Reporting Authority ("OPRA"). Members and member organizations will be notified when the Exchange has determined that quotes are not reliable and prior to customer orders not being automatically executed and routed to the ABC for execution. The ABC will report the execution or non-execution of such orders to the firm that originally forwarded the order to the Exchange.

.04 The Exchange has adopted an options market data size mitigation policy ("Options Size Mitigation") on a pilot basis that will expire on March 5, 2008. Under Options Size Mitigation, during high options quote volume periods and peaks, incoming market data will be filtered prior to being forwarded to Exchange floor trading systems. When in effect, Options Size Mitigation will filter market data by not processing incoming quotes with size changes below a variable percent. Exchange systems will always maintain and display **Exchange [Amex]** quotations with accurate size regardless of whether Options Size Mitigation is in effect. In addition, the Exchange will also ensure that all options market data (including filtered quotes) is available for regulatory and surveillance purposes.

Rule 935—ANTE Allocation of Executed Contracts

4. When more than one market participant is quoting at the ABBO, the ANTE System will allocate executed contracts to non-broker-dealer customers first and then to all other market participants based upon the following allocation algorithm:

- (i) Component A (Parity Component) —the percentage used for Component A shall be an equal percentage, derived by dividing 100 by the number of market participants quoting at the **Exchange [Amex]** best bid or offer (ABBO);

The Options Trading Committee may from time to time to determine to change the weightings of Components A and B and may vary the weightings by option class. Changes made to the weightings of Components A and B shall be announced to the **members and member organizations [membership]** through an Information Circular at least one day prior to the implementation of the change.

8. However, when more than one market participant is quoting at the ABBO and an eligible Directed Order Participant is interacting with Directed Orders, the ANTE system will allocate the remaining contracts after non-broker dealer customer orders are executed, as follows: i) with respect to an eligible Directed Order Participant interacting with Directed Orders, the greater of

the enhanced participation as specified in [AMEX] Rule 997-ANTE (c), or the amount the Directed Order Participant would be entitled to receive according to the allocation algorithm pursuant to Rule 935 – ANTE (a)(4)above; and ii) the balance to the specialist, registered options traders, RROT or SROT pursuant to Rule 935 – ANTE (a)(4)above.

Rule 936—ANTE Cancellation and Adjustment of Equity Options Transactions

(a) Trades Subject to Review. A member or person associated with a member may have a trade cancelled or adjusted if, in addition to satisfying the procedural requirements of paragraph (b) below, one of the following conditions is satisfied:

(1) Obvious Price Error.

(i) Cancellation or Price Adjustment. Obvious Pricing Errors will be cancelled or adjusted as follows.

- Transactions Between **Exchange [Amex]** specialists, registered options traders (ROTs), Supplemental Registered Options Traders (SROT) and/or Remote Registered Options Traders (RROT): Where both parties to the transaction are **Exchange [Amex]** specialists/ROTs/SROT/RROT, the execution price of the transaction will be adjusted by Trading Officials to the prices provided in Paragraphs (A) and (B) below, minus (plus) an adjustment penalty ("adjustment penalty"), unless both parties agree to adjust the transaction to a different price or agree to cancel the trade within fifteen (15) minutes of being notified by Trading Officials of the Obvious Error.

- Transactions Involving at least one non-**Exchange [Amex]** specialist/ROT/SROT/RROT: Where one of the parties to the transaction is not an **Exchange [Amex]** specialist/ROT/SROT/RROT, the transactions will be cancelled by Trading Officials unless both parties agree to an adjustment price for the transaction within thirty (30) minutes of being notified by Trading Officials of the Obvious Error.

(6) Transactions Executed Outside of Trading Hours. All equity options transactions that occur outside of the trading hours of the Exchange will be cancelled if it is determined by the Trading Officials that the transaction occurred outside of the Exchange's trading hours, except as set forth in Commentary .02 to [Amex] Rule 1.

(d) Review of Rulings. A member affected by a determination made under this rule may appeal such determination to a Review Panel of at least three (3) Exchange Officials who have

not already ruled on the matter. A request for review must be made in writing (in a form and manner prescribed by the Exchange) no later than the close of trading on the next trade date after the member receives verbal and/or electronic notification of such determination by Trading Officials. Notwithstanding other Exchange rules to the contrary (e.g., Rule 22(d)), decisions of the Review Panel are binding on members, subject to any right of appeal pursuant to **the Exchange Rules [Article II, Section 3 of the Constitution]**. The parties may also elect to submit the matter to arbitration pursuant to **the Arbitration Rules of the Exchange [Article VIII of the Constitution]**.

Rule 936C—ANTE Cancellation and Adjustment of Index Option Transactions

(a)

(8) Transactions Executed Outside of Trading Hours. All index options transactions that occur outside of the trading hours of the Exchange will be cancelled if it is determined by the Trading Officials that the transaction occurred outside of the Exchange's trading hours, except as set forth in Commentary .02 to **[Amex] Rule 1**.

(d) Review of Rulings. A member affected by a determination made under this rule may appeal such determination to a Review Panel of at least three (3) Exchange Officials who have not already ruled on the matter. A request for review must be made in writing (in a form and manner prescribed by the Exchange) no later than the close of trading on the next trade date after the member receives verbal and/or electronic notification of such determination by Trading Officials.

Notwithstanding other Exchange rules to the contrary (e.g., Rule 22(d)), decisions of the Review Panel are binding on members, subject to any right of appeal pursuant to **the Exchange Rules [Article II, Section 3 of the Constitution]**. The parties may also elect to submit the matter to arbitration pursuant to **the Arbitration Rules of the Exchange [Article VIII of the Constitution]**.

Rule 950—ANTE Rules of General Applicability

(d) The provisions of Rule 126, with the exception of subparagraphs (a) and (b) thereof, shall apply to Exchange option transactions and the following additional commentary shall also apply:

••• *Commentary* -----

.07

(d) Floor brokers are able to achieve split price priority in accordance with paragraphs (a) and (b) above. Provided, however, that a floor broker who bids (offers) on behalf of a non-market-maker Exchange [Amex] member broker-dealer ("Exchange [Amex] member BD") must ensure that the Exchange [Amex] member BD qualifies for an exemption from Section 11(a)(1) of the Exchange Act or that the transaction satisfies the requirements of Exchange Act Rule 11a2-2(T), otherwise the floor broker must yield priority to orders for the accounts of non-members.

(e) The types of orders specified in Rule 131 and the following additional types of orders shall be applicable to Exchange option transactions:

(v) Immediate or Cancel Order —An immediate or cancel order is a market or limited price order which is to be executed in whole or in part as soon as such order is represented in the ANTE System, and the portion not so executed is to be treated as cancelled. For the purposes of this definition, a "stop" is considered an execution. An immediate or cancel order may be cancelled if the Exchange [Amex] disseminated quote is not equal to the NBBO at the time the order is represented in the ANTE system.

Rule 953—ANTE Acceptance of Bid or Offer

(a) All bids or offers for option contracts dealt in on the Exchange made and accepted in accordance with these Rules shall constitute binding contracts between the parties thereto but shall be subject to the exercise by the Board of Directors [Governors] of the powers in respect thereto vested in said Board [**by the Constitution**], and to the Rules of the Exchange, and said contracts shall also be subject to the rules of The Options Clearing Corporation and to the exercise by The Options Clearing Corporation of the powers reserved to it in the rules of The Options Clearing Corporation.

Rule 958—ANTE Options Transactions of Registered Options Traders and Supplemental Registered Options Traders and Remote Registered Options Traders

(e) No equity specialist, odd-lot-dealer or NASDAQ market maker may act as a registered options trader or RROT in a class of stock options on a stock in which he is registered in the primary market therefore, provided, however, that an equity specialist may act as a registered options trader or RROT in a class of stock options on an Exchange-Traded Fund Share or a Trust Issued Receipt in which he is registered in the primary market therefore if the Exchange-Traded Fund Share or Trust Issued Receipt meets the criteria set forth in Commentary .03(a) to Exchange [Amex] Rule 1000 or Commentary .02(a) to Exchange [Amex] Rule 1000A or

approved by the Securities and Exchange Commission as eligible for trading arrangements under this paragraph and Rule 175(c)(2).

(h) (i) Registered options traders, other than RROT's, may choose to either use an Exchange provided or proprietary automated quote calculation system to calculate and submit quotes in all or some of their assigned classes. RROT's must use an authorized or proprietary automated quote calculation system; (ii) join the specialist's disseminated quotation with the ability to manually change that quotation on a series-by-series basis in those classes the registered options trader has chosen not to use an automated quote calculation system; or enter orders into the ANTE System from their hand-held device. SROT's and RROT's may not participate in the "join quote" feature in the ANTE system.

Whenever a registered options trader is either using an automated quote calculation system (pursuant to (i) above); joining the specialist's quote in a given option class (pursuant to (ii) above); or sending an order into the ANTE System, the registered options trader, that is not an SROT or RROT, must be physically present at the specialist's post on the Floor of the Exchange where that option class is traded. Notwithstanding the foregoing, a registered options trader is not required to be physically present and may submit electronic quotations and orders from off the Exchange [Amex] trading floor on a temporary basis pursuant to Commentary .01(c) of this rule.

••• *Commentary* -----

(c) A registered options trader may submit electronic quotations and orders from off the Exchange [Amex] trading floor on a temporary basis for a maximum of twenty (20) days throughout the calendar year. For purposes of a registered options trader's "on the floor" requirement set forth in this Rule, any transaction that occurs when quoting from off the floor will be deemed to be "on the floor." A registered options trader must notify the Exchange's Division of Regulation and Compliance immediately following the day or days during which he or she submits quotes and orders from off the Exchange [Amex] trading floor.

.09 (a) Transactions on the Floor and through the facilities of the Exchange in index warrants, currency warrants, securities listed pursuant to Section 107 of the Company Guide ("Other Securities"), Trust Issue Receipts listed pursuant to Rules 1200 et seq. and Partnership Units listed pursuant to Rules 1500 et seq. which are otherwise traded under the Exchange's equity trading rules, shall be effected in accordance with the provisions of this rule, and shall only be effected by registered options traders who are regular members. Transactions by registered options traders on the Floor in derivative products [(as defined in Article I, Section 3(d) of the **Exchange Constitution**)] which are otherwise traded under the Exchange's equity trading rules, shall be effected in accordance with the provisions of this rule. In addition, Rule 111, Commentary .01 shall not apply to such transactions. (See Rule 111, Commentary .12, and Rule 114, Commentary .14.)

Rule 958A—ANTE Application of the Firm Quote Rule

••• *Commentary* -----

.03 In order to control the number of quotations the Exchange disseminates, the Exchange shall utilize a mechanism so that newly-received quotations and other changes to the **Exchange [Amex]** best bid or offer ("ABBO") are not disseminated for a period of up to, but no more than one (1) second.

Rule 993—ANTE Supplemental Registered Options Traders

(a) SROT - Approval

- (iii) Determinations regarding granting or withdrawing approval to act as an SROT shall be made by **Exchange staff [a committee designated by the Board of Governors which shall include representatives from the Options Market Maker Association and the Options Specialist Association (the "Committee")]**.
- (iv) No SROT application shall be approved by the **Exchange [Committee]** without written certification signed by an officer of the Exchange's Technology department indicating that an SROT applicant has sufficient technological ability to support the continuous quoting requirement set forth in Rules 993 - ANTE (c) and 958 - ANTE(c), and the SROT applicant has successfully completed, or is scheduled to complete, testing of its quoting system with the Exchange.
- (v) The **Exchange [Committee]** then approves the applicant or, if it decides not to approve the applicant, notifies the applicant of its disapproval and that the applicant is entitled to a hearing under **[Article IV, Section 1(g) of the Constitution and] Rule 40 and other Rules of the Exchange** .
- (vi) The **Exchange [Committee]** may defer approval of an applicant that satisfies the technological readiness and testing requirements described in sub-paragraph (a)(iv) above based on system constraints, capacity restrictions or other factors relevant to the maintenance of a fair and orderly market, for a period to be determined in the **Exchange's [Committee's]** discretion, pending any action required to address the issue of concern to the **Exchange [Committee]**. The **Exchange [Committee]** may not defer a determination of the approval of the application of an SROT applicant unless the basis for such deferral has been objectively determined by the **Exchange [Committee]**, subject to Securities and Exchange Commission approval or effectiveness pursuant to a rule change filing under Section 19(b) of the Securities Exchange Act of 1934, as amended. The **Exchange [Committee]** shall provide written notification to any SROT applicant whose application is the subject of such deferral, describing the objective basis for such deferral.

- (vii) If an SROT seeks to withdraw from acting as such, it should so notify the **Exchange [Committee]** at least ten business days prior to the desired effective date of such withdrawal.
- (viii) The Exchange may suspend or terminate any appointment of an SROT in one or more classes under this Rule whenever, in the Exchange's judgment, the interests of a fair and orderly market are best served by such action. An SROT may seek review of any action taken by the Exchange pursuant to this subparagraph in accordance with **[Article IV, Section 1(g) of the Constitution and] Rule 40 and other Rules of the Exchange.**

(c) Obligations of SROTs

- (i) SROTs shall be required to **obtain [purchase or lease]one 86 Trinity Permit [seat]** for every thirty (30) options classes quoted.

Rule 994—ANTE Remote Registered Options Traders

(a) Designation as an RROT

- (i) A member or member organization requesting approval to act as an RROT shall file an application in writing with the Exchange pursuant to this Rule 994—ANTE.
- (ii) An application for designation as an RROT shall be submitted in writing to the Exchange's designated staff and shall include, at a minimum, the name of the RROT applicant and written verification from the Exchange[**'s Membership Department]** that the RROT applicant is qualified as a ROT.
- (iii) If an RROT seeks to withdraw from acting as such, it should so notify the Exchange at least three business days prior to the desired effective date of such withdrawal.
- (iv) The Exchange may suspend or terminate any designation of an RROT in one or more options classes under this Rule whenever, in the Exchange's judgment, the interests of a fair and orderly market are best served by such action. An RROT may seek review of any action taken by the Exchange pursuant to this subparagraph in accordance with **[Article IV, Section 1(g) of the Constitution and] Rule 40 and other Rules of the Exchange.**

(b) Remote Quoting Rights

- (i) Determinations regarding remote quoting rights shall be made by **Exchange designated staff [a committee designated by the Board of Governors which shall include a representative from the Options Market Maker Association and a representative from the Options Specialist Association (the "Committee")]**.

- (ii) The total number of available remote quoting rights to be awarded according to the percentage of **Exchange [Amex]** floor volume traded shall be established quarterly by the **Exchange [Committee]**. The **Exchange [Committee]** shall inform the **members and member organizations [membership]** of the number of quoting rights available no later than the first business day of each calendar quarter, **in a form and manner prescribed by the Committee**.
- (iii) The **members and member organizations [membership]** shall be informed of the amount of quoting rights earned no later than one week prior to the commencement of the subsequent trading period.

ROTs

- (iv) ROTs may earn remote quoting rights based on the percentage of **Exchange [Amex]** options floor volume they execute, including the volume executed via remote quoting.

Specialists

- (v) Specialists may earn remote quoting rights based on the percentage of **Exchange [Amex]** options floor volume they execute, including the volume executed via remote quoting.
- (vi) Specialists also may earn remote quoting rights based on their percentage of the average market share of industry volume in the option classes in which they specialize per quarter.
 - a. The award of remote quoting rights to specialists will be based upon their market share in the top 100 option classes by industry volume, top 101-300 option classes by industry volume and remaining option classes as follows:

Specialist Percent of Market Share	Options Classes *		
	Top 100	101-300	301+
Greater than 20+	3.00	1.50	0.75
15-19.99	1.50	0.75	0.25
10-14.99	0.50	0.25	0.00

* Option classes with an average daily **Exchange [Amex]** volume of less than 100 contracts shall be excluded from this determination.

- (c) Obligations of RROTs

In addition to obligations set forth in other Exchange Rules:

- (i) RROTs must have at least one active floor member acting as a ROT subject to the limitations set forth in (d)(i) of this rule.
 - a. RROTs may remotely quote in up to five (5) option classes per **86 Trinity Permit** [seat owned or leased without any additional seat requirement].
 - b. RROTs will be required to **obtain** [purchase or lease] one additional **86 Trinity Permit** [seat] for every forty (40) option classes remotely quoted in, in excess of the five option classes permitted pursuant to 994 - ANTE (c)(i)(a).

[(ii) Exchange memberships used to satisfy membership requirements to remotely quote as an RROT pursuant to 994—ANTE (c)(i)(b) may not be used for any other purpose while being used in an RROT capacity, including being leased to another member or for trading on the trading floor. For purposes of this rule, an Exchange membership shall include a regular membership and an options principal membership pursuant to Article I Section 3 of the Constitution.]

Rule 995—ANTE NYSE Alternext [Amex] Book Clerks ("ABCs")

(a) An **NYSE Alternext** [Amex] Book Clerk (the "ABC") is an Exchange employee or independent contractor whom the Exchange may designate as being responsible for (i) operating, and when applicable, maintaining, the customer limit order book at the trading post with respect to the classes of options assigned to him/her; and (ii) effecting proper executions of orders placed with him/her. The ABC may not be affiliated with any member that is approved to act as an options specialist, registered options trader, remote registered options trader or supplemental registered options trader.

(b) The ABC shall be responsible for the following obligations with respect to the classes of options assigned to him/her:

- (i) **Display Obligation:** Each ABC shall display immediately the full price and size of any customer limit order that improves the price or increases the size of the best disseminated **Exchange** [Amex] quote. For purposes of this Rule, "immediately" means, under normal market conditions, as soon as practicable but no later than 30 seconds after receipt ("30-second standard") by the ABC. The term "customer limit order" means an order to buy or sell a listed option at a specified price that is not for the account of either a broker or dealer; provided, however, that the term "customer limit order" shall include an order transmitted by a broker or dealer on behalf of a customer.

The following are exempt from the Display Obligation as set forth under this Rule:

(E) The order types set forth in [Amex] Rules 131(e), (i), (k), (l), (q), (r) and (s) and 950-ANTE(e);

- (iv) Display Book. The ABC shall maintain and keep active at all times the automated customer limit order display facility (the "Display Book") provided by the Exchange. In connection with maintaining the Display Book, the ABC is required to maintain and keep active the ANTE limit order quote assist feature as set forth in **[Amex]** Rule 958A—ANTE.

(d) Linkage Obligations. In connection with the performance of the ABC's duties, the ABC shall be responsible for manually or automatically (1) routing linkage Principal Acting as Agent ("P/A") Orders and Satisfaction Orders to other markets based on prior written instructions (which instructions shall state, among other things, whether the orders should be routed automatically, the means through which the orders should be routed and the procedures the ABC is required to follow when utilizing the options specialists' accounts, etc.) that must be provided by the options specialist to the ABC (utilizing the options specialist's account); and (2) handling all linkage orders or portions of linkage orders received by the Exchange that are not automatically executed. When handling outbound P/A Orders and Satisfaction Orders, the ABC shall use due diligence to execute the orders entrusted to him/her and shall act in accordance with the prior written instructions provided by the specialist for P/A Orders and Satisfaction Orders that the ABC represents. An ABC also shall act in accordance with **[Amex]** rules regarding P/A and Satisfaction Orders received through the Linkage.

Rule 996—ANTE Liability of the Exchange for the Actions of NYSE Alternext [Amex] Book Clerks

- (a) Except to the extent provided in paragraph (d) of this Rule, the Exchange shall not be liable to members or persons associated with a member or member organization for any loss, expense, damages or claims arising out of any errors or omissions of an NYSE Alternext [Amex] Book Clerk or his or her assistants or clerks (the "ABCs").

(e) All disputed claims shall be referred for binding arbitration to an arbitration panel and the decision of a majority of the arbitrators selected to hear and determine the controversy shall be final and there shall be no appeal to the Board of **Directors** [Governors] from the decision of such panel. The arbitration panel shall be composed of an odd number of panelists. Each of the parties to the dispute shall select one Exchange member to serve as panelist on the arbitration panel. The panelists so selected shall then select one or more additional panelist(s); provided that the additional panelist(s) so selected are members of the Exchange and that no member of the arbitration panel may have any direct or indirect financial interest in the claim. In the event that the initial panelists selected by the parties to the dispute cannot agree on the selection of the additional panelist(s), such additional panelist(s) shall be appointed by a Floor Official chosen by lot who has no direct or indirect financial interest in the claim. To the extent not inconsistent with the provisions of this Rule, the **Rules** [provisions] governing arbitration [contained in **Article VIII of the Constitution**] shall apply to proceedings under this paragraph.

Trading of Certain Equity Derivatives

Rule 1000 Portfolio Depositary Receipts

(a) Applicability. The Rules in this Section are applicable only to Portfolio Depositary Receipts. Except to the extent specific Rules in this Section govern, or unless the context otherwise requires, the [provisions of the Constitution and all other] rules and policies of the Board of **Directors** [Governors] shall be applicable to the trading on the Exchange of such securities. [Pursuant to the provisions of Article 1, Section 3(j) of the Constitution,] Portfolio Depositary Receipts are included within the definition of "security" or "securities" as such terms are used in the [Constitution and] Rules of the Exchange. In addition, [pursuant to the provisions of Article I, Section 3(d) of the Constitution,] Portfolio Depositary Receipts are included within the definition of "derivative products" as that term is used in the [Constitution and] Rules of the Exchange.

••• *Commentary* -----

.01 The Exchange requires that members and member organizations provide to all purchasers of a series of Portfolio Depositary Receipts a written description of the terms and characteristics of such securities, in a form prepared by the Exchange, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series of Portfolio Depositary Receipts that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of Portfolio Depositary 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 Depositary Receipts] has been prepared by the [American Stock] Exchange and is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of Portfolio Depositary Receipts]. In addition, upon request you may obtain from your broker a prospectus for [the series of Portfolio Depositary Receipts]."

.03

(f) *Listing fees.* See Sections 140-144 of the **NYSE Alternext** [Amex] Company Guide.

Rule 1000A. Index Fund Shares

(a) Applicability. The Rules in this Section are applicable only to Index Fund Shares. Except to the extent specific Rules in this Section govern or unless the context otherwise requires, the [provisions of the Constitution and all other] rules and policies of the Board of **Directors** [Governors] shall be applicable to the trading on the Exchange of such securities. [Pursuant to

the provisions of Article 1, Section 3(j) of the Constitution,] Index Fund Shares are included within the definition of "security" or "securities" as such terms are used in the **[Constitution and]** Rules of the Exchange. In addition, **[pursuant to the provisions of Article I, Section 3(d) of the Constitution,]** Index Fund Shares are included within the definition of "derivative products" as that term is used in the **[Constitution and]** Rules of the Exchange.

••• *Commentary* -----

.02

(g) *Listing fees.* See Sections 140-144 of the NYSE Alternext [Amex] Company Guide.

Rule 1004A. FORTUNE Indexes

The FORTUNE 500 Index and the FORTUNE e-50 Index (the "Indexes") are trademarks of FORTUNE, a division of Time Inc., which are licensed for use by the **[American Stock]** Exchange **[LLC]** in connection with FORTUNE exchange traded index funds (the "Product"). The Product has not been passed on by FORTUNE for suitability for a particular use. The Product is not sponsored, endorsed, sold or promoted by FORTUNE. FORTUNE makes no warranty or representation and has no liability or obligation with respect to such Product. FORTUNE makes no warranty or representation as to the accuracy and/or completeness of the Indexes or the data included therein or the results to be obtained by any person from the use of the Indexes or the data included therein. FORTUNE makes no express or implied warranty of merchantability or fitness for a particular use with respect to the Indexes or any data included therein.

Rule 1000B. Managed Fund Shares

(a) **Applicability.** The Rules in this Section are applicable only to Managed Fund Shares. Except to the extent specific Rules in this Section govern or unless the context otherwise requires, the **[provisions of the Constitution and all other]** rules and policies of the Board of **Directors** **[Governors]** shall be applicable to the trading on the Exchange of such securities. **[Pursuant to the provisions of Article 1, Section 3(j) of the Constitution,]** Managed Fund Shares are included within the definition of "security" or "securities" as such terms are used in the **[Constitution and]** Rules of the Exchange. In addition, **[pursuant to the provisions of Article I, Section 3(d) of the Constitution,]** Managed Fund Shares are included within the definition of "derivative products" as that term is used in the **[Constitution and]** Rules of the Exchange.

Trading of Stock Index and Currency Warrants

Rule 1100. Applicability and Definitions

(a) The rules in this Chapter (Trading of Stock Index and Currency Warrants) are applicable only to stock index warrants and, where stated, to currency warrants and currency index warrants. Except to the extent that specific rules in this Chapter govern, or unless the context otherwise requires, the **[provisions of the Constitution and all other]** rules and policies of the Board of **Directors** **[Governors]** shall be applicable to trading on the Exchange of such securities.

The rules in this Chapter are not applicable to stock index, currency and currency index warrants listed on the Exchange prior to SEC approval of this Chapter of the Exchange's rules. The stock index, currency and currency index warrants that were listed on the Exchange prior to SEC approval of this Chapter shall continue to be governed by those provisions of the Exchange's **[Constitution and]** rules that were applicable to such warrants prior to the approval of this Chapter. The SEC approved this Chapter on August 29, 1995. (See Exchange Act Release No. 34-36168 approving SR-Amex-94-38.)

Trading of Trust Issued Receipts**Rule 1200. Rules of General Applicability**

(a) Applicability. The Rules in this Chapter (Trading of Trust Issued Receipts) are applicable only to Trust Issued Receipts. Except to the extent that specific Rules in this Chapter govern, or unless the context otherwise requires, the **[provisions of the Constitution and all other]** rules and policies of the Board of **Directors** **[Governors]** shall be applicable to the trading on the Exchange of such securities. **[Pursuant to the provisions of Article 1, Section 3(i) of the Constitution,]** Trust Issued Receipts are included within the definitions of "security" or "securities" as such terms are used in the **[Constitution and]** Rules of the Exchange.

Rule 1202. Initial and Continued Listing

• • • *Commentary* -----

.03

(e) Prior to commencement of trading of securities admitted to listing under this section, the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute and circulate to the **members and member organizations** **[membership]** providing guidance regarding member firm compliance responsibilities when handling transactions in such securities.

Rule 1200A. Commodity-Based Trust Shares

(a) **Applicability.** The Rules in this Section are applicable only to Commodity-Based Trust Shares. In addition, except to the extent specific Rules in this Section govern or unless the context otherwise requires, the provisions of the Trust Issued Receipt rules and the **[Constitution and all other]** rules and policies of the Board of **Directors [Governors]** shall be applicable to the trading on the Exchange of such securities. **[Pursuant to the provisions of Article I, Section 3(i) of the Constitution,]** Commodity-Based Trust Shares are included within the definition of "security" or "securities" as such terms are used in the **[Constitution and]** Rules of the Exchange.

Rule 1200B. Currency Trust Shares

(a) **Applicability.** The Rules in this Section (Trading of Currency Trust Shares) are applicable only to Currency Trust Shares. Except to the extent that specific Rules in this Section govern, or unless the context otherwise requires, the **[provisions of the Constitution and all other]** rules and policies of the Board of **Directors [Governors]** shall be applicable to the trading on the Exchange of such securities. **[Pursuant to the provisions of Article I, Section 3(i) of the Constitution,]** Currency Trust Shares are included within the definitions of "security" or "securities" as such terms are used in the **[Constitution and]** Rules of the Exchange.

Rule 1300. Applicability of 1300 Series

(e) As used in this 1300 series of Rules and other Rules in their application to After-Hours Trading, the following terms shall have the meanings specified below:

- (i) The term "closing price" means the price established by the last "regular way" sale on the **[American Stock]** Exchange in a security prior to the official closing of the 9:30 a.m. to 4:00 p.m. trading session, as determined by the Exchange. In the case of a Portfolio Depositary Receipt, Index Fund Share, or an investment trust security listed pursuant to Section 118B of the Exchange's Company Guide, the term "closing price" means the price established by the last "regular way" sale on the **[American Stock]** Exchange prior to the official closing of the 9:30 a.m. to 4:15 p.m. trading session, as determined by the Exchange.

Trading of Paired Trust Shares

Rule 1400. Rules of General Applicability

(a) **Applicability .** The Rules in this Chapter (Trading of Paired Trust Shares) are applicable only to Paired Trust Shares. In addition, except to the extent specific Rules in this Chapter govern or unless the context otherwise requires, the **[provisions of the Constitution and all other]** rules and policies of the Board of **Directors [Governors]** shall be applicable to the trading on the Exchange of such securities. **[Pursuant to the provisions of Article I, Section 3(j) of the Constitution,]** Paired Trust Shares are included within the definition of "security" or "securities"

as such terms are used in the **[Constitution and]** Rules of the Exchange. In addition, Paired Trust Shares are included within the definition of "derivative products" as that term is used in the **[Constitution and]** Rules of the Exchange.

Trading of Partnership Units

Rule 1500. Trading of Partnership Units

(a) **Applicability.** The Rules in this Chapter (Trading of Partnership Units) are applicable only to Partnership Units. Except to the extent that specific Rules in this Chapter govern, or unless the context otherwise requires, the **[provisions of the Constitution and all other]** rules and policies of the Board of **Directors [Governors]** shall be applicable to the trading on the Exchange of such securities. **[Pursuant to the provisions of Article I, Section 3(i) of the Constitution,]** Partnership Units are included within the definitions of "security" or "securities" as such terms are used in the **[Constitution and]** Rules of the Exchange.

Rule 1600. Trading of Trust Units

(a) **Applicability.** The Rules in this Chapter (Trading of Trust Units) are applicable only to Trust Units. Except to the extent that specific Rules in this Chapter govern, or unless the context otherwise requires, the **[provisions of the Constitution and all other]** rules and policies of the Board of **Directors [Governors]** shall be applicable to the trading on the Exchange of such securities. **[Pursuant to the provisions of Article I, Section 3(i) of the Constitution,]** Trust Units are included within the definitions of "security" or "securities" as such terms are used in the **[Constitution and]** Rules of the Exchange.

AEMI Rules

Rule 1—AEMI. Hours of Business

Except as otherwise determined by the Board of **Directors [Governors]**, the Exchange shall be open for the transaction of business on every business day, Monday through Friday. At 9:00 a.m., official announcement shall be made that the Exchange is open for trading in options on debt securities. At 9:30 a.m., official announcement shall be made that the Exchange is open for all other business purposes. The Exchange shall remain open until closed by official announcement at 4:00 p.m.; provided however, that option transactions in debt options may be effected on the Exchange only until 3:00 p.m. and all other option transactions may be effected on the Exchange until 4:00 p.m. each business day at which times no further debt or other options transactions may be made.

Except as may be otherwise determined by the Board of **Directors [Governors]**, the Chief Executive Officer of the Exchange, or his designee, shall have the power to halt, extend or suspend trading in some or all securities traded on the Exchange, to close some or all Exchange facilities, and to determine the duration of any such halt, extension, suspension or closing, when

he deems such action to be necessary or appropriate for the maintenance of a fair and orderly market or the protection of investors, or otherwise in the public interest, due to extraordinary circumstances, such as (1) actual or threatened physical danger, severe climatic conditions, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange; (2) a request by a governmental agency or official; or (3) a period of mourning or recognition for a person or event. In considering such action, the Chief Executive Officer of the Exchange, or his designee, shall consult with the Vice Chairman or Senior Supervisory Officer on the Floor, if available, and such available **Senior Floor Officials [Floor Governors]** as he deems appropriate under the circumstances. The Chief Executive Officer of the Exchange, or his designee, shall notify the Board of **Directors [Governors]** of actions taken pursuant to this Rule, except for a period of mourning or recognition for a person or event, as soon thereafter as is feasible.

Rule 1A—AEMI Applicability, Definitions, References and Phase-In

(a) The Exchange's new trading platform, designated as AEMISM— the "Auction & Electronic Market Integration" platform, (pronounced "Amy" and referred to hereinafter as the "AEMI platform" or "AEMI"), will be rolled-out over a period of time anticipated to begin prior to the final date set by the Commission for full operation of all automated trading centers that intend to qualify their quotations for trade-through protection under Rule 611 of Regulation NMS ("Trading Phase Date"). By the Trading Phase Date, all Exchange Traded Fund shares, equities, and securities that trade like equities that are traded on the Exchange, will be on the AEMI platform. During the roll-out period, while the Exchange has securities trading on its legacy and AEMI platforms, current rules (as they are amended from time to time) will apply to those securities continuing to trade on the legacy platform, while the AEMI rules will apply to those securities trading on the new trading platform.

These AEMI rules cover the operation of the AEMI platform effective on and after the Trading Phase Date. Prior to the Trading Phase Date, a somewhat modified early version of the AEMI platform will be in operation starting with the initial roll-out and continuing through the day prior to the Trading Phase Date. This earlier version of the AEMI platform will be referred to as AEMI-One and the **Exchange [Amex]** will file a separate set of AEMI-One rules in the near future to cover the operation of the system up until the Trading Phase Date.

(d) Except to the extent that specific rules in this Chapter govern, or unless the context otherwise requires, the **[provisions of the Constitution and of all other]** Rules and policies of the Board of **Directors [Governors]** shall be applicable to the trading on the Exchange of securities traded through the AEMI platform. In addition, the following Rules Principally Applicable to Floor Transactions shall apply to the trading of securities on the AEMI platform: 100, 101, 102, 103, 104, 105, 117, 120, 122, 125, 128, 129, 153A, 171, 172, 173, 175, 176, 177, 183, 184, 185, 186, 190, 191, 192, 193, 208, 221, **and 222[, and 230 through 236]**.

(e) The following rules are not applicable to transactions in AEMI and will be rescinded via a rule filing with the Commission upon the full implementation of AEMI: 25, 111, 116, 121, 130, 134, 181, 201, 202, 203, 204, and 1300 through 1306. The **Exchange [Amex]** has made a rule filing with the Commission to revise current Rule 114 to provide appropriate requirements for Registered Equity Market Makers when AEMI is implemented.

(f) Members, member organizations and persons associated with members and member organizations shall participate in AEMI training and may only use AEMI technology at such times as may be specified by the Exchange. Any failure to participate in AEMI training or use AEMI technology when specified by the Exchange may result in (i) a prohibition on use of the AEMI platform, (ii) disciplinary action pursuant to Part 1 of **Exchange [Amex] Rule 590**, and/or (iii) remedial action by either the Committee on Floor Member Performance or the Market Quality Committee.

(g) The following terms as used in the rules of this Chapter shall have the meanings specified herein unless the context otherwise indicates:

NYSE Alternext [Amex] Published Quote ("APQ"). The "**NYSE Alternext [Amex] Published Quote**" is the highest bid and lowest offer disseminated by the American Stock Exchange.

AEMI Book. The "AEMI Book" is the part of the AEMI platform that holds and automatically matches orders, bids and offers submitted to it electronically by specialists, Registered Traders, Designated **NYSE Alternext [Amex] Remote Traders**, Floor Brokers and off-Floor members in accordance with these rules.

Automated Quotation, Automated Bid, Automated Offer. An "automated quotation", "automated bid", or "automated offer" is a bid and/or offer disseminated by a trading center (as defined in Regulation NMS) that: (1) permits an incoming order to be marked as immediate or cancel ("IOC"), (2) immediately and automatically executes an order marked as IOC against the displayed quotation up to the displayed size, (3) immediately and automatically cancels any unexecuted portion of an order marked as IOC without routing the order elsewhere, (4) immediately and automatically transmits a response to the sender of an order marked as immediate-or-cancel indicating the action taken with respect to such order, and (5) immediately and automatically displays information that updates the displayed quotation to reflect any change to its material terms.

Automated National Best Bid and Offer ("automated NBBO"). The "automated national best bid and offer" is the highest automated bid and lowest automated offer calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan.

Broker/Dealer. The term "broker/dealer" means a registered broker or dealer and any foreign person that either is registered as a broker or dealer where it operates or would be required to register with the Commission as a broker or dealer if it were operating in the United States.

Crowd Order. A "Crowd Order" is (1) an order in the AEMI Book that is represented by a broker standing in the Zone where the order is represented or (2) a bid or offer in the AEMI Book entered by a Registered Trader standing in the crowd or by a Designated **NYSE Alternext [Amex] Remote Trader** operating from an off-floor location.

Customer. The term "customer" means any person who is not a broker/dealer.

Designated NYSE Alternext [Amex] Remote Trader. A "Designated **NYSE Alternext [Amex] Remote Trader**" or "DART" is a member or member organization authorized by the Rules of the Exchange to operate as a market maker in assigned ETF securities that trade on the Exchange. A DART shall electronically enter competitive quotations into AEMI from an off-floor location. DART transactions in securities traded in AEMI may only be effected in accordance with the provisions of Rule 110A-AEMI.

Exchange Traded Funds ("ETFs"). The terms Exchange Traded Funds or ETFs include any Portfolio Depositary Receipt, Index Fund Share, Trust Issued Receipt, Paired Trust Share or Partnership Unit.

May Trade Order. A "may trade order" is an order limited to the price of an opening, reopening or closing that is eligible to be executed on an opening, reopening or closing but is not required to be executed.

Must Trade Order. A "must trade order" is a market or marketable limit order that is eligible to be executed on an opening, reopening or closing and is required to be executed on the opening, reopening, or closing.

Message Queue. A "Message Queue" refers to an accumulation of messages (e.g., orders, status requests, cancels, cancel/replaces) that have entered AEMI but are not permitted by the system to enter the AEMI Book. AEMI shall initiate a Message Queue only during an Opening or Reopening Pair-off Session, a Cash Closing Pair-off Session (in ETFs), a pair-off to execute an order imbalance following a breach of a Spread Tolerance or a "gap trade", or a pair-off to execute an order imbalance that caused the dissemination of a gap quote. During a Message Queue, messages come into the AEMI queue and do not enter the AEMI Book. A Message Queue shall last no longer than three seconds at which point it will automatically terminate and all queued messages will enter the AEMI Book in the same time sequence in which they entered the Message Queue. No member or person associated with a member shall see messages in a Message Queue.

NMS Security. An "NMS security" is any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.

NMS Stock. An "NMS stock" is any NMS security other than an option.

Protected Bid or Protected Offer. A "protected bid" or "protected offer" means a quotation in an NMS stock that (i) is displayed by an automated trading center (as defined in Regulation NMS), (ii) is disseminated pursuant to an effective national market system plan, and (iii) is an automated quotation that is the best bid or best offer of a national securities exchange or a national securities association.

Protected Quotation. A "protected quotation" is a protected bid or a protected offer.

Public Order. A "public order" is an order, initiated either on the Floor by a Floor Broker (e.g., a limit order) or off the Floor by a member, that is entered directly into the Specialist Order Book. A Crowd Order can never be a public order.

Registered Trader. Registered Trader. A "Registered Trader" is a member who is authorized by the Rules of the Exchange to initiate trades while on the Floor for his or her account. Transactions by Registered Traders on the Floor in index warrants, currency warrants, securities listed pursuant to Section 107 of the Company Guide ("Other Securities"), Trust Issued Receipts listed pursuant to Rules 1200 et seq., and Partnership Units listed pursuant to Rules 1500 et seq. shall be effected in accordance with the provisions of Rule 110-AEMI, and shall only be effected by **86 Trinity Permit Holders authorized to be Registered Traders [who are regular members]**. Transactions by Registered Traders on the Floor in derivative products [(as defined in Article I, Section 3(d) of the Exchange Constitution)] shall be effected in accordance with

the provisions of Rule 110-AEMI. Registered Trader transactions in securities traded in AEMI may only be effected in accordance with the provisions of Rule 110-AEMI.

Specialist Order Book. The "Specialist Order Book" is the accumulation of orders on the AEMI Book that is not represented by a broker standing in the crowd or other party. It is a subset of the AEMI Book. The Specialist Order Book does not include the bids and offers of Registered Traders in the crowd or Designated NYSE Alternext [Amex] Remote Traders operating from off-floor locations.

Trade Event. Every execution due to an aggressing order is considered to be a "trade event" by the AEMI platform. The election of a stop order or stop limit order is based on a trade event.

Specialist Emergency Quote. A "specialist emergency quote" is a firm, automated quote automatically generated by AEMI when the Specialist's mandatory quote is reduced to or below a configured size in order to ensure continuity of price and assist the specialist in meeting his quoting obligations under Rule 170—AEMI. Such a quote is generated according to parameters set by the specialist, and is obligatory if the specialist is utilizing an AEMI "front end" device to generate quotes. This feature is disabled if quotes are streamed in from a proprietary system. The number of emergency quotes issued sequentially shall be limited to an exchange-wide numerical parameter set in the AEMI system, not to exceed ten (10).

Stabilizing Quote. A "stabilizing quote" is a non-firm quote that is automatically generated by AEMI when Auto-Ex is disengaged following a tolerance breach or gap trade (see Rule 128A—AEMI(g)) and no orders exist on the contra side of the AEMI Book. Under those circumstances, AEMI will automatically publish a quote for one round lot at one tick away from the price of the automated NBBO on the contra side. A stabilizing quote may also be generated when orders and quotes on the AEMI Book are exhausted, and Auto-Ex is then disabled so that the specialist may step in to re-quote the market.

Zone. The Floor is divided into three trading Zones as the Exchange shall from time to time determine and make known to its members and member organizations [membership]. Each trading Zone reflects the specific identifiable areas on the Floor where Floor Brokers are able to conduct business at each post/panel within the Zone. A Floor broker will be considered to be in the Zone if he or she is physically present in the area designated as part of that Zone.

Rule 3—AEMI. General Prohibitions and Duty to Report

(b) No 86 Trinity Permit Holder who is a natural person [regular or options principal member] shall effect, in the rooms of the Exchange, a transaction with a member who has no rights to trade on the Floor [an associate member] or with a non-member, in any security dealt in on the Exchange; but this rule shall not prohibit transactions permitted by Rule 118—AEMI, Rule 152—AEMI or by Section 7 of Part II of the Rules of the Exchange or with an employee of the Exchange or American Stock Exchange Clearing Corporation engaged in carrying out arrangements approved by the Board of Directors [Governors] to facilitate the borrowing and lending of money.

(h) It shall be deemed an act detrimental to the interest or welfare of the Exchange for any member, member organization or employee thereof to fail to report immediately to the Exchange any fraudulent or manipulative conduct in connection with the trading of securities on the Floor (i) of which the member, member organization or employee thereof has knowledge, or (ii) that the member, member organization or employee thereof has been asked to perform.

Reports to the Exchange of fraudulent or manipulative conduct shall be made in such form and to such person(s) as the Exchange shall prescribe from time to time in a notice to the **members and member organizations [membership]**.

Rule 22—AEMI. Authority of Floor Officials

(d) Review of Rulings.—Any member wishing a prompt (i.e., prior to scheduled settlement) on-Floor review of a Floor Official's market decision, shall, forthwith and in the presence of the ruling Floor Official, present the matter to an Exchange Official who shall confirm, amend, or overrule the decision. The Exchange Official's decision in a matter may be promptly presented on appeal to a panel of three Senior Floor Officials who have not already ruled on the matter which panel shall confirm, amend, or overrule the decision. The Senior Supervisory Officer on the Floor may serve on a panel as a Senior Floor Official. Any remaining vacancies on the panel may be filled by Exchange Officials (who have not already ruled on the matter) in order of their seniority as Exchange Officials.

Any member wishing a prompt (i.e., prior to scheduled settlement) on-Floor review of a market decision of a Floor Official made with the concurrence of a Senior Floor Official shall, forthwith and in the presence of the ruling Floor Official and Senior Floor Official, present the matter to a panel of three Senior Floor Officials who have not already ruled on the matter which panel shall confirm, amend, or overrule the decision. The Senior Supervisory Officer on the Floor may serve on a panel as a Senior Floor Official. In the event that three Senior Floor Officials are not available, Exchange Officials who have not already ruled on the matter may serve on a panel in order of their seniority as Exchange Officials.

A member of the regulatory staff shall advise and participate in any review of a Floor Official decision or ruling that required the advice and participation of a member of the regulatory staff in the initial Floor Official ruling.

The decision or ruling of a Floor Official or Officials, Exchange Official, or three Senior Floor Official panel shall be binding on members. Notwithstanding the foregoing, at any point after establishing a loss (or profit) through clearance and complying with the highest decision (if any) made in a matter, either party to the matter may elect to submit it to arbitration pursuant to **the Arbitration Rules of the Exchange [Article VIII of the Constitution]**. The final decision or ruling on the Trading Floor shall not be binding on the arbitrators, but they may give it such weight as they feel is appropriate. Not all decisions or rulings on the Trading Floor may be subject to arbitration.

(e) Two Floor Officials in consultation with a designated senior executive officer of the Exchange may summarily exclude a member or person associated with a member or member organization from the Exchange premises for not longer than the remainder of the trading day for the following violations:

- Physical violence
- Unbusinesslike conduct
- Harassment (as set forth in Exchange [Amex] Rule 16)
- Failure to abide by a Floor Official's ruling
- Property damage
- Enabling/Assisting suspended member or associated person to gain improper access to the Floor
- Failure to supervise a visitor

Any action taken by Floor Officials under this paragraph (e) shall not preclude additional disciplinary action under [Article V of the Exchange Constitution, or] the Exchange Rules [345 or 590].

Rule 108—AEMI. Priority and Parity at Openings and Reopenings

- (b) In connection with an opening;
- (1) A limited price order to buy which is executable at a higher price than the price at which the security is to be opened, and a limited price order to sell which is executable at a lower price than the price at which the security is to be opened, are to be treated as market orders.
 - (2) A market order to sell short a security designated under the SEC's short sale rules and regulations as subject to short sale price test restrictions is not to be treated as other market orders, but is to be treated as a limited price order to sell at the price of the first permissible short sale under Exchange [Amex] rules. A limited price order to sell short a security designated under the SEC's short sale rules and regulations as subject to short sale price test restrictions which is at a lower price than the price at which the security is to be opened, is to be treated as a limited price order to sell at the price of the first permissible short sale under Exchange [Amex] rules. Such orders are to be treated as market orders only if the opening price is higher than the first permissible short sale price under Exchange [Amex] rules. The same requirements apply to other tick sensitive sell orders.

Rule 109—AEMI. "Stopping" Stock

No specialist, broker, Designated NYSE Alternext [Amex] Remote Trader or Registered Trader shall grant or accept a stop with respect to a security traded in AEMI.

Rule 110—AEMI. Registered Traders and Floor Trading

(l)

[(iv) Members who are not regular members (as described in Article IV of the Exchange Constitution) may enter orders in accordance with this paragraph (m) only in securities which members of their class are otherwise entitled to trade while on the Floor of the Exchange.]

(n) Transactions by Registered Traders in AEMI shall be limited to transactions in index warrants, currency warrants, securities listed pursuant to Section 107 of the Company Guide ("Other Securities"), Trust Issued Receipts listed pursuant to Rules 1200 et seq., Partnership Units listed pursuant to Rules 1500 et seq., and derivative products **[(as defined in Article I, Section 3(d) of the Exchange Constitution)]**.

(o) Transactions by Registered Traders in AEMI in index warrants, currency warrants, Other Securities, Trust Issued Receipts listed pursuant to Rules 1200 et seq., and Partnership Units listed pursuant to Rules 1500 et seq. may only be effected by **86 Trinity Permit Holders authorized to be** Registered Traders **[who are regular members]**. Transactions by Registered Traders in AEMI in derivative products **[(as defined in Article I, Section 3(d) of the Exchange Constitution)]** may be effected by Registered Traders who are **86 Trinity Permit Holders who are natural persons** **[regular members, Options Principal Members, or limited trading permit holders]**.

Rule 110A—AEMI. Designated NYSE Alternext [Amex] Remote Traders

(a) (i) A **member or** member organization requesting approval to act as a Designated **NYSE Alternext** [Amex] Remote Trader ("DART") shall file an application with the Exchange, which shall consider the following factors:

(ii) Determinations regarding granting or withdrawing approval to act as a DART shall be made by the Exchange. In the event that an application is disapproved by the Exchange, the Exchange shall notify the applicant of its disapproval and that the applicant is entitled to a hearing under **[Article IV, Section 1(g) of the Constitution and] Rule 40 and other Rules of the Exchange**.

(vi) The Exchange may suspend or terminate any appointment of a DART in one or more securities or subject such DART to disciplinary action under this Rule whenever, in the Exchange's judgment, the interests of a fair and orderly market are best served by such action or upon a determination of any substantial or continued failure by such

DART to engage in a course of dealings in accordance with subparagraphs (b)(i) and (b)(ii) of this Rule. A DART may seek review of any action taken by the Exchange pursuant to this subparagraph in accordance with **[Article IV, Section 1(g) of the Constitution and] Rule 40 and other Rules of the Exchange**.

(b) Obligations of DARTs

- (iii) Nothing in this Rule will limit any other power of the Board of **Directors** **[Governors]** under the Rules or procedures of the Exchange with respect to the registration of a DART or in respect of any violation by a DART of the provisions of this Rule.
- (iv) Without limiting the foregoing, a DART's performance will also be evaluated against certain minimum performance standards with respect to each security it trades, the levels of which may be determined from time-to-time by the Exchange and communicated to the DART. DARTs that fail to comply with one or more of the performance standards, as determined by the Chief Executive Officer of the Exchange or his/her designee, may be subject to loss of all or a portion of any benefits to which they would otherwise be entitled under **Exchange [Amex]** rules by virtue of their status as DARTs, including possible suspension or termination of DART status. The performance measures will be determined by the Exchange and will include:
 - a. volume participation rate; and
 - b. trade participation rate.

(c) Affiliation Limitations

- (i) An **Exchange [Amex]** specialist firm may also be a DART, but it may not be registered as such in securities in which it is also the specialist.
- (ii) DARTs shall maintain information barriers that are reasonably designed to prevent the misuse of material, non-public information with any affiliates that may conduct a brokerage business in the securities assigned to a DART or that may act as a specialist or market maker in any security underlying a security assigned to a DART, and otherwise comply with Rule 193 regarding the misuse of material non-public information.
- (iii) A DART may be **[either]** a **member or member organization** **[regular member of the Exchange or an associate member]** that meets the requirements for electronic access to the Exchange's automated systems.

Rule 112—AEMI. Suspension of Registration of Registered Trader or Designated NYSE Alternext [Amex] Remote Trader

The Exchange may suspend the registration of any Registered Trader who is found to have violated the provisions of Rules 108-AEMI, 109-AEMI, or 110-AEMI. The Exchange may suspend the registration of any Designated **NYSE Alternext [Amex]** Remote Trader who is found to have violated the provisions of Rules 108-AEMI, 109-AEMI, or 110A-AEMI. Such suspension may be imposed in addition to or in lieu of any penalty which may be imposed under **Rules 475 through 477 [Article V of the Constitution]**.

Rule 115—AEMI. Exchange Procedures for Use of Unusual Market Exception

••• *Commentary:* -----

.01 Exchange Procedures for Use of "Unusual Market Exception" Provided by Rule 602 under Regulation NMS

1(b). Upon notification by a specialist, the Floor Official, with the advice and participation of a member of the regulatory staff, shall promptly verify the existence of the unusual market activity or condition and if, in his judgment, the specialist is unable to update his quotations on a timely basis, the Floor Official shall promptly notify the Market Operations Division of the Exchange, which shall promptly disable Auto-Ex and disseminate the indicator "N" to indicate that the **Exchange [Amex]**'s quotation, if a trading halt has not been declared and quotations are being published for such security or securities, is not firm. If a Floor Official, independent of notification by a specialist, becomes aware of any unusual market activity or condition which adversely affects a specialist's ability to promptly communicate quotation data, he shall likewise, with the advice and participation of a member of the regulatory staff, promptly advise the Market Operations Division, which shall promptly disable Auto-Ex and disseminate the indicator "N" to indicate that the **Exchange [Amex]**'s quotation, if a trading halt has not been declared and quotations are being published for such security or securities, is not firm. In both of the foregoing circumstances, the Floor Official shall consult with the Market Operations Division regarding the extent of the problem and determine whether to declare a non-regulatory halt in such security or securities. If the existence of the unusual market activity or condition should result in a specialist not publishing a quotation for one or more of its specialty securities, the Floor Official shall consult with the Market Operations Division to determine whether to declare a non-regulatory halt in such security or securities based on the absence of the specialist from that market. In the absence of such a non-regulatory halt, incoming orders would continue to execute against orders for the security or securities in the AEMI Book. If a Registered Trader or Designated **NYSE Alternext [Amex]** Remote Trader, on the other hand, is unable to publish a quotation in a security, he may withdraw or cancel his quotation and inform the Market Operations Division afterward, since he does not have the same quoting obligations of a specialist as specified in Rule 170—AEMI(d). In addition, the absence of a quotation from a Registered Trader or Designated **NYSE Alternext [Amex]** Remote Trader would not be a basis for a non-regulatory halt in the related security.

1(c). In the event that quotes being generated for the specialist or a Registered Trader by AEMI's Auto-Quote function are determined by the Service Desk or by the specialist or Registered Trader

to be incorrect, the Market Operations Division will disable the operation of Auto-Quote. If the specialist is utilizing Auto-Quote at the time it is disabled, AEMI shall automatically input the then current automated NBBO as the specialist's bid and offer to facilitate the specialist's continuity responsibility under Rule 170—AEMI(d) (an obligation a Registered Trader does not have). Further updates to the specialist's quotation shall be entered by the specialist without utilizing Auto-Quote until the problem causing the unusual market condition is resolved. Similarly, in the event that streaming quotes being generated by a proprietary system and submitted to AEMI on behalf of the specialist or a Registered Trader or Designated **NYSE Alternext [Amex]** Remote Trader are determined by the Service Desk or by the specialist or Registered Trader or Designated **NYSE Alternext [Amex]** Remote Trader to be incorrect, the Market Operations Division will instruct AEMI to reject new streamed-in quotations. If the specialist is utilizing streaming quotations at the time that rejection of such quotations is implemented, AEMI shall automatically input the then current automated NBBO as the specialist's bid and offer to facilitate the specialist's continuity responsibility under Rule 170—AEMI(d) (an obligation a Registered Trader or Designated **NYSE Alternext [Amex]** Remote Trader does not have). Further updates to the specialist's quotation shall be entered by the specialist without utilizing streaming quotations until the problem causing the unusual market condition is resolved. In each of the foregoing instances, the action taken by the Market Operations Division with respect to the unusual market condition may be implemented on any of the following bases: (i) by individual specialist or Registered Trader or Designated **NYSE Alternext [Amex]** Remote Trader, (ii) by firm, (iii) for all AEMI users, or (iv) by symbol or symbol category.

2. If the Exchange (as opposed to the specialist or a Registered Trader or Designated **NYSE Alternext [Amex]** Remote Trader) is unable to accurately collect, process, and/or disseminate quotation data in one or more securities owing to the high level of trading activity or the existence of unusual market conditions, AEMI shall immediately disable Auto-Ex and disseminate the indicator "N" to indicate that the **Exchange [Amex]**'s quotation, if a trading halt has not been declared and quotations are being published for such security or securities, is not firm. (See Rule 123—AEMI(h) regarding the circumstances under which bids and offers in AEMI are firm and when a non-firm indicator would be disseminated.) An unusual market condition affecting the Exchange's ability to disseminate quotation data would include, but not be limited to, situations where the equipment used to collect, process, and disseminate quotations data becomes inoperable.

3. The Market Operations Division, either upon receiving notification from a Floor Official with respect to a specialist as provided in paragraph 1(b) or when AEMI disseminates the indicator "N" to indicate that the **Exchange [Amex]**'s quotation is not firm because the Exchange is unable to accurately collect, process and/or disseminate quotations data, shall notify the Securities Industry Automation Corporation ("SIAC") (and request that it notify quotation vendors) or, with respect to Nasdaq securities, the Processor for Nasdaq securities, regarding the Exchange's inability to accurately collect, process, and make available the quotation data for the particular security or securities required by Rule 602 under Regulation NMS.

4. After a Floor Official has given notification with respect to a specialist as provided in paragraph 1(b) or AEMI disseminates the indicator "N" to indicate that the **Exchange [Amex]**'s quotation is not firm because the Exchange is unable to accurately collect, process and/or disseminate quotations data, the Floor Official, with the advice and participation of a member of the regulatory staff, or the Market Operations Division (as the case may be) shall monitor the unusual market activity or condition until it has terminated. Thereupon, the Market Operations Division shall immediately renotify SIAC (and request that it renotify quotations vendors) or,

with respect to Nasdaq securities, the Processor for Nasdaq securities, that the Exchange is once again capable of disseminating the quotation data for the particular security or securities required by Rule 602 under Regulation NMS.

Rule 118—AEMI. Trading in Nasdaq Securities

(b) Except to the extent that the provisions of Rule 118-AEMI govern, or unless the context otherwise requires, the **[provisions of the Constitution and]** Rules of the Exchange are applicable to trading in Nasdaq securities.

(f) Non-Liability of Exchange- **Rule 63 [Article IV, Section 1(e) of the Exchange Constitution]** shall apply to trading of Nasdaq securities on the Exchange pursuant to Exchange Rule 118-AEMI, and the Exchange, its affiliates, and any of its or their respective officers, **directors [governors]**, committee members, employees or agents shall not be liable to a member of the Exchange, a member organization, or a person associated with a member or member organization to the extent provided in **Rule 63 [Article IV, Section 1(e)]**.

(i)

Indications

Indications before the opening should be disseminated at 9:15 a.m., if possible, but any indications disseminated prior to 9:30 a.m. require the approval of a **Senior Floor Official [Floor Governor]** or Exchange Official, or the approval of a Floor Official if it relates to a spin-off or if trading had been halted and not resumed the prior day. Indications will be disseminated via a structured communication process established with major news vendors.

(k)

(iii) In the event of (1) a disruption or malfunction in the use or operation of any facility of the Exchange, (2) a disruption or malfunction in the use or operation of any facility of Nasdaq that results in Nasdaq nullifying or modifying trades in the Nasdaq market pursuant to its rules, or (3) extraordinary market conditions or other circumstances in which the nullification or modification of transactions executed on the Exchange in Nasdaq securities may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, a Senior Floor Official may review any transactions arising out of or reported through any facility of the Exchange; provided, however, that a Senior Floor Official may not review transactions arising out of the use or operation of any execution or communication

system owned or operated by Nasdaq. A Senior Floor Official shall review the transaction with the advice and participation of a member of the regulatory staff. Prior to the nullification or modification of transactions as a result of a disruption or malfunction in the use or operation of any facility of Nasdaq, the Exchange must receive confirmation from **FINRA [NASD]** or Nasdaq that there is a disruption or malfunction on Nasdaq's market that has resulted in the nullification or modification of trades in that market. A Senior Floor Official acting pursuant to this subsection may declare any **Exchange [Amex]** transaction null and void or modify the terms of any such transactions if the Senior Floor Official determines that (1) the transaction is clearly erroneous, or (2) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest; provided, however, that, in the absence of extraordinary circumstances, the Senior Floor Official must take action pursuant to this subsection within thirty (30) minutes of detection of the transaction, but in no event later than 3:00 p.m., Eastern Time, on the next trading day following the date of the trade at issue. A member may seek review of a Senior Floor Official's ruling from a three Senior Floor Official Panel as described in Rule 22(d) and Commentary .02 to Rule 22 without first seeking review of the ruling from a Floor Official or Exchange Official.

(m) Rule 390 shall not preclude a member, member organization, allied member, registered representative, or officer from sharing or agreeing to share in any losses in any customer's account with respect to Nasdaq securities after the member organization has established that the loss was caused in whole or in part by the action or inaction of such member, member organization, allied member, registered representative or officer, provided, however, that this provision shall not permit a member, member organization, allied member, registered representative or officer to guarantee any customer against loss in his **or its** account.

Rule 119—AEMI. Indications, Openings and Reopenings

Except as provided elsewhere in the **[Constitution and]** Rules of the Exchange, this Rule shall govern indications, openings and (re)openings of securities traded on the Exchange.

(1) **Mandatory Indications: When Commencement is Permitted**—A specialist is required to disseminate indications of interest prior to (re)opening trading in a previously halted stock or in the event of a delayed opening as follows:

- (b) **Non-Regulatory Halts**—A specialist may commence disseminating indications of interest in a stock subject to a Non-Regulatory Halt when an Exchange Official or **Senior Floor Official [Floor Governor]** approves such dissemination, in consultation with a Floor Official when appropriate. In the case of an inter-day Non-Regulatory Halt, such approval may include disseminations of interest before the Exchange opens for business.
- (c) **Delayed Openings**—A specialist may commence disseminating indications of interest in a stock subject to delayed opening other than by reason of an inter-day Regulatory Halt, when an Exchange Official or **Senior Floor Official [Floor**

Governor] approves. An opening shall be considered delayed for purposes of this Rule if the specialist has not opened the security within one half hour of its regularly scheduled opening.

- (e) "Circuit Breaker" Halts—Dissemination of an indication shall be mandatory prior to the reopening of trading following a "circuit breaker" halt under Rule 117 if such reopening will result in a price change constituting the lesser of 10% or three points from the last sale reported on the Exchange [Amex], or five points if the previous reported last sale is \$100 or higher. No indications would be required if the price change is less than one point. If, on any day that Rule 117 halt is in effect, trading in a security has not reopened by one-half hour after resumption of trading on the Exchange, the matter should be treated as a delayed opening, and would require an indication as well as a Floor Official's supervision.
- (f) Gap Openings—Dissemination of an indication shall be mandatory prior to an opening if such opening would result in a price change of 10% or more from (1) the last sale reported on the Exchange [Amex], (2) the offering price of the security in the case of an initial public offering, or (3) the last reported sale on a securities market from which the security is being transferred.

(2) Optional Indications

- (a) Spin-Offs, IPOs, Etc.—Prior to the commencement of trading in a stock for which there has been no prior public market, the specialist in the stock may disseminate indications of interest for the stock if an Exchange Official or Senior Floor Official [Floor Governor] approves. In the case of a spin-off, any Floor Official may approve such dissemination which may include dissemination before the Exchange opens for business.
- (b) Other Opening Situations—In any opening situation not specified above, the specialist in the affected stock may disseminate indications of interest for the stock before the Exchange opens for business if an Exchange Official or Senior Floor Official [Floor Governor] approves, and thereafter if any Floor Official approves.

Rule 123—AEMI. Manner of Bidding and Offering

- (a) AEMI shall accept electronic bids and offers from the specialist, Designated NYSE Alternext [Amex] Remote Traders and Registered Traders and include them in the AEMI Book. All bids and offers must state the number of shares bid for or offered. AEMI shall also accept orders from Floor Brokers standing in the Zone (Crowd Orders) and other orders transmitted to AEMI electronically and file all such orders in the AEMI Book. On the basis of this input of bids, offers and orders, AEMI shall disseminate the best quote on the Exchange [Amex] together with associated visible size to the tape. AEMI also shall disseminate an indicator to the tape whenever the Exchange [Amex] quote is not firm.

(b) Specialists, Designated NYSE Alternext [Amex] Remote Traders and Registered Traders may stream bids and offers into AEMI at one or multiple price points. Specialists may add resident liquidity to the AEMI Book at up to four price levels including the quote that each specialist provides to comply with the provisions of Rule 170—AEMI(d), and Designated NYSE Alternext [Amex] Remote Traders and Registered Traders will also be permitted to add liquidity at four price levels on both sides of the market. All quotes provided by specialists, Designated NYSE Alternext [Amex] Remote Traders and Registered Traders shall be two-sided quotes. Specialists and Registered Traders may also manually update their bids and offers in AEMI. No specialist, Designated NYSE Alternext [Amex] Remote Trader or Registered Trader shall stream in a quote that locks or crosses an existing quote that the same specialist, Designated NYSE Alternext [Amex] Remote Trader or Registered Trader has previously streamed in for the same security.

(d) When Auto-Ex is enabled, AEMI shall allow Registered Traders to Auto-Quote based upon: (1) the Intra-day optimized Portfolio Value for ETFs, (2) the best bid or offer published by the Exchange [Amex], (3) the automated away market best bid, minus or without a price adjustment, or (4) the automated away market best offer, plus or without a price adjustment. If the Registered Trader elects to Auto-Quote based upon the automated away market best bid or offer, the contra side of the quote shall be based upon a programmable spread to the bid or offer (a specified number of trading increments) selected by the Registered Trader. AEMI shall not allow a Registered Trader to generate bids and offers based upon both sides of the APQ or the automated away market best bid or offer. If (i) a Registered Trader elects to Auto-Quote based on the APQ and (ii) that Registered Trader's quotation at any time represents the only interest on one side of the APQ, then AEMI, in determining the Auto-Quote prices for that Registered Trader, will exclude the APQ bid or offer quotation that is comprised solely of the Registered Trader's interest and will substitute the next best Exchange [Amex] bid or offer quotation.

(f) In the event that AEMI ships one or more orders, bids or offers to away markets to comply with Rule 611 or Rule 610 of the Commission's Regulation NMS, AEMI shall (1) suspend the shipped order, bid or offer, and (2) remove (or not incorporate) the suspended order, bid or offer from the Exchange [Amex] quote to the extent that it has been shipped. An order that has been shipped to another market is deemed to have been removed from the AEMI Book and, consequently, may not be traded against and may be traded through. If one or more of the shipped orders are returned unexecuted in whole or part by the away markets, the unexecuted portion of the suspended order, bid, or offer shall be incorporated or reinserted into AEMI and quoted or requoted with the same order time priority as it would have had if it had not been shipped; provided, however, that additional intermarket sweep orders to away markets shall be generated as required under Rule 611 of Regulation NMS in connection with the reaggessing of the AEMI Book by the unexecuted portion of the suspended order.

Rule 126A—AEMI. Protected Bids and Offers of Away Markets

Except when one or more of the following eleven circumstances exist, AEMI shall generate an intermarket sweep order to any away market displaying a protected quotation simultaneously with the execution of a transaction on the Exchange [Amex] that would constitute a trade-through.

All such intermarket sweep orders shall be generated for the account of the bid, offer or order that caused the generation of the intermarket sweep order:

- (1) The transaction that constituted the trade-through was effected when the trading center displaying the protected quotation that was traded through was experiencing a failure, material delay, or malfunction of its systems or equipment.
- (2) The transaction that constituted the trade-through was not a "regular way" contract.
- (3) The transaction that constituted the trade-through was a single-priced opening, reopening, cash closing, or closing transaction by the **Exchange [Amex]**.
- (4) The transaction that constituted the trade-through was executed at a time when a protected bid was priced higher than a protected offer in the NMS stock.
- (5) The transaction that constituted the trade-through was the execution of an order identified as an intermarket sweep order.
- (6) At the time the **Exchange [Amex]** effected the transaction that constituted the trade-through, it simultaneously routed an intermarket sweep order to execute against the full displayed size of any protected quotation in the NMS stock that was traded through.
- (7) The transaction that constituted the trade-through was the execution of an order at a price that was not based, directly or indirectly, on the quoted price of the NMS stock at the time of execution and for which the material terms were not reasonably determinable at the time the commitment to execute the order was made.
- (8) The trading center displaying the protected quotation that was traded through had displayed, within one second prior to execution of the transaction that constituted the trade-through, a best bid or best offer, as applicable, for the NMS stock with a price that was equal or inferior to the price of the trade-through transaction.
- (9) The transaction that constituted the trade-through was the execution by the **Exchange [Amex]** of an order for which, at the time of receipt of the order, the **Exchange [Amex]** had guaranteed an execution at no worse than a specified price (a "stopped order"), where:
 - (i) The stopped order was for the account of a customer;
 - (ii) The customer agreed to the specified price on an order-by-order basis; and
 - (iii) The price of the trade-through transaction was, for a stopped buy order, lower than the national best bid in the NMS stock at the time of execution or, for a stopped sell order, higher than the national best offer in the NMS stock at the time of execution.
- (10) The transaction that constituted the trade-through was the execution of an order involving one or more NMS stocks (each an "Exempted NMS Stock Transaction") that were components of a "qualified contingent trade." A qualified contingent trade is a transaction consisting of two or more component orders, executed as agent or principal, where:

- (i) at least one component order is in an NMS stock;
 - (ii) all components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent;
 - (iii) the execution of one component is contingent upon the execution of all other components at or near the same time;
 - (iv) the specific relationship between the component orders (e.g., the spread between the prices of the component orders) is determined at the time the contingent order is placed;
 - (v) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since cancelled;²
 - (vi) the Exempted NMS Stock Transaction is fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade;³ and
 - (vii) the Exempted NMS Stock Transaction that is part of a contingent trade involves at least 10,000 shares or has a market value of at least \$200,000.
- (11) The price of the protected quotation that was traded through was \$1.00 or less and the price of the transaction that constituted the trade-through was less than \$0.01 away from the price of the protected quotation that was traded through.

A member may submit an intermarket sweep order to the Exchange only if it has simultaneously sent an intermarket sweep order for the full displayed size of every other better-priced protected quotation displayed by other trading centers.

Following the compliance date for Rule 611 of Regulation NMS, the Exchange shall identify all trades executed pursuant to an exception or exemption from Rule 611 of Regulation NMS in accordance with specifications approved by the operating committee of the relevant national market system plan for an NMS stock. If a trade is executed pursuant to both the intermarket sweep order exception of Rule 611(b)(5) or (6) and the self-help exception of Rule 611(b)(1), such trade shall be identified as executed pursuant to the intermarket sweep order exception.

An intermarket sweep order shall be generated if an order that is entered on the **Exchange [Amex]** would lock or cross a protected quotation in an away market. Each outbound intermarket sweep order will be issued as an immediate or cancel order but will also carry an expiration delay timer.

The Exchange [Amex] will actively monitor all systems relating to private linkage at all times to ensure that systems are functioning correctly. **The Exchange [Amex]** will also ensure that the private linkage provider is responsible for the active monitoring of all connections relating to private linkage and for providing immediate notification regarding system problems. In the event that AEMI does not receive any response at all to an outbound intermarket sweep order, and assuming that no system errors have been detected, AEMI will issue a cancellation at the expiration of the expiration delay timer. This action will release the corresponding order that had

been suspended on the AEMI Book pending the response to the intermarket sweep order, and the released order will re-aggress the AEMI Book (including the generation of intermarket sweep orders to other away markets, if necessary).

In the event that AEMI receives a rejection (i.e., a no-fill or partial fill cancellation) in response to an outbound intermarket sweep order and the quotation at the away market is not updated, AEMI will release the corresponding order that had been suspended on the AEMI Book so that it may re-aggress the AEMI Book as described in the immediately prior paragraph (including the generation of intermarket sweep orders to other away markets, if necessary). Other intermarket sweep orders will still continue to be routed to that particular away market's protected quotation in that security.

In accordance with Rule 611(a) of Regulation NMS, the Exchange may, pursuant to objective industry-wide established interpretations and policies, determine to bypass the quotations displayed by another trading center if such trading center repeatedly fails to respond within one second to orders attempting to access such trading center's protected quotations provided such failures are attributable to such trading center and are not attributable to transmission outside the control of such trading center. In connection with any such determination, the Exchange will immediately notify the non-responding trading center of such determination.

Rule 126B—AEMI. Order Routing Services

• • • *Commentary:* -----

.01 (a) The Exchange will provide its Routing Services in compliance with these rules, as well as other provisions of the Exchange's [**Constitution and**] rules where applicable, and with the provisions of the Securities Exchange Act of 1934 (the "Act") and the rules thereunder, including, but not limited to, the requirements in Section 6(b)(4) and (5) of the Act that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Rule 128A—AEMI. Automatic Execution

(d) Trade Execution. (i) AEMI shall automatically execute a new Auto-Ex Eligible Order, Bid or Offer against contra side orders, bids or offers residing in the AEMI Book at the price of such resident orders, bids or offers in accordance with the rules of precedence of bids and offers until the new order, bid or offer is filled in full, the size of the orders, bids or offers residing in the AEMI Book is exhausted, or the execution of the order breaches a Spread Tolerance in the security or a gap trade occurs. Automated execution will not occur without protected quotations at away markets being satisfied through the issuance of one or more intermarket sweep orders. AEMI will not publish a bid (offer) equal to or higher (lower) than the National Best Offer (Bid) without sending intermarket sweep orders to execute against the full displayed size of the protected quotations in the away markets.

- (ii) When a Registered Trader, Designated **NYSE Alternext [Amex]** Remote Trader or specialist moves his quote to match the APQ on the other side of the market (e.g., a Registered Trader raises his bid to match the offer side of the APQ), AEMI shall automatically execute the trade at the price of the APQ for the lesser of the size of the APQ or the size of the bid/offer that hit the APQ; provided, however, that any trade execution resulting from the specialist moving his quote must be consistent with the requirements of Rule 170-AEMI.
- (iii) AEMI shall automatically execute a trade when a member uses the hit or take functionality of AEMI to initiate an order against the APQ or otherwise initiates an order to trade with the bid/offer displayed in the APQ. Such an order may be entered by the member from on or off the Floor of the Exchange. Members who wish to use the hit or take functionality must specify the price and quantity of the hit or take order. When a member uses the hit or take functionality, AEMI shall validate that the specified price is equal to or better than the contra **Exchange [Amex]** quote and automatically generate a limit order at that price. Equity specialists who use the hit or take functionality must do so in a manner consistent with the requirements of Rule 170-AEMI. An order initiated by a member using the hit or take functionality is an order that expires if not immediately executed but that is capable of generating intermarket sweep orders to clear better away markets before executing on the **Exchange [Amex]**.
- (iv) Any quotation in a non-ETF **Exchange [Amex]** –listed security or a non-Nasdaq UTP equity security entered into the AEMI platform by the specialist while Auto-Ex is enabled that would cause the APQ to be crossed will automatically be rejected. Any quotation in an ETF or a Nasdaq UTP equity security entered into the AEMI platform by the specialist, a Registered Trader or a Designated **NYSE Alternext [Amex]** Remote Trader while Auto-Ex is enabled that would cause the APQ to be locked or crossed will be automatically executed. For all securities, when Auto-Ex is disabled due to the breach of a Spread Tolerance or a gap trade (see section (f) below), orders and quotations (with the exception of the specialist's quotation) that enter the AEMI Book and are priced better than the contra side of the APQ will participate in the auction trade to eliminate the locked or crossed market and will result in the dissemination of an automated APQ.

- (f) Auto-Ex Unavailability. AEMI shall not execute trades automatically in the following situations.
 - (i) The automatic execution of a single order causes a breach of the Spread Tolerance in the security. The Spread Tolerance for securities trading under \$5 per share shall be 10 cents; for securities trading at \$5 to \$15 per share, the Spread Tolerance shall be 30 cents; and for securities trading for more than \$15 per share, the Spread Tolerance shall be 50 cents. The Spread Tolerance shall be calculated from the price of the first execution of the order on the **Exchange [Amex]**.
 - (ii) Reserved.
 - (iii) The opening is delayed, the **Exchange [Amex]** is disseminating a gap quote (See Rule 170—AEMI(f)), or trading is halted in a security.

- (iv) The automatic execution of an order has exceeded the price change parameters of the "1%, 2, 1, ½ point" rule ("gap trade"). This rule does not apply to ETFs. (See Rule 154—AEMI(e).)
- (v) The **Exchange [Amex]** is conducting the cash close pair-off in an ETF. (See Rule 131—AEMI, Commentary .03).
- (vi) When the Exchange has determined that (1) "unusual market conditions" exist in one or more securities as described in **Exchange [Amex]** Rule 115—AEMI, or (2) a Senior Floor Official determines that the market(s) where securities trade representing more than 25% of the index value of an ETF are experiencing communications or system problems, "unusual market conditions" as described in Rule 602 under Regulation NMS, or delays in the dissemination of quotes.

Members may not trade in the open outcry market (other than to consummate an auction trade to remove a condition that caused Auto-Ex to be disabled) while Auto-Ex is disabled as a result of a delayed opening, gap quote or trading halt under any of the foregoing circumstances but may enter and cancel bids, offers and orders in AEMI during these times.

(g) If a buy or sell imbalance that locks or crosses the AEMI Book exists in a security and Auto-Ex has been disabled for any of the reasons listed in items (i), (iii) or (iv) of paragraph (f) of this Rule, the specialist must perform an auction pair-off of any remaining imbalance in order to re-enable Auto-Ex. If Auto-Ex has been disabled due to the breach of a Spread Tolerance (under (f)(i) above) or the Exchange's gap trade rule price change parameters (under (f)(iv) above), each of the foregoing parameters being referred to herein as a "Tolerance," the procedures for re-enabling Auto-Ex shall operate in the following manner.

During the 10-second time period following the breach of the Tolerance, if the specialist has not resolved the locked or crossed AEMI Book along with AEMI disseminating a new automated APQ, incoming orders, amendments and cancels shall continue to enter the AEMI Book but shall not update the APQ. On the expiration of the 10-second time period following the breach of the Tolerance, if the AEMI Book is not locked or crossed, Auto-Ex and the dissemination of an automated **Exchange [Amex]** quote shall resume automatically.

If the AEMI Book remains locked or crossed following the expiration of the 10-second period, Auto-Ex and the dissemination of an automated quotation shall not resume until the specialist takes action to pair-off the remainder of the aggressing order (i.e., to resolve the locked or crossed condition). AEMI will perform a recursive check every subsequent 10 seconds to determine if the locked or crossed condition has been eliminated and, if it has been eliminated, Auto-Ex and the dissemination of an automated **Exchange [Amex]** quote shall resume automatically. Members may not trade in the open outcry market (other than to consummate an auction trade to remove a condition that caused Auto-Ex to be disabled) while Auto-Ex is disabled as a result of the breach of a Tolerance but may enter and cancel bids, offers and orders in AEMI during this time.

If Auto-Ex has been disabled for either of the reasons listed in item (vi) of paragraph (f) of this Rule, the Exchange will disseminate the indicator "N" to indicate that the **Exchange [Amex]**'s quotation, if a trading halt has not been declared and quotations are being published in the particular security, is not firm (see Rule 115—AEMI, Commentary .01). Once the condition that caused Auto-Ex to be disabled has been eliminated, the specialist, with Floor Official approval as

described in Rule 115—AEMI, Commentary .01, paragraph 4, may resume the publication and dissemination of automated quotations in that security by manually re-enabling Auto-Ex or conducting an auction if the AEMI Book is locked or crossed. However, if a trading halt had been declared in the security in conjunction with the disabling of Auto-Ex, the specialist must conduct a normal reopening of the security, which may include a reopening pair-off, in order to re-enable Auto-Ex. (See Rules 108—AEMI and 119—AEMI with respect to the procedures for reopening a security.)

Rule 128B—AEMI. Auction Trades

(b) A specialist shall immediately enter an auction trade into AEMI if he participates in the trade. If the specialist is not part of an auction trade, the member who initiates the trade shall immediately report the trade to the specialist for input into AEMI. Upon input, AEMI shall immediately send a report of the trade to the tape (less the size of any intermarket sweep order(s) to be immediately sent to away markets), execute any bids, offers or orders on the AEMI Book that were able to be executed at the price of the auction trade, generate intermarket sweep order(s) to away markets, and disseminate a new automated APQ if Auto-Ex is not then enabled. For trades with more than one contra-side member, the specialist shall conduct a post trade allocation, and AEMI will then send notification of individual trades to active crowd participants upon the specialist's confirmation of the post trade allocation. This requirement that the specialist confirm the initial post trade allocation (which is an estimate computed by AEMI based on assumed participation by all of the active crowd participants and the Exchange's priority and parity rules) is to allow the active crowd participants to verbally confirm their participation or non-participation. Any necessary adjustments by the specialist would result in a reallocation, also computed by AEMI. If the specialist has not confirmed the allocation within a three-minute period following the trade, the default allocation will be AEMI's estimated allocation to the specialist and the active crowd participants. "Active crowd participants" consist of Registered Traders in the crowd with a bid or offer on the AEMI Book on the contra side of the aggressing order and Floor Brokers with a Crowd Order on the contra side of the aggressing order, in each case at the time of the trade, but do not include Designated NYSE Alternext [Amex] Remote Traders. The Floor Brokers that are a party to the auction trade, both on the side of the aggressing order and the contra side, shall each have 20 seconds following notification by AEMI of their respective individual trades to complete an additional allocation to the existing orders in their hand held terminals. If such a trade allocation is reported to AEMI more than 20 seconds later, it will be deemed "late" but will still be permitted.

(c) If one or more of the intermarket sweep orders generated by an auction trade are unexecuted in whole or in part by away markets, AEMI will release the remaining portion of any order, bid or offer in AEMI that was suspended at the time the intermarket sweep orders were generated, and the released order, bid or offer will re-aggress the orders, bids and offers in the AEMI Book (including the generation of intermarket sweep orders to away markets, if necessary); provided, however, that intermarket sweep orders generated by a trade having only a single member on the buy side and a single member on the sell side ("negotiated trade") that are not executed by an away market will be automatically expired and not executed at the Exchange [Amex]. In the event that AEMI (i) does not receive any response to an outbound intermarket sweep order by the time the expiration delay timer has expired (assuming that no system errors have been detected), or (ii) receives a rejection (i.e., a no-fill or partial fill cancellation) in

response to such order and the quotation at the away market is not updated, the Exchange will follow the procedures described for such circumstances in Rule 126A—AEMI, which will include the release of the suspended portion of the order on the AEMI Book that was represented by the unexecuted (or partially executed) outbound intermarket sweep order and the re-aggressing of the AEMI Book by the released order.

Rule 131—AEMI. Types of Orders

Intermarket sweep order

(k) An intermarket sweep order is a limit order for an NMS stock (1) received on the Exchange by AEMI from a member or another market center which is to be executed (i) immediately at the time such order is received in the AEMI Book, (ii) without regard for better-priced protected quotations displayed at one or more other market centers, and (iii) at prices equal to or better than the limit price, with any portion not so executed to be treated as cancelled[; **provided, however, that an order that is received through the communications network operated pursuant to the Intermarket Trading System (ITS) Plan or any successor to the ITS Plan will only trade at a single price**], or (2) generated by AEMI in connection with the execution of an order by AEMI and routed to one or more away market centers to execute against all better-priced protected quotations displayed by the other market centers up to their displayed size. Intermarket sweep orders must be marked as such to inform the receiving market center that they can be immediately executed without regard to protected quotations in other markets. A member may submit an intermarket sweep order to the Exchange only if it has simultaneously sent an intermarket sweep order for the full displayed size of every other better-priced protected quotation displayed by other trading centers.

Rule 135—AEMI. Cancellations of, and Revisions in, Transactions Where both the Buying and Selling Members Agree to the Cancellation or Revision

(b) Rule 390 shall not preclude a member, member organization, allied member, registered representative, or officer from sharing or agreeing to share in any losses in any customer's account with respect to securities admitted to dealings on the Exchange after the member organization has established that the loss was caused in whole or in part by the action or inaction of such member, member organization, allied member, registered representative or officer, provided, however, that this provision shall not permit a member, member organization, allied member, registered representative or officer to guarantee any customer against loss in his or her **or its** account.

Rule 135A—AEMI. Cancellations of, and Revisions in, Transactions Where both the Buying and Selling Members Do Not Agree to the Cancellation or Revision

(e) Rule 390 shall not preclude a member, member organization, allied member, registered representative, or officer from sharing or agreeing to share in any losses in any customer's account with respect to securities admitted to dealings on the Exchange after the member organization has established that the loss was caused in whole or in part by the action or inaction of such member, member organization, allied member, registered representative or officer, provided, however, that this provision shall not permit a member, member organization, allied member, registered representative or officer to guarantee any customer against loss in his or her **or its** account.

Rule 154—AEMI. Orders in AEMI

(k) (i) Equity Securities—A specialist shall not charge a commission for handling an order (or portion thereof) that is not executed, an order that is executed on an opening or reopening, an at the close order (either market or limit) or an order (or portion thereof) that is executed against the specialist as principal (see **Exchange [Amex]** Rule—AEMI 152(c)). Without limiting the foregoing, a specialist also shall not charge a commission for the execution of an off floor order delivered to the specialist through the Exchange's electronic order routing systems except in the following cases:

Rule 157—AEMI. Orders with More than One Broker

••• Commentary -----

.01 To ensure fairness in trading crowds, Registered Traders in a joint account may never trade in the same crowd at the same time. Registered Traders that have a relationship with the same member organization can, however, trade in the same crowd at the same time, but only if they first demonstrate to the Exchange's satisfaction that they are not "affiliated" with one another; provided, however, that, if two or more such related Registered Traders trade in the same crowd at the same time, they will be limited to the match they could get if there were only two of them in the crowd. Such related Registered Traders who wish to use this exception must submit to the **Exchange [Amex Membership Department]** complete documentation of their relationship to their member organization as well as their relationship to each other and explain why they believe they are not "affiliated". The Exchange will determine whether or not such related Registered Traders are also "affiliated" using the control test in Exchange Rule 904, Comm. .08. Such related Registered Traders will be considered "affiliated" if one "controls" or is controlled by the other Registered Trader. Under Rule 904, Comm. .08, the term "control" includes the power or ability to (i) make trading decisions for an account (in this case, the account of another Registered Trader); or (ii) influence directly or indirectly the trading decisions of another Registered Trader. Control will be presumed when a Registered Trader shares in 10 percent or more of profits and/or losses of another Registered Trader's account. For example, if two Registered Traders have a relationship with the same member organization and one has a 10% interest in the profit and/or losses of the other's account, the Registered Traders are "affiliated" and may not be on parity.

In addition, if two Registered Traders have a relationship with the same member organization, but are not affiliated with each other, those Registered Traders will not be permitted to trade in the same crowd at the same time if the member organization's combined share of their profits and/or losses exceeds "100%" of their profits and/or losses. For example, Registered Trader John Doe has a relationship with XYZ Brokerage, and its share of profits and losses in his account is 60%. Registered Trader Jane Smith also has a relationship with XYZ Brokerage, and its share of profits and losses in her account is 50%. Those Registered Traders will not be permitted to be on parity because XYZ's combined share of their profits and losses is "110%". If, in the example, XYZ's share of Doe's profit and losses was 50% or less and XYZ's share of Smith's profit and losses was 50% or less, then Doe and Smith would be permitted to trade in the same crowd at the same time as long as they were not "affiliated" with each other in addition to having a relationship with XYZ.

If a Designated **NYSE Alternext [Amex]** Remote Trader has a relationship with the same member organization as a Registered Trader trading in the same security, the Designated **NYSE Alternext [Amex]** Remote Trader shall be treated as if it were another Registered Trader under the provisions of this Commentary .01 for the purposes of (i) determining whether it and the Registered Trader may trade in that security at the same time and (ii) applying the limitation on the trade allocation match they may receive even if they are permitted to trade in that security at the same time. Consequently, a Designated **NYSE Alternext [Amex]** Remote Trader in this situation must submit to the **Exchange [Amex Membership Department]** the required relationship documentation described in the first paragraph of this Commentary .01.

Rule 170—AEMI. Registration and Functions of Specialists

(b) As a condition of a member's being registered as a specialist in one or more securities, it is to be understood that, in addition to the execution of orders on the Specialist Order Book and the performance of his obligations as the odd-lot dealer in such securities, a specialist is to engage in a course of dealings for his own account to assist in the maintenance, insofar as reasonably practicable, of a fair and orderly market on the Exchange in such securities in accordance with and when viewed in relation to the criteria set forth in paragraphs (c) and (d) of this rule and the commentary thereto. If the Exchange shall have found any substantial or continued failure by a specialist to engage in such a course of dealings, the registration of such specialist shall be subject to suspension or cancellation by the Exchange in one or more of the securities in which he is registered. Nothing herein shall limit any other power of the Board of **Directors [Governors]** under **[the Constitution or]** any rule of the Exchange with respect to the registration of a specialist or in respect of any violation by a specialist of the provisions of this rule.

••• *Commentary:* -----

.01

Transactions of these types may, nevertheless, be effected with the approval of a Floor Official or in relatively inactive markets where they are an essential part of a proper course of dealings and

where the amount of stock involved and the price change, if any, are normal in relation to the market. In addition, transactions by the specialist in the tick situations described above may be effected without the approval of a Floor Official if the stock is subject to auto-ex in AEMI and the specialist (i) purchases on the Exchange [Amex] Published Bid (which must be equal to his bid) when his bid is accessed by an aggressing sell order, or (ii) sells on the Exchange [Amex] Published Offer (which must be equal to his offer) when his offer is accessed by an aggressing buy order.

.02 Transactions by a specialist for his own account in liquidating or decreasing his position in a stock in which he is registered are to be effected in a reasonable and orderly manner in relation to the condition of the general market, the market in the particular stock and the adequacy of the specialist's positions to the immediate and reasonably anticipated needs of the full lot and the odd-lot market, and, in this connection:

(a) the specialist may liquidate a position by selling stock to the bid on a direct minus tick or by purchasing stock on the offer on a direct plus tick only if such transactions are reasonably necessary in relation to the specialist's overall position in the stocks in which he is registered, and the specialist has obtained the prior approval of a Floor Official; provided, however, that transactions by the specialist in these tick situations may be effected without the approval of a Floor Official if the stock is subject to auto-ex in AEMI and the specialist (i) purchases on the Exchange [Amex] Published Bid (which must be equal to his bid) when his bid is accessed by an aggressing sell order, or (ii) sells on the Exchange [Amex] Published Offer (which must be equal to his offer) when his offer is accessed by an aggressing buy order;

Rule 174—AEMI. Disclosures by Specialists Prohibited

••• *Commentary* -----

.02

(b) The depth indication may be disseminated only when there is market interest, consisting of the specialist's proprietary interest as well as interest reflected by orders on the AEMI Book (including percentage orders, but excluding the reserve size of reserve orders), aggregating such minimum number of shares and range of prices below the published bid or above the published offer as the Exchange deems appropriate and communicates to its members and member organizations [membership].

Rule 220—AEMI. Communications to and on the Floor

••• *Commentary* -----

Sanctions for Violations of the Hand Held Terminal and Data Communication Policy

Violations of any aspect of the foregoing Hand Held Terminal and Data Communication Policy may result in disciplinary action pursuant to the [**Article V of the Exchange Constitution or**] Exchange Rules [**345 or 590**] as appropriate.

Rule 719. AEMI. Comparison of Exchange Transactions

••• *Commentary* -----

.02 (12) Account type code-equities only. The current account type codes for equity transactions are as follows. Members should use the most restrictive account type code available. Thus, for example, members only should use the "A" account type code for an agency transaction when no other account type code accurately describes the trade. These codes may be changed from time to time as the Exchange may determine:

S—Specialist principal transaction in a specialty security (regardless of the account or clearing member)

G—Registered Trader, Designated **NYSE Alternext [Amex]** Remote Trader and Registered Equity Market Maker market maker transactions in the equities and ETFs in which they are registered as a market maker regardless of the clearing member, and Registered Options Trader and option specialist transactions in an underlying Paired Security if the underlying Paired Security is an equity other than an ETF (e.g., SPY, DIA, QQQQ, HOLDRS, Sector SPDRs)

P—**Exchange [Amex]** Option Specialist or Market Maker transaction in the underlying of an **Exchange [Amex]** "paired security" if the underlying of the Paired Security is an ETF (e.g., SPY, DIA, QQQQ, HOLDRS, Sector SPDRs) (regardless of the clearing member)

Rule 1000—AEMI. Portfolio Depository Receipts

(a) Applicability. The Rules in this Section are applicable only to Portfolio Depository Receipts. Except to the extent specific Rules in this Section govern, or unless the context otherwise requires, the [**provisions of the Constitution and all other**] rules and policies of the Board of **Directors [Governors]** shall be applicable to the trading on the Exchange of such securities. [**Pursuant to the provisions of Article 1, Section 3(j) of the Constitution,**] Portfolio Depository Receipts are included within the definition of "security" or "securities" as such terms are used in the [**Constitution and**] Rules of the Exchange. In addition, [**pursuant to the provisions of Article I, Section 3(d) of the Constitution,**] Portfolio Depository Receipts are included within the definition of "derivative products" as that term is used in the [**Constitution and**] Rules of the Exchange.

••• *Commentary:* -----

.01 The Exchange requires that members and member organizations provide to all purchasers of a series of Portfolio Depositary Receipts a written description of the terms and characteristics of such securities, in a form prepared by the Exchange, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series of Portfolio Depositary Receipts that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of Portfolio Depositary 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 Depositary Receipts] has been prepared by the **[American Stock]** Exchange and is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of Portfolio Depositary Receipts]. In addition, upon request you may obtain from your broker a prospectus for [the series of Portfolio Depositary Receipts]."

Rule 1000A—AEMI. Index Fund Shares

(a) **Applicability.** The Rules in this Section are applicable only to Index Fund Shares. Except to the extent specific Rules in this Section govern or unless the context otherwise requires, the **[provisions of the Constitution and all other]** rules and policies of the Board of **Directors [Governors]** shall be applicable to the trading on the Exchange of such securities. **[Pursuant to the provisions of Article 1, Section 3(j) of the Constitution,]** Index Fund Shares are included within the definition of "security" or "securities" as such terms are used in the **[Constitution and]** Rules of the Exchange. In addition, **[pursuant to the provisions of Article I, Section 3(d) of the Constitution,]** Index Fund Shares are included within the definition of "derivative products" as that term is used in the **[Constitution and]** Rules of the Exchange.

Rule 1200—AEMI. Rules of General Applicability

(a) **Applicability.** The Rules in this Chapter (Trading of Trust Issued Receipts) are applicable only to Trust Issued Receipts. Except to the extent that specific Rules in this Chapter govern, or unless the context otherwise requires, the **[provisions of the Constitution and all other]** rules and policies of the Board of **Directors [Governors]** shall be applicable to the trading on the Exchange of such securities. **[Pursuant to the provisions of Article 1, Section 3(i) of the Constitution,]** Trust Issued Receipts are included within the definitions of "security" or "securities" as such terms are used in the **[Constitution and]** Rules of the Exchange.

Rule 1200A—AEMI. Commodity-Based Trust Shares

(a) **Applicability.** The Rules in this Section are applicable only to Commodity-Based Trust Shares. In addition, except to the extent specific Rules in this Section govern or unless the context otherwise requires, the provisions of the Trust Issued Receipt rules **[and the Constitution**

and] all other rules and policies of the Board of **Directors [Governors]** shall be applicable to the trading on the Exchange of such securities. **[Pursuant to the provisions of Article 1, Section 3(i) of the Constitution,]** Commodity-Based Trust Shares are included within the definition of "security" or "securities" as such terms are used in the **[Constitution and]** Rules of the Exchange.

Rule 1200B—AEMI. Currency Trust Shares

(a) Applicability. The Rules in this Section (Trading of Currency Trust Shares) are applicable only to Currency Trust Shares. Except to the extent that specific Rules in this Section govern, or unless the context otherwise requires, the **[provisions of the Constitution and all other]** rules and policies of the Board of **Directors [Governors]** shall be applicable to the trading on the Exchange of such securities. **[Pursuant to the provisions of Article 1, Section 3(i) of the Constitution,]** Currency Trust Shares are included within the definitions of "security" or "securities" as such terms are used in the **[Constitution and]** Rules of the Exchange.

Rule 1500—AEMI. Trading of Partnership Units

(a) Applicability. The Rules in this Chapter (Trading of Partnership Units) are applicable only to Partnership Units. Except to the extent that specific Rules in this Chapter govern, or unless the context otherwise requires, the **[provisions of the Constitution and all other]** rules and policies of the Board of **Directors [Governors]** shall be applicable to the trading on the Exchange of such securities. **[Pursuant to the provisions of Article 1, Section 3(i) of the Constitution,]** Partnership Units are included within the definitions of "security" or "securities" as such terms are used in the **[Constitution and]** Rules of the Exchange.

[Rules of Procedure in Disciplinary Matters

Rule 1. Appointment of Hearing Officers and Hearing Board

The Chief Executive Officer of the Exchange, subject to the approval of the Board of Governors, shall from time to time appoint such number of Exchange Officials and other persons to serve on the hearing board as he shall deem necessary for the purpose of conducting Exchange disciplinary proceedings. In making such appointments, the Chief Executive Officer shall give due consideration to the various phases of member and member organization activities and operations. No member of the Board of Governors shall be eligible for appointment to the Hearing Board or as a hearing officer. The Chairman of the Board, subject to the approval of the Board, shall also designate one or more hearing officers who shall have no Exchange duties or functions relating to the investigation or preparation of disciplinary matters. Whenever the Chief Executive Officer of the Exchange shall be advised by the chairman of an Exchange Disciplinary Panel that in his opinion there is not a sufficient number of persons on the hearing board from which to select persons having the appropriate background, experience and training to consider and make determinations regarding the subject matter to be presented to that particular Disciplinary Panel, the Chief Executive Officer of the Exchange, subject to approval of the Board of Governors, may appoint additional persons to the hearing board.

Rule 2(a). Selection of Chairman of Disciplinary Panel

Whenever the Chief Executive Officer of the Exchange shall be advised that a charge or charges have been served upon a member, member organization, approved person, or a registered or non-registered employee or prospective employee of a member or member organization, or that a written stipulation of facts and consent to a specified penalty has been entered into between any such person or persons and an authorized officer of the Exchange, or that a member or member organization has been suspended or expelled from any other securities exchange or any national securities association, or has been suspended or barred from being associated with any member of such exchange or association, or has been suspended or barred by any governmental securities agency from dealing in securities or being associated with any broker or dealer in securities and such member or member organization has not consented in writing to similar action by the Exchange, or that an employee or prospective employee of a member or member organization has been suspended or expelled from any other securities exchange or any national securities association, or has been suspended or barred from being associated with any member of such exchange or association, or has been suspended or barred by any governmental securities agency from dealing in securities or being associated with any broker or dealer in securities and such employee or prospective employee has not consented in writing to similar action by the Exchange, the Chief Executive Officer, (or such person(s) as the Chief Executive Officer may designate with Board approval), shall select a hearing officer, appointed pursuant to Section 1(b)(3) of Article V of the Constitution, to act as a chairman of a Disciplinary Panel and take such further action as may be authorized pursuant to the Constitution and rules of the Exchange. To the extent practicable, such selection shall be made on a rotating basis from among the Exchange Officials designated to serve on Exchange Disciplinary Panels, but in the discretion of the Chief Executive Officer may also include other persons appointed as hearing officers

Rule 2(b). Selection of Persons on Hearing Board for Service on Panels

The chairman of an Exchange Disciplinary Panel, promptly after his selection to serve in such capacity, shall review the charge or charges and the answer, if any, to be considered by the Panel, or the written stipulation of facts and consent to a specified penalty or other written statement of the disciplinary matter to be considered in the event no charge or charges have been served, and shall determine the number of persons to be selected to serve on such panel, which number shall be not less than two nor more than four. Thereafter he shall select, from among the persons on the hearing board appointed by the Chief Executive Officer of the Exchange, the individuals to serve on the Panel, consistent with the provisions of Section 1(b)(2) of Article V of the Constitution. In making such selections the chairman shall, to the extent practicable, choose individuals whose background, experience and training qualified them to consider and make determinations regarding the subject matter to be presented to the Panel. He shall also consider such factors as the availability of individuals on the hearing board, the extent of their prior service on Disciplinary Panels and any relationship between an individual on the hearing board and the respondent which might make it inappropriate for such person to serve on the Panel. Promptly after the selection of the persons to serve on the Disciplinary Panel, the chairman of the Panel shall cause written notice thereof to be given to the respondent. If any person involved in the

disciplinary proceeding shall have knowledge of a relationship between himself and any person selected for service on the Panel which might result in such person being unable to render a fair and impartial decision, he shall give prompt written notice thereof to the chairman of the Panel, specifying the nature of such relationship and the grounds for contesting the qualification of such person to serve on the Panel. The decision of the chairman of the Panel shall be final and conclusive with respect to the qualification of any persons to serve on the Panel. Notwithstanding anything in the foregoing to the contrary, consistent with Section 1(b)(1) of Article V of the Constitution, without convening a Disciplinary Panel, (i) the chairman of such Panel may preside over a disciplinary proceeding in which the respondent fails to answer the charges or otherwise defend himself, and (ii) any hearing officer, without conducting a formal hearing, may accept or reject a written stipulation of facts and consent to a specified penalty before a hearing on the merits has begun, as specified in Section 2 of Article V of the Constitution (in the case of a respondent member, member organization or approved person) or Exchange Rule 345(k) (in the case of a respondent employee or prospective employee of a member or member organization).

••• Commentary -----

.01 In determining the number of persons to serve on a Disciplinary Panel, the chairman of the Panel shall consider such factors as the complexity of the disciplinary matter to be heard, whether it presents novel questions concerning the interpretation and application of Exchange rules or of the securities laws and whether it appears that substantial questions of fact or law must be resolved.

Rule 3. Meetings of Disciplinary Panel

The chairman of an Exchange Disciplinary Panel shall determine the time and place of all meetings of the Panel and written notice thereof shall be sent to each person serving on the Panel and to each of the parties, except that, if the time and place of an adjourned meeting or succeeding meeting is announced by the chairman at a meeting of the Panel no further notice thereof need be given. The hearing of all witnesses, the receiving of evidence and the hearing of oral argument, if any, by an Exchange Disciplinary Panel shall be at a meeting of the Panel at which all members of the Panel and all parties are present, except where any party is absent by reason of his own default or has waived his right to be present. The chairman of the Panel and all other persons serving on the Panel shall be present during all deliberations of the Panel and shall participate in all decisions of the Panel, except with regard to procedural or evidentiary matters to be determined exclusively by the chairman.

••• Commentary -----

.01 For the purposes of these Rules of Procedure, the term "parties" shall mean:

- (i) The person or persons (including member organizations) named in the charges or in the written stipulation of facts and consent to penalty or in a statement describing the disciplinary action taken against such person or persons by another securities exchange, national securities association or governmental securities agency, as the case may be. With respect to a member organization the term "party", for the purpose of giving and receiving notice under these rules and being represented at meetings of the Panel shall mean any general

partner, holder of voting stock, director or executive officer of the accused member organization who is a member of the Exchange and is designated in writing by the accused member organization to represent it for all purposes in the disciplinary proceeding. Such written designation shall be furnished to the chairman of the Panel prior to the commencement of the hearing.

- (ii) The officer of the Exchange in charge of compliance matters or any other official or employee of the Exchange designated by such officer to represent the Exchange in such disciplinary proceeding.

Rule 4. Substitution of Persons on Disciplinary Panels

If, after a Disciplinary Panel has been selected and commenced hearing a particular disciplinary matter, any person selected from the hearing board and serving on the Panel shall for any reason become unavailable to continue with the hearing of the matter without undue delay, or it shall be determined that he is not qualified to continue hearing the matter because of the existence of a relationship between him and the person or persons involved in the disciplinary proceeding, the parties may agree to the substitution of another person from the hearing board to serve on the Panel to be selected by the chairman provided that such substitute hearing officer is given adequate opportunity to review all the prior proceedings of the Disciplinary Panel and to familiarize himself with all evidence and documents which have theretofore been presented to the Panel. If the parties do not agree to the substitution of a member of the Panel under such conditions, a new Panel member shall be selected by the chairman of the Panel from the hearing board and the Panel shall commence to hear the matter again. If the chairman of a Panel shall for any reason become unavailable to continue with the hearing of the matter without undue delay, the Chief Executive Officer of the Exchange shall appoint another hearing officer to serve as chairman of the Panel, and the Panel shall commence to hear the matter again.

Rule 5. Panel Assistants

The Chief Executive Officer of the Exchange may appoint a person or persons to provide assistance to Exchange Disciplinary Panels, provided that such persons are not part of, nor assigned to, any division or department of the Exchange having responsibility for compliance matters or charged with investigating or presenting disciplinary matters to Disciplinary Panels.

Rule 6. Evidence and Witnesses

Conformity with legal rules of evidence shall not be required in proceedings before Exchange Disciplinary Panels. The parties in any such proceeding may offer such evidence and may conduct such examination of witnesses as may be deemed relevant to the issues raised by the charge or charges and by the answer, if any. The chairman of the Panel shall rule on all questions of admissibility, relevancy and materiality of evidence offered. The parties shall produce such additional evidence as the chairman may require. All witnesses called by a party during a hearing shall be subject to examination by members of the Panel

and cross-examination by the other parties. The chairman of the Panel shall have the authority to require all witnesses to testify under oath. Except as otherwise provided in the Constitution or rules of the Exchange, the chairman shall prescribe the time within which all documents, exhibits, briefs, stipulations, notices or other written materials must be filed with the Panel. If during the course of a hearing it shall appear to the chairman that proffered evidence relates to matters outside the scope of the charges or the answer but that a proper resolution of the issues involved requires consideration of such evidence by the Panel, he may permit amendment of the charges or the answer, or both, by the respective parties. In such event, the chairman shall grant a reasonable continuance to enable the objecting party to meet such evidence.

Rule 7. Notice of Representation

Upon receipt of notice of the selection of a Disciplinary Panel to hear a disciplinary matter, each party to the proceeding (other than the representative of the Exchange) shall promptly notify the Secretary of the Exchange of an address to which all notices and other written communications from the Panel to such party may be sent. Each such party shall also notify the Secretary of the Exchange in writing if he is to be represented during the hearing by legal or other counsel and shall indicate the name, address and telephone number of the person who will represent him. Thereafter, any notice or other written communication from the Panel to such party may be delivered or mailed to the person designated as his representative and upon being so delivered or mailed shall be deemed for all purposes to have been served upon such party.

Rule 8. Record of Proceedings

A stenographic record shall be made of every meeting of a Disciplinary Panel at which evidence or testimony is received (including a proceeding presided over by a Panel Chairman alone pursuant to Section 1(b)(1)(i) of Article V of the Constitution), and a transcript thereof shall be prepared.

Rule 9. Requests for Review

A request by a party for review of a determination by a Disciplinary Panel shall state the specific decisions of the Panel with respect to which objection is made, and any decision of the Panel which is not expressly objected to in such request shall be deemed accepted by the party making the request. Upon the filing by a party of a request for review of a determination by a Disciplinary Panel, such party shall have twenty days thereafter in which to file with the Secretary of the Exchange any brief and supporting documents for submission to the Amex Adjudicatory Council. The representative of the Exchange shall have an additional twenty days thereafter in which to file an answering brief and supporting documents in connection with such review. If a request for review of a determination by a Disciplinary Panel is initiated by members of the Amex Adjudicatory Council, all briefs and supporting documents to be submitted by the parties must be filed with the Secretary of the Exchange within twenty days after notice of such request is served

upon them. The Amex Adjudicatory Council shall determine in each instance whether it will hear oral argument in connection with any such review.

Rule 10. Representation by Counsel

The parties and legal or other counsel representing a party before an Exchange Disciplinary Panel shall be subject to and shall comply with such rulings and directives as the chairman of the Panel shall deem necessary to preserve orderliness and proper decorum during the hearing and to avoid undue delay of the proceeding.

Rule 11. Exchange Investigations

(a) Members, employees of member organizations and prospective employees of member organizations who are the subject of, or are questioned in connection with, an Exchange investigation shall not discuss such investigation publicly or with any member of the Board of Governors or any Exchange Official.

(b) No person, firm or corporation, nor his or its counsel, shall assert legal objections to inquiries by Exchange representatives in the course of an Exchange investigation, nor impede nor delay the conduct of such investigation. All objections to questions or requests for information shall be reserved until there is a hearing on the matter which is the subject of the investigation.

Rule 12. Disclosure of the Result of Disciplinary Proceeding

Whenever an Exchange Disciplinary Panel shall find a person guilty of an offense and such determination has become final and conclusive, the Exchange shall announce publicly the results of such disciplinary proceeding, including the basis for such determination and the penalty imposed or other action taken. Such public announcement, in a form approved by the Disciplinary Panel rendering the decision, shall be released to the press and may be in any or all of the following additional forms: an announcement on the Exchange ticker, a circular to the membership, and the posting of an announcement on the trading floor. This rule shall not be applicable if the Disciplinary Panel finds in its determination that the offense relates solely to minor administrative requirements of the Exchange and does not materially affect the public interest or the interest of investors.

AMERICAN STOCK EXCHANGE SANCTIONS GUIDELINES

Overview

The mission of the American Stock Exchange ("Amex") is to provide a securities market place in which high standards of honor and integrity prevail and to promote and maintain just and equitable principles of trade and business. To this end, as a regulator, the Amex seeks to protect investors and strengthen market integrity through vigorous, even-handed,

and cost-effective self-regulation. The Amex embraces self-regulation as the most effective means of infusing a balance of industry and non-industry expertise into the regulatory process. To build public confidence in the financial markets, and as part of the Amex's regulatory mission, the Amex must stand ready to discipline members, member organizations, their employees, and approved persons by imposing sanctions when necessary and appropriate to protect investors, members, member organizations and the market place as a whole and to promote the public interest.

The Amex has developed these Sanction Guidelines for use by the various bodies adjudicating disciplinary actions, including Disciplinary Panels, the Amex Adjudicatory Council, and the Board of Governors (collectively, "Adjudicatory Bodies" or "Adjudicators"), in determining appropriate remedial sanctions. These Guidelines also may be used by parties to a disciplinary action in entering into a Stipulation of Facts and Consent to Penalty.

These Guidelines do not prescribe fixed sanctions for particular violations. Rather, they provide direction for Adjudicatory Bodies to assist them in imposing sanctions consistently and fairly. The Guidelines recommend ranges for sanctions and suggest factors (called "Principal Considerations") that Adjudicatory Bodies may consider in determining, for each case, where within the range the sanctions should fall or whether sanctions should be above or below the recommended range. These Guidelines are not intended to be absolute. Based on the facts and circumstances presented in each case, Adjudicatory Bodies may impose sanctions that fall outside the ranges recommended and may consider aggravating and mitigating factors in addition to those listed in these Guidelines.

To promote consistency and uniformity in the imposition of penalties, the following factors should be considered in connection with the imposition of sanctions in all cases. In addition, a list of Principal Considerations in Determining Sanctions, which enumerates generic factors that could be aggravating or mitigating in any given case, is included.

General Principles Applicable to All Sanction Determinations

(1) Disciplinary sanctions are remedial in nature. Adjudicatory Bodies should design sanctions to prevent and deter future misconduct by the wrongdoer, to discourage others from engaging in similar misconduct, and to improve overall business standards of Amex members. The concept of remediation calls for the imposition of the least burdensome sanction necessary effectively to address the misconduct. The concept of deterrence requires the imposition of a remedial sanction of sufficient weight to discourage the violator and others similarly situated from repeating or engaging in the misconduct. Disciplinary sanctions should not be designed to punish for past misconduct. Rather, Adjudicatory Bodies should seek to achieve remediation and deterrence in imposing sanctions.

(2) An important objective of the disciplinary process is to deter future misconduct by imposing progressively escalating sanctions on recidivists. Repeated acts of misconduct call for increasingly serious sanctions.¹ Adjudicatory Bodies should consider a named party's relevant disciplinary history in determining sanctions. Relevant history may include past misconduct similar to the misconduct at issue or past misconduct that, while unrelated, evidences prior disregard for regulatory requirements, investor protection, or the integrity of the industry as a whole.²

(3) Adjudicatory Bodies should tailor sanctions to address the misconduct at issue. In order to achieve remediation, Adjudicatory Bodies should impose sanctions tailored to the

misconduct at issue. While adhering to the limitations with respect to sanctions imposed by the Securities Exchange Act of 1934 and the Amex's own rules, Adjudicatory Bodies may consider imposing somewhat unique sanctions if necessary to address the specific misconduct at issue. For example, an Adjudicatory Body may require a member or member organization to: retain a qualified independent consultant to improve future compliance with regulatory requirements; disclose disciplinary history to new and/or existing clients; or implement heightened supervision of certain employees.

(4) Aggregation or "batching" of violations may be appropriate in certain instances for purposes of determining sanctions. Adjudicatory Bodies may treat several acts of misconduct as one "violation" for purposes of determining sanctions if the misconduct meets certain objective parameters. The parameters are intended to describe the circumstances in which Adjudicatory Bodies may choose to aggregate violations and are not intended to require that Adjudicators aggregate multiple violations in every instance in which the violations meet the parameters. Multiple violations may be treated individually such that a sanction is imposed for each violation, and multiple violations may be treated as aggravating and warrant higher sanctions. In determining whether to aggregate, Adjudicatory Bodies should consider the following factors:

- (A) Whether the violations involved related activity and the same or similar interrelated rules or regulations. (If aggregated, the violations should not have involved materially different types of misconduct.)
- (B) Whether the violations involved unintentional or negligent misconduct or manipulative, fraudulent, or deceptive intent. (If aggregated, the violations should not have involved manipulative, fraudulent, or deceptive intent.)
- (C) Whether the misconduct resulted in injury to investors. (If investors were injured, but the misconduct did not involve manipulative, fraudulent, or deceptive intent and full restitution has been paid to all injured parties, an Adjudicatory Body may consider aggregating violations. Otherwise, violations involving customer harm should not be aggregated.)
- (D) Whether the violations resulted from a single systematic problem or underlying cause that has been corrected. (If aggregated, the violations should have resulted from one cause and the cause should have been corrected.)
- (E) Whether the violations were uncovered as the result of a comprehensive surveillance review conducted by the Exchange or the member firm. (It may be appropriate to aggregate violations if they were uncovered as a result of a comprehensive surveillance review.),

(5) Adjudicatory Bodies should order restitution if necessary to remediate misconduct. Adjudicatory Bodies should order restitution when an identifiable party has suffered a quantifiable loss as a result of a named party's misconduct.³ Adjudicatory Bodies should calculate orders of restitution based on the actual amount of loss sustained by the injured party, as demonstrated by record evidence. Orders of restitution may exceed the amount of the named party's ill-gotten gain. It is imperative that Adjudicatory Bodies include in written decisions a description of the method used to calculate restitution.

(6) Adjudicatory Bodies should consider the amount of a named party's ill-gotten gain when determining the amount of a disciplinary fine. In cases in which the record

demonstrates that a named party obtained a financial benefit from its misconduct, Adjudicatory Bodies should require disgorgement of the ill-gotten gain by fining away the amount of the financial benefit in addition to any other sanction that might apply.

(7) Adjudicatory bodies may require approved persons and other registered employees of members or member organizations to requalify in any or all registered capacities or to obtain additional training before continuing as floor officials. The remedial purpose of disciplinary sanctions may be served best by requiring a named party who is a registered employee of a member or member organization to requalify by examination as a condition of continued employment in the securities industry. Similarly, it may be appropriate to require a named party to receive additional training before allowing the party to continue to act as a floor official. These types of sanctions are particularly appropriate in cases in which a named party's actions demonstrate a lack of knowledge or familiarity with the rules and laws governing the securities industry.

(8) Adjudicatory Bodies may consider a named party's inability to pay in connection with the imposition of monetary sanctions when the party raises this issue. When raised by a named party, Adjudicatory Bodies may consider a proven bona fide inability to pay when determining monetary sanctions. The burden is on the named party to raise the issue of inability to pay and to provide evidence of inability. Proof of inability to pay need not result in a reduction or waiver of monetary sanctions, but could instead result in the imposition of an alternate payment option or alternate sanction.

These General Principles are applicable to all sanctions determinations and should be considered by Adjudicatory Bodies in all cases. Consistency and uniformity are important in the application of disciplinary sanctions and, for this reason, these guiding principles are extremely important to the continued fairness of the Amex disciplinary process.

Principal Considerations In Determining Sanctions

The following list of factors should be considered in conjunction with the imposition of sanctions. Individual guidelines may list other factors. As appropriate, Adjudicatory Bodies should consider case-specific factors in addition to those listed here and in individual guidelines.

- (1) The named party's relevant disciplinary history including any fines imposed under a Minor Rule Violation Fine Plan. (*See* General Principle No. 2).
- (2) Whether the named party accepted responsibility for and acknowledged the misconduct to an employer (in the case of an employee of a member or member organization or an approved person) or a regulator prior to detection and intervention by the employer or regulator.
- (3) Whether the named party voluntarily employed subsequent corrective measures, prior to detection or intervention by an employer (in the case of an employee of a member or member organization or an approved person) or a regulator, to revise general and/or specific procedures to avoid recurrence of misconduct.
- (4) Whether the named party voluntarily and reasonably attempted, prior to detection and intervention, to pay restitution or otherwise remedy the misconduct.

- (5) Whether the named party demonstrated reasonable reliance on competent legal or accounting advice.**
- (6) Whether the named party engaged in numerous acts and/or a pattern of misconduct.**
- (7) Whether the named party engaged in the misconduct over an extended period of time.**
- (8) Whether the named party attempted to conceal misconduct or to lull into inactivity, mislead, deceive, or intimidate a customer, regulatory authorities, or an employer (in the case of an employee of a member or member organization or an approved person).**
- (9) With respect to other parties, including the investing public and/or other market participants, (a) whether the named party's misconduct resulted directly or indirectly in injury to such other parties; and (b) the extent of the injury.**
- (10) Whether the named party provided substantial assistance to regulators in its examination and/or investigation of the underlying misconduct, or whether the named party attempted to delay an investigation, to conceal information, or to provide inaccurate or misleading testimony or documentary information to the Amex or another regulator.**
- (11) Whether the named party's misconduct was the result of an intentional act, recklessness, or negligence.**
- (12) Whether the named party engaged in the misconduct at issue notwithstanding prior warnings from Amex staff, another regulator, or a supervisor (in the case of an approved person or employee of a member or member organization) that the conduct violated Amex rules or applicable securities laws or regulations.**
- (13) Whether the named party's misconduct resulted in the potential for monetary or other gain.**
- (14) The number, size, and character of the transactions at issue.**
- (15) The level of sophistication of the injured or affected customer. (Generally a violation affecting an unsophisticated customer should be considered as an aggravating factor.)**
- (16) Whether, at the time of the violation, the named member or member organization had developed reasonable supervisory, operational, and/or technical procedures or controls that were properly implemented.**
- (17) Whether, at the time of the violation, the named member or member organization had developed adequate training and educational initiatives.**
- (18) Whether the named member or member organization can demonstrate that the misconduct at issue was aberrant or not otherwise reflective of its historical compliance record.**

- (19) Whether the member or member organization with which a named party is/was associated disciplined the party for the misconduct at issue prior to regulatory detection.

Firm Quotes—Specialist Options Transactions

AMEX Rule 958A

<i>Principal Considerations in Determining Sanctions</i>	<i>Monetary Sanction</i>	<i>Suspension, Expulsion, or Other Sanctions</i>
See List of Principal Considerations Applicable to All Guidelines	<i>First Disciplinary Action</i> ⁴ Fine of \$500 to \$1,000.	In egregious cases, consider suspending the named party with respect to any or all activities or functions for up to two years.
Additional Considerations	<i>Second Disciplinary Action</i> Fine of \$1,000 to \$10,000.	
1) Whether named party remediated the failures to execute.	<i>Subsequent Disciplinary Actions</i> Fine of \$3,000 to \$50,000.	

⁴To determine if an action is the first disciplinary action, consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. As indicated in the General Principles, recent acts of similar misconduct may be considered to be aggravating factors.

Limit Order Display—Specialist Options Transactions

AMEX Rule 958A⁵

<i>Principal Considerations in Determining Sanctions</i>	<i>Monetary Sanction</i>	<i>Suspension, Bar, or Other Sanctions</i>
See List of Principal Considerations Applicable to All Guidelines	<i>First Disciplinary Action</i> ⁶ Fine of \$1,000 to \$2,000.	In egregious cases, consider suspending the named party with respect to any or all activities or functions for up to two years. In particularly egregious cases involving a pattern of misconduct, consider expelling the member or member organization, withdrawing approval of the responsible approved person, and/or permanently barring a named party from employment or association with any member or
Additional Considerations	<i>Second Disciplinary Action</i> Fine of \$2,000 to \$10,000.	
1) Whether customer limit order was executed during the period of non-compliance.	<i>Subsequent Disciplinary Actions</i> Fine of \$5,000 to \$50,000.	
2) Whether other transactions were executed at prices equal to or better than the customer limit order.		

member organization.

3) Whether misconduct had a significant adverse impact on market transparency and availability of price information.

4) Amount of time beyond 30 seconds that elapsed before limit order was displayed.

⁵ As of March 15, 2002, the Exchange's "Limit Order Display Rule" for options currently is pending approval at the SEC.

⁶ To determine if an action is the first disciplinary action, consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. As indicated in the General Principles, recent acts of similar misconduct may be considered to be aggravating.

Priority Rules—Restrictions on Transactions of Registered Traders, Precedence of Bids and Offers, and Precedence of Orders Entrusted to Specialists

AMEX Rules 111, 126, 155, 950, and 958

<i>Principal Considerations in Determining Sanctions</i>	<i>Monetary Sanction</i>	<i>Suspension, Bar, or Other Sanctions</i>
See List of Principal Considerations Applicable to All Guidelines	First Disciplinary Action ⁷ Fine of \$1,000 to \$5,000.	In egregious cases, consider suspending the named party with respect to any or all activities or functions for up to two years. In particularly egregious cases involving a pattern of misconduct and/or customer harm, consider expelling the member or member organization, withdrawing approval of the responsible approved person, and/or permanently barring a named party from employment or association with any member or member organization.
Additional Considerations	Second Disciplinary Action Fine of \$2,000 to \$20,000.	
1) Whether the misconduct involved violations of rules intended to provide protection to customer orders.	Subsequent Disciplinary Actions Fine of \$5,000 to \$50,000.	
2) Whether misconduct resulted in the failure to execute a customer order and, if so, whether the named party remediated the misconduct.		

⁷ To determine if an action is the first disciplinary action, consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. As indicated in the General Principles, recent acts of similar misconduct may be considered to be aggravating.

Rule Regarding Anti-Competitive Behavior and Harassment

AMEX Rule 16

<i>Principal Considerations in Determining Sanctions</i>	<i>Monetary Sanction</i>	<i>Suspension, Bar, or Other Sanctions</i>
See List of Principal Considerations Applicable to All Guidelines	First Disciplinary Action ⁸ Fine of \$1,000 to \$5,000.	In egregious cases, consider expelling the member or member organization, withdrawing approval of the responsible approved person, and/or permanently barring a named party from employment or association with any member or member organization.
Additional Considerations	Second Disciplinary Action Fine of \$2,000 to \$20,000.	
1) Whether the behavior also was collusive.	Subsequent Disciplinary Actions Fine of \$5,000 to \$50,000.	
2) Whether the behavior affected publicly disseminated quotes.		
3) Whether the behavior resulted in late or inaccurate trade reporting.		
4) Whether the behavior resulted in altered prices or quotations.		
5) In the case of harassment, nature and content of named party's speech and/or communications.		
6) Whether the behavior resulted in harm to public customers.		

⁸ To determine if an action is the first disciplinary action, consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. As indicated in the General Principles, recent acts of similar misconduct may be considered to be aggravating factors.

Trade Reporting – Late Reporting; Failing To Report; False, Inaccurate, Or Misleading Reporting

AMEX Rule 992

<i>Principal Considerations in Determining Sanctions</i>	<i>Monetary Sanction</i>	<i>Suspension, Bar, or Other Sanctions</i>
See List of Principal	First Disciplinary Action ⁹	In egregious cases, consider

Considerations Applicable to All Guidelines	Fine of \$1,000 to \$2,000.	suspending the named party with respect to any or all activities or functions for up to two years. In particularly egregious cases involving a pattern of misconduct, consider expelling the member or member organization, withdrawing approval of the responsible approved person, and/or permanently barring a named party from employment or association with any member or member organization.
Additional Considerations	Second Disciplinary Action Fine of \$2,000 to \$10,000.	
1) Nature of trade-reporting violation.	Subsequent Disciplinary Actions Fine of \$5,000 to \$50,000.	
2) Whether violative conduct affected discovery of information regarding market price.		
3) Amount of time beyond 90 seconds that elapsed before trade was reported.		

⁹ To determine if an action is the first disciplinary action, consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. As indicated in the General Principles, recent acts of similar misconduct may be considered to be aggravating.

¹ It should be noted, however, that even if a named party has no history of misconduct, the misconduct at issue may be so egregious as to justify sanctions beyond the range recommended in these Guidelines.

² Certain regulatory incidents are not relevant to the determination of disciplinary sanctions. Examples of incidents not relevant to the determination of disciplinary sanctions are: settlements containing an express agreement prohibiting consideration of the action for purposes of enhancement of sanctions in subsequent actions; arbitration proceedings, whether pending, settled or fully litigated; and pending regulatory investigations or the existence of ongoing regulatory proceedings prior to the issuance of a decision.

³ Restitution is particularly appropriate when a named party has benefited from the misconduct. Furthermore, while restitution is an appropriate method of depriving a wrongdoer of ill-gotten gain, as discussed in the sixth principle, the amount of ill-gotten gain also may be used to determine the amount of a disciplinary fine.]

NYSE ALTERNEXT US LLC [AMEX] COMPANY GUIDE

Sec. 101. GENERAL

• • • *Commentary* -----

.02 Future Priced Securities

Summary

Future Priced Securities are private financing instruments which were created as an alternative means of quickly raising capital for issuers. The security is generally structured in the form of a convertible security and is often issued via a private placement. Issuers will typically receive all capital proceeds at the closing. The conversion price of the Future Priced Security is generally linked to a percentage discount to the market price of the underlying common stock at the time of conversion and accordingly the conversion rate for Future Priced Securities floats with the market price of the common stock. As such, the lower the price of the issuer's common stock at the time of conversion, the more shares in to which the Future Priced Security is convertible. The delay in setting the conversion price is appealing to issuers who believe that their stock will achieve greater value after the financing is received. However, the issuance of Future Priced Securities may be followed by a decline in common stock price, creating additional dilution to the existing holders of the common stock. Such a price decline allows holders to convert the Future Priced Security into large amounts of the issuer's common stock. As these shares are issued upon conversion of the Future Priced Security, the common stock price may tend to decline further.

For example, an issuer may issue \$10 million of convertible preferred stock (the Future Priced Security), which is convertible by the holder or holders into \$10 million of common stock based on a conversion price of 80% of the closing price of the common stock on the date of conversion. If the closing price is \$5 on the date of conversion, the Future Priced Security holders would receive 2,500,000 shares of common stock. If, on the other hand, the closing price is \$1 on the date of conversion, the Future Priced Security holders would receive 12,500,000 shares of common stock.

Unless the issuer carefully considers the terms of the securities in connection with several Exchange Rules, the issuance of Future Priced Securities could result in a failure to comply with the listing standards and the concomitant delisting of the issuer's securities from **NYSE Alternext US LLC [The American Stock Exchange]**. The Exchange's experience has been that issuers do not always appreciate this potential consequence. Sections of the Listing Standards, Policies and Requirements that bear upon the continued listing qualification of an issuer and that must be considered when issuing Future Priced Securities include:

1. the shareholder approval rules
2. the voting rights rules
3. the rules relating to low priced securities
4. the listing of additional shares rules
5. the rules relating to the acquisition of a listed company by an unlisted company
6. the Exchange's discretionary authority rules

It is important for issuers to clearly understand that failure to comply with any of these rules could result in the delisting of the issuer's securities.

This notice is intended to be of assistance to companies considering financings involving Future Priced Securities. By adhering to the above requirements, issuers can avoid unintended listing

qualifications problems. Issuers having any questions about this notice or proposed transactions should contact The **Exchange [Amex]** Listing Qualifications Department at 212-306-2222. The Exchange will provide an issuer with a written interpretation of the application of Exchange rules to a specific transaction, upon request of the issuer.

Sec. 107. OTHER SECURITIES

C. Index-Linked Exchangeable Notes

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

(d) The index to which an exchangeable-note is linked shall either be (i) indices that have been created by a third party and been reviewed and have been approved for the trading of options or other derivatives securities (each, a "Third-Party Index") either by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and rules thereunder or by the Exchange under rules adopted pursuant to Rule 19b-4(e); or (ii) indices which the issuer has created and for which an Exchange will have obtained approval from either the Commission pursuant to Section 19(b)(2) and rules thereunder or from the Exchange under rules adopted pursuant to Rule 19b-4(e) (each an "Issuer Index"). The Issuer Indices and their underlying securities must meet one of the following:

- (A) the procedures and criteria set forth in Commentary .02 to Rule 901C; or
- (B) the criteria set forth in paragraphs (d) through (e) and (h) of Section 107B of the *NYSE Alternext [Amex] Company Guide*, the index concentration limits set forth in Commentary .02 to Rule 901C, and paragraph (b)(iii) of Rule 901C, Commentary .02.

Sec. 132. LISTING AGREEMENTS

In addition to meeting the foregoing criteria, companies applying for listing enter into agreements with the Exchange and become subject to its rules, regulations and policies applicable to listed companies.

Among other things, listed companies are required to:

(c) *Accounting, Annual and Quarterly Reports* —Furnish shareholders with annual reports and release quarterly sales and earnings (§§603-624). (Companies not having common stock listed on

the **Exchange [Amex]** or NYSE are required to send annual *and* quarterly reports to security holders.);

Sec. 135. DRS PARTICIPATION

(a) All securities initially listing on the Exchange on or after January 1, 2007 must be eligible for a direct registration system operated by a securities depository (as defined below). This provision does not extend to (i) securities of companies which already have securities listed on the Exchange, (ii) securities of companies which immediately prior to such listing had securities listed on another national securities exchange, (iii) derivative products (as defined in **the Rules [Article 1, Section 3(d) of the Constitution]**), or (iv) securities (other than stocks) which are book-entry only.

(b) On and after March 31, 2008, all securities listed on the Exchange must be eligible for a direct registration system operated by a securities depository (as defined below). This provision does not extend to derivative products (as defined in **the Rules [Article 1, Section 3(d) of the Constitution]**) or securities (other than stocks) which are book-entry only.

For the purposes of this section, the term "securities depository" shall mean a securities depository registered as a clearing agency under Section 17A(b)(2) of the Securities Exchange Act of 1934.

Sec. 136. BOOK-ENTRY SETTLEMENT OF TRANSACTIONS

Listed companies are subject to the Exchange's book-entry settlement requirements set forth in **Exchange [Amex] Rule 776**.

Sec. 140. ORIGINAL LISTING FEES

The Board of **Directors [Governors]** or its designee may, in its discretion, defer, waive or rebate all or any part of the applicable initial listing fee specified above.

Issues Listed under Section 106 (Currency and Index Warrants) and Section 107 (Other Securities)

In the case of non-U.S. issuers listed on foreign stock exchanges, the fee, including the one-time, non-refundable application-processing fee of \$5,000, will be \$40,000. The Board of **Directors [Governors]** or its designee may, in its discretion, defer, waive or rebate all or any part of the initial listing fee applicable to such non-U.S. issuers.

Warrants —The original (as well as the annual and additional) listing fees for warrant issues are the same as those for stock issues. The Board of **Directors** **[Governors]** or its designee may, in its discretion, defer, waive or rebate all or any part of the initial listing fee applicable to warrants.

In addition, there is a one-time, non-refundable application processing fee of \$5,000 for issuers that do not have an issue of securities listed on the Exchange. The Board of **Directors** **[Governors]** or its designee may, in its discretion, defer, waive or rebate all or any part of the initial listing fee applicable to bonds.

Index Fund Shares, Trust Issued Receipts, Commodity-Based Trust Shares, Currency Trust Shares, Paired Trust Shares, Partnership Units, Trust Units and Closed-End Funds— The original listing fee for Index Fund Shares listed under Rule 1000A-AEMI, Trust Issued Receipts listed under Rule 1200-AEMI, Commodity-Based Trust Shares listed under Rule 1200A-AEMI, Currency Trust Shares listed under Rule 1200B-AEMI, Paired Trust Shares listed under Rule 1400, Partnership Units listed under Rule 1500-AEMI, Trust Units listed under Rule 1600 and Closed-End Funds listed under Section 101 of the Company Guide is \$5,000 for each series or Fund, with no application processing fee. The Board of **Directors** **[Governors]** or its designee may, in its discretion, defer, waive or rebate all or any part of the initial listing fee applicable to Index Fund Shares, Trust Issued Receipts, Commodity-Based Trust Shares, Currency Trust Shares, Paired Trust Shares, Partnership Units and Closed-End Funds when such series or funds transfer to the **Exchange** **[Amex]** from another marketplace.

The Board of **Directors** **[Governors]** or its designee may, in its discretion, defer, waive or rebate all or any part of the initial listing fee applicable to Special Shareholder Rights Plans.

Sec. 141. ANNUAL FEES

The Board of **Directors** **[Governors]** or its designee may, in its discretion, defer, waive or rebate all or any part of the applicable annual listing fee specified above for Stock Issues.

Bond Issues —There is an annual fee of \$5,000 for listed bonds and debentures of companies whose equity securities are not listed on the Exchange. The annual fee is payable in January of each year. In the calendar year in which a company lists, the annual fee will be prorated to reflect only that portion of the year during which the security was admitted to dealings. The Board of

Directors [**Governors**] or its designee may, in its discretion, defer, waive or rebate all or any part of the annual listing fee applicable to bonds.

Sec 142. ADDITIONAL LISTING FEES

(f) Fees for certain changes - a \$2,000 fee will apply in the case of an issuer that changes its name or its symbol, and the issuer must submit the appropriate form as designated by the **Exchange** [**Amex**]. In the event that an issuer changes its name and symbol concurrently, only one \$2,000 fee will apply.

(g) The Board of **Directors** [**Governors**] or its designee may, in its discretion, defer, waive or rebate all or any part of the applicable additional listing fees.

Sec. 146. ADJUSTMENT TO FEES

The Board of **Directors** [**Governors**] or its designee may, in its discretion, may reduce or waive the listing fees imposed pursuant to the above provisions under certain circumstances where deemed appropriate to achieve an equitable result, such as spin-offs of enterprises to existing shareholders of a listed company or other similar situations.

Sec. 205. POLICY REGARDING ALLOCATION OF STOCKS TO SPECIALISTS

One of the most significant programs of the Exchange concerns the allocation of stocks to specialists. The **Exchange** [**Amex**] has adopted a procedure to increase company input into the allocation process. Under this procedure, a company may choose either to be assigned a specialist unit by the Allocations Committee of the Exchange, or to select its own specialist from a list of the seven most qualified specialist units compiled by the Allocations Committee.

Sec. 211. ORIGINAL LISTING APPLICATION—GENERAL

(c) *Listing Fee* —A check drawn to the order of "**NYSE Alternext US LLC** [**American Stock Exchange**]" should accompany the submission. (See §140 for computation of amount.)

Sec. 332. FEES FOR LISTING ADDITIONAL SECURITIES

A check drawn to the order of "**NYSE Alternext US LLC** [**American Stock Exchange**]" should accompany each application (see §142 for computation of amount).

Sec. 350. CANCELLATION NOTICE

A company which has received authority to list securities, upon official notice of issuance, for a particular purpose, and which no longer intends to issue all or a portion of such securities for that purpose, should cancel the listing authority by notifying the Exchange by letter (see sample below). The letter should specify the amount of securities to be cancelled and the reason for such request.

NYSE Alternext US LLC [American Stock Exchange]

86 Trinity Place

New York, N.Y. 10006-1881

Dear Sirs:

Please cancel the listing authority covering ___ shares of our Common Stock, \$1 Par Value, reserved for issuance against the exercise of stock options, pursuant to Listing Application No. ___ dated ___. The option plan under which such shares were authorized for listing has expired according to its terms, and no additional options may be granted thereunder.

This cancellation reduces the total number of shares of Common Stock as to which listing authority is in effect for all purposes from ___ shares to ___ shares.

Sincerely

Sec. 402. EXPLANATION OF EXCHANGE DISCLOSURE POLICIES

(g) Receipt of Written Notice of Noncompliance with a Continued Listing Requirement or Written Delisting Notice

Q. What steps must be taken before the public announcement is made?

A. The public announcement must be provided to **the Exchange [Amex]**'s StockWatch Department at (212) 306-8383 (phone), (212) 306-1488 (facsimile) and Listing Qualifications Department at (212) 306-1331 (phone), (212) 306-5325 (facsimile) prior to public dissemination.

Sec. 610. PUBLICATION OF ANNUAL REPORT

(b) A listed company that receives an audit opinion that contains a going concern qualification must make a public announcement through the news media disclosing the receipt of such qualified opinion. Prior to the release of the public announcement, the listed company must

provide such announcement to **the Exchange [Amex]**'s StockWatch and Listing Qualifications Departments. * The public announcement shall be made as promptly as possible, but not more than seven calendar days following the filing of such audit opinion in a public filing with the Securities and Exchange Commission.

Sec. 722. TRANSMISSION OF PROXY MATERIAL TO CUSTOMERS (SEE EXCHANGE RULE 576)

••• *Commentary* -----

.20 Forms of letters to clients requesting voting instructions

When Broker May Vote on All Proposals Without Instructions

To Our Clients:

We urge you to send in your proxy so that we may vote your shares in accordance with your wishes. However, the Rules of the **[American Stock]** Exchange provide that if instructions are not received from you by the tenth day before the meeting, the proxy may be given at discretion by the holder of record of the shares. If you are unable to communicate with us by such date, we will, nevertheless, follow your instructions, even if our discretionary vote has already been given, provided your instructions are received by the last business day before the stockholders' meeting.

When Broker May Vote on Certain But Not All of the Proposals Without Instructions

To Our Clients:

We wish to call your attention to the fact that, under the rules of the **[American Stock]** Exchange, we cannot vote your shares on one or more of the matters to be acted upon at the meeting without your specific voting instructions.

Sec. 801. GENERAL

In addition to the quantitative listing standards set forth in Part 1, this Part 8 specifies certain corporate governance listing standards. These standards apply to all listed companies, subject to the exceptions set forth below, to the extent not inconsistent with Rule 10A-3 under the Securities Exchange Act of 1934. However, notwithstanding these exceptions, each listed company must

provide prompt notification to the **Exchange [Amex]** after an executive officer of the listed company becomes aware of any material non-compliance by the listed company with the applicable requirements specified or referenced in Part 8. Any notification required pursuant to this Part 8 should be provided to the Exchange's Listing Qualifications Department at (212) 306-1331 (telephone), (212) 306-5325 (facsimile).

(c) Other entities—Part 8 is not applicable to asset-backed issuers and other passive business organizations (such as royalty trusts) or to derivatives and special purpose securities listed pursuant to **Exchange [Amex]** Rules 1000, and 1200 and Sections 106, 107 and 118B. However, issuers of such securities are required to comply with Section 803 to the extent required by Rule 10A-3 under the Securities Exchange Act of 1934.

(d) Registered Management Investment Companies—Management investment companies that are registered under the Investment Company Act of 1940 (including closed-end funds and open-end funds) are subject to extensive federal regulation. Accordingly, closed-end funds are not required to comply with the requirements in Part 8 other than Sections 802(e) and 803B(1). Open-end funds listed pursuant to **Exchange [Amex]** Rule 1000A are required to comply with Section 803 to the extent required by Rule 10A-3 under the Securities Exchange Act of 1934, and are also required to comply with Section 802(e) and the provision in Section 803B(5) requiring audit committees for investment companies to 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.

PART 9. Additional Matters (§§910-994)
 RELATIONSHIP WITH SPECIALIST (§910—910—AEMI)
 Sec. 910. PROCEDURES, RULES AND REGULATIONS

(d)

With respect to any security in which a specialist is registered, Exchange rules prohibit specialists (and, with respect to paragraphs iii through ix, the member firm or member corporation of which the specialist is a member) from:

(i) disclosing information in regard in orders entrusted to the specialist or the name of a buyer or seller except as follows: when requested by a member, member organization, or a representative of the issuer of the security involved, the specialist may disclose to such parties the names of buying and selling member organizations in either completed or partially executed Exchange transactions unless specifically directed to the contrary by the parties involved; while acting in a market making capacity, the specialist may in response to an inquiry from a member conducting a market probe in the normal

course of business provide any information about buying or selling interest in the market which may include the identity of bidders or offerors represented on his book unless the specialist has been expressly directed to the contrary by the broker who entered the order with the specialist and may also include information regarding stop orders if the specialist has a reasonable basis to believe that the member intends to trade the security at a price at which stop orders would be relevant, provided that the specialist shall, while on the Floor, make the same information available in a fair and impartial manner to any member, and provided further that the specialist, when requested, shall disclose whether a bid or offer is in whole or in part for an account in which he has a direct or indirect interest; **[and the specialist shall disclose information in regard to limited price orders entrusted to him as a specialist to the extent required by the Intermarket Trading System Plan (the "Plan") provided for in Rule 230, but the provision of the Plan shall not be construed to require a specialist to disclose the name of a bidder or offeror whose order is contained in the specialist's book];**

Sec. 910—AEMI. PROCEDURES, RULES AND REGULATIONS

(d) Exchange Rules Governing Specialist's Activities

when requested by a member, member organization, or a representative of the issuer of the security involved, the specialist shall disclose to such parties on a post-trade basis the names of buying and selling member organizations in either completed or partially executed Exchange transactions to which the specialist is a counterparty unless specifically directed to the contrary by the parties involved; the specialist may in response to an inquiry from a member or member organization conducting a market probe in the normal course of business provide any information about the quantity of buying or selling interest in the market or on the AEMI Book and may also include information regarding stop orders if the specialist has a reasonable basis to believe that the member or member organization intends to trade the security at a price at which stop orders would be relevant, provided that the specialist shall, while on the Floor, make the same information available in a fair and impartial manner to any member or member organization, and provided further that the specialist, when requested, shall disclose whether a bid or offer is in whole or in part for an account in which he has a direct or indirect interest; the specialist shall not disclose any information about the reserve (undisplayed) size of reserve orders on the AEMI Book; **[and the specialist shall disclose information in regard to limited price orders entrusted to him as a specialist to the extent required by the Intermarket Trading System Plan (the "Plan") provided for in Rule 230, but the provision of the Plan shall not be construed to require a specialist to disclose the name of a bidder or offeror whose order is contained in the AEMI Book;]**

Sec. 950. EXPLANATION OF DIFFERENCE BETWEEN LISTED AND UNLISTED TRADING PRIVILEGES

••• *Commentary* -----

.01 Notwithstanding the provisions of Section 950, the Exchange may extend unlisted trading privileges to Nasdaq securities pursuant to Section 12(f) of the Securities Exchange Act of 1934. The Exchange has implemented certain rules applicable to trading in Nasdaq securities. See **Exchange [Amex]** Rule 118.

Sec. 991. INTERPRETATION OF REQUIREMENTS

The Board of **Directors [Governors]** of the Exchange is authorized by the Exchange **Rules [constitution]** to make and amend rules, requirements and policies governing listed companies. The Board is also authorized to delegate the administration of such requirements to the president or other officers or employees of the Exchange or to such committees as the Board may authorize.

Sec. 1002. POLICIES WITH RESPECT TO CONTINUED LISTING

The **Rules [Constitution]** of the Exchange provides that the Board of **Directors [Governors]** may, in its discretion, at any time, and without notice, suspend dealings in, or may remove any security from, listing or unlisted trading privileges.

The Exchange, as a matter of policy, will consider the suspension of trading in, or removal from listing or unlisted trading of, any security when, in the opinion of the Exchange:

Sec. 1003. APPLICATION OF POLICIES

(d) *Failure to Comply with Listing Agreements and/or SEC Requirements*—The securities of an issuer failing to comply with its listing or other agreements with the Exchange and/or SEC Requirements in any material respect (*e.g.*, failure to distribute annual reports when due, failure to report interim earnings, failure to observe Exchange policies regarding timely disclosure of important corporate developments, failure to solicit proxies, issuance of additional shares of a listed class without prior listing thereof, failure to obtain shareholder approval of corporate action where required by Exchange policies, failure to provide requested information within a reasonable period of time or providing information that contains a material misrepresentation or omits material information necessary to make the communication to the **Exchange [Amex]** not misleading, etc.) are subject to suspension from dealings and, unless prompt corrective action is taken, removal from listing.

(e) *Convertible Bonds* —A debt security convertible into a listed equity security will be reviewed when the underlying equity security is delisted and will be delisted when the underlying equity security is no longer subject to real-time trade reporting in the United States. In addition, if common stock is delisted for violation of any of the "Corporate Responsibility" standards in

Sections 120-126 of the NYSE Alternext [Amex] Company Guide, the Exchange will also delist any listed debt securities convertible into that common stock.

Sec. 1009. CONTINUED LISTING EVALUATION AND FOLLOW-UP

(j) An issuer that receives a Warning Letter pursuant to paragraph (a)(i) of this Section and/or a Deficiency Letter pursuant to paragraph (b) of this Section that it is below the continued listing criteria shall make a public announcement through the news media that it has received such Warning Letter and/or Deficiency Letter, and must include the specific policies and standards upon which the determination is based. Prior to the release of the public announcement, the issuer shall provide such announcement to Exchange [Amex]'s StockWatch and Listing Qualifications Departments. ** The public announcement shall be made as promptly as possible, but not more than four business days following receipt of the Warning Letter or Deficiency Letter, as applicable..

PART 12— Procedures For Review of Exchange [Amex] Listing Determinations

Sec. 1201. PURPOSE AND GENERAL PROVISIONS

(a) The purpose of Part 12 is to provide procedures for the independent review of determinations that prohibit or limit the listing (or unlisted trading) of an issuer's securities on the NYSE Alternext US [American Stock Exchange] (the "Exchange") based upon the Criteria for Original Listing set forth in Part 1 (Sections 101-146) and the Suspension and Delisting Policies set forth in Part 10 (Sections 1001-1009).

(b) At each level of a proceeding under this Part 12, a Listing Qualifications Panel (as defined in Section 1204), the Committee on Securities (as defined in Section 1205) or the Exchange [Amex] Board of Directors [Governors] [(the "Amex Board")], as part of its respective review, may request additional information from the issuer. The issuer will be afforded an opportunity to address the significance of the information requested.

(c) At each level of a proceeding under this Part 12, a Listing Qualifications Panel, the Committee on Securities or the Exchange [Amex] Board of Directors, as part of its respective review, may consider the issuer's stock price or any information that the issuer releases to the public, including any additional quantitative deficiencies or qualitative considerations reflected in the released information.

[Section 1201(d) in the following form is effective through April 23, 2006. It will be rescinded after that date and will be replaced as set forth below.

(d) At each level of a proceeding under Part 12, a Listing Qualifications Panel, the Committee on Securities, or the Amex Board, as part of its respective review, may consider any failure to meet any quantitative standard or qualitative consideration set forth in Part 1 or Part 10, including failures previously not considered in the proceeding. The issuer will be afforded notice of such consideration and an opportunity to respond. The fact that an applicant may meet the Exchange's quantitative standards does not necessarily mean that

its application for initial listing will be approved. Other factors which will also be considered include the nature of a company's business, the market for its products, the reputation of its management, its historical record and pattern of growth, its financial integrity, its demonstrated earning power and its future outlook. With respect to continued listing, although the Exchange has adopted certain standards under which it will normally give consideration to suspending dealings in, or removing, a security from listing or unlisted trading, these standards in no way limit or restrict the Exchange in applying its policies regarding continued listing, and the Exchange may at any time, in view of the circumstances of each case, suspend dealings in, or remove a security from listing or unlisted trading when in its opinion such security is unsuitable for continued trading on the Exchange. Such action will be taken regardless of whether the issuer meets or fails to meet any or all of the continued listing standards.

Section 1201(d) in the following form will be effective on April 24, 2006.]

(d) At each level of a proceeding under Part 12, a Listing Qualifications Panel, the Committee on Securities, or the **Exchange [Amex] Board of Directors**, as part of its respective review, may consider any failure to meet any quantitative standard or qualitative consideration set forth in Part 1 or Part 10, including failures previously not considered in the proceeding. The issuer will be afforded notice of such consideration and an opportunity to respond. The fact that an applicant may meet the Exchange's quantitative standards does not necessarily mean that its application for initial listing will be approved. Other factors which will also be considered include the nature of a company's business, the market for its products, the reputation of its management, its historical record and pattern of growth, its financial integrity, its demonstrated earning power and its future outlook. With respect to continued listing, although the Exchange has adopted certain standards under which it will normally give consideration to suspending dealings in, or removing, a security from listing or unlisted trading, these standards in no way limit or restrict the Exchange in applying its policies regarding continued listing, and the Exchange may at any time, in view of the circumstances of each case, suspend dealings in, or file an application with the Securities and Exchange Commission on Form 25 to strike the class of securities from listing or unlisted trading when in its opinion such security is unsuitable for continued trading on the Exchange. Such action will be taken in accordance with Section 1010 regardless of whether the issuer meets or fails to meet any or all of the continued listing standards.

Sec. 1202. WRITTEN NOTICE OF STAFF DETERMINATION

(a) If the Listing Qualifications Department or the Listing Investigations Department reaches a determination to limit or prohibit the initial or continued listing of an issuer's securities, it will notify the issuer in writing, describe the specific grounds for the determination, identify the quantitative standard(s) or qualitative consideration(s) set forth in Part 1 or Part 10 that the issuer has failed to satisfy, and provide notice that upon request the issuer will be provided an opportunity for a hearing under the procedures set forth in this Part 12 (the "Staff Determination").

[Section 1202(b) in the following form is effective through April 23, 2006. It will be rescinded after that date and will be replaced as set forth below.

(b) **An issuer that receives a Staff Determination to prohibit the continued listing of the issuer's securities under Section 1202(a) shall make a public announcement through the news media that it has received such notice, including the specific policies and standards**

upon which the determination was based. Prior to the release of the public announcement, the issuer shall provide such announcement to Amex's StockWatch and Listing Qualifications Departments. The public announcement shall be made as promptly as possible, but not more than seven calendar days following receipt of the Staff Determination.**

Section 1202(b) in the following form will be effective on April 24, 2006.]

(b) An issuer that receives a Staff Determination to prohibit the continued listing of the issuer's securities under Section 1202(a) shall make a public announcement through the news media that it has received such notice, including the specific policies and standards upon which the determination was based. Prior to the release of the public announcement, the issuer shall provide such announcement to **Exchange [Amex]**'s StockWatch and Listing Qualifications Departments. The public announcement shall be made as promptly as possible, but not more than four business days following receipt of the Staff Determination.

Sec. 1203. REQUEST FOR HEARING

(a) An issuer may, within seven calendar days of the date of the Staff Determination, request either a written or oral hearing to review the Staff Determination. Requests for hearings should be filed with the **Exchange [Amex]** Office of General Counsel (the "Office of General Counsel"). An issuer must submit a hearing fee to the **[American Stock] Exchange [LLC]**, to cover the cost of holding the hearing, as follows: (1) where consideration is on the basis of a written submission from the issuer, \$4,000 or (2) where consideration is on the basis of an oral hearing, whether in person or by telephone, \$5,000. No payment will be credited and applied towards the applicable hearing fee unless the issuer has previously paid all applicable listing fees due to the Exchange. The issuer will be deemed to have waived the opportunity to request a hearing, and a hearing will not be scheduled, unless the applicant has submitted such hearing fee and any unpaid listing fees due to the Exchange, in the form and manner prescribed by the Exchange, no later than seven calendar days of the date of the Staff Determination. All hearings will be held before a Listing Qualifications Panel as described in Section 1204. All hearings will be scheduled on a date and time determined by the Office of General Counsel, to the extent practicable, within 45 days of the date that the request for hearing is filed, at a location determined by the Office of General Counsel. The Office of General Counsel will make an acknowledgment of the issuer's hearing request stating the date, time, and location of the hearing, and the deadline for written submissions to the Listing Qualifications Panel. The issuer will be provided at least 10 calendar days notice of the hearing unless the issuer waives such notice.

Sec. 1204. THE LISTING QUALIFICATIONS PANEL

(c) After the hearing, the Panel will issue a written decision (the "Panel Decision") describing the specific grounds for its determination and identifying any quantitative standard or qualitative consideration set forth in Part 1 or Part 10 that the issuer has failed to satisfy, including, if applicable, the basis for its determination that (i) the issuer's securities should be approved for listing pursuant to Section 1203(c); (ii) the issuer's securities should continue to be listed as permitted by Section 1009; or (iii) that the Staff Determination was in error. The Panel Decision

will be promptly provided to the issuer and is effective immediately unless it specifies to the contrary, or as provided in paragraph (d) of this Section. The Panel Decision will provide notice that the issuer may request review of the Panel Decision by the Committee on Securities within 15 calendar days of the date of the Panel Decision and that any such Committee on Securities Decision may be called for review by the Exchange [Amex] Board of Directors not later than the next Exchange [Amex] Board meeting that is 15 calendar days or more following the date of the Committee on Securities Decision pursuant to Section 1206.

Sec. 1205. REVIEW BY THE EXCHANGE [AMEX] COMMITTEE ON SECURITIES

(a) The Committee on Securities is a committee appointed by the Exchange [Amex] Board of Directors whose responsibilities include the consideration of determinations to limit or prohibit the listing of an issuer's securities on the Exchange.

(b) The issuer may initiate the Committee on Securities' review of any Panel Decision by making a written request within 15 calendar days of the date of the decision. Requests for review should be addressed to the Committee on Securities in care of the Office of General Counsel . If the issuer requests review of the Panel Decision, the issuer must submit a fee of \$5,000 to the [American Stock] Exchange [LLC] to cover the cost of the review by the Committee on Securities. No payment will be credited and applied towards the applicable hearing fee unless the issuer has previously paid all applicable listing fees due to the Exchange. The issuer will be deemed to have waived the opportunity for review, and a review will not be commenced, unless the issuer has submitted the hearing fee and any unpaid listing fees due to the Exchange, in the form and manner prescribed by the Exchange, within 15 calendar days of the date of the Panel Decision.

Upon receipt of the request for review, the Office of the General Counsel will make an acknowledgment of the issuer's request stating the deadline for the issuer to provide any written submissions.

(d) The Committee on Securities will consider the written record and, in its discretion, hold additional hearings. Any hearing will be scheduled, to the extent practicable, within 45 days of the date that a request for review initiated by the issuer is made. The Committee on Securities may also recommend that the Exchange [Amex] Board of Directors consider the matter. The record of proceedings before the Committee on Securities will be kept by the Office of the General Counsel.

(e) The Committee on Securities will issue a written decision (the "Committee on Securities Decision") that affirms, modifies, or reverses the Panel Decision or that refers the matter to the Staff or to the Panel for further consideration. The Committee on Securities Decision will describe the specific grounds for the decision, identify any quantitative standard or qualitative consideration set forth in Part 1 or Part 10 that the applicant has failed to satisfy, including, if applicable, the basis for its determination that (i) the issuer's securities should be approved for listing pursuant to Section 1203(c); (ii) the issuer's securities should continue to be listed as permitted by Section 1009; or (iii) the Panel Decision was in error, and provide notice that the Exchange [Amex] Board of Directors may call the Committee on Securities Decision for review at any time before its next meeting that is at least 15 calendar days following the issuance of the Committee on Securities Decision. The Committee on Securities Decision will be promptly

provided to the issuer and will take immediate effect unless it specifies to the contrary, or as provided in Section 1205(f).

(f) If the Committee on Securities Decision reverses the Panel Decision and provides that the issuer's listing application should be approved, the listing of the security or securities which are the subject of such application will not be effective unless and until such Committee on Securities Decision represents final action of the Exchange as specified in Section 1206(d). If the Committee on Securities Decision reverses the Panel Decision and provides that the issuer's security or securities should not be delisted, and such security or securities have been suspended pursuant to Section 1204(d), such suspension shall continue until either the Committee on Securities Decision represents final action of the Exchange as specified in Section 1206(d) or in accordance with a discretionary review by the Exchange [Amex] Board of Directors pursuant to Section 1206.

Sec. 1206. DISCRETIONARY REVIEW BY [AMEX] BOARD OF DIRECTORS

(a) A Committee on Securities Decision may be called for review by the Exchange [Amex] Board of Directors solely upon the request of one or more Directors [Governors] not later than the next Exchange [Amex] Board of Directors meeting that is 15 calendar days or more following the date of the Committee on Securities Decision. Such review will be undertaken solely at the discretion of the Exchange [Amex] Board of Directors. The institution of discretionary review by the Exchange [Amex] Board of Directors will not operate as a stay of the Committee on Securities Decision. At the sole discretion of the Exchange [Amex] Board of Directors, the call for review of a Committee on Securities Decision may be withdrawn at any time prior to the issuance of a decision.

(b) If the Exchange [Amex] Board of Directors conducts a discretionary review, the review generally will be based on the written record considered by the Committee on Securities. The Exchange [Amex] Board of Directors will be provided with the documents in the Record on Review as specified in Section 1207, except for the issuer's public filings and information released to the public by the issuer, which will be available on request from the Office of the General Counsel. However, the Exchange [Amex] Board of Directors may, at its discretion, request and consider additional information from the issuer and/or from the Staff. Should the Exchange [Amex] Board of Directors consider additional information, the record of proceedings before the Exchange [Amex] Board of Directors will be kept by the Office of the General Counsel.

(c) The Exchange [Amex] Board of Directors may authorize the approval of the applicant's securities for listing or continued listing if it determines that (i) the issuer's securities should be approved for listing pursuant to Section 1203(c); (ii) the issuer's securities should continue to be listed as permitted by Section 1009; or (iii) the Committee on Securities Decision was in error.

[Sections 1206(d) - (f) in the following form are effective through April 23, 2006. They will be rescinded after that date and will be replaced as set forth below.

(d) If the Amex Board conducts a discretionary review, the issuer will be provided with a written decision describing the specific grounds for its decision, and identifying any quantitative standard or qualitative consideration set forth in Part 1 or Part 10 that the issuer has failed to satisfy, including, if applicable, the basis for its determination that (i) the issuer's securities should be approved for listing pursuant to Section 1203(c); (ii) the issuer's

securities should continue to be listed as permitted by Section 1009; or (iii) that the Committee on Securities Decision was in error. The Amex Board may affirm, modify or reverse the Committee on Securities Decision and may remand the matter to the Committee on Securities Council, Panel, or Staff with appropriate instructions. The decision represents the final action of the Exchange and will take immediate effect unless it specifies to the contrary. If the Board Decision provides that the issuer's security or securities should be delisted, the Exchange will suspend trading in such security or securities as soon as practicable, if it has not already done so pursuant to Section 1204(d), and an application will be submitted by the Exchange staff to the Securities and Exchange Commission to strike the security or securities from listing and registration in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder.

(e) If the Amex Board declines to conduct a discretionary review or withdraws its call for review, the issuer will be promptly provided with written notice that the Committee on Securities Decision represents the final action of the Exchange. If the Committee on Securities Decision provides that the issuer's security or securities should be delisted, upon the expiration of the time period specified in paragraph (a) of this Section, or upon the Amex Board's determination to withdraw a call for review, the Exchange will suspend trading in such security or securities as soon as practicable, if it has not already done so pursuant to Sections 1204(d), and an application will be submitted to the Securities and Exchange Commission to strike the security or securities from listing and registration in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder.

(f) Any issuer aggrieved by a final action of the Exchange may make application for review to the Commission in accordance with Section 19 of the Securities Exchange Act of 1934.

Sections 1206(d) - (f) in the following form will be effective on April 24, 2006.]

(d) If the Exchange [Amex] Board of Directors conducts a discretionary review, the issuer will be provided with a written decision describing the specific grounds for its decision, and identifying any quantitative standard or qualitative consideration set forth in Part 1 or Part 10 that the issuer has failed to satisfy, including, if applicable, the basis for its determination that (i) the issuer's securities should be approved for listing pursuant to Section 1203(c); (ii) the issuer's securities should continue to be listed as permitted by Section 1009; or (iii) that the Committee on Securities Decision was in error. The [Amex] Board may affirm, modify or reverse the Committee on Securities Decision and may remand the matter to the Committee on Securities Council, Panel, or Staff with appropriate instructions. The decision represents the final action of the Exchange and will take immediate effect unless it specifies to the contrary. If the Board Decision provides that the issuer's security or securities should be delisted, the Exchange will suspend trading in such security or securities as soon as practicable, if it has not already done so pursuant to Section 1204(d), and the Exchange staff will file an application with the Securities and Exchange Commission on Form 25 to strike the class of securities from listing and registration in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder and in accordance with Section 1010.

(e) If the Exchange [Amex] Board of Directors declines to conduct a discretionary review or withdraws its call for review, the issuer will be promptly provided with written notice that the Committee on Securities Decision represents the final action of the Exchange. If the Committee on Securities Decision provides that the issuer's security or securities should be delisted, upon the

expiration of the time period specified in paragraph (a) of this Section, or upon the **Exchange [Amex] Board of Directors'** determination to withdraw a call for review, the Exchange will suspend trading in such security or securities as soon as practicable, if it has not already done so pursuant to Section 1204(d), and the Exchange staff will file an application with the Securities and Exchange Commission on Form 25 to strike the class of securities from listing and registration in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder and in accordance with Section 1010.

(f) Any issuer aggrieved by a final action of the Exchange may make application for review to the Commission in accordance with Section 19 of the Securities Exchange Act of 1934.

Sec. 1207. RECORD ON REVIEW

(a) Documents in the written record may consist of the following items, as applicable: correspondence between **the Exchange [Amex]** and the issuer, the issuer's public filings, information released to the public by the issuer, and any written submissions or exhibits submitted by either the issuer, the Listing Qualifications Department or the Listing Investigations Department, including any written request for listing approval pursuant to Section 1203(c) or continued listing pursuant to Section 1009 and any response thereto. Any additional information requested from the issuer by the Panel, Committee on Securities or **the Exchange [Amex] Board of Directors** as part of the review process will be included in the written record. The written record will be supplemented by the transcript of any oral hearings held during the review process and each decision issued. At each level of review under this Part 12, the issuer will be provided with a list of documents in the written record, and a copy of any documents included in the record that are not in the issuer's possession or control, at least three calendar days in advance of the deadline for the issuer's submissions, unless the applicant waives such production.

Sec. 1211. PROHIBITED COMMUNICATIONS

(a) Unless on notice and opportunity for the appropriate Staff and the issuer to participate, a representative of the Exchange involved in reaching a Staff Determination, or an issuer, counsel to or representative of an issuer, shall not make or knowingly cause to be made a communication relevant to the merits of a proceeding under this Part 12 (a "Prohibited Communication") to any member of the Panel, Committee on Securities or to any **Director [Governor]** of the **Exchange [Amex] Board of Directors**, who is participating in or advising in the decision in that proceeding, or to any Exchange employee who is participating or advising in the decision of these individuals.

(b) Panel, Committee on Securities members, **Board of Directors [Governors of the Amex Board]** and Exchange employees who are participating in or advising in the decision in a proceeding under this Part 12, shall not make or knowingly cause to be made a Prohibited Communication to an issuer, counsel to or representative of an issuer, or a representative of the Exchange involved in reaching a Staff Determination.

(c) If a Prohibited Communication is made, received, or caused to be made, the Exchange will place a copy of it, or its substance if it is an oral communication, in the record of the proceeding. The Exchange will permit **Exchange [Amex]** Staff or the issuer, as applicable, to respond to the Prohibited Communication, and will place any response in the record of the proceeding.

(d) If the issuer submits a proposal to resolve matters at issue in a Part 12 proceeding, that submission will constitute a waiver of any claim that the Exchange communications relating to the proposal were Prohibited Communications.

Appendix: Listing Forms

Initial Public Offering

NYSE Alternext US
[American Stock Exchange]

Sample Listing Application

86 Trinity Place

Initial Public Offering

New York, New York

10006-1881

ORIGINAL LISTING APPLICATION

* Amended _____

No. _____

Approved on _____

Date _____

IPO CORPORATION

5620 Main Street

Anytown, New York 10621

Telephone (212) 555-5000

IPO CORPORATION (the "Company") hereby makes application to the **NYSE Alternext US LLC** [American Stock Exchange, Inc.] for the listing of:

10,000 issued and outstanding shares of its common stock, par value \$1.00 per share and for the authority to add to the list, upon official notice of issuance:

1,150,000 additional shares of its common stock to be issued pursuant to the Company's initial public offering (including the Underwriter's over-allotment option of 150,000 shares); plus

1,000,000 additional shares of its common stock upon exercise of warrants (expiring 4/15/___); plus

40,000 additional shares of its common stock upon conversion of the Company's outstanding Series A preferred Stock; making a total of:

3,000,000 shares of said common stock, the listing of which is herein applied for (of a total authorized issue of 10,000,000 shares).

Other than the unissued reserved shares of common stock herein applied for, there are no authorized but unissued shares of common stock reserved for issuance for any specific purpose.

PROSPECTUS

Attached hereto and incorporated herein by reference is a copy of the Company's Prospectus dated _____ (the "Prospectus") used in connection with the sale of common stock. An index appears on page 40 thereof. All of the common stock has been sold and the net proceeds of \$_____ million are being applied as set forth on page 4 of the Prospectus. There have been no material developments affecting the Company since the date of the Prospectus.

The undersigned hereby certifies that the statements made herein and the papers and exhibits submitted in support hereof are, to the best of such person's knowledge and belief, true and correct.

IPO CORPORATION

By: _____

Duly Authorized Officer

* Amended to reflect completion of the offering.

Common Stock

NYSE Alternext US

[American Stock Exchange]

Sample Listing Application

86 Trinity Place

Common Stock

New York, New York

10006-1881

ORIGINAL LISTING APPLICATION

Approved on_____

No._____

Date_____

ANY CORPORATION

5620 Main Street
Anytown, New York 10621
Telephone (212)-555-5000

ANY CORPORATION (the "Company") hereby makes application to the **NYSE Alternext US LLC [American Stock Exchange, Inc.]** for the listing of:

- 6,000,000 issued and outstanding shares of its common stock, par value \$1.00 per share (including 10,000 shares held in the treasury); and for authority to add to the list, upon official notice of issuance:
- 800,000 additional shares of its common stock upon exercise of stock options granted or to be granted by the Company pursuant to its 19__ Employee Stock Option Plan; plus
- 1,000,000 additional shares of its common stock upon exercise of warrants (expiring 4/15/__); plus
- 20,000 additional shares of its common stock upon conversion of the Company's outstanding Series A Preferred Stock; making a total of:
- 7,820,000 shares of said common stock, the listing of which is herein applied for (of a total authorized issue of 10,000,000 shares).

Other than the unissued reserved shares of common stock herein applied for, there are no authorized but unissued shares of common stock reserved for issuance for any specific purpose.

Listing Agreement

NYSE Alternext US [American Stock Exchange]

Listing Agreement

_____ (the "Company"), in consideration of the listing of its securities, hereby agrees, with the **NYSE Alternext US [American Stock Exchange]** LLC (the "Exchange") that:

By: _____
SIGNATURE

Dated: _____

PLEASE PRINT NAME
AND TITLE

Accepted at New York, New York, The **NYSE Alternext US** [American Stock
Exchange] LLC

By: _____
SIGNATURE

Dated: _____

PLEASE PRINT NAME
AND TITLE