

**EXHIBIT 5**

Deleted text is [bracketed]. New text is underlined.

**The Nasdaq Stock Market Rules**

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**1000. Membership, Registration and Qualification Requirements****1001. Nasdaq Regulatory Contract with FINRA**

The Exchange[Nasdaq] and FINRA are parties to the Regulatory Contract, pursuant to which FINRA has agreed to perform certain functions described in the Rule 1000 Series and the General 4, Section 1.1200 Series on behalf of [Nasdaq]the Exchange. Exchange[Nasdaq] Rules that refer to the Exchange's [Nasdaq] Regulation Department, [Nasdaq] Regulation Department staff, [Nasdaq]Exchange staff, and [Nasdaq]Exchange departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of the Exchange[Nasdaq] pursuant to the Regulatory Contract.

Notwithstanding the fact that [Nasdaq]the Exchange has entered into the Regulatory Contract with FINRA to perform some of [Nasdaq's]the Exchange's functions, [Nasdaq]the Exchange shall retain ultimate legal responsibility for, and control of, such functions. In addition, [Nasdaq]the Exchange has incorporated by reference certain [NASD]FINRA rules. [Nasdaq] [m]Members shall comply with these rules and interpretations as if such rules and interpretations were part of [Nasdaq's]the Exchange's [r]Rules.

**1002. Qualifications of [Nasdaq]Exchange Members and Associated Persons; Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction****[Qualifications of Nasdaq Members and Associated Persons]**

(a) Persons Eligible to Become [Nasdaq]Members and Associated Persons[ of Nasdaq Members].

(1) Any registered broker or dealer shall be eligible for membership in [Nasdaq]the Exchange, except such registered brokers or dealers as are excluded under paragraph (b).

(2) Any person shall be eligible to become an [a]Associated [p]Person of a [Nasdaq] [m]Member, except such persons as are excluded under paragraph (b).

**(b) Ineligibility of Certain Persons for Membership or Association**

(1) Subject to such exceptions as may be explicitly provided elsewhere in the [Nasdaq] Rules, no registered broker or dealer shall be admitted to membership, and no [Nasdaq] [m]Member shall be continued in membership, if such broker, dealer, or [Nasdaq] [m]Member fails or ceases to satisfy the qualification requirements established by the

[Nasdaq ]Rules, or if such broker, dealer, or [Nasdaq ][m]Member is or becomes subject to a statutory disqualification, or if such broker, dealer, or [Nasdaq ][m]Member fails to file such forms as [Nasdaq]may be required in accordance with such process as [Nasdaq]the Exchange may prescribe.

(2) Subject to such exceptions as may be explicitly provided elsewhere in the [Nasdaq ] Rules, no person shall become associated with a [Nasdaq ][m]Member, continue to be associated with a [Nasdaq ][m]Member, or transfer association to another [Nasdaq ][m]Member, if such person fails or ceases to satisfy the qualification requirements established by the [Nasdaq ]Rules, or if such person is or becomes subject to a statutory disqualification; and no broker or dealer shall be admitted to membership, and no [Nasdaq ][m]Member shall be continued in membership, if any person associated with it is ineligible to be an [a]Associated [p]Person under this subsection.

**(c) Payment of Fees, Dues, Assessments, and Other Charges by Members and Associated Persons]**

**(1)** Fees, dues, assessments, and other charges shall be called and payable by members and associated persons as determined by Nasdaq from time to time. The Collection of Exchange Fees and Other Claims for Nasdaq Options Market members is specified in Options 7, Section 1 of the Options Rules.]

**(2)** Each Nasdaq member or associated person shall promptly furnish all information or reports requested by Nasdaq in connection with the determination of the amount of fees, dues, assessments, or other charges owed.]

**(d)** Reinstatement of Membership or Registration. Any membership or registration suspended or canceled under the Nasdaq Rules may be reinstated by Nasdaq upon such terms and conditions as are permitted under the Act and the Nasdaq Rules; provided, however, that any applicant for reinstatement of membership or registration shall possess the qualifications required for membership or registration in Nasdaq.]

**(e)(c)** Membership in a Registered Securities Association or Another Registered Exchange.

As a condition to maintaining membership in [Nasdaq]the Exchange, [m]Members shall at all times maintain membership in a registered securities association that is not registered solely under Section 15A(k) of the Securities Exchange Act of 1934, or another registered exchange that is not registered solely under Section 6(g) of the Securities Exchange Act of 1934. [Nasdaq][ m]Members that transact business with customers shall at all times be members of FINRA.

**(d) Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction**

**(1)** Each branch office of a Member shall be registered with the Exchange.

(2) Each Member must designate to the Exchange those offices of supervisory jurisdiction, including the main office in accordance with the standards set forth in Exchange Rule 3010.

(3) Each Member shall promptly advise the Exchange, via electronic means or such other means as the Exchange may prescribe, of the opening, closing, relocation, change in designated supervisor, or change in designated activities of any branch office of such Member not later than 30 days after the effective date of such change.

(A) Members that are also FINRA members shall be deemed to have complied with this provision if they are in compliance with FINRA rules by keeping current Form BR.

(B) Members that are not FINRA members shall promptly advise the Exchange by submitting to the Exchange a Branch Office Disclosure Form.

**[IM-1002-1. Filing of Misleading Information as to Membership or Registration**

No member or person associated with a member shall file with Nasdaq information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof.]

**[IM-1002-4. Branch Offices and Offices of Supervisory Jurisdiction**

Each member is under a duty to insure that its membership application with Nasdaq is kept current at all times by supplementary amendments to its original application and that any offices other than the main office are properly designated and registered, if required, with Nasdaq.]

[Each member must designate to Nasdaq those offices of supervisory jurisdiction, including the main office, and must register those offices which are deemed to be branch offices in accordance with the standards set forth in Nasdaq Rule 3010.]

[Nasdaq members that are also FINRA members shall be deemed to have complied with the provisions of Nasdaq IM-1002-4 relating to designation of offices of supervisory jurisdiction and branch offices if they are in compliance with NASD IM-1000-4 and Article IV, Section 8 of the NASD By-Laws. Nasdaq Members that are FINRA members shall comply with NASD IM-1000-4 and Article IV, Section 8 of the NASD By-Laws as if such Rules were part of Nasdaq's Rules. Therefore, Nasdaq members are complying with the provisions of Nasdaq IM-1002-4 relating to designation of offices or supervisory jurisdiction and branch offices by complying with NASD IM-1000-4 and Article IV, Section 8 of the NASD By-Laws as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Nasdaq IM-1002-4 are being performed by FINRA Regulation on behalf of Nasdaq.]

[Nasdaq members that are not FINRA members shall designate offices of supervisory jurisdiction and branch offices by submitting to Nasdaq a written filing in such form as Nasdaq may prescribe.]

## **1010. Membership Proceedings**

### **1011. Definitions**

Unless otherwise provided, terms used in the Rule 1000 Series and the General 4, Section 1.1200 Series shall have the meaning as defined in Rule 0120.

#### **(a) "Applicant"**

The term "Applicant" means a person that applies for membership in [Nasdaq]the Exchange under Rule 1013 or a [m]Member that files an application for approval of a change in ownership, control, or business operations under Rule 1017.

#### **(b) "Associated Person"**

The term "Associated Person" means any partner, officer, director, or branch manager of a [Nasdaq ][m]Member or Applicant (or person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such [Nasdaq ][m]Member or Applicant, or any employee of such [Nasdaq ][m]Member or Applicant, except that any person associated with a [Nasdaq ][m]Member or Applicant whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of the [Nasdaq ]Rules.

#### **(c) "Department"**

The term "Department" means the [Nasdaq]Exchange's Membership Department located within [Nasdaq]the Exchange's Regulation Department.

#### **(d) "Director"**

The term "Director" means a member of the [Nasdaq]Exchange Board.

#### **(e) "Interested Staff"**

The term "Interested Staff" means an employee who directly participates in a decision under Rule 1014 or 1017, an employee who directly supervises an employee with respect to such decision, an employee who conducted an investigation or examination of a member that files an application under Rule 1017, and the head of the Department.

#### **(f) "[Investment banking or ]S[s]ecurities business"**

The term "[investment banking or ]securities business" means the business[, carried on by a broker or dealer, of underwriting or distributing issues of securities, or] of

purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others.

**(g) ["material change in business operations"]Reserved.**

[The term "material change in business operations" includes, but is not limited to:]

**[(1)** removing or modifying a membership restriction;]

**[(2)(A)** acting as a dealer for the first time; or]

**[(B)** market making for the first time on Nasdaq; provided, however, that market making for the first time on Nasdaq will not be considered a material change in business operations if the member's market making has previously been approved by FINRA under NASD Rule 1017 or Nasdaq BX under Nasdaq BX Equity Rule 1017;]

**[(3)** adding business activities that require a higher minimum net capital under SEC Rule 15c3-1; and]

**[(4)** adding business activities that would cause a proprietary trading firm no longer to meet the definition of that term contained in this rule.]

**(h) "[Nasdaq]Exchange Board"**

The term "[Nasdaq]Exchange Board" means the Board of Directors of [Nasdaq]the Exchange.

**(i) "principal place of business"**

The term "principal place of business" means the executive office from which the sole proprietor or the officers, partners, or managers of the Applicant direct, control, and coordinate the activities of the Applicant, unless the Department determines that the principal place of business is where: (1) the largest number of Associated Persons of the Applicant are located; or (2) the books and records necessary to provide information and data to operate the business and comply with applicable rules are located.

**(j) "registered broker or dealer"**

The term "registered broker or dealer" means any [registered ]broker or dealer, as defined in Section 3(a)(48) of the Act, that is registered with the Commission under the Act.

**(k) "Representative"**

The term "Representative" shall have the meaning assigned to it in General 4, Section 1.1220(b)(1). All Representatives of Exchange[Nasdaq] Members are required to be

registered with the Exchange[Nasdaq], and Representatives that are so registered are referred to herein as "Registered Representatives."

**(l) "sales practice event"**

The term "sales practice event" means any customer complaint, arbitration, or civil litigation that has been reported to the Central Registration Depository, currently is required to be reported to the Central Registration Depository, or otherwise has been reported to [Nasdaq]the Exchange.

**(m) "Subcommittee"**

The term "Subcommittee" means a subcommittee of the [Nasdaq]Exchange Review Council that is constituted pursuant to Rule 1015 to conduct a review of a Department decision issued under the Rule 1010 Series.

**(n) "statutory disqualification"**

The term "statutory disqualification" shall have the meaning set forth in Section 3(a)(39) of the Act.

**(o) "Proprietary Trading Firm"**

The term "proprietary trading firm" means an Applicant or Member with the following characteristics:

- (1) the Applicant or Member is not required by Section 15(b)(8) of the A[CT]ct to become a FINRA member but is a member of another registered securities exchange not registered solely under Section 6(g) of the Act;
- (2) all funds used by the Applicant or Member or proposed to be used by the Applicant or Member for trading are the Applicant's or Member's own capital, traded through the Applicant's or Member's own accounts;
- (3) the Applicant or Member does not, and will not have "customers," as that term is defined in [Nasdaq]Exchange Rule 0120(g); and
- (4) all Principals and Representatives of the Applicant or Member acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the Applicant.

**1012. General Application Provisions**

**(a) [Filing by Applicant or Service by Nasdaq]Instructions for Filing Application Materials with the Exchange and Requirements for Service of Documents by the Exchange;**

(1) An Applicant or Member may file an application or any document or information requested under the Rule 1010 Series by first-class mail, overnight courier, [or ]hand delivery, or by electronic means. If the Department and the Applicant or Member agree, the Applicant or Member also may file a requested document or information by facsimile.

(2) [Nasdaq][The Exchange] shall serve a notice or decision issued under the Rule 1010 Series by first-class mail or electronic means on the Applicant or Member or its counsel, unless a Rule specifies a different method of service.

(3) Service by [Nasdaq][the Exchange] or filing by an Applicant or Member shall be deemed complete as follows:

(A) Service or filing by first-class mail shall be deemed complete on the date of postmark;

(B) Service or filing by overnight courier shall be deemed complete on the date of delivery to the overnight courier as specified in the airbill;

(C) Service or filing by hand delivery shall be deemed complete on the date of receipt as evidenced by a date stamp; [and]

(D) Service or filing by facsimile shall be deemed complete on the date specified in the document and on the written confirmation of transmission[.]; and

(E) Service or filing by electronic means shall be deemed complete on the date of transmission, except that service or filing shall not be deemed to have occurred if, subsequent to transmission, the serving or filing party receives notice that its attempted transmission was unsuccessful.

**[(b) Lapse of Application]**

[(1) Absent a showing of good cause, an application filed under Rule 1013 or 1017 shall lapse if an Applicant fails to:]

[(A) respond fully within 15 business days after service of an initial or subsequent written request for information or documents under Rule 1013, within 30 days after service of an initial or subsequent written request for information or documents under Rule 1017, or within such other time period agreed to by the Department and the Applicant;]

[(B) appear at or otherwise participate in a scheduled membership interview pursuant to Rule 1013(b) or 1017(f), if required; or]

[(C) file an executed membership agreement under Rule 1014(d) or 1017(g)(4) within 25 days after service of the agreement, or within such other period agreed to by the Department and the Applicant.]

[(2) If an Applicant wishes to continue to seek membership or approval of a change in ownership, control, or business operations, then the Applicant shall be required to submit a new application under Rule 1013 or 1017, respectively, and any required fee. Nasdaq shall not refund any fee for a lapsed application.]

**[(c) Ex Parte Communications]**

[(1) The prohibitions against ex parte communications shall become effective when Nasdaq staff has knowledge that an Applicant intends to file a written request for review by the Nasdaq Review Council under Rule 1015.]

[(2) Unless on notice and opportunity for an Applicant and Interested Staff to participate, or to the extent required for the disposition of ex parte matters as authorized by the Nasdaq Rules:]

[(A) an Applicant, a counsel or representative of an Applicant, or an Interested Staff shall not make or knowingly cause to be made an ex parte communication relevant to the merits of a membership proceeding under the Rule 1010 Series to a Director, a member of the Nasdaq Review Council or a Subcommittee thereof, or a Nasdaq employee who is participating or advising in a decision of such a person with respect to that proceeding; and]

[(B) a Director, a member of the Nasdaq Review Council or a Subcommittee thereof, or a Nasdaq employee who is participating or advising in the decision of such a person with respect to a membership proceeding shall not make or knowingly cause to be made to an Applicant, a counsel or representative of the Applicant, or an Interested Staff an ex parte communication relevant to the merits of that proceeding.]

[(3) A Director, a member of the Nasdaq Review Council or a Subcommittee thereof, or a Nasdaq employee participating or advising in the decision of such a person, who receives, makes, or knowingly causes to be made a communication prohibited by this paragraph shall place in the record of the membership proceeding:]

[(A) all such written communications;]

[(B) memoranda stating the substance of all such oral communications; and]

[(C) all written responses and memoranda stating the substance of all oral responses to all such communications.]

**[(d) Recusal or Disqualification]**

[A Director or a member of the Nasdaq Review Council or a Subcommittee thereof shall not participate in a matter governed by the Rule 1010 Series as to which that person has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness

might reasonably be questioned. In such a case, the person shall recuse himself or shall be disqualified as follows:]

[(1) The Chair of the Nasdaq Board shall have authority to direct the disqualification of a Director, and a majority of the Directors of the Nasdaq Board excluding the Chair shall have authority to direct the disqualification of the Chair of the Nasdaq Board.]

[(2) The Chair of the Nasdaq Review Council shall have authority to direct the disqualification of a member of the Nasdaq Review Council or a member of a Subcommittee appointed pursuant to Rule 1015, and the Vice Chair of the Nasdaq Review Council shall have authority to direct the disqualification of the Chair of the Nasdaq Review Council.]

**[(e)](b) Computation of Time**

**(1) Calendar Day**

In the Rule 1010 Series, "day" means calendar day, unless otherwise specified.

**(2) Formula**

In computing a period of time under the Rule 1010 Series, the day of the act, event, default, or lapse from which the period of time designated begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays shall be excluded from the computation when the period prescribed is ten days or less or when the term "business day" is used.

**[(f) Similarity of Membership Names]**

[(1) No person or firm shall be admitted to or continued in membership in Nasdaq if such person or firm has a name that is identical to the name of another Nasdaq member appearing in the membership role of Nasdaq or a name so similar to any such name as to tend to confuse or mislead.]

[(2) No Nasdaq member may change its name without prior approval of Nasdaq.]

**(c) Duty to Ensure the Accuracy, Completeness, and Current Nature of Membership Information Filed with the Exchange**

(1) Each Applicant, Member, and Associated Person shall ensure that all membership information they file with the Exchange, including but not limited to their application forms and all information they file in support of their applications under Rules 1013 and 1017, is accurate, complete, and current at the time of filing.

(2) Each Applicant, Member, and Associated Person shall ensure that their membership applications and supporting materials filed with the Exchange remain accurate, complete, and current at all times by filing supplementary amendments with the Department, as necessary. Such amendments to the application shall be filed with the Department not later than 15 business days after the Applicant, Member, or Associated Person learns of the facts or circumstances giving rise to the need for the amendment. The Applicant, Member, and Associated Person shall promptly notify the Department in writing of any material adverse change in its financial condition.

**[(g) Resignation of Nasdaq Members]**

[Membership in Nasdaq may be voluntarily terminated only by formal resignation. Resignations of Nasdaq members must be filed via electronic process or such other process as Nasdaq may prescribe and addressed to Nasdaq. Any Nasdaq member may resign from Nasdaq at any time. Such resignation shall not take effect until 30 days after receipt thereof by Nasdaq and until all indebtedness due Nasdaq from such Nasdaq member shall have been paid in full and so long as any complaint or action is pending against the Nasdaq member under the Nasdaq Rules. Nasdaq, however, may in its discretion declare a resignation effective at any time.]

**[(h) Reserved]**

**[(i) Transfer and Termination of Membership]**

[(1) Except as provided hereinafter, no member of Nasdaq may transfer its membership or any right arising therefrom; the membership of a corporation, partnership, or any other business organization that is a member of Nasdaq shall terminate upon its liquidation, dissolution, or winding up; and the membership of a sole proprietorship that is a Nasdaq member shall terminate at death, provided that all obligations of membership under the Nasdaq Rules have been fulfilled.]

[(2) The consolidation, reorganization, merger, change of name, or similar change in any corporate Nasdaq member shall not terminate the membership of such corporate Nasdaq member, provided that the Nasdaq member or surviving corporation, if any, shall be deemed a successor to the business of the corporate Nasdaq member, and the Nasdaq member or the surviving organization shall continue in the investment banking or securities business, and shall possess the qualifications for membership in Nasdaq. The death, change of name, withdrawal of any partner, the addition of any new partner, reorganization, consolidation, or any change in the legal structure of a partnership Nasdaq member shall not terminate the membership of such partnership Nasdaq member, provided that the Nasdaq member or surviving organization, if any, shall be deemed a successor to the business of the partnership Nasdaq member, and the Nasdaq member or surviving organization shall possess the qualifications for membership in Nasdaq. If the business of any predecessor Nasdaq member is to be carried on by an organization deemed to be a successor organization by Nasdaq, the membership of such predecessor Nasdaq member shall be extended to the successor organization subject to the notice and

application requirements of the Nasdaq Rules and the right of Nasdaq to place restrictions on the successor organization pursuant to the Nasdaq Rules; otherwise, any surviving organization shall be required to satisfy all of the membership application requirements of the Nasdaq Rules.]

**[(j) Registration of Branch Offices.]**

**[(1)** Each branch office of a member of Nasdaq shall be registered with and listed upon the membership roll of Nasdaq, and shall pay such dues, assessments, and other charges as shall be fixed from time to time under the Nasdaq Rules.]

**[(2)** Each member of Nasdaq shall promptly advise Nasdaq via electronic process or such other process as Nasdaq may prescribe of the opening, closing, relocation, change in designated supervisor, or change in designated activities of any branch office of such Nasdaq member not later than 30 days after the effective date of such change.]

**[(A)** Nasdaq members that are also FINRA members shall be deemed to have complied with Nasdaq Rule 1012(j) if they are in compliance with NASD IM-1000-4 and Article IV, Section 8 of the NASD By-Laws. Nasdaq Members that are FINRA members shall comply with NASD IM-1000-4 and Article IV, Section 8 of the NASD By-Laws as if such Rule were part of Nasdaq's Rules. Nasdaq and FINRA are parties to the Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of Nasdaq. Therefore, Nasdaq members are complying with Nasdaq Rule 1012(j) by complying with NASD IM-1000-4 and Article IV, Section 8 of the NASD By-Laws as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Nasdaq Rule 1012(j) are being performed by FINRA on behalf of Nasdaq.]

**[(B)** Nasdaq members that are not FINRA members shall promptly advise Nasdaq of the opening, closing, relocation, change in designated supervisor, or change in designated activities of any branch office of such Nasdaq member by submitting a written filing to Nasdaq in such form as Nasdaq may prescribe.]

**1013. New Member Application**

**(a) Filing of Application**

**(1) Where to File; Contents**

An Applicant for [Nasdaq ]membership shall file its application with the Department in accordance with this Rule. An Applicant shall submit an application that includes:

- (A) a copy of the Applicant's current Form BD, if not otherwise available to the Exchange electronically through the Central Registration Depository;
- (B) an original [Nasdaq]Exchange-approved fingerprint card for each Associated Person who will be subject to SEC Rule 17f-2 and for whom a fingerprint card has

not been filed with another self-regulatory organization, if such fingerprints are not otherwise available electronically to the Exchange through the Central Registration Depository;

- (C) [a check]payment for such fee as may be required under the [Nasdaq ]Rules;
- (D) a description of the Applicant's proposed trading activities on [Nasdaq]the Exchange, such as the types of securities it will trade, whether it will be a market maker, or an order entry firm, and/or engage in block trading activities, and the extent to which the Applicant is conducting such activities as a member of other SRO(s);
- (E) a copy of the Applicant's most recent audited financial statements and a description of any material changes in the Applicant's financial condition since the date of the financial statements;
- (F) an organizational chart;
- (G) the intended location of the Applicant's principal place of business and all other branch offices, if any, [whether or not such offices would be required to be registered under the Nasdaq Rules, ]and the names of the persons who will be in charge of each office, if not otherwise available to the Exchange electronically through the Central Registration Depository or a similar source;
- (H) a description of the communications and operational systems the Applicant will employ to conduct business and the plans and procedures the Applicant will employ to ensure business continuity, including: system capacity to handle the anticipated level of usage; contingency plans in the event of systems or other technological or communications problems or failures; system redundancies; disaster recovery plans; and system security;
- (I) a copy of any decision or order by a federal or state authority or self-regulatory organization taking permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person;
- (J) a statement indicating whether the Applicant or any person listed on Schedule A of the Applicant's Form BD is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any self-regulatory organization, the foreign equivalent of a self-regulatory organization, a foreign or international securities exchange, a contract market designated pursuant to the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, a futures association registered under the Commodity Exchange Act or any substantially similar foreign statute or regulation, the Commission or any other "appropriate regulatory agency" (as defined in the Act), the Commodity Futures Trading Commission, or any state financial regulatory agency regarding the

Applicant's activities that has not been reported to the Central Registration Depository, together with all relevant details, including any sanctions imposed;

- (K) [a statement indicating whether any person listed on Schedule A of the Applicant's Form BD is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any self-regulatory organization, the foreign equivalent of a self-regulatory organization, a foreign or international securities exchange, a contract market designated pursuant to the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, a futures association registered under the Commodity Exchange Act or any substantially similar foreign statute or regulation, the Commission or any other "appropriate regulatory agency", the Commodity Futures Trading Commission, or any state financial regulatory agency regarding the Applicant's activities that has not been reported to the Central Registration Depository, together with all relevant details, including any sanctions imposed;]Reserved.
- (L) a copy of any contract or agreement with another broker-dealer, a bank, a clearing entity, a service bureau or a similar entity to provide the Applicant with services regarding the execution or clearance and settlement of transactions effected on [Nasdaq]the Exchange;
- (M) if the Applicant proposes to make markets on [Nasdaq]the Exchange, a description of the source and amount of Applicant's capital to support its market making activities on [Nasdaq]the Exchange, and the source of any additional capital that may become necessary;
- (N) a description of the financial controls to be employed by the Applicant with respect to anti-money laundering compliance rules as set forth in [Nasdaq] Rule 3011;
- (O) a copy of the Applicant's written supervisory procedures with respect to the activities identified in paragraph (a)(1)(D);
- (P) a list of the persons conducting the Applicant's market making and other trading activities, and a list of the persons responsible for such persons' supervision, together with the CRD numbers<sup>[</sup> (if applicable) or a copy of Form U-4 for each such person];
- (Q) [if not previously provided to FINRA, a FINRA Entitlement Program Agreement and Terms of Use and an Account Administration Entitlement Form]Reserved;
- (R) a copy of the Applicant's most recent "FOCUS Report" (Form X-17A-5) filed with the SEC pursuant to SEC Rule 17a-5 (the most current Parts I, II, and III, as applicable);

- (S) all examination reports and corresponding responses regarding the Applicant for the previous two years from the self-regulatory organizations of which it is a member;
- (T) a copy of the Exchange's Membership Agreement, duly executed by the Applicant, which includes, among other things:
- (1) an agreement to comply with the federal securities laws, the rules and regulations thereunder, the [Nasdaq]Rules, and all rulings, orders, directions, and decisions issued and sanctions imposed under the [Nasdaq] Rules;
  - (~~U~~)2) an agreement to pay such dues, assessments, and other charges in the manner and amount as from time to time shall be fixed pursuant to the [Nasdaq] Rules; and
  - (~~V~~)U) such other reasonable information with respect to the [a]Applicant as [Nasdaq]the Exchange may require.

[Each Applicant and Nasdaq member shall ensure that its membership application with Nasdaq is kept current at all times by supplementary amendments via electronic process or such other process as Nasdaq may prescribe. Such amendments to the application shall be filed with Nasdaq not later than 15 business days after the applicant or Nasdaq member learns of the facts or circumstances giving rise to the need for the amendment. The Applicant shall promptly notify the Department in writing of any material adverse change in its financial condition.]

**(2) [Uniform Registration Forms]When an Application is Deemed to be Filed.**

[Upon approval of the Applicant's Account Administrator Entitlement Form, the Applicant shall submit its Forms U4 for each Associated Person who is required to be registered under the Rules, any amendments to its Forms BD or U4, and any Form U5 electronically via Web CRD.]The Department will deem an application to be filed on the date when it is substantially complete, meaning the date on which the Department receives from the Applicant all material documentation and information required under this Rule. The Exchange will notify the Applicant in writing when the Exchange deems the Applicant's application to be substantially complete.

**(3) [Rejection of Application That Is Not Substantially Complete]Incomplete Applications**

[If the Department determines within 15 business days after the filing of an application that the application is not substantially complete, the Department may reject the application and deem it not to have been filed. In such case, within the 15 day period, the Department shall serve a written notice on the Applicant of the Department's determination and the reasons therefor. Nasdaq shall refund the application fees, if any, in accordance with the provisions of the Nasdaq Rules governing such fees. If the Applicant

determines to continue to seek membership, the Applicant shall submit a new application and any required fee under this Rule.]

(A) Lapse of Applications that are not Substantially Complete

If an application that was initiated under this Rule is not deemed to be substantially complete by the Department within 90 calendar days after an Applicant initiates it, then absent a showing of good cause by the Applicant, the Department may, at its discretion, deem the application to have lapsed without filing, and the Department will take no action in furtherance of the application. If the Department deems an application to have lapsed, then the Department shall serve a written notice of that determination on the Applicant. If an Applicant still wishes to apply for membership on the Exchange after receiving notice of a lapse in its application, then the Applicant will be required to submit a new application pursuant to these Rules and pay a new application fee for doing so, if applicable. The Department will refund fees that an Applicant has paid to the Exchange in connection with a lapsed application, in accordance with its Rules regarding fees, provided that the Exchange has not proceeded to process the application at the time it lapses. For purposes of this paragraph, the Department will deem an application to be not “substantially complete” if the Applicant fails to submit to the Department materially important information or documentation that is required or requested under these Rules.

(B) Rejection of Filed Applications that Remain or Become Incomplete After Filing

If an application that was initiated under this Rule is substantially complete and thus is deemed to be filed with the Exchange under paragraph (a)(2) of this Rule, but the application nevertheless remains or becomes incomplete with respect to any required or requested information or documentation, then the Department shall serve written notice to the Applicant of such incompleteness and describe the missing information or documentation. If the Applicant fails to submit to the Exchange the missing information or documentation within a reasonable period after it receives a notice of incompleteness, then absent a showing of good cause by the Applicant, the Department may, at its discretion, reject the application. If the Department rejects an application on the basis of incompleteness, then the Department shall serve a written notice on the Applicant of the Department's determination and the reasons therefor. The Exchange shall not refund the application fees that an Applicant has paid to the Exchange in connection with an application that the Exchange rejects. If the Applicant determines to continue to seek membership on the Exchange, then the Applicant shall submit a new application and pay a new application fee in accordance with the Rules.

**(4) Requests by the Department for Additional Documents [O] or Information from the Applicant or from Third Parties**

[Within 15 business days after the filing of an application, the Department shall serve an initial request for any additional information or documents necessary to render a decision on the application. The Department may serve subsequent requests for additional information or documents at any time during the membership application process.]

[Unless otherwise agreed by the Department and the Applicant, the Applicant shall file any additional information and documents with the Department within 15 business days after service of the Department's request]

(A) At any time before the Department serves its decision as to an application for new membership in the Exchange, the Department may serve a written request for additional information or documentation, from the Applicant or from a third party, if the Department deems such information or documentation to be necessary to clarify, verify, or supplement the application materials. The Department may, at its discretion, request that the Applicant or the third party provide the requested information or documentation in writing or through an in-person or telephonic interview. In the written request, the Department shall afford the Applicant or the third party a reasonable period of time within which to respond to the request.

(B) In the event that the Department obtains information or documentation about an Applicant from a third party that the Department reasonably believes could adversely impact its decision on an application, then the Department shall promptly inform the Applicant in writing and provide the Applicant with a description of the information or a copy of the documentation that the Department obtained, where appropriate under the circumstances. Prior to rendering an application decision on the basis of information or documentation obtained from a third party source, the Department shall afford the Applicant with a reasonable opportunity to discuss or to otherwise address the information or documentation that the Department obtained from the third party.

#### **(b) Special Application Procedures**

##### **[(5) Applicants That Are Members of an Association or Another Exchange]**

[(A) Applicants for Nasdaq membership that are also simultaneously applying for FINRA membership may file one application with FINRA in compliance with the NASD Rule 1010 Series; however, Nasdaq will not take action on the application for Nasdaq membership until the applicant is an active member of FINRA.]

[(B) Applicants that are members of another registered national securities exchange or association must submit a complete application form containing all of the required items of information listed in Rule 1013(a)(1).]

[(C) An applicant that is an approved FINRA, Nasdaq BX, Inc. ("BX") or Nasdaq Phlx LLC ("PHLX") member shall have the option to apply to become a Nasdaq member

and to register with Nasdaq all associated persons of the firm whose registrations with the firm are approved with FINRA, BX or PHLX in categories recognized by Nasdaq rules through an expedited process by submitting a Waive-in Membership Application Form and a Nasdaq Membership Agreement.]

(1) Special Application Procedures for Applicants that are FINRA Members

(A) An Applicant that is a FINRA member shall have the option to waive-in to become a Member and to register with the Exchange all persons associated with the Applicant whose registrations with the Applicant are approved with FINRA in categories recognized by the Exchange's Rules. For purposes of this provision, the term "waive-in" means that the Department will rely substantially upon FINRA's determination to approve the Applicant for FINRA membership when the Department evaluates the Applicant for Exchange membership.

(B) Waive-in membership that is granted pursuant to this provision shall terminate in the event that the Applicant ceases to be a FINRA member and otherwise fails to comply with Rule 1002(c).

(C) In lieu of submitting an application as set forth in paragraph (a), an Applicant may waive-in to Exchange membership as provided in subparagraph (b)(1) by filing with the Exchange a waive-in application form and an executed Exchange Membership Agreement.

(D) The Department will act upon a duly submitted application to waive-into Exchange membership under paragraph (b)(1) by serving upon the Applicant a written notification of its decision within a reasonable time frame not to exceed 20 days of submission of the application, unless the Department and the Applicant agree that the Department may issue its decision at a later date. A failure of the Department to issue a decision within this time frame shall be subject to Rule 1014(c)(3). The Department will normally grant a duly submitted application to waive-into Exchange membership, provided that the Applicant submits the required materials, the Department verifies that the Applicant is a FINRA member, and that the Department is not otherwise aware of any basis to deny or condition approval of the application, as set forth in Rule 1014. A decision issued under this provision shall have the same effectiveness as set forth in Rule 1014 and shall be subject to review as set forth in Rules 1015 and 1016.

(2) Special Application Procedures Applicable to Applicants that are Already Members of an Affiliated Exchange

(A) An Applicant that is a member of an exchange that is affiliated with the Exchange shall have the option to waive-in to become a Member of the Exchange and to register with the Exchange all persons associated with the Applicant whose registrations with the Applicant are approved with the other affiliated exchange in categories recognized by the Rules. For purposes of this provision, the term "waive-

in” means that the Department will rely substantially upon an affiliated exchange’s determination to approve the Applicant for exchange membership when the Department evaluates the Applicant for membership.

(B) In lieu of submitting an application as set forth in paragraph (a), an Applicant may waive-into Exchange membership as provided in subparagraph (b)(2) by filing with the Department a waive-in application form. As part of this form, the Applicant must attest to the fact that it has made no unapproved material changes to its broker-dealer business subsequent to its approval as a member of an affiliated exchange.

(C) The Department will act upon a duly submitted application to waive-into Exchange membership under paragraph (b)(2) by serving upon the Applicant a written notification of its decision within a reasonable time frame not to exceed 20 days of submission of the application, unless the Department and the Applicant agree that the Department may issue its decision at a later date. A failure of the Department to issue a decision within this time frame shall be subject to Rule 1014(c)(3). The Department will normally grant a duly submitted application to waive-into Exchange membership, provided that the Applicant submits the required materials, the Department verifies that the Applicant is a member of an exchange affiliated with the Exchange, and that the Department is not otherwise aware of any basis to deny or condition approval of the application, as set forth in Rule 1014. A decision issued under this provision shall have the same effectiveness as set forth in Rule 1014 and shall be subject to review as set forth in Rules 1015 and 1016.

#### **[(b) Membership Interview]**

##### **[(1) Optional Interview]**

[Before the Department serves its decision on an application for new membership in Nasdaq, the Department may conduct a membership interview with a representative or representatives of the Applicant if the Department determines that an interview is necessary to clarify aspects of an application.]

##### **[(2) Service of Notice]**

[At least seven days before a membership interview, the Department shall serve on the Applicant a written notice that specifies the date and time of the interview and the representative or representatives of the Applicant who are required to participate in the interview. The Department shall serve the notice by facsimile or overnight courier. The Applicant and the Department may agree to a shorter or longer period for notice or a different method of service under this subparagraph.]

##### **[(3) Time]**

[Unless the Department directs otherwise for good cause shown, any membership interview shall be scheduled to occur within 60 days after the filing of an application or

within 15 business days after the filing of all additional information or documents requested, whichever is later.]

**[(4) Place]**

[The membership interview shall be conducted in a location specified by Nasdaq.]

**[(5) Review of Standards for Admission]**

[During any membership interview, the Department shall review the application and the bases for denial of membership with the Applicant's representative or representatives.]

**[(6) Information From Other Sources]**

[During any membership interview, the Department shall provide to the Applicant's representative or representatives any information or document that the Department has obtained from the Central Registration Depository or a source other than the Applicant and upon which the Department intends to base its decision under Rule 1014. If the Department does not conduct a membership interview, receives such information or document after the membership interview, decides to base its decision on such information after the membership interview, the Department shall promptly serve the information or document and an explanation thereof on the Applicant. The Applicant may submit such materials as it may deem relevant with respect to such information or document at any time prior to the service of a decision under Rule 1014.]

**1014. Department Decision**

**(a) Authority of Department to Approve, Approve with Restrictions, or Deny an Application**

After evaluating an application for membership on the basis of the criteria set forth in paragraph (b) below, the Department shall issue one of the following decisions:

(1) approve the application;

(2) approve the application, subject to one or more restrictions:

(A) that are reasonably designed to address a specific financial, operational, supervisory, disciplinary, investor protection, or other regulatory concern; or

(B) that have been imposed by FINRA or by an affiliated exchange in their applicable membership determinations concerning the Applicant, in instances where the Applicant has applied for Exchange membership pursuant to Rule 1013(b); or

(3) deny the application.

**(b) [(a) Bases for Approval, Conditional Approval, or Denial**

After considering the completed application, other information and documents provided by the Applicant, other information and documents obtained by the Department, and the public interest and the protection of investors, the Department shall approve an application under Rules 1013 or 1017 by an Applicant that is not, and is not required to become, a FINRA member unless the Department determines that such information or documents provide a basis for denial of membership:

(1) The Department may deny (or condition) approval of an Applicant for the same reasons that the [Securities and Exchange Commission]Commission may deny or revoke a broker or dealer registration and for those reasons required or allowed under the Act;

(2) Without limiting the generality of the foregoing, the Department may deny (or condition) approval of an Applicant when the Applicant directly or indirectly:

- (A) is unable to satisfactorily demonstrate its present capacity to adhere to all applicable [Nasdaq]Exchange and Commission policies, rules, and regulations, including, without limitation, those concerning recordkeeping, reporting, finance, and trading procedures;
- (B) has previously violated, and there is a reasonable likelihood such Applicant will again engage in acts or practices violative of, any applicable [Nasdaq]Exchange or Commission policies, rules and regulations, including, without limitation, those concerning record-keeping, reporting, finance and trading procedures or those rules of other self-regulatory organizations of which such Applicant is or was a member;
- (C) has engaged, and there is a reasonable likelihood such Applicant will again engage, in acts or practices inconsistent with just and equitable principles of trade;
- (D) is not in compliance with the [SEC]Commission's net capital rule (17 C.F.R. 240.15c3-1), or has financial difficulties involving an amount that is more than 5% of the Applicant's net worth;
- (E) has been itself, or is the successor to an entity which has been subject to any bankruptcy proceeding, receivership or arrangement for the benefit of creditors within the past three years;
- (F) has engaged in an established pattern of failure to pay just debts;
- (G) does not have such licenses and registrations as are required by governmental authorities and self-regulatory organizations; or
- (H) is unable satisfactorily to demonstrate reasonably adequate systems capacity and capability.

(3) The Department will not approve an Applicant unless the Applicant is a member of another registered securities exchange or association that is not registered solely under

Section 6(g) or Section 15A(k) of the Securities Exchange Act of 1934. An Applicant that will transact business with the public must be a member of FINRA.

**[(b) Granting or Denying Application]**

**[(1)]**

[Unless the Department determines that there is a basis for denying (or conditioning) approval of the application under the bases for denial in paragraph (a), the Department shall approve the application for membership. If the Department does not approve the application, the Department shall:]

[(A) grant the application subject to one or more restrictions reasonably designed to address a specific financial, operational, supervisory, disciplinary, investor protection, or other regulatory concern; or]

[(B) deny the application.]

**(c) Decision**

**(1) Time**

The Department shall serve a written decision on the membership application within [15 business days] a reasonable time period, not to exceed 45 days after [the conclusion of the membership interview (if any) or after ] the Applicant fil[ing]es and provides to the Exchange[of] all required and requested information or documents in connection with the Applicant's application, unless the Department and the Applicant agree that the Department may issue its decision at a later date[, whichever is later].

**(2) Content**

If the Department denies the application or grants the application subject to restrictions, the decision shall explain in detail the reason for denial or restriction, referencing the applicable bases in paragraph (a).

**(3) Failure to Serve Decision**

If the Department fails to serve a decision [within 90 days after the filing of an application (or 120 days if the Department has opted to conduct a membership interview) or such later date as the Department and the Applicant have agreed in writing] within the time frame set forth in subparagraph (c)(1) of this Rule, the Applicant may file a written request with the [Nasdaq] Exchange Board requesting that the [Nasdaq] Exchange Board direct the Department to serve a decision. Within seven days after the filing of such a request, the [Nasdaq] Exchange Board shall direct the Department to serve its written decision immediately or to show good cause for an extension of time. If the Department shows good cause for an extension of time, the [Nasdaq] Exchange Board may [extend

the 90-day(or 120-day) time limit by]grant an extension of not more than 45 days thereafter.

**(d) [Submission of Membership Agreement]Reserved.**

[If the Department grants an application, with or without restriction, the Applicant's approval for membership shall be contingent upon the Applicant's filing of an executed written membership agreement, satisfactory to the Department undertaking to:]

**(1)** abide by any restriction specified in the Department's decision; and]

**(2)** obtain the Department's approval of a change in ownership, control, or business operations pursuant to Rule 1017, including the modification or removal of a membership agreement restriction.]

[The Applicant shall not waive the right to file a written request for review under Rule 1015 by executing a membership agreement under this paragraph.]

**(e) Service and Effectiveness of Decision**

The Department shall serve its decision[ and the membership agreement] on the Applicant in accordance with Rule 1012. The decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of [Nasdaq]the Exchange is issued under Rule 1015 or 1016, unless otherwise directed by the [Nasdaq]Exchange Review Council, the [Nasdaq]Exchange Board, or the Commission.

**(f) Effectiveness of Restriction**

A restriction imposed under this Rule shall remain in effect and bind the Applicant and all successors to the ownership or control of the Applicant unless:

**(1)** removed or modified by a decision constituting final action of [Nasdaq]the Exchange issued under Rule 1015, 1016, or 1017; or

**(2)** stayed by the [Nasdaq]Exchange Review Council, the [Nasdaq]Exchange Board, or the Commission.

**(g) Final Action**

Unless the Applicant files a written request for a review under Rule 1015, the Department's decision shall constitute final action by [Nasdaq]the Exchange.

**1015. Review by [Nasdaq]Exchange Review Council**

**(a) Initiation of Review by Applicant**

Within 25 days after service of a decision under Rule 1014 or 1017, an Applicant may file a written request for review with the [Nasdaq]Exchange Review Council. A request for review shall state with specificity why the Applicant believes that the Department's decision is inconsistent with the bases for denial set forth in Rule 1014, or otherwise should be set aside, and state whether a hearing is requested. The Applicant simultaneously shall file[ by first-class mail] a copy of the request with the Department.

**(b) Transmission of Documents**

Within ten days after the filing of a request for review, the Department shall:

(1) transmit to the [Nasdaq]Exchange Review Council copies of all documents that were considered in connection with the Department's decision and an index to the documents; and

(2) serve on the Applicant a copy of such documents (other than those documents originally submitted by Applicant) and a copy of the index.

**(c) Membership Application Docket**

The Department shall promptly record in [Nasdaq's]the Exchange's membership application docket each request for review filed with the [Nasdaq]Exchange Review Council under this Rule and each material subsequent event, filing, and change in the status of a membership proceeding.

**(d) Appointment of Subcommittee**

The [Nasdaq]Exchange Review Council or the Review Subcommittee defined in Rule 9120 shall appoint a Subcommittee to participate in the review. The Subcommittee shall be composed of two or more persons who shall be current or past members of the [Nasdaq]Exchange Review Council or former Directors.

**(e) Powers of Subcommittee**

If a hearing is requested, the Subcommittee shall conduct the hearing. If a hearing is not requested, the Subcommittee may serve a notice directing that a hearing be held. If a hearing is not requested or directed, the Subcommittee shall conduct its review on the basis of the record developed before the Department and any written submissions made by the Applicant or the Department in connection with the request for review.

**(f) Hearing**

**(1) Notice**

If a hearing is requested or directed, the hearing shall be held within 45 days after the filing of the request with the [Nasdaq]Exchange Review Council or service of the notice

by the Subcommittee. The [Nasdaq]Exchange Review Council shall serve written notice of the date and time of the hearing to the Applicant by facsimile or overnight courier not later than 14 days before the hearing.

## **(2) Counsel**

The Applicant and the Department may be represented by counsel at a hearing conducted pursuant to this Rule.

## **(3) Evidence**

Formal rules of evidence shall not apply to a hearing under this Rule. Not later than five days before the hearing, the Applicant and the Department shall exchange copies of their proposed hearing exhibits and witness lists and provide copies of the same to the [Nasdaq]Exchange Review Council. If the Applicant or the Department fails to provide copies of its proposed hearing exhibits or witness list within such time, the Subcommittee shall exclude the evidence or witnesses from the proceeding, unless the Subcommittee determines that good cause is shown for failure to comply with the production date set forth in this subparagraph.

## **(4) Transcript**

The hearing shall be recorded and a transcript prepared by a court reporter. A transcript of the hearing shall be available for purchase from the court reporter at prescribed rates. The Applicant, the Department, or a witness may seek to correct the transcript. A proposed correction of the transcript shall be submitted to the Subcommittee within a reasonable period of time prescribed by the Subcommittee. Upon notice to the Applicant and the Department, the Subcommittee may direct the correction to the transcript as requested or sua sponte.

## **(g) Additional Information, Briefs**

At any time during its consideration, the Subcommittee or the [Nasdaq]Exchange Review Council may direct the Applicant or the Department to file additional information or briefs. Any additional information or brief filed shall be provided to all parties before the [Nasdaq]Exchange Review Council renders its decision.

## **(h) Abandonment of Request for Review**

If an Applicant fails to specify the grounds for its request for review under Rule 1015(a)(1), appear at a hearing for which it has notice, or file information or briefs as directed, the [Nasdaq]Exchange Review Council or the Review Subcommittee may dismiss the request for review as abandoned, and the decision of the Department shall become the final action of [Nasdaq]the Exchange. Upon a showing of good cause, the [Nasdaq]Exchange Review Council or the Review Subcommittee may withdraw a dismissal entered pursuant to this paragraph.

**(i) Subcommittee Recommendation**

The Subcommittee shall present a recommended decision in writing to the [Nasdaq]Exchange Review Council within 60 days after the date of the hearing held pursuant to paragraph (f), and not later than seven days before the meeting of the [Nasdaq]Exchange Review Council at which the membership proceeding shall be considered.

**(j) Decision****(1) Proposed Written Decision**

After considering all matters presented in the review and the Subcommittee's recommended written decision, the [Nasdaq]Exchange Review Council may affirm, modify, or reverse the Department's decision or remand the membership proceeding with instructions. The [Nasdaq]Exchange Review Council shall prepare a proposed written decision pursuant to subparagraph (2).

**(2) Contents**

The decision shall include:

- (A) a description of the Department's decision, including its rationale;
- (B) a description of the principal issues raised in the review;
- (C) a summary of the evidence on each issue; and
- (D) a statement whether the Department's decision is affirmed, modified, or reversed, and a rationale therefor that references the bases for denial in Rule 1014.

**(3) Issuance of Decision After Expiration of Call for Review Periods**

The [Nasdaq]Exchange Review Council shall provide its proposed written decision to the [Nasdaq]Exchange Board. The [Nasdaq]Exchange Board may call the membership proceeding for review pursuant to Rule 1016. If the [Nasdaq]Exchange Board does not call the membership proceeding for review, the proposed written decision of the [Nasdaq]Exchange Review Council shall become final. The [Nasdaq]Exchange Review Council shall serve the Applicant with a written notice specifying the date on which the call for review period expired and stating that the final written decision will be served within 15 days after such date. The [Nasdaq]Exchange Review Council shall serve its final written decision within 15 days after the date on which the call for review period expired. The decision shall constitute the final action of Nasdaq for purposes of SEC Rule 19d-3, unless the [Nasdaq]Exchange Review Council remands the membership proceeding.

**(4) Failure to Issue Decision**

If the [Nasdaq]Exchange Review Council fails to serve its final written decision within the time prescribed in subparagraph (3), the Applicant may file a written request with the [Nasdaq]Exchange Board requesting that the [Nasdaq]Exchange Board direct the [Nasdaq]Exchange Review Council to serve its decision immediately or to show good cause for an extension of time. Within seven days after the filing of such a request, the Board shall direct the [Nasdaq]Exchange Review Council to serve its written decision immediately or to show good cause for an extension of time. If the [Nasdaq]Exchange Review Council shows good cause for an extension of time, the [Nasdaq]Exchange Board may extend the 15-day time limit by not more than 15 days.

**(k) Ex Parte Communications**

(1) The prohibitions against ex parte communications shall become effective when Exchange staff has knowledge that an Applicant intends to file a written request for review by the Exchange Review Council under Rule 1015.

(2) Unless on notice and opportunity for an Applicant and Interested Staff to participate, or to the extent required for the disposition of ex parte matters as authorized by the Exchange's Rules:

(A) an Applicant, a counsel or representative of an Applicant, or an Interested Staff shall not make or knowingly cause to be made an ex parte communication relevant to the merits of a membership proceeding under the Rule 1010 Series to a Director, a member of the Exchange Review Council or a Subcommittee thereof, or an Exchange employee who is participating or advising in a decision of such a person with respect to that proceeding; and

(B) a Director, a member of the Exchange Review Council or a Subcommittee thereof, or an Exchange employee who is participating or advising in the decision of such a person with respect to a membership proceeding shall not make or knowingly cause to be made to an Applicant, a counsel or representative of the Applicant, or an Interested Staff an ex parte communication relevant to the merits of that proceeding.

(3) A Director, a member of the Exchange Review Council or a Subcommittee thereof, or an Exchange employee participating or advising in the decision of such a person, who receives, makes, or knowingly causes to be made a communication prohibited by this paragraph shall place in the record of the membership proceeding:

(A) all such written communications;

(B) memoranda stating the substance of all such oral communications; and

(C) all written responses and memoranda stating the substance of all oral responses to all such communications.

**(1) Recusal or Disqualification**

A Director or a member of the Exchange Review Council or a Subcommittee thereof shall not participate in a matter governed by the Rule 1010 Series as to which that person has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In such a case, the person shall recuse himself or shall be disqualified as follows:

(1) The Chair of the Exchange Board of Directors shall have authority to direct the disqualification of a Director, and a majority of the Directors of the Exchange Board excluding the Chair shall have authority to direct the disqualification of the Chair of the Exchange Board.

(2) The Chair of the Exchange Review Council shall have authority to direct the disqualification of a member of the Exchange Review Council or a member of a Subcommittee appointed pursuant to Rule 1015, and the Vice Chair of the Exchange Review Council shall have authority to direct the disqualification of the Chair of the Exchange Review Council.

**1016. Discretionary Review by the [Nasdaq]Exchange Board****(a) Call for Review by Director**

A Director may call a membership proceeding for review by the [Nasdaq]Exchange Board if the call for review is made within the period prescribed in paragraph (b).

**(b) 15 Day Period; Waiver**

A Director shall make his or her call for review at the next meeting of the [Nasdaq]Exchange Board that is at least 15 days after the date on which the [Nasdaq]Exchange Board receives the proposed written decision of the [Nasdaq]Exchange Review Council. By unanimous vote of the [Nasdaq]Exchange Board, the Nasdaq Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the [Nasdaq]Exchange Board then in office, the [Nasdaq]Exchange Board may, during the 15 day period, vote to extend the period to more than 15 days.

**(c) Review At Next Meeting**

If a Director calls a membership proceeding for review within the time prescribed in paragraph (b), the [Nasdaq]Exchange Board shall review the membership proceeding not later than the next meeting of the [Nasdaq]Exchange Board. The [Nasdaq]Exchange Board may order the Applicant and the Department to file briefs in connection with review proceedings pursuant to this paragraph.

**(d) Decision of the [Nasdaq]Exchange Board, Including Remand**

After review, the [Nasdaq]Exchange Board may affirm, modify, or reverse the proposed written decision of the [Nasdaq]Exchange Review Council. Alternatively, the [Nasdaq]Exchange Board may remand the membership proceeding with instructions. The [Nasdaq]Exchange Board shall prepare a written decision that includes all of the elements described in Rule 1015(j)(2).

**(e) Issuance of Decision**

The [Nasdaq]Exchange Board shall serve its written decision on the Applicant within 15 days after the meeting at which it conducted its review. The decision shall constitute the final action of [Nasdaq]the Exchange for purposes of SEC Rule 19d-3, unless the [Nasdaq]Exchange Board remands the membership proceeding.

**1017. Application for Approval of Change in Ownership, Control, or Material Business Operations**

**(a) Events Requiring Application**

A [m]Member shall file an application for approval of any of the following changes to its ownership, control, or business operations[:], except that the Department will not consider a change listed below to require its approval if an exchange affiliated with the Exchange or a Member's Designated Examining Authority has already approved the change in accordance with its respective rules, the Member provides written evidence to the Department of such prior approval, and the nature, terms, or conditions of the proposed change have not altered materially since such approvals occurred:

- (1) a merger of the [m]Member with another [m]Member[, unless both are members of the New York Stock Exchange, Inc. or the surviving entity will continue to be a member of the New York Stock Exchange, Inc.];
- (2) a direct or indirect acquisition by the [m]Member of another [m]Member[, unless the acquiring member is a member of the New York Stock Exchange, Inc.];
- (3) direct or indirect acquisitions or transfers of 25% or more in the aggregate of the [m]Member's assets or any asset, business or line of operation that generates revenues comprising 25% or more in the aggregate of the [m]Member's earnings measured on a rolling 36-month basis[, unless both the seller and acquirer are members of the New York Stock Exchange, Inc.];
- (4) a change in the equity ownership or partnership capital of the [m]Member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital; or
- (5) a material change in business operations[ as defined in Rule 1011], which includes, but is not limited to, the following changes:

(A) removing or modifying a membership restriction;

(B) acting as a dealer or a market maker for the first time;

(C) adding business activities that require a higher minimum net capital under SEC Rule 15c3-1; or

(D) adding business activities that would cause a proprietary trading firm no longer to meet the definition of that term contained in the Rule 1000 Series.

**(b) Filing and Content of Application**

(1) The [m]Member shall file the application with the Department.

(2) If the application seeks approval of a change in ownership or control or a material change in the business operations of the Member, then t[T]he application shall:

(A) describe in detail the proposed change in ownership, control, or material business operations;

(B) [and include]attach a business plan, pro forma financials, an organizational chart, and written supervisory procedures reflecting the proposed change[.]; and

([A]C) [I]f the application requests approval of a change in ownership or control, the application also shall include the names of the new owners, their percentage of ownership, and the sources of their funding for the purchase and recapitalization of the member.

(B)3 If the application requests the removal or modification of a membership [agreement]restriction, the application also shall:

(i)A present facts showing that the circumstances that gave rise to the restriction have changed; and

(ii)B state with specificity why the restriction should be modified or removed in light of the applicable bases for denial or standards for approval set forth in Rule 1014 or 1017 and the articulated rationale for the imposition of the restriction.

(C)4 If the application requests approval of an increase in Associated Persons involved in sales, offices, or markets made, the application shall set forth the increases in such areas during the preceding 12 months.

**(c) [Effecting Change and Imposition of Interim Restrictions]When Applications Shall or May Be Filed**

(1) A [m]Member shall file an application for approval of a change in ownership or control at least 30 days prior to such change.[ A member may effect a change in ownership or control prior to the conclusion of the proceeding, but the Department may

place new interim restrictions on the member based on the applicable bases for denial or standards for approval in Rule 1014 or 1017, pending final Department action.]

(2) A [m]Member may file an application to remove or modify a membership [agreement] restriction at any time. An existing restriction shall remain in effect during the pendency of the proceeding.

(3) A [m]Member may file an application for approval of a material change in business operations, other than the modification or removal of a restriction, at any time, but the [m]Member may not effect such change until the conclusion of the proceeding, unless the Department and the [m]Member otherwise agree.

**(d) [Rejection Of Application That Is Not Substantially Complete]When an Application is Deemed to Be Filed**

[If the Department determines within 30 days after the filing of an application that the application is not substantially complete, the Department may reject the application and deem it not to have been filed. In such case, within the 30 day period, the Department shall serve a written notice on the Applicant of the Department's determination and the reasons therefor. If the Applicant determines to continue to apply for approval of a change in ownership, control, or business operations, the Applicant shall submit a new application under this Rule.]The Department will deem an application to be filed on the date when it is substantially complete, meaning the date on which the Department receives from the Applicant all material documentation and information required under this Rule. The Department will notify the Applicant in writing when the Department deems the Applicant's application to be substantially complete.

**(e) [Request for Additional Documents and Information]Incomplete Applications**

[Within 30 days after the filing of an application, the Department shall serve a request for any additional information or documents necessary to render a decision on the application. The Department may request additional information or documents at any time during the application process. Unless otherwise agreed to by the Department and the Applicant, the Applicant shall file such additional information or documents with the Department within 30 days after the Department's request.]As set forth in Rule 1013(a)(3), the Department may treat an application filed under this Rule as having lapsed or it may reject such an application, except that the Department may treat an application as having lapsed if it is not substantially complete for 30 days or more after the Applicant initiates it.

**(f) [Membership Interview]Requests by the Department for Additional Documents or Information from the Applicant or from Third Parties**

At any time before the Department serves its decision on an application filed under this Rule, the Department may request additional information or documentation from the Applicant or from a third party in accordance with Rule 1013(a)(4).[(1) The Department

may require the Applicant to participate in a membership interview within 30 days after the filing of the application, or if the Department requests additional information or documents, within 30 days after the filing of the additional information or documents by the Applicant.]

[(2) At least seven days before the membership interview, the Department shall serve on the Applicant a written notice that specifies the date and time of the interview and persons who are required to participate in the interview. The Department shall serve the notice by facsimile or overnight courier. The Applicant and the Department may agree to a shorter or longer period for notice or a different method of service.]

[(3) The membership interview shall be conducted in a location specified by Nasdaq.]

[(4) During the membership interview, the Department shall review the application and the considerations for the Department's decision set forth in paragraph (g)(1) with the Applicant's representative or representatives. The Department shall provide to the Applicant's representative or representatives any information or document that the Department has obtained from the Central Registration Depository or a source other than the Applicant and upon which the Department intends to base its decision under paragraph (g). If the Department receives such information or document after the membership interview or decides to base its decision on such information after the membership interview, the Department shall promptly serve the information or document and an explanation thereof on the Applicant.]

**(g) Department Decision**

The Department shall render a decision on an application filed under this Rule in accordance with Rule 1014, except as follows:[(1) The Department shall consider the application, the membership interview, other information and documents provided by the Applicant or obtained by the Department, the public interest, and the protection of investors.]

[(A) In rendering a decision on an application submitted under Rule 1017(a) by a Nasdaq member that is not, and is not required to become, a member of FINRA, the Department shall approve the application unless the Department determines that there is a basis for denying (or conditioning) approval of the Applicant under the bases for denial in Rule 1014(a).]

[(B) In rendering a decision on an application submitted under Rule 1017(a) by a Nasdaq member that is also a member of FINRA, the Department shall consider whether the Applicant and its Associated Persons meet each of the standards in NASD Rule 1014(a). For purposes of this rule:]

[(i) the provisions of NASD Rule 1014(a) shall apply to Nasdaq members as if such Rule were part of Nasdaq's Rules;]

[(ii) references to "NASD Rules" shall be construed as references to "Nasdaq Rules";]

[(iii) the reference to "Rule 1013(a)(2)(E)(xii)" shall be construed as a reference to "NASD Rule 1013(a)(2)(F)(xii)";]

[(iv) the reference to "information filed under Rule 1013(b)(5)" shall be construed as a reference to "the most up-to-date financial information available to the Department";]

[(v) references to "NASD" or "FINRA" shall be construed as references to "Nasdaq";]

[(vi) the reference to "Notice to Members 97-19" shall be construed as a reference to "NASD Notice to Members 97-19 as incorporated by reference into the Nasdaq Rules by Nasdaq IM-3010"; and]

[(vii) where the Department determines that the Applicant or its Associated Person are the subject of any of the events set forth in NASD Rule 1014(a)(3)(A) and (C) through (E), a presumption exists that the application should be denied. The Applicant may overcome the presumption by demonstrating that it can meet each of the standards in NASD Rule 1014(a), notwithstanding the existence of any of the events set forth in Rule NASD 1014(a)(3)(A) and (C) through (E).]

**[(C)]** In rendering a decision on an application for approval of a change in ownership or control, or an application for approval of a material change in business operations that does not involve modification or removal of a membership agreement restriction, the Department shall determine (i) if there would be a basis for denying (or conditioning) approval of the Applicant under the bases for denial in Rule 1014(a) upon approval of the application in the case of a Nasdaq member that is not, and is not required to become, a member of FINRA, and (ii) if the Applicant would continue to meet the standards in NASD Rule 1014(a) upon approval of the application in the case of a Nasdaq member that is a member of FINRA.]

**[(D)1]** In rendering a decision on an application submitted under this Rule that request[ing]s the modification or removal of a membership [agreement ]restriction, the Department shall consider whether maintenance of the restriction is appropriate in light of:

**[(i)A]** the applicable bases for denial or standards for approval set forth in Rule[s] 1014[ and 1017];

**[(ii)B]** the circumstances that gave rise to the imposition of the restriction;

**[(iii)C]** the Applicant's operations since the restriction was imposed;

**[(iv)D]** any change in ownership or control or supervisors and principals; and

~~(v)~~**(E)** any new evidence submitted in connection with the application.

**(2)** The Department shall serve a written decision on ~~[the]~~an application filed under this Rule in accordance with Rule 1013(c).~~[within 30 days after the conclusion of the membership interview or the filing of additional information or documents, whichever is later. If the Department does not require the Applicant to participate in a membership interview or request additional information or documents, the Department shall serve a written decision within 45 days after the filing of the application under paragraph (a). The decision shall state whether the application is granted or denied in whole or in part, and shall provide a rationale for the Department's decision, referencing the applicable bases or standards in Rules 1014 or 1017.]~~

**(3)** If the Department fails to serve a decision within 180 days after filing of an application or such later date as the Department and the Applicant have agreed in writing, the Applicant may file a written request with the Nasdaq Board requesting that the Nasdaq Board direct the Department to issue a decision. Within seven days after the filing of such a request, the Nasdaq Board shall direct the Department to issue a written decision immediately or to show good cause for an extension of time. If the Department shows good cause for an extension of time, the Nasdaq Board may extend the time limit for issuing a decision by not more than 30 days.]

~~(4)~~**(3)** Notwithstanding anything in this Rule 1017 to the contrary, in the event that a proposed change in ownership, control, or business operations by a~~[Nasdaq]~~ [m]~~Member~~ requires such [m]~~Member~~ to become a member of FINRA, the Department shall not be required to serve a written decision under this [r]~~Rule~~ until 10 business days after the [Nasdaq] [m]~~Member~~ becomes a FINRA member.

**(5)** If the Department approves an application under this Rule in whole or part, the Department may require an Applicant to file an executed membership agreement.]

#### **(h) Service and Effectiveness of Decision**

The Department shall serve its decision on the Applicant in accordance with Rule 1012. The decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of [Nasdaq]the Exchange is issued under Rule 1015 or 1016, unless otherwise directed by the [Nasdaq]Exchange Review Council, the [Nasdaq]Exchange Board, or the Commission.

#### **(i) Request for Review; Final Action**

An Applicant may file a written request for review of the Department's decision with the [Nasdaq]Exchange Review Council pursuant to Rule 1015. The procedures set forth in Rule 1015 shall apply to such review, and the [Nasdaq]Exchange Review Council's decision shall be subject to discretionary review by the [Nasdaq]Exchange Board pursuant to Rule 1016. If the Applicant does not file a request for a review, the Department's decision shall constitute final action by [Nasdaq]the Exchange.

**(j) Removal or Modification of Restriction on Department's Initiative**

The Department shall modify or remove a restriction on its own initiative if the Department determines such action is appropriate in light of the considerations set forth in paragraph (g)(1). The Department shall notify the member in writing of the Department's determination and inform the member that it may apply for further modification or removal of a restriction by filing an application under paragraph (a).

**(k) [Lapse or Denial of Application for Approval of Change in Ownership]Reserved.**

[If an application for approval of a change in ownership lapses, or is denied and all appeals are exhausted or waived, the member shall, no more than 60 days after the lapse, or exhaustion or waiver of appeal:]

[(1) submit a new application;]

[(2) unwind the transaction; or]

[(3) file a Form BDW.]

[For the protection of investors, the Department may shorten the 60-day period. For good cause shown by the member, the Department may lengthen the 60-day period. The Department shall serve written notice on the Applicant of any change in the 60-day period and the reasons therefor. During the 60-day or other imposed period, the Department may continue to place interim restrictions on the member for the protection of investors.]

**1018. [Reserved]Resignation, Reinstatement, Termination, and Transfer of Membership****(a) Resignation of Exchange Members**

Membership in the Exchange may be voluntarily terminated only by formal resignation. Resignations of Members must be filed via electronic process or such other process as the Exchange may prescribe. Any Member may resign from the Exchange at any time. Such resignation shall not take effect until all indebtedness due the Exchange from such Member shall have been paid in full and so long as any complaint or action is pending against the Member under the Rules. The Exchange, however, may in its discretion declare a resignation effective at any time.

**(b) Transfer and Termination of Membership**

(1) Except as provided hereinafter, no Member may transfer its membership or any right arising therefrom; the membership of a corporation, partnership, or any other business organization that is a Member shall terminate upon its liquidation, dissolution, or winding

up; and the membership of a sole proprietorship that is a Member shall terminate at death, provided that all obligations of membership under the Rules have been fulfilled.

(2) The consolidation, reorganization, merger, change of name, or similar change in any corporate Member shall not terminate the membership of such corporate Member, provided that the Exchange Member or surviving corporation, if any, shall be deemed a successor to the business of the corporate Member, and the Member or the surviving organization shall continue in the securities business, and shall possess the qualifications for membership in the Exchange. The death, change of name, withdrawal of any partner, the addition of any new partner, reorganization, consolidation, or any change in the legal structure of a partnership Member shall not terminate the membership of such partnership Member, provided that the Member or surviving organization, if any, shall be deemed a successor to the business of the partnership Member, and the Member or surviving organization shall possess the qualifications for membership in the Exchange. If the business of any predecessor Member is to be carried on by an organization deemed to be a successor organization by the Exchange, the membership of such predecessor Member shall be extended to the successor organization subject to the notice and application requirements of the Rules and the right of the Exchange to place restrictions on the successor organization pursuant to the Rules; otherwise, any surviving organization shall be required to satisfy all of the membership application requirements of the Exchange's Rules.

**(c) Reinstatement of Membership.**

Any membership or registration suspended or canceled under the Rules may be reinstated by the Exchange upon such terms and conditions as are permitted under the Act and the Rules; provided, however, that any applicant for reinstatement of membership or registration shall possess the qualifications required for membership or registration in the Exchange.

**1019. Application to Commission for Review**

A person aggrieved by final action of [Nasdaq]the Exchange under the Rule 1010 Series may apply for review by the Commission pursuant to Section 19(d)(2) of the Act. The filing of an application for review shall not stay the effectiveness of a decision constituting final action of [Nasdaq]the Exchange, unless the Commission otherwise orders.

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