

**EXHIBIT 5**

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

**The Nasdaq Stock Market LLC Rules**

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**Equity Rules****[0100. General Provisions****0110. Adoption and Application of Rules****0111. Adoption of Rules**

The following provisions are adopted pursuant to the By-Laws of Nasdaq.

**0112. Effective Date**

The Rules shall become effective as provided in the By-Laws.

**0113. Interpretation**

The Rules shall be interpreted in such manner as will aid in effectuating the purposes and business of Nasdaq, and so as to require that all practices in connection with the investment banking and securities business shall be just, reasonable and not unfairly discriminatory.

**0114. Reserved****0115. Applicability**

**(a)** These Rules shall apply to all members and persons associated with a member. Persons associated with a member shall have the same duties and obligations as a member under these Rules.

**(b)** A member or person associated with a member, who has been expelled, canceled or revoked from membership or from registration or who has been barred from being associated with all members, shall cease to have any privileges of membership or registration. A member or person associated with a member who has been suspended from membership or registration shall also cease to have any privileges of membership or registration other than those under the Code of Procedure as set forth in the Rule 9000 Series. In neither case shall such a member or person associated with a member be entitled to recover any admission fees, dues, assessments or other charges paid to Nasdaq.

**(c)** A member or person associated with a member who has been suspended from membership or from registration shall be considered as a non-member during the period of suspension for purposes of applying the provisions of these Rules which govern dealings between members and non-members. However, such member or person associated with a member shall have all of the obligations imposed by the rules of Nasdaq.

**0120. Definitions**

## Definitions

When used in these Rules, unless the context otherwise requires:

**(a) "Act"**

The term "Act" or "Exchange Act" means the Securities Exchange Act of 1934, as amended.

**(b) "FINRA" or "NASD"**

The terms "Association" and "NASD" mean, collectively, the Financial Industry Regulatory Authority and its subsidiaries.

**(c) "By-Laws"**

The term "By-Laws" means the By-Laws of Nasdaq.

**(d) "Code of Procedure"**

The term "Code of Procedure" means the procedural rules contained in the Rule 9000 Series.

**(e) "Commission" or "SEC"**

The terms "Commission" or "SEC" mean the Securities and Exchange Commission (SEC), established pursuant to the Act.

**(f) "Regulatory Contract"**

The term "Regulatory Contract" means the regulatory services agreement between Nasdaq and FINRA pursuant to which FINRA has agreed to perform certain regulatory functions on behalf of Nasdaq.

**(g) "Customer"**

The term "customer" shall not include a broker or dealer.

**(h) "Security"**

Unless the context requires otherwise, the term "security" shall mean a security listed on Nasdaq or traded on Nasdaq pursuant to unlisted trading privileges.

**(i) "Member" or "Nasdaq Member"**

The terms "member" or "Nasdaq Member" mean any registered broker or dealer that has been admitted to membership in Nasdaq. A Nasdaq Member is not a member of Nasdaq within the meaning of the Delaware Limited Liability Company Act by reason of being admitted to membership in Nasdaq.

**(j) "Nasdaq Regulation"**

The term "Nasdaq Regulation" means the Department of Nasdaq that supervises and administers the regulatory functions of Nasdaq, including the administration of any regulatory services agreements with another self-regulatory organization to which Nasdaq is a party.

**(k) "Nasdaq"**

The term "Nasdaq" means The Nasdaq Stock Market LLC.

**(l) "NASD Regulation"**

The term "NASD Regulation" means NASD Regulation, Inc.

**(m) "Nasdaq Review Council"**

The term "Nasdaq Review Council" means the committee authorized and directed to act for the Board of Directors of Nasdaq in a manner consistent with the Rules and By-Laws of Nasdaq with respect to (1) an appeal or review of a disciplinary proceeding; (2) a statutory disqualification decision; (3) a review of a membership proceeding; (4) a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; (5) the exercise of exemptive authority; (6) an appeal of proceedings involving Exchange Rules 4612, 4619, 4620, and 11890, and Exchange Options Rules Chapter V Section 6; and (7) such other proceedings or actions authorized by the Rules of Nasdaq.

**(n) "Person"**

The term "person" shall include any natural person, partnership, corporation, association, or other legal entity.

**(o) "Rules" or "Rules of Nasdaq"**

The term "Rules" or "Rules of Nasdaq" means the numbered rules set forth in the Nasdaq Manual beginning with the Rule 0100 Series, as adopted by the Nasdaq Board of Directors pursuant to the By-Laws of the Nasdaq, as hereafter amended or supplemented, and also includes the By-Laws and the Limited Liability Company Agreement of The Nasdaq Stock Market LLC.

**0121. Definitions in Nasdaq By-Laws**

Unless the context otherwise requires, or unless otherwise defined in these Rules, terms used in the Rules and interpretive material, if defined in the Nasdaq By-Laws, shall have the meaning as defined in the Nasdaq By-Laws.

### **0130. Regulation of the Exchange and Its Members**

Nasdaq and FINRA are parties to the Regulatory Contract pursuant to which FINRA has agreed to perform certain functions described in these Rules on behalf of Nasdaq. Nasdaq Rules that refer to Nasdaq Regulation, Nasdaq Regulation staff, Nasdaq staff, and Nasdaq departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of Nasdaq pursuant to the Regulatory Contract.

Notwithstanding the fact that Nasdaq has entered into the Regulatory Contract with FINRA to perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions.

In addition, Nasdaq has incorporated by reference certain NASD rules. Nasdaq members shall comply with these rules and interpretations as if such rules and interpretations were part of Nasdaq's rules.

### **0140. Fingerprint-Based Background Checks of Employees and Independent Contractors**

(a) In order to enhance the physical security of the facilities, systems, data, and information of Nasdaq and its affiliates (collectively, the "Nasdaq Entities"), it shall be the policy of the Nasdaq Entities to conduct a fingerprint-based criminal records check of (i) all prospective and current employees of the Nasdaq Entities, (ii) all prospective and current independent contractors who have or are anticipated to have access to facilities of the Nasdaq Entities for ten business days or longer, and (iii) all prospective and current temporary employees who have or are anticipated to have access to facilities of the Nasdaq Entities for ten business days or longer. The Nasdaq Entities shall apply this policy in all circumstances where permitted by applicable law.

(b) The Nasdaq Entities shall submit fingerprint cards obtained pursuant to the foregoing policy to the Attorney General of the United States or his or her designee for identification and processing. The Nasdaq Entities shall at all times maintain the security of fingerprint cards and information received from the Attorney General or his or her designee.

(c) The Nasdaq Entities shall evaluate information received from the Attorney General or his or her designee in accordance with the terms of a written fingerprint policy and provisions of applicable law. A felony or serious misdemeanor conviction will be a factor in considering whether to hire a prospective employee, take adverse employment action with respect to a current employee, or deny prospective or current independent contractors or temporary employees access to facilities of the Nasdaq Entities.

(d) A prospective employee who refuses to submit to fingerprinting shall be denied employment by the Nasdaq Entities, and a prospective independent contractor or

temporary employee who refuses to submit to fingerprinting shall be denied access to facilities of the Nasdaq Entities. A current employee, independent contractor, or temporary employee who refuses to submit to fingerprinting will be terminated following notice and being given three opportunities to submit.

#### **0150. Regulatory Independence**

In furtherance of the independence of Nasdaq's regulatory functions from its commercial operations, Nasdaq shall ensure that, unless it obtains prior Commission approval, the regulatory functions subject to the Regulatory Contract as in effect at the time when Nasdaq begins to operate as a national securities exchange shall at all times continue to be performed by NASD or an affiliate thereof or by another independent self-regulatory organization.

#### **1000. Membership, Registration and Qualification Requirements]**

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#### **[1050. Research Analysts**

A Nasdaq member that employs a research analyst or publishes or otherwise distributes a research report shall also be a member of FINRA or the New York Stock Exchange and shall comply with FINRA Rules 1120, 1250 and 2241 (and any other FINRA rules that apply to research analysts or research reports), as amended. For purposes of this Rule 1050, (i) "research analyst" shall mean an associated person who is primarily responsible for, and any associated person who reports directly or indirectly to such research analyst in connection with, the preparation of the substance of a research report, whether or not any such person has the job title of "research analyst," and (ii) "research report" shall mean a written or electronic communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision.

#### **1090. Foreign Members**

A member which does not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the Commission and Nasdaq must:

- (a) prepare all such reports, and maintain a general ledger chart of account and any description thereof, in English and U.S. dollars;
- (b) reimburse Nasdaq for any expenses incurred in connection with examinations of the member to the extent that such expenses exceed the cost of examining a member located within the continental United States in the geographic location most distant from Nasdaq;
- (c) ensure the availability of an individual fluent in English and knowledgeable in securities and financial matters to assist representatives of Nasdaq during examinations; and
- (d) utilize, either directly or indirectly, the services of a broker/dealer registered with the Commission, a bank or a clearing agency registered with the Commission located in the

United States in clearing all transactions involving members of Nasdaq, except where both parties to a transaction agree otherwise.

### **1130. Reliance on Current Membership List**

The Nasdaq Secretary shall keep a currently accurate and complete membership roll, containing the name and address of each Nasdaq member, and the name and address of the executive representative of each Nasdaq member. In any case where a membership has been terminated, such fact shall be recorded together with the date on which the membership ceased. The membership roll of Nasdaq shall at all times be available to all members of Nasdaq, to all governmental authorities, and to the general public; provided, however, that the names and addresses of executive representatives shall not be available to members or the general public. For the purpose of complying with pertinent Rules, a member shall be entitled to rely on such membership roll.

### **1150. Executive Representative**

Each Nasdaq member shall appoint and certify to the Secretary of Nasdaq one "executive representative" who shall represent, vote, and act for the Nasdaq member in all the affairs of Nasdaq; provided, however, that other representatives of a Nasdaq member may also serve on the Nasdaq Board or committees of Nasdaq or otherwise take part in the affairs of Nasdaq. If a Nasdaq member is also a member of FINRA, the Nasdaq executive representative shall be the same person appointed to serve as the FINRA executive representative. A Nasdaq member may change its executive representative or appoint a substitute for its executive representative upon giving notice thereof to the Nasdaq Secretary via electronic process or such other process as Nasdaq may prescribe. An executive representative of a Nasdaq member or a substitute shall be a member of senior management and registered principal of the Nasdaq member. Each executive representative shall maintain an Internet electronic mail account for communication with Nasdaq and shall update firm contact information as prescribed by Nasdaq. Each member shall review and, if necessary, update its executive representative designation and contact information in the manner prescribed by Exchange Rule 1160.

### **1160. Contact Information Requirements**

(a) Each member shall report to Nasdaq all contact information required by Nasdaq via the FINRA Contact System.

(b) Each member shall update its required contact information promptly, but in any event not later than 30 days following any change in such information. In addition, each member shall review and, if necessary, update its required contact information, via such means as Nasdaq may specify, within 17 business days after the end of each calendar year.

(c) Each member shall comply with any Nasdaq request for such information promptly, but in any event not later than 15 days following the request, or such longer period that may be agreed to by Nasdaq staff.

**1170. Nasdaq's Business Continuity and Disaster Recovery Plan Testing Requirements for Members and Options Participants Pursuant to Regulation SCI**

With respect to Nasdaq's business continuity and disaster recovery plans, including its backup systems, Nasdaq shall:

(a) Establish standards for the designation of those Members and Options Participants that Nasdaq reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans. Such standards may include volume-based and/or market share-based criteria, and may be adjusted from time to time by Nasdaq. Nasdaq will provide public notice of the standards;

(b) Designate Members and Options Participants pursuant to the standards established in paragraph (a) of this rule and require participation by such designated Members and Options Participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by Nasdaq, provided that such frequency shall not be less than once every 12 months. Nasdaq will provide at least six months prior notice to Members and Options Participants that are designated for mandatory testing, and participation of such Members and Options Participants is a condition of membership.

**2000. Business Conduct****2040. Nonregistered Foreign Finders**

(a) Member firms, and persons associated with a member, may pay to nonregistered foreign persons transaction-related compensation based upon the business of customers they direct to member firms if the following conditions are met:

- (1) the member firm has assured itself that the nonregistered foreign person who will receive the compensation (the "finder") is not required to register in the U.S. as a broker/dealer nor is subject to a disqualification as defined in the Exchange Rules, and has further assured itself that the compensation arrangement does not violate applicable foreign law;
- (2) the finders are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad;
- (3) the customers are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad transacting business in either foreign or U.S. securities;
- (4) customers receive a descriptive document, similar to that required by Rule 206(4)-3(b) of the Investment Advisers Act of 1940, that discloses what compensation is being paid to finders;
- (5) customers provide written acknowledgment to the member firm of the existence of the compensation arrangement and that such acknowledgment is retained and made available for inspection by the Exchange;

- (6) records reflecting payments to finders are maintained on the member firm's books and actual agreements between the member firm and persons compensated are available for inspection by the Exchange; and
- (7) the confirmation of each transaction indicates that a referral or finders fee is being paid pursuant to an agreement.

## **2100. General Standards**

### **2110. Renumbered**

#### **IM-2110-1. Deleted**

#### **IM-2110-2. Renumbered**

#### **IM-2110-3. Front Running Policy**

Nasdaq members and persons associated with a member shall comply with NASD Interpretive Material 2110-3 as if such Rule were part of Nasdaq's rules.

#### **IM-2110-4. Trading Ahead of Research Reports**

(a) No member shall use any facility of Nasdaq to establish, increase, decrease or liquidate an inventory position in a security or a derivative of such security based on nonpublic advance knowledge of the content or timing of a research report in that security.

(b) A member must establish, maintain and enforce policies and procedures reasonably designed to restrict or limit the information flow between research department personnel, or other persons with knowledge of the content or timing of a research report, and trading department personnel, so as to prevent trading department personnel from utilizing non-public advance knowledge of the issuance or content of a research report for the benefit of the member or any other person.

#### **IM-2110-5. Anti-Intimidation/ Coordination**

Nasdaq is issuing this interpretation to codify a longstanding policy. It is conduct inconsistent with just and equitable principles of trade for any member or person associated with a member to coordinate the prices (including quotations), trades, or trade reports of such member with any other member or person associated with a member; to direct or request another member to alter a price (including a quotation); or to engage, directly or indirectly, in any conduct that threatens, harasses, coerces, intimidates, or otherwise attempts improperly to influence another member or person associated with a member. This includes, but is not limited to, any attempt to influence another member or person associated with a member to adjust or maintain a price or quotation, whether displayed on any facility operated by Nasdaq or otherwise, or refusals to trade or other conduct that retaliates against or discourages the competitive activities of another market maker or market participant. Nothing in this interpretation respecting coordination of quotes, trades, or trade reports shall be deemed to limit, constrain, or otherwise inhibit the freedom of a member or person associated with a member to:



- (1) set unilaterally its own bid or ask in any Nasdaq security or other exchange-listed security traded on Nasdaq pursuant to unlisted trading privileges, the prices at which it is willing to buy or sell any Nasdaq or other exchange-listed security, and the quantity of shares of any Nasdaq or other exchange-listed security that it is willing to buy or sell;
- (2) set unilaterally its own dealer spread, quote increment, or quantity of shares for its quotations (or set any relationship between or among its dealer spread, inside spread, or the size of any quote increment) in any Nasdaq or other exchange-listed security;
- (3) communicate its own bid or ask, or the prices at or the quantity of shares in which it is willing to buy or sell any Nasdaq or other exchange-listed security to any person, for the purpose of exploring the possibility of a purchase or sale of the Nasdaq or other exchange-listed security, and to negotiate for or agree to such purchase or sale;
- (4) communicate its own bid or ask, or the price at or the quantity of shares in which it is willing to buy or sell any Nasdaq or other exchange-listed security, to any person for the purpose of retaining such person as an agent or subagent for the member or for a customer of the member (or for the purpose of seeking to be retained as an agent or subagent), and to negotiate for or agree to such purchase or sale;
- (5) engage in any underwriting (or any syndicate for the underwriting) of securities to the extent permitted by the federal securities laws;
- (6) take any unilateral action or make any unilateral decision regarding the market makers with which it will trade and the terms on which it will trade unless such action is prohibited by the second and third sentences of this Interpretation; and
- (7) deliver an order to another member for handling,

provided, however, that the conduct described in (1) through (7) is otherwise in compliance with all applicable law.

#### **IM-2110-6. Confirmation of Callable Common Stock**

Nasdaq members and persons associated with a member shall comply with NASD Interpretive Material 2110-6 as if such Rule were part of the Nasdaq rules.

#### **IM-2110-7. Deleted**

#### **2111. Renumbered**

#### **2120. Use of Manipulative, Deceptive or Other Fraudulent Devices**

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

#### **2130. Nasdaq Ownership Restriction**

(a) No member or person associated with a member shall be the beneficial owner of greater than twenty percent (20%) of the then-outstanding voting securities of The Nasdaq Stock Market, Inc.

(b) For purposes of this rule, any calculation of the number of shares of common stock outstanding at any particular time shall be made in accordance with the last sentence of SEC Rule 13d-3(d)(1)(i)(D). The term "beneficial owner" shall have the meaning set forth in the Restated Certificate of Incorporation of The Nasdaq Stock Market, Inc.

#### **2140. Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes**

(a) Exchange members and persons associated with a member shall comply with FINRA Rule 2140 as if such Rule were part of the Exchange's rules.

(b) For purposes of this Rule, references to Rule 11870 shall be construed as references to Nasdaq Rule 11870.

#### **2150. Customers' Securities or Funds**

(a) Nasdaq Members and persons associated with a member shall comply with FINRA Rule 2150 as if such Rule were part of Nasdaq's Rules.

(b) Nothing in FINRA Rule 2150, as applied to Nasdaq members and their associated persons, shall be construed to authorize any Nasdaq member or associated person to act in a manner inconsistent with Section 11(a) of the Act.

#### **IM-2150. Segregation of Customers' Securities**

(a) Nasdaq Members and persons associated with a member shall comply with FINRA Interpretive Material 2150 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule, references to Rule 2150 shall be construed as references to Nasdaq Rule 2150.

#### **2160. Restrictions on Affiliation**

(a) Except as provided in paragraph (b):

(1) Nasdaq or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in, or engage in a business venture with, a Nasdaq member or an affiliate of a Nasdaq member in the absence of an effective filing under Section 19(b) of the Act; and

(2) a Nasdaq member shall not be or become an affiliate of Nasdaq, or an affiliate of an entity affiliated with Nasdaq, in the absence of an effective filing under Section 19(b) of the Act.

The term "affiliate" shall have the meaning specified in Rule 12b-2 under the Act; provided, however, that for purposes of this Rule, one entity shall not be deemed to be an

affiliate of another entity solely by reason of having a common director. The term "business venture" means an arrangement under which (A) Nasdaq or an entity with which it is affiliated, and (B) a Nasdaq member or an affiliate of a Nasdaq member, engage in joint activities with an expectation of shared profit and a risk of shared loss from common entrepreneurial efforts.

**(b)** Nothing in this rule shall prohibit, or require a filing under Section 19(b) of the Act, for:

(1) a Nasdaq member or an affiliate of a Nasdaq member acquiring or holding an equity interest in The Nasdaq Stock Market, Inc. that is permitted by the ownership limitations contained in Nasdaq Rule 2130, or

(2) Nasdaq or an entity affiliated with Nasdaq acquiring or maintaining an ownership interest in, or engaging in a business venture with, an affiliate of a Nasdaq member if:

(A) there are information barriers between the member and Nasdaq and its facilities, such that the member

(i) will not be provided an informational advantage concerning the operation of Nasdaq and its facilities, and will not be provided changes or improvements to the trading system that are not available to the industry generally or other Nasdaq members;

(ii) will not have any knowledge in advance of other Nasdaq members of proposed changes, modifications, or improvements to the operations or trading systems of Nasdaq and its facilities, including advance knowledge of Nasdaq filings pursuant to Section 19(b) of the Act;

(iii) will be notified of any proposed changes, modifications, or improvements to the operations or trading systems of Nasdaq and its facilities in the same manner as other Nasdaq members are notified; and

(iv) will not share employees, office space, or databases with Nasdaq or its facilities, The Nasdaq Stock Market, Inc., or any entity that is controlled by The Nasdaq Stock Market, Inc.; and

(B) Nasdaq's Regulatory Oversight Committee certifies, on an annual basis, to the Director of the Division of Trading & Markets that Nasdaq has taken all reasonable steps to implement the requirements of this rule and is in compliance therewith.

**(c)** Nasdaq, Inc., which is the holding company owning the Exchange and Nasdaq Execution Services, LLC, shall establish and maintain procedures and internal controls

reasonably designed to ensure that Nasdaq Execution Services, LLC 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 routing to the Exchange.

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## **[2200. Communications with Customers and the Public**

### **2210. Communications with the Public**

(a) Nasdaq members and persons associated with a member shall comply with FINRA Rule 2210 (except FINRA Rule 2210(c)) 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 2210 by complying with FINRA Rule 2210 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Nasdaq Rule 2210 are being performed by FINRA on Nasdaq's behalf.

(b) For purposes of this Rule, references to Rule 2211 shall be construed as references to Nasdaq Rule 2211.

#### **IM-2210-1. Guidelines to Ensure That Communications With the Public Are Not Misleading**

Members and persons associated with a member shall comply with NASD Interpretive Material 2210-1 as if such Rule were part of Nasdaq's rules.

#### **IM-2210-2. Reserved**

#### **IM-2210-3. Reserved**

#### **IM-2210-4. Limitations on Use of Nasdaq's Name**

Members may indicate membership in Nasdaq in any communication with the public, provided that the communication complies with the applicable standards of Nasdaq Rule 2210 and neither states nor implies that Nasdaq, or any other corporate name or facility affiliated with Nasdaq, or any other regulatory organization, endorses, indemnifies, or guarantees the member's business practices, selling methods, the class or type of securities offered, or any specific security.

### **2211. Institutional Sales Material and Correspondence**

(a) Nasdaq Members and persons associated with a member shall comply with NASD Rule 2211 (except NASD Rule 2211(c) and (d)(3)) as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule:

(1) references to an "NASD member" shall be construed as references to a "Nasdaq member", and

(2) references to Rule 2210 and Rule 3110 shall be construed as references to Nasdaq Rule 2210 and Nasdaq Rule 3110, and references to Rule 3010(d) shall be construed as references to NASD Rule 3010(d), as incorporated into the Nasdaq Rules by Nasdaq Rule 3010.

**2212. Telemarketing**

Nasdaq members and persons associated with a member shall comply with NASD Rule 2212 as if such Rule were part of Nasdaq's Rules.

**2220. Reserved**

**2230. Reserved**

**2240. Deleted**

**2250. Proxy Materials**

**2251. Forwarding of Proxy and Other Issuer-Related Materials**

(a) Nasdaq Members shall comply with FINRA Rule 2251 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule, the guidance adopted by FINRA with respect to reasonable rates of reimbursement as provided in FINRA Rule 2251 and the accompanying supplementary material is hereby adopted as the guidance of the Nasdaq Board.

(c) For purposes of this Rule:

(1) references to FINRA shall be construed as references to Nasdaq, and

(2) references to Rule 2251 shall be construed as references to Nasdaq Rule 2251.

(d) Notwithstanding the foregoing, a Nasdaq Member that is not the beneficial owner of a security registered under Section 12 of the Act is prohibited from granting a proxy to vote the security in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule, unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner.

**2260. Deleted**

**IM-2260. Deleted**

**2261. Disclosure of Financial Condition**

Nasdaq Members shall comply with FINRA Rule 2261 as if such Rule were part of Nasdaq's Rules.

**2262. Disclosure of Control Relationship with Issuer**

Nasdaq Members shall comply with FINRA Rule 2262 as if such Rule were part of Nasdaq's Rules.

**2266. SIPC Information**

Nasdaq Members shall comply with FINRA Rule 2266 as if such Rule were part of Nasdaq's Rules.

**2269. Disclosure of Participation or Interest in Primary or Secondary Distribution**

Nasdaq Members shall comply with FINRA Rule 2269 as if such Rule were part of Nasdaq's Rules.

**2270. Deleted****2280. Reserved****2290. Fairness Opinions**

Nasdaq Members and persons associated with a member shall comply with NASD Rule 2290 as if such Rule were part of Nasdaq's Rules.

**2300. Transactions with Customers****2310. Renumbered****IM-2310-1. Deleted****IM-2310-2. Deleted****IM-2310-3. Deleted**

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**2320. Renumbered****IM-2320. Deleted****2330. Deleted****IM-2330. Deleted****2340. Customer Account Statements**

(a) Nasdaq Members shall comply with NASD Rule 2340 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule, references to Rule 2810, Rule 3110, and Rule 11860 shall be construed as references to Nasdaq Rule 2810, Nasdaq Rule 3110, and Nasdaq Rule 11860.

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

**2341. Margin Disclosure Statement**

(a) Nasdaq Members shall comply with NASD Rule 2341 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule, references to Rule 3110 shall be construed as references to Nasdaq Rule 3110.

**2342. Deleted**

**2350. Reserved**

**2360. Approval Procedures for Day-Trading Accounts**

(a) Nasdaq Members shall comply with FINRA Rule 2130 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule, references to Rule 2361 and Rule 3110 shall be construed as references to Nasdaq Rule 2361 and Nasdaq Rule 3110.

**2361. Day-Trading Risk Disclosure Statement**

(a) Nasdaq Members shall comply with FINRA Rule 2270 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 2361 by complying with FINRA Rule 2270 as written. Accordingly, Nasdaq members may submit an alternative disclosure statement to the FINRA's Advertising Department as provided in the FINRA Rule. Functions performed by FINRA, FINRA departments, and FINRA staff under FINRA Rule 2270 are being performed by FINRA on Nasdaq's behalf.

(b) For purposes of this Rule, references to Rule 2360 and Rule 3110 shall be construed as references to Nasdaq Rule 2360 and Nasdaq Rule 3110.

**2370. Borrowing From or Lending to Customers**

Nasdaq Members and persons associated with a member shall comply with FINRA Rule 3240 as if such Rule were part of Nasdaq's Rules.

**2400. Commissions, Mark-Ups and Charges**

**2410. Reserved**

**2420. Reserved**

**2430. Charges for Services Performed**

Nasdaq Members shall comply with NASD Rule 2430 as if such Rule were part of Nasdaq's Rules.

**2440. Reserved****2441. Net Transactions with Customers**

(a) Nasdaq Members shall comply with NASD Rule 2441 as if such Rule were part of the Nasdaq Rules.

(b) For purposes of this Rule, references to Rule 3110 shall be construed as references to Nasdaq Rule 3110.

**2450. Reserved****2460. Payments for Market Making**

(a) No member or person associated with a member shall accept any payment or other consideration, directly or indirectly, from an issuer of a security, or any affiliate or promoter thereof, for publishing a quotation, acting as market maker in a security, or submitting an application in connection therewith.

(b) The provisions of paragraph (a) shall not preclude a member from accepting:

(1) payment for bona fide services, including, but not limited to, investment banking services (including underwriting compensation and fees); and

(2) reimbursement of any payment for registration imposed by the Securities and Exchange Commission or state regulatory authorities and for listing of an issue of securities imposed by a self-regulatory organization.

(c) For purposes of this rule, the following terms shall have the stated meanings:

(1) "affiliate"

(A) The term "affiliate" shall mean a company which controls, is controlled by, or is under common control with a member;

(B) The term affiliate is presumed to include, but is not limited to, the following for purposes of subparagraph (A), above:

(i) a company will be presumed to control a member if the company beneficially owns 10 percent or more of the outstanding voting securities of a member which is a corporation, or beneficially owns a partnership interest in 10 percent or more of the distributable profits or losses of a member which is a partnership;

(ii) a member will be presumed to control a company if the member and persons associated with the member beneficially own 10 percent or more of the outstanding



voting securities of a company which is a corporation, or beneficially own a partnership interest in 10 percent or more of the distributable profits or losses of a company which is a partnership;

**(iii)** a company will be presumed to be under common control with a member if:

**a.** The same natural person or company controls both the member and company by beneficially owning 10 percent or more of the outstanding voting securities of a member or company which is a corporation, or by beneficially owning a partnership interest in 10 percent or more of the distributable profits or losses of a member or company which is a partnership; or

**b.** A person having the power to direct or cause the direction of the management or policies of the member or the company also has the power to direct or cause the direction of the management or policies of the other entity in question.

**(C)** The provisions of subparagraphs (A) and (B) hereof notwithstanding, none of the following shall be presumed to be an affiliate of a member for purposes of this Rule:

**(i)** an investment company registered with the Commission pursuant to the Investment Company Act of 1940, as amended;

**(ii)** a "separate account" as defined in Section 2(a)(37) of the Investment Company Act of 1940, as amended;

**(iii)** a "real estate investment trust" as defined in Section 856 of the Internal Revenue Code;

**(iv)** a "direct participation program" as defined in Rule 2810; and

**(v)** a corporation, trust, partnership or other entity issuing financing instrument-backed securities which are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories.

**(2)** "promoter" means any person who founded or organized the business or enterprise of an issuer, is a director or employee of an issuer, acts or has acted as a consultant, advisor, accountant or attorney to an issuer, is the beneficial owner of any of an issuer's securities that are considered "restricted securities" under Rule 144, or is the beneficial owner of five percent (5%) or more of the public float of any class of an issuer's securities, and any other person with a similar interest in promoting the entry of quotations or market making in an issuer's securities; and

**(3)** "quotation" shall mean any bid or offer at a specified price with respect to a security, or any indication of interest by a member in receiving bids or offers from others for a security, or an indication by a member that he wishes to advertise his general interest in buying or selling a particular security.

**IM-2460-1. Market Quality Program**

This Rule 2460 is not applicable to a member that is accepted into the Market Quality Program pursuant to Rule 5950 or to a person that is associated with such member for their conduct in connection with that program.

**2500. Special Accounts****2510. Discretionary Accounts**

(a) Nasdaq Members shall comply with NASD Rule 2510 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of applying this Rule, references to Rule 3010 and Rule 3110 shall be construed as references to Nasdaq Rule 3010 and Nasdaq Rule 3110.

**2520. Margin Requirements**

(a) A member that is not designated to Nasdaq for oversight pursuant to SEC Rule 17d-1 shall comply with the initial and maintenance margin requirements of Regulation T and the self-regulatory organization to which the member is designated for oversight pursuant to SEC Rule 17d-1. Members shall comply with Regulation T and such self-regulatory organization rules, and shall submit to such self-regulatory organization any filings required thereunder, in each case as if such rules were part of Nasdaq's rules.

(b) A member designated to Nasdaq for oversight pursuant to SEC Rule 17d-1 shall comply with the initial and maintenance margin requirements of Regulation T and the NASD Rule 2520 as if such Rules were part of Nasdaq's Rules.

(c) 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 2520 by complying with NASD Rule 2520 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Nasdaq Rule 2520 are being performed by FINRA on Nasdaq's behalf.

(d) Pursuant to the Rule 9600 Series, Nasdaq may exempt any member from the requirements contained in paragraph (e)(3) of NASD Rule 2520, as applied to Nasdaq members through Nasdaq Rule 2520, if the account referenced in paragraph (e)(3) of NASD Rule 2520 is confined exclusively to transactions and positions in exempted securities.

**2600. Reserved**

**2700. Reserved**

**2800. Special Products**

**2810. Deleted**

**2820. Reserved]**

\* \* \* \* \*

**[2854. Reserved**

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

**2910. Deleted**

**2000A. Business Conduct**

**2010A. Standards of Commercial Honor and Principles of Trade**

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

**2070A. Transactions Involving Nasdaq Employees**

(a) When a member has actual notice that a Nasdaq employee has a financial interest in, or controls trading in, an account, the member shall promptly obtain and implement an instruction from the employee directing that duplicate account statements be provided by the member to Nasdaq.

(b) No member shall directly or indirectly make any loan of money or securities to any Nasdaq employee. Provided, however, that this prohibition does not apply to loans made in the context of disclosed, routine banking and brokerage agreements, or loans that are clearly motivated by a personal or family relationship.

(c) Notwithstanding the annual dollar limitation set forth in Nasdaq Rule 3220A, no member shall directly or indirectly give, or permit to be given, anything of more than nominal value to any Nasdaq employee who has responsibility for a regulatory matter that involves the member. For purposes of this subsection, the term "regulatory matter" includes, but is not limited to, examinations, disciplinary proceedings, membership applications, listing applications, delisting proceedings, and dispute-resolution proceedings that involve the member.

**2090A. Know Your Customer**

Nasdaq members shall comply with FINRA Rule 2090 as if such rule were part of Nasdaq's rules.

**2111A. Suitability**

(a) Nasdaq members and associated persons of a member shall comply with FINRA Rule 2111 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule:

(1) References to Rules 2111 and 4512 shall be construed as references to Nasdaq Rules 2111A and 4512A, respectively;

(2) References to "FINRA's rules" shall be construed as references to "Nasdaq Rules";  
and

(3) References to IM-2210-6 shall be disregarded, and no comparable Nasdaq Rule shall apply to activities of Nasdaq Members in connection with investment analysis tools.

### **3000. Responsibilities Relating to Associated Persons, Employees, and Others' Employees**

#### **3010. Supervision**

##### **Supervision**

(a) Each member shall establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable Nasdaq rules. Nasdaq members shall comply with NASD Rule 3010 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 3010 by complying with NASD Rule 3010 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Nasdaq Rule 3010 are being performed by FINRA on behalf of Nasdaq.

(b) For purposes of this Rule:

(1) references to "NASD Rules", "rules of NASD", or "Rules of this Association" shall be construed as references to "Nasdaq Rules",

(2) the term "registered person" in NASD Rule 3010(b)(2)(I) shall be defined as any person registered with Nasdaq as a representative, principal, or assistant representative pursuant to the General 4, Section 1.1200 Series of the Nasdaq Rules,

(3) references to Article V, Section 3 of the Association's By-Laws shall be construed as references to Nasdaq General 4, Section 1.1210,

(4) references to Rule 2210 and Rule 3110 shall be construed as references to Nasdaq Rule 2210 and Nasdaq Rule 3110, and

(5) references to registration with NASD or the Association shall be construed as references to registration with Nasdaq.

(c) Pursuant to the Rule 9600 Series, Nasdaq may in exceptional circumstances, taking into consideration all relevant factors, exempt any member unconditionally or on specified terms and conditions from the requirements contained in paragraph (b)(2) of NASD Rule 3010, as applied to Nasdaq members through Nasdaq Rule 3010. A member seeking an exemption must file a written application pursuant to the Rule 9600 Series within 30 days after receiving notice or obtaining actual knowledge that it meets one of the criteria in paragraph (b)(2)(H) of NASD Rule 3010. A member that meets one of the criteria in paragraph (b)(2)(H) for the first time may elect to reduce its staffing levels pursuant to the provisions of paragraph (b)(2)(B) of NASD Rule 3010 or, alternatively, to

seek an exemption hereunder, as appropriate; such a member may not seek relief from the Rule by both reducing its staffing levels pursuant to paragraph (b)(2)(B) and requesting an exemption.

#### **IM-3010-1. Standards for Reasonable Review**

**(a) Nasdaq members and persons associated with a member shall comply**

**(a)** Nasdaq members and persons associated with a member shall comply with NASD Interpretive Material IM-3010-1 as if such Rule were part of Nasdaq's Rules.

**(b)** For purposes of this Rule:

**(1)** references to Rule 3010 shall be construed as references to Nasdaq Rule 3010; and

**(2)** references to "NASD Rules" shall be construed as references to "Nasdaq Rules".

#### **IM-3010-2. Guidance on Heightened Supervision Requirements**

Nasdaq members shall comply with NASD Notice to Members 97-19 as if such Rule were part of Nasdaq's Rules.

#### **3011. Anti-Money Laundering Compliance Program**

Nasdaq Members and persons associated with a member shall comply with FINRA Rule 3310 as if such Rule were part of Nasdaq's rules.

##### **.01 Independent Testing Requirements**

Nasdaq members and persons associated with a member shall comply with FINRA Rule 3310.01 as if such Rule were part of Nasdaq's Rules. For purposes of this Rule, references to FINRA Rule 3310 shall be construed as references to Nasdaq Rule 3011.

##### **.02 Review of Anti-Money Laundering Compliance Person Information**

Each Nasdaq member must review and, if necessary, update the information regarding its anti-money laundering compliance person designated pursuant to Rule 3011 in the manner prescribed by Rule 1160.

#### **3012. Supervisory Control System**

**(a)** Members and persons associated with a member shall comply with NASD Rule 3012 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 3012 by complying with NASD Rule 3012 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Nasdaq Rule 3012 are being performed by FINRA on behalf of Nasdaq.

(b) For purposes of this Rule, references to "NASD Rules" shall be construed as references to "Nasdaq Rules".

**3013. Annual Certification of Compliance and Supervisory Processes**

(a) Nasdaq Members and persons associated with a member shall comply with NASD Rule 3013 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule:

(1) references to "NASD Rules" shall be construed as references to "Nasdaq Rules",

(2) references to IM-3013 shall be construed as references to Nasdaq IM-3013, and

(3) references to "MSRB rules" shall be deleted.

**IM-3013. Annual Compliance and Supervision Certification**

(a) Nasdaq Members and persons associated with a member shall comply with NASD Interpretive Material IM-3013 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule:

(1) references to "NASD Rules" shall be construed as references to "Nasdaq Rules",

(2) references to NASD Rule 3013 and Rule 2110 shall be construed as references to Nasdaq Rule 3013 and Nasdaq Rule 2110,

(3) references to "NASD members" shall be construed as references to "Nasdaq Members",

(4) references to "the NASD Board of Governors" shall be construed as references to "the Board of Directors of The Nasdaq Stock Market LLC", and

(5) references to "MSRB rules" shall be deleted.

**3020. Fidelity Bonds**

(a) Each member required to join the Securities Investor Protection Corporation who has employees and who is a member in good standing of another self-regulatory organization shall follow the applicable fidelity bond rule of the self-regulatory organization to which it is designated by the Commission for financial responsibility pursuant to Section 17 of the Act and SEC Rule 17d-1 thereunder.

(b) A member designated to Nasdaq for oversight pursuant to SEC Rule 17d-1 shall comply with FINRA Rule 4360 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 3020 by complying with FINRA Rule 4360 as written, including, for example, filing requirements and notifications. In addition, functions

performed by FINRA, FINRA departments, and FINRA staff under Nasdaq Rule 3020 are being performed by FINRA on behalf of Nasdaq.

(c) For purposes of this Rule:

(1) references to an "Association member" shall be construed as references to a "Nasdaq member", and

(2) references to Article I, paragraph (q) of the By-Laws shall be construed as references to Nasdaq Rule 1011,

(d) Pursuant to the Rule 9600 Series, any member subject to paragraph (c) of FINRA Rule 4360, through the application of Nasdaq Rule 3020(b), may apply to Nasdaq for an exemption from such requirements. The exemption may be granted upon a showing of good cause, including a substantial change in the circumstances or nature of the member's business that results in a lower net capital requirement. Nasdaq may issue an exemption subject to any condition or limitation upon a member's bonding coverage that is deemed necessary to protect the public and serve the purposes of this Rule.

### **3030. Outside Business Activities of an Associated Person**

(a) Nasdaq Members and persons associated with a member shall comply with NASD Rule 3030 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule, references to Rule 3040 shall be construed as references to Nasdaq Rule 3040.

### **3040. Private Securities Transactions of an Associated Person**

(a) Nasdaq Members and persons associated with a member shall comply with NASD Rule 3040 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule:

(1) references to Rule 3050 shall be construed as references to Nasdaq Rule 3050, and

(2) references to "immediately family members (as defined in Rule 2790)" shall be construed to mean a person's parents, mother-in-law or father-in-law, spouse, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, and children, and any other individual to whom the person provides material support.

### **3050. Transactions for or by Associated Persons**

Nasdaq Members and persons associated with a member shall comply with NASD Rule 3050 as if such Rule were part of Nasdaq's Rules.

### **3060. Renumbered**

### **3070. Reporting Requirements**

(a) Nasdaq Members and persons associated with a member shall comply with NASD Rule 3070 (excluding NASD Rule 3070(g)) 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 3070 by complying with NASD Rule 3070 as written (excluding Rule 3070(g)), including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Nasdaq Rule 3070 are being performed by FINRA on behalf of Nasdaq.

(b) For purposes of this Rule, the requirement of NASD Rule 3070(d) to respond to NASD with respect to any customer complaint, examination, or inquiry shall be construed as a requirement to respond to FINRA and Nasdaq.

#### **3080. Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4**

Nasdaq Members shall comply with FINRA Rule 2263 as if such Rule were part of Nasdaq's Rules. In lieu of incorporating in the written statement the language in paragraph (2) of FINRA Rule 2263, members shall include the following provision:

A claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute is not required to be arbitrated under Nasdaq rules. Such a claim may be arbitrated under Nasdaq rules only if the parties have agreed to arbitrate it, either before or after the dispute arose. The rules of other arbitration forums may be different.

#### **3090. Renumbered**

#### **3100. Books and Records, and Financial Condition**

#### **3110. Renumbered**

#### **IM-3110. Deleted**

#### **3120. Use of Information Obtained in Fiduciary Capacity**

Nasdaq Members shall comply with NASD Rule 3120 as if such Rule were part of Nasdaq's Rules.

#### **3121. Deleted**

#### **3130. Deleted**

#### **IM-3130. Deleted**

#### **3140. Approval of Change in Exempt Status Under SEC Rule 15c3-3**

(a) Application — For the purposes of this Rule, the term "member" shall be limited to any member of Nasdaq who is subject to SEC Rule 15c3-3 and is not designated to another self-regulatory organization by the Commission for financial responsibility pursuant to Section 17 of the Act and SEC Rule 17d-1 promulgated thereunder. Further, the term shall not be applicable to any member that is subject to Section 402.2(c) of the rules of the Treasury Department.



(b) A member operating pursuant to any exemptive provision as contained in subparagraph (k) of SEC Rule 15c3-3 under the Act (Rule 15c3-3), shall not change its method of doing business in a manner which will change its exemptive status from that governed by subparagraph (k)(1) or (k)(2)(ii) to that governed by subparagraph (k)(2)(i); or from subparagraph (k)(1), (k)(2)(i) or (k)(2)(ii) to a fully computing firm that is subject to all provisions of Rule 15c3-3; or commence operations that will disqualify it for continued exemption under Rule 15c3-3 without first having obtained the prior written approval of Nasdaq

(c) In making the determination as to whether to approve, deny in whole or in part an application made pursuant to paragraph (b), Nasdaq staff shall consider among other things the type of business in which the member is engaged, the training, experience and qualifications of persons associated with the member, the member's procedures for safeguarding customer funds and securities, the member's overall financial and operational condition and any other information deemed relevant in the particular circumstances and the time these measures would remain in effect.

### **3150. Reporting Requirements for Clearing Firms**

(a) Nasdaq Members shall comply with NASD Rule 3150 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 3150 by complying with NASD Rule 3150 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Nasdaq Rule 3150 are being performed by FINRA on behalf of Nasdaq.

(b) Pursuant to the Rule 9600 Series, Nasdaq may in exceptional and unusual circumstances, taking into consideration all relevant factors, exempt a member or class of members unconditionally or on specified terms and conditions from any or all of the provisions of this Rule that it deems appropriate.

### **IM-3150. Exemptive Relief**

(a) Upon written request for exemptive relief pursuant to the Rule 9600 Series, Nasdaq generally will grant an exemption from the reporting requirements of Rule 3150 to a self-clearing firm that:

(1) derives, on an annualized basis, at least 85 percent of its revenue from transactions in fixed income securities;

(2) conducts an institutional business that settles transactions on an RVP/DVP basis, provided that such exemption from reporting shall apply only with respect to such institutional business unless Nasdaq determines that any other remaining business otherwise qualifies for an exemption under this IM-3150 or is de minimis in nature; or

(3) does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts (e.g., that engages solely

in proprietary trading, or that conducts business only with other broker-dealers or any other non-customer counter-parties).

(b) Upon written request for exemptive relief pursuant to the Rule 9600 Series, Nasdaq also generally will grant an exemption to a clearing firm with respect to one or more of the introducing firms for which it clears if the introducing firm meets one of the above-stated grounds for exemptive relief.

(c) Any self-clearing firm that, due to a change in the facts pertaining to the operation and nature of its business or the operation and nature of the business of a firm for which it clears, as applicable, no longer qualifies for an exemption previously granted by Nasdaq from the reporting requirements of Rule 3150 must promptly report such change in circumstances to Nasdaq and NASD, Department of Member Regulation, and commence compliance with the reporting requirements of Rule 3150.

### **3160. Extensions of Time Under Regulation T and SEC Rule 15c3-3**

A member designated to Nasdaq for oversight pursuant to SEC Rule 17d-1 shall comply with NASD Rule 3160 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 3160 by complying with NASD Rule 3160 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Nasdaq Rule 3160 are being performed by FINRA on behalf of Nasdaq.

### **3200. Settlements**

#### **3210. Reserved]**

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### **[3500. Emergency Preparedness**

#### **3510. Business Continuity Plans**

(a) Nasdaq Members shall comply with NASD Rule 3510 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 3510 by complying with NASD Rule 3510 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Nasdaq Rule 3510 are being performed by FINRA on behalf of Nasdaq.

#### **3520. Emergency Contact Information**

(a) Each member shall report to Nasdaq, via such electronic or other means as Nasdaq may specify, prescribed emergency contact information for the member. The emergency contact information for the member includes designation of two emergency contact

persons. Each emergency contact person shall be a member of senior management and a registered principal of the member.

**(b)** Each member must promptly update its emergency contact information, via such electronic or other means as Nasdaq may specify, in the event of any material change. With respect to designated emergency contact persons, each member must identify, review, and, if necessary, update such designations in the manner prescribed by Nasdaq Rule 1160.

### **3000A. SUPERVISION AND RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS**

#### **3110A. Books and Records**

##### **Books and Records**

Nasdaq members shall comply with NASD Rule 3110 (or any successor FINRA rule) as if such rule were part of Nasdaq's rules.

#### **3220A. Influencing or Rewarding Employees of Others**

##### **Influencing or Rewarding Employees of Others**

Nasdaq Members and persons associated with a member shall comply with FINRA Rule 3220 as if such Rule were part of Nasdaq's Rules.]

\* \* \* \* \*

### **[4000A. FINANCIAL AND OPERATIONAL RULES**

#### **4100A. FINANCIAL CONDITION**

##### **4110A. Capital Compliance**

(a) A member designated to Nasdaq for oversight pursuant to SEC Rule 17d-1 shall comply with FINRA Rule 4110 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule, references to Rule 9557 shall be construed as references to Nasdaq Rule 9557.

##### **4120A. Regulatory Notification and Business Curtailment**

(a) A member designated to Nasdaq for oversight pursuant to SEC Rule 17d-1 shall comply with FINRA Rule 4120 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule, references to Rule 9557 shall be construed as references to Nasdaq Rule 9557.

##### **4140A. Audit**

(a) A member designated to Nasdaq for oversight pursuant to SEC Rule 17d-1 shall comply with FINRA Rule 4140 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule, references to Rule 9557 shall be construed as references to Nasdaq Rule 9557.

#### **4500A. BOOKS, RECORDS AND REPORTS**

##### **4510A. Books and Records Requirements**

###### **4511A. General Requirements**

(a) Nasdaq members and persons associated with a member shall comply with FINRA Rule 4511 as if such Rule were part of the Nasdaq rules.

(b) For purposes of this Rule, references to "FINRA rules" shall be construed as references to "Nasdaq rules" and references to "FINRA books and records" shall be construed as references to "Nasdaq books and records".4512A. Customer Account Information

(a) Nasdaq members and persons associated with a member shall comply with FINRA Rule 4512 as if such Rule were part of the Nasdaq rules.

(b) For purposes of this Rule:

(1) references to NASD 2510 (or any successor FINRA rule) shall be construed as references to Nasdaq Rule 2510;

(2) references to Rules 2070, 2090, and 4512 shall be construed as references to Nasdaq Rules 2070A, 2090A, and 4512A, respectively;

(3) references to "a prior FINRA rule" shall be construed as references to "a FINRA or Nasdaq rule in effect prior to the effectiveness of FINRA Rule 4512";

(4) 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 4512A by complying with FINRA Rule 4512 as written, including, for example, providing information required by FINRA staff. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Nasdaq Rule 4512A are being performed by FINRA on behalf of Nasdaq.

###### **4513A. Records of Written Customer Complaints**

Nasdaq members and persons associated with a member shall comply with FINRA Rule 4513 as if such Rule were part of the Nasdaq rules.

###### **4514A. Authorization Records for Negotiable Instruments Drawn From a Customer's Account**

Nasdaq members and persons associated with a member shall comply with FINRA Rule 4514 as if such Rule were part of the Nasdaq rules.

**4515A. Approval and Documentation of Changes in Account Name or Designation**

(a) Nasdaq members and persons associated with a member shall comply with FINRA Rule 4515 as if such Rule were part of the Nasdaq rules.

(b) For purposes of this rule, references to NASD Rule 2510 (or any successor FINRA rule) shall be construed as references to Nasdaq Rule 2510.

**4520A. Financial Records and Reporting Requirements****4521A. Notifications, Questionnaires and Reports**

(a) A member designated to Nasdaq for oversight pursuant to SEC Rule 17d-1 shall comply with FINRA Rule 4521 as if such Rule were part of Nasdaq's Rules.]

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**[5000A. NASDAQ SUPPLEMENTARY CONDUCT RULES****5230A. Payments Involving Publications that Influence the Market Price of a Security**

(a) Except as provided in paragraph (b), no member shall, directly or indirectly, give, permit to be given, or offer to give, anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any electronic or other public media, including any investment service or similar publication, Web site, newspaper, magazine or other periodical, radio, or television program of any matter that has, or is intended to have, an effect upon the market price of any security.

(b) The prohibitions in paragraph (a) shall not apply to compensation paid to a person in connection with the publication or circulation of:

- (1) a communication that is clearly distinguishable as paid advertising;
- (2) a communication that discloses the receipt of compensation and the amount thereof in accordance with Section 17(b) of the Securities Act; or
- (3) a research report, as that term is defined in NASD Rule 2711.

FINRA is in the process of consolidating certain NASD rules into a new FINRA rulebook. If the provisions of NASD Rule 2711 are transferred into the FINRA rulebook, then Rule 2711 shall be construed to require Exchange members to comply with the FINRA rule corresponding to NASD Rule 2711 (regardless of whether such rule is renumbered or amended) as if such rule were part of the Rules of the Exchange.

**5310A. Best Execution and Interpositioning**

(a) Nasdaq Members shall comply with FINRA Rule 5310 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule:

(1) References to NASD Rule 2440 and IM-2440 shall be disregarded;

(2) References to FINRA members shall be construed as references to Nasdaq members; and

(3) References to FINRA shall be construed as references to Nasdaq.

**5320A. Prohibition Against Trading Ahead of Customer Orders**

(a) Nasdaq members and persons associated with a member shall comply with FINRA Rule 5320 as if such Rule were part of Nasdaq's rules.

(b) For purposes of this Rule:

(1) references to Rules 4512, 5310, 5320, and 7440 shall be construed as references to Nasdaq Rules 4512A, 5310A, 5320A, and Equity 5, Section 4, respectively;

(2) Rule 5320.02(b) and the reference to Rule 6420 therein shall be disregarded,

(3) references to "FINRA" shall be construed as references to "Nasdaq".

(4) Nasdaq members and persons associated with a member relying upon the exemption set forth in FINRA Rule 5320.03 shall comply with the reporting requirements stated therein. 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 5320A.03 by complying with FINRA Rule 5320.03 as written, including, for example, reporting requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Nasdaq Rule 5320A.03 are being performed by FINRA on behalf of Nasdaq.]

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**[Procedural Rules (8000-11000)**

**Investigations and Sanctions (8000)**

**8000. Investigations and Sanctions**

**8001. Regulation of Nasdaq and its Members**

Nasdaq and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions described in these rules on behalf of Nasdaq. Nasdaq rules that refer to Nasdaq Regulation Department, Nasdaq Regulation staff, Nasdaq staff, and Nasdaq departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of Nasdaq pursuant to the FINRA Regulatory Contract.

Notwithstanding the fact that Nasdaq has entered into the Regulatory Contract with FINRA to perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions.

### **8100. General Provisions**

#### **8110. Availability of Manual to Customers**

Members shall keep and maintain current paper or electronic copies of the FINRA and Nasdaq Manuals in a readily accessible place and shall make them available for examination by customers upon request.

#### **8120. Definitions**

(a) Unless otherwise provided, terms used in the Rule 8000 Series shall have the meaning as defined in Rule 0120.

(b) The term "Adjudicator" shall have the meaning as defined in Rule 9120.

### **8200. Investigations**

#### **8210. Provision of Information and Testimony and Inspection and Copying of Books**

##### **(a) Authority of the Nasdaq Regulation Department, Including FINRA Staff**

For the purpose of an investigation, complaint, examination, or proceeding authorized by the Nasdaq By-Laws or Rules, Nasdaq Regulation Department, including FINRA staff shall have the right to:

(1) require a member, person associated with a member, or person subject to Nasdaq's jurisdiction to provide information orally, in writing, or electronically (if the requested information is, or is required to be, maintained in electronic form) and to testify at a location specified by Nasdaq Regulation Department, including FINRA staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation, complaint, examination, or proceeding; and

(2) inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding.

##### **(b) Other SROs and Regulators**

Nasdaq Regulation Department, including FINRA staff, also may exercise the authority set forth in paragraph (a) for the purpose of an investigation, complaint, examination, or proceeding conducted by another domestic or foreign self-regulatory organization, association, securities or contract market, or regulator of such markets with which Nasdaq has entered into an agreement providing for the exchange of information and

other forms of material assistance solely for market surveillance, investigative, enforcement, or other regulatory purposes.

**(c) Requirement to Comply**

No member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule.

**(d) Notice**

A notice under this Rule shall be deemed received by the member or person to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the member or the last known residential address of the person as reflected in the Central Registration Depository. If Nasdaq Regulation Department staff, including FINRA staff, responsible for mailing or otherwise transmitting the notice to the member or person has actual knowledge that the address in the Central Registration Depository is out of date or inaccurate, then a copy of the notice shall be mailed or otherwise transmitted to:

**(1)** the last known business address of the member or the last known residential address of the person as reflected in the Central Registration Depository, and

**(2)** any other more current address of the member or the person known to the Adjudicator or Nasdaq Regulation Department, including FINRA staff who is responsible for mailing or otherwise transmitting the notice.

**(e) Electronic Interface**

In carrying out its responsibilities under this Rule, Nasdaq may, as appropriate, establish programs for the submission of information to FINRA on a regular basis through a direct or indirect electronic interface between FINRA and Nasdaq members.

**(f) Inspection and Copying**

A witness, upon proper identification, may inspect the official transcript of the witness' own testimony. Upon written request, a person who has submitted documentary evidence or testimony in an investigation may procure a copy of the person's documentary evidence or the transcript of the person's testimony upon payment of the appropriate fees, except that prior to the issuance of a complaint arising from the investigation, Nasdaq Regulation Department, including FINRA staff, may for good cause deny such request.

**8211. Automated Submission of Trading Data**

**(a)** A member shall submit the trade data specified below in automated format as may be prescribed by the Nasdaq Regulation Department, including FINRA staff, from time to time. This information shall be supplied with respect to any transaction or transactions



that are the subject of a request for information made by Nasdaq Regulation Department, including FINRA staff.

**(b)** If the transaction was a proprietary transaction effected or caused to be effected by the member for any account in which such member, or person associated with a member, is directly or indirectly interested, such member shall submit or cause to be submitted the following information:

- (1)** Clearing house number, or alpha symbol as used by the member submitting the data;
- (2)** Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the members(s) on the opposite side of the transaction;
- (3)** Identifying symbol assigned to the security;
- (4)** Date transaction was executed;
- (5)** Number of shares, or quantity of bonds or options contracts for each specific transaction and whether each transaction was a purchase, sale, short sale, or, if an options contract, whether open long or short or close long or short;
- (6)** Transaction price;
- (7)** Account number; and
- (8)** Market center where transaction was executed.

**(c)** If the transaction was effected or caused to be effected by the member for any customer account, such member shall submit or cause to be submitted the following information:

- (1)** The data described in subparagraphs (b)(1) through (8) above;
- (2)** The customer name, address(es), branch office number, registered representative number, whether order was solicited or unsolicited, date account opened, employer name, and the tax identification number(s); and
- (3)** If the transaction was effected for another member, whether the other member was acting as principal or agent.
- (d)** In addition to the above trade data, a member shall submit such other information in such automated format as may from time to time be required by Nasdaq Regulation Department.

**(e)** Pursuant to the Rule 9600 Series, Nasdaq may exempt a member from the requirement that the data prescribed in paragraphs (b) through (d) above be submitted to

Nasdaq Regulation Department, including FINRA staff, in an automated format for good cause shown.

**8212. Reserved**

**8213. Reserved**

**8220. Reserved**

**8300. Sanctions**

**8310. Sanctions for Violation of the Rules**

**(a) Imposition of Sanction**

After compliance with the Rule 9000 Series, Nasdaq may impose one or more of the following sanctions on a member or person associated with a member for each violation of the federal securities laws, rules or regulations thereunder, or Rules of Nasdaq, or may impose one or more of the following sanctions on a member or person associated with a member for any neglect or refusal to comply with an order, direction, or decision issued under the Rules of Nasdaq:

- (1)** censure a member or person associated with a member;
- (2)** impose a fine upon a member or person associated with a member;
- (3)** suspend the membership of a member or suspend the registration of a person associated with a member for a definite period or a period contingent on the performance of a particular act;
- (4)** expel a member, cancel the membership of a member, or revoke or cancel the registration of a person associated with a member;
- (5)** suspend or bar a member or person associated with a member from association with all members;
- (6)** impose a temporary or permanent cease and desist order against a member or a person associated with a member; or
- (7)** impose any other fitting sanction.

**(b) Assent to Sanction**

Each party to a proceeding resulting in a sanction shall be deemed to have assented to the imposition of the sanction unless such party files a written application for appeal, review, or relief pursuant to the Rule 9000 Series.

**IM-8310-1. Effect of a Suspension, Revocation, Cancellation, or Bar**

If Nasdaq or the Commission issues an order that imposes a suspension, revocation, or cancellation of the registration of a person associated with a member or bars a person from further association with any member, a member shall not allow such person to remain associated with it in any capacity, including a clerical or ministerial capacity. If Nasdaq or the Commission suspends a person associated with a member, the member also shall not pay or credit any salary, or any commission, profit, or other remuneration that results directly or indirectly from any securities transaction, that the person associated with a member might have earned during the period of suspension.

#### **IM-8310-2. Reserved**

#### **IM-8310-3. Release of Disciplinary Complaints, Decisions and Other Information**

**(a)** Nasdaq Regulation Department shall, in response to a request, release to the requesting party a copy of any identified disciplinary complaint or disciplinary decision issued by Nasdaq or any committee thereof; provided, however, that each copy of:

**(1)** a disciplinary complaint shall be accompanied by the following statement: "The issuance of a disciplinary complaint represents the initiation of a formal proceeding by Nasdaq in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, you may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint."

**(2)** a disciplinary decision that is released prior to the expiration of the time period provided under the Rule 9000 Series for appeal or call for review within Nasdaq or while such an appeal or call for review is pending, shall be accompanied by a statement that the findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by Nasdaq;

**(3)** a final decision of Nasdaq that is released prior to the time period provided under the Act for appeal to the Commission or while such an appeal is pending, shall be accompanied by a statement that the findings and sanctions of Nasdaq are subject to review and modification by the Commission; and

**(4)** a final decision of Nasdaq that is released after the decision is appealed to the Commission shall be accompanied by a statement as to whether the effectiveness of the sanctions has been stayed pending the outcome of proceedings before the Commission.

**(b)** (1) Nasdaq Regulation Department shall release to the public information with respect to any disciplinary complaint initiated by the Department of Enforcement, as defined in Rule 9120(f), containing an allegation of a violation of a designated statute, rule or regulation of the Commission or Nasdaq, as determined by the Chief Regulatory Officer of Nasdaq (a "Designated Rule"); and may also release such information with respect to any disciplinary complaint or group of disciplinary complaints that involve a significant policy or enforcement determination where the release of information is deemed by the Chief Regulatory Officer to be in the public interest.

**(2)** Information released to the public pursuant to paragraph (b)(1) shall be accompanied by the statement required under paragraph (a)(1).

**(c)** (1) Nasdaq Regulation Department shall release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of \$10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the Chief Regulatory Officer to be in the public interest. Nasdaq Regulation Department also may release to the public information with respect to any decision issued pursuant to the Rule 9550 Series imposing a suspension or cancellation of the member or a suspension or bar of the association of a person with a member, unless Nasdaq Regulation Department determines otherwise. Nasdaq Regulation Department may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary or other decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice. Nasdaq Regulation Department also shall release to the public information with respect to any temporary cease and desist order issued pursuant to the Rule 9800 Series. Nasdaq Regulation Department may release to the public information on any disciplinary or other decision issued pursuant to the Rule 9000 Series, not specifically enumerated in this paragraph, regardless of sanctions imposed, so long as the names of the parties and other identifying information is redacted.

**(A)** Nasdaq Regulation Department shall release to the public, in unredacted form, information with respect to any disciplinary decision issued pursuant to the Rule 9300 Series that does not meet one or more of the criteria in IM-8310-3(c)(1) for the release of information to the public, provided that the underlying decision issued pursuant to the Rule 9200 Series meets one or more of the criteria in IM-8310-3(c)(1) for the release of information to the public, and information regarding such decision has been released to the public in unredacted form.

**(B)** In the event there is more than one respondent in a disciplinary decision issued pursuant to the Rule 9000 Series, and sanctions imposed on one or more, but not all, of the respondents meet one or more of the criteria in IM-8310-3(c)(1) for the release of information to the public, Nasdaq Regulation Department shall release to the public, in unredacted form, information with respect to the respondent(s) who meet such criteria, and may release to the public, in redacted form, information with respect to the respondent(s) who do not meet such criteria. Notwithstanding the foregoing, Nasdaq Regulation Department shall release to the public, in unredacted form, information with respect to any respondent in a disciplinary decision issued pursuant to the Rule 9300 Series if the sanctions imposed on such respondent in the underlying decision issued

pursuant to the Rule 9200 Series meet one or more of the criteria for release of information to the public, and information with respect to that respondent has been released in unredacted form.

**(2)** Information released to the public pursuant to paragraph (c)(1) shall be accompanied by a statement to the extent required for that type of information under paragraphs (a)(2)-(4).

**(d)** If a decision issued pursuant to the Rule 9000 Series other than by the Nasdaq Review Council is not appealed to or called for review by the Nasdaq Review Council, the decision shall become effective on a date set by Nasdaq Regulation Department but not before the expiration of 45 days after the date of decision.

**(e)** Notwithstanding paragraph (d), expulsions and bars imposed pursuant to the provisions of Rules 9216 and 9270 shall become effective upon approval or acceptance by the Nasdaq Review Council, and information regarding any sanctions imposed pursuant to those Rules may be released to the public pursuant to paragraph (c) immediately upon such approval or acceptance.

**(f)** If a decision issued pursuant to the Rule 9000 Series is called for review by the Nasdaq Board, the decision shall be stayed pending a final determination and decision by the Board.

**(g)** If a decision of Nasdaq imposing monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, or suspension of a member and/or barring of a person from being associated with all members is appealed to the Commission, notice thereof shall be given to the membership and to the press as soon as possible after receipt by Nasdaq of notice from the Commission of such appeal and Nasdaq's notice shall state whether the effectiveness of the Board's decision has been stayed pending the outcome of proceedings before the Commission.

**(h)** In the event an appeal to the courts is filed from a decision by the Commission in a case previously appealed to it from a decision of Nasdaq, involving the imposition of monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, or suspension of a member and/or barring of a person from being associated with all members, notice thereof shall be given to the membership as soon as possible after receipt by Nasdaq of a formal notice of appeal. Such notice shall include a statement whether the order of the Commission has been stayed.

**(i)** Any order issued by the Commission of revocation or suspension of a member's broker/dealer registration with the Commission; or the suspension or expulsion of a member from Nasdaq; or the barring of a person associated with a member from association with all broker/dealers or membership; or the imposition of monetary sanctions of \$10,000 or more shall be released to the public through a notice containing the effective date thereof sent as soon as possible after receipt by Nasdaq of the order of the Commission.

(j) Cancellations of membership or registration pursuant to the Nasdaq Rules shall be released to the public as soon after the effective date of the cancellation as possible.

(k) Releases to the public referred to in paragraphs (b) and (c) above shall identify the Nasdaq Rules or SEC Rules violated, and shall describe the conduct constituting such violation. Releases may also identify the member with which an individual was associated at the time the violations occurred if such identification is determined by Nasdaq Regulation Department to be in the public interest.

(l) Nasdaq Regulation Department shall release to the public, in the form issued by the Nasdaq Review Council, information with respect to any decision issued by the Nasdaq Review Council pursuant to Rule 1015. In its discretion, the Nasdaq Review Council may have redacted certain information from such decisions prior to their issuance.

### **8320. Payment of Fines, Other Monetary Sanctions, or Costs; Summary Action for Failure to Pay**

#### **(a) Payment to Treasurer**

All fines and other monetary sanctions shall be paid to the Treasurer of Nasdaq.

- (1) Certain fines may be collected from Nasdaq Options Market members as specified in Options 7, Section 1 of the Options Rules.
- (2) Subject to the following conditions and procedures, a member may pay a regulatory fine via an installment plan:
  - (A) The member must check the installment plan option on the election of payment form included with the letter of acceptance, waiver, and consent ("AWC").
  - (B) The fine under the AWC must be fifty thousand dollars (\$50,000) or more. A fine of less than fifty thousand dollars (\$50,000) is not eligible for the installment plan.
  - (C) A down payment of twenty-five percent (25%) or more of the total fine must be submitted with the signed AWC.
  - (D) An installment package, including a promissory note and payment schedule, will be mailed to the member upon receipt of the down payment, as required in subparagraph (C) above.
  - (E) An executed (signed and notarized) promissory note for the unpaid balance of the fine must be returned with the first installment payment.
  - (F) The term of the installment plan shall not exceed four (4) years after the execution of the AWC. The member may elect monthly or quarterly payments.

**(b) Summary Suspension or Expulsion**

After seven days notice in writing, Nasdaq may summarily suspend or expel from membership a member that fails to:

(1) pay promptly a fine or other monetary sanction imposed pursuant to Rule 8310 or cost imposed pursuant to Rule 8330 when such fine, monetary sanction, or cost becomes finally due and payable; or

(2) terminate immediately the association of a person who fails to pay promptly a fine or other monetary sanction imposed pursuant to Rule 8310 or a cost imposed pursuant to Rule 8330 when such fine, monetary sanction, or cost becomes finally due and payable.

**(c) Summary Revocation of Registration**

After seven days notice in writing, Nasdaq may summarily revoke the registration of a person associated with a member if such person fails to pay promptly a fine or other monetary sanction imposed pursuant to Rule 8310 or a cost imposed pursuant to Rule 8330 when such fine, monetary sanction, or cost becomes finally due and payable.

**8330. Costs of Proceedings**

A member or person associated with a member disciplined pursuant to Rule 8310 shall bear such costs of the proceeding, as the Adjudicator deems fair and appropriate under the circumstances.

**9000. Code of Procedure****9001. Nasdaq Regulatory Contract with FINRA**

Nasdaq and FINRA are parties to the FINRA Regulatory Contract, pursuant to which FINRA has agreed to perform certain functions described in the Rule 9000 Series on behalf of Nasdaq. Nasdaq Rules that refer to the Nasdaq Regulation Department, Nasdaq Regulation Department staff, Nasdaq staff, and Nasdaq departments should be understood as also referring to FINRA, FINRA staff and FINRA departments acting on behalf of Nasdaq pursuant to the FINRA Regulatory Contract.

Notwithstanding the fact that Nasdaq has entered into the FINRA Regulatory Contract with FINRA to perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions.

**9100. Application and Purpose****9110. Application****(a) Proceedings**

The Rule 9000 Series is the Code of Procedure and includes proceedings for disciplining a member or person associated with a member; proceedings for regulating the activities

of a member experiencing financial or operational difficulties; proceedings for summary or non-summary suspensions, cancellations, bars, prohibitions, or limitations; and proceedings for obtaining relief from the eligibility requirements of the Nasdaq By-Laws and the Rules of Nasdaq. The Rule 9100 Series is of general applicability to all proceedings set forth in the Rule 9000 Series, unless a Rule specifically provides otherwise.

**(b) Rights, Duties, and Obligations of Members and Associated Persons**

Unless otherwise specified, a person associated with a member shall have the same rights as a member and shall be subject to the same duties and obligations under the Code of Procedure.

Except as otherwise permitted under the By-Laws or the Act and as set forth in more detail in the Rule 9000 Series, in any disciplinary proceeding under the Rules, any Nasdaq member or person associated with a Nasdaq member shall be given the opportunity to have a hearing at which such Nasdaq member or person associated with a Nasdaq member shall be entitled to be heard in person or by counsel or by a representative as provided in the Rules. Such persons may present any relevant material in accordance with the Rules. In any such proceeding against a Nasdaq member or against a person associated with a Nasdaq member to determine whether the Nasdaq member or the person associated with a Nasdaq member shall be disciplined:

- (1)** specific charges shall be brought;
- (2)** such Nasdaq member or person associated with a Nasdaq member shall be notified of and be given an opportunity to defend against such charges;
- (3)** a record shall be kept; and
- (4)** any determination shall include a statement setting forth:
  - (i)** any act or practice, in which such Nasdaq member or person associated with a Nasdaq member may be found to have engaged, or which such Nasdaq member or person associated with a Nasdaq member may be found to have omitted;
  - (ii)** the rule, regulation, or statutory provision of which any such act or practice, or omission to act, is deemed to be in violation;
  - (iii)** the basis upon which any findings are made; and
  - (iv)** the sanction imposed.

**(c) Incorporation of Defined Terms and Cross References**



Unless otherwise provided, terms used in the Rule 9000 Series shall have the meaning as defined in Rule 0120 and Rule 9120.

**(d) Jurisdiction**

Any member or associated person (the Respondent) who is alleged to have violated or aided and abetted a violation of the Securities Exchange Act of 1934 (Exchange Act), the rules and regulations thereunder, the By-Laws and Rules of Nasdaq or any interpretation thereof, and the Rules, Regulations, resolutions and stated policies of the Board of Directors or any Committee of Nasdaq, shall be subject to the disciplinary jurisdiction of Nasdaq, and after notice and opportunity for a hearing may be appropriately disciplined by expulsion, suspension, fine, censure, limitation or termination as to activities, functions, operations, or association with a member, or any other fitting sanction in accordance with the provisions of these disciplinary Rules.

An associated person may be charged with any violation within the disciplinary jurisdiction of Nasdaq committed by employees under his supervision or by the member with which he is associated, as though such violations were his own. A member may be charged with any violation within the disciplinary jurisdiction of Nasdaq committed by its officers, directors, or employees or by a person who is associated with such member, as though such violation were its own.

Any member or associated person shall continue to be subject to the disciplinary jurisdiction of Nasdaq following the termination of such member's membership from Nasdaq, or the termination of the employment by or the association with a member of such person; provided, that Nasdaq serves written notice to such former member or former associated person within one year of receipt by Nasdaq of notice of such termination that Nasdaq is making inquiry into a matter or matters which occurred prior to the termination of such person's employment by or association with a member, or prior to the termination of such member's membership.

**9120. Definitions**

**(a) "Adjudicator"**

The term "Adjudicator" means:

- (1) a body, board, committee, group, or natural person that presides over a proceeding and renders a decision;
- (2) a body, board, committee, group, or natural person that presides over a proceeding and renders a recommended or proposed decision which is acted upon by an Adjudicator described in (1); or
- (3) a natural person who serves on a body, board, committee, or group described in (1) or (2).

The term includes a Review Subcommittee as defined in paragraph (cc), a Subcommittee as defined in paragraph (ee), an Extended Proceeding Committee as defined in paragraph (n), and a Statutory Disqualification Committee as defined in paragraph (dd).

**(b) "Chief Hearing Officer"**

The term "Chief Hearing Officer" means the Hearing Officer that manages the Office of Hearing Officers, or his or her delegatee. The Chief Hearing Officer may be FINRA's Chief Hearing Officer pursuant to the Regulatory Contract, if approved by the Nasdaq Board of Directors at least annually.

**(c) "Chief Regulatory Officer"**

The term "Chief Regulatory Officer" means the Chief Regulatory Officer of Nasdaq, or his or her delegatee, who shall be a person who reports to the Chief Regulatory Officer of Nasdaq.

**(d) "Code"**

The term "Code" refers to the Code of Procedure.

**(e) "Counsel to the Nasdaq Review Council"**

The term "Counsel to the Nasdaq Review Council" means an attorney that reports to the Chief Regulatory Officer of Nasdaq who is responsible for advising the Nasdaq Review Council, the Review Subcommittee, a Subcommittee, or an Extended Proceeding Committee regarding a disciplinary proceeding on appeal or review before the Nasdaq Review Council.

**(f) "Department of Enforcement"**

The term "Department of Enforcement" means the Department of Enforcement of FINRA Regulation, acting on behalf of Nasdaq pursuant to the FINRA Regulatory Contract.

**(g) "Department of Member Regulation"**

The term "Department of Member Regulation" means the Department of Member Regulation of FINRA, acting on behalf of Nasdaq pursuant to the FINRA Regulatory Contract.

**(h) "Director"**

The term "Director" means a member of the Board of Directors of Nasdaq.

**(i) "Document"**

The term "Document" means writing, drawing, graph, chart, photograph, recording, or any other data compilation, including data stored by computer, from which information can be obtained.

**(j) "Extended Hearing"**

The term "Extended Hearing" means a disciplinary proceeding described in Rule 9231(c).

**(k) "Extended Hearing Panel"**

The term "Extended Hearing Panel" means an Adjudicator that is constituted under Rule 9231(c) to conduct a disciplinary proceeding that is classified as an "Extended Hearing" and is governed by the Rule 9200 Series.

**(l) "Extended Proceeding"**

The term "Extended Proceeding" means a disciplinary proceeding described in Rule 9331(a)(2).

**(m) "Extended Proceeding Committee"**

The term "Extended Proceeding Committee" means an appellate Adjudicator that is constituted under Rule 9331 to participate in the Nasdaq Review Council's consideration of a disciplinary proceeding that is classified as an "Extended Proceeding" and governed by the Rule 9300 Series.

**(n) "Head of Enforcement"**

The term "Head of Enforcement" means the individual that manages the Department of Enforcement of FINRA, or his or her delegatee in the Department of Enforcement.

**(o) "Head of Member Regulation"**

The term "Head of Member Regulation" means the individual that manages the Department of Member Regulation of FINRA, or his or her delegatee in the Department of Member Regulation.

**(p) "Hearing Officer"**

The term "Hearing Officer" means an attorney who is appointed by the Chief Hearing Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in the Rule 9200 Series regarding disciplinary proceedings, the Rule 9550 Series regarding expedited proceedings, and the Rule 9800 Series regarding temporary cease and desist proceedings brought against members and associated persons. Hearing Officers may be drawn from FINRA's pool of Hearing Officers pursuant to the Regulatory Contract, if approved by the Nasdaq Board of Directors at least annually.

**(q) "Hearing Panel"**

The term "Hearing Panel" means an Adjudicator that is constituted under Rule 9231 to conduct a disciplinary proceeding governed by the Rule 9200 Series, that is constituted under the Rule 9520 Series or the Rule 9550 Series to conduct a proceeding, or that is constituted under the Rule 9800 Series to conduct a temporary cease and desist proceeding.

**(r) "Interested Staff"**

The term "Interested Staff" means, in the context of:

- (1)** a disciplinary proceeding under the Rule 9200 Series and the Rule 9300 Series:
  - (A)** the Head of the Nasdaq Regulation Department;
  - (B)** an Exchange employee of the Nasdaq Regulation Department who reports, directly or indirectly, to the Head of the Nasdaq Regulation Department;
  - (C)** an Exchange employee who directly participated in the authorization of the complaint;
  - (D)** an Exchange employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific disciplinary proceeding, and a department head to whom such employee reports;
  - (E)** the Head of the Department of Enforcement;
  - (F)** a FINRA employee of the Department of Enforcement who reports, directly or indirectly, to the Head of Enforcement;
  - (G)** a FINRA employee who directly participated in the authorization of the complaint; or
  - (H)** a FINRA employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific disciplinary proceeding, and a district director or department head to whom such employee reports;
- (2)** a proceeding under the Rule 9520 Series or Rule 9550 Series:
  - (A)** the head of the Nasdaq or FINRA department or office that issues the notice or petition or is designated as a Party;
  - (B)** Nasdaq employee or FINRA employee who reports, directly or indirectly, to such person;

(C) a Nasdaq employee or FINRA employee who directly participated in the authorization or initiation of the proceeding;

(D) a Nasdaq employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific proceeding, and a department head to whom such employee reports; or

(E) a FINRA employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific proceeding, and a district director or department head to whom such employee reports;

(3) a proceeding under the Rule 9600 Series:

(A) the head of the Nasdaq or FINRA department or office that issues the decision granting or denying an exemption or is designated as a Party;

(B) a Nasdaq employee or FINRA employee who reports, directly or indirectly, to such person;

(C) a Nasdaq employee or FINRA employee who directly participated in the exemption proceeding;

(D) a Nasdaq employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific exemption proceeding, and a department head to whom such employee reports; or

(E) a FINRA employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific exemption proceeding, and a district director or department head to whom such employee reports;

(4) a proceeding under the Rule 9800 Series:

(A) the Head of the Nasdaq Regulation Department;

(B) an employee of the Nasdaq Regulation Department who reports, directly or indirectly, to the Head of the Nasdaq Regulation Department;

(C) the Head of Enforcement;

(D) a FINRA employee who reports, directly or indirectly, to the Head of Enforcement;

(E) a Nasdaq employee or FINRA employee who directly participated in the authorization of the notice that initiates a temporary cease and desist proceeding; or

**(F)** a Nasdaq employee or FINRA employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific temporary cease and desist proceeding, and a district director or department head to whom such employee reports.

**(s)** "Nasdaq Board"

The term "Nasdaq Board" means the Board of Directors of the Nasdaq.

**(t)** "Nasdaq Regulation" or "Nasdaq Regulation Department"

The term "Nasdaq Regulation" or "Nasdaq Regulation Department" means the department of Nasdaq that administers the Code, and includes the Nasdaq Enforcement Department.

**(u)** "Office of Disciplinary Affairs"

The term "Office of Disciplinary Affairs" means the Office of Disciplinary Affairs for FINRA, acting on behalf of Nasdaq pursuant to the FINRA Regulatory Contract.

**(v)** "Office of Hearing Officers"

The term "Office of Hearing Officers" means the Office of Hearing Officers of FINRA, acting on behalf of Nasdaq pursuant to the FINRA Regulatory Contract.

**(w)** "Panelist"

The term "Panelist," as used in the Rule 9200 Series, the Rule 9550 Series, and the Rule 9800 Series, means a member of a Hearing Panel or Extended Hearing Panel who is not a Hearing Officer. As used in the Rule 9300 Series, the term means a current or former member of the Nasdaq Review Council or a former Director who is appointed to serve on a Subcommittee or an Extended Proceeding Committee.

**(x)** "Party"

With respect to a particular proceeding, the term "Party" means:

**(1)** in the Rule 9200 Series, the Rule 9300 Series, and the Rule 9800 Series, the Nasdaq Regulation Department or the Department of Enforcement or a Respondent;

**(2)** in the Rule 9400 Series, the Nasdaq Regulation Department or the Department of Enforcement, or a Member or associated person of a Member that is the subject of a notice under Rule 9400(a)(2);

**(3)** in the Rule 9520 Series, the Department of Enforcement or a member that is the subject of a notice or files an application under Rule 9522;

(4) in the Rule 9550 Series, the Nasdaq or FINRA department or office that issued the notice or, if another Nasdaq or FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, the Nasdaq or FINRA department or office that is so designated or a member or person that is the subject of a notice under the Rule 9550 Series; or

(5) in the Rule 9600 Series, the department or office designated under Rule 9620 to issue the decision granting or denying an exemption or a member that seeks the exemption under Rule 9610.

(y) "Respondent"

The term "Respondent" means, in a disciplinary proceeding governed by the Rule 9200 Series and in an appeal or review governed by the Rule 9300 Series, a Nasdaq member or associated person against whom a complaint is issued. In a proceeding governed by the Rule 9800 Series, the term "Respondent" means a Nasdaq member or associated person that has been served a notice initiating a cease and desist proceeding.

(z) "Review Subcommittee"

The term "Review Subcommittee" means a body appointed by the Nasdaq Review Council pursuant to the Nasdaq By-Laws.

(aa) "Statutory Disqualification Committee"

The term "Statutory Disqualification Committee" means a Subcommittee of the Nasdaq Review Council that makes a recommended decision to grant or deny an application for relief from the eligibility requirements of Nasdaq to the Nasdaq Review Council pursuant to the Rule 9520 Series.

(bb) "Subcommittee"

The term "Subcommittee" means an Adjudicator that is:

(1) constituted under Rule 9331(a) to participate in the Nasdaq Review Council's consideration of an appeal or a review of a disciplinary proceeding pursuant to the Rule 9300 Series;

(2) constituted under Rule 9559(q) or Rule 9630 to conduct a review proceeding.

### **9130. Service; Filing of Papers**

#### **9131. Service of Complaint and Document Initiating a Proceeding**

(a) Service on Each Party

A complaint shall be served on each Party by the Department of Enforcement. A document initiating a proceeding shall be served on each Party by the Party or person initiating such proceeding or his or her counsel or representative.

**(b) How Served**

A complaint or document initiating a proceeding shall be served pursuant to Rule 9134.

**(c) Filing Requirement**

A complaint that is served upon a Respondent and each document initiating a proceeding that is served upon a Party, along with the certificate of service executed in connection with the service upon such Respondent or Party, shall be filed with the Nasdaq Regulation Department pursuant to Rule 9135.

**9132. Service of Orders, Notices, and Decisions by Adjudicator**

**(a) Service on Each Party**

An order, notice, or decision issued by a Hearing Officer, Hearing Panel or Extended Hearing Panel under the Rule 9200 Series shall be served on each Party, or each Party's counsel, or other person the Party designates to represent him or her in a proceeding by the Office of Hearing Officers. An order, notice, or decision issued by any other Adjudicator shall be served by that Adjudicator.

**(b) How Served**

An order, notice, or decision shall be served pursuant to Rule 9134.

**(c) Service Upon Counsel or Other Person Acting In Representative Capacity**

Whenever service is required to be made upon a person represented by counsel or a representative who has filed a notice of appearance pursuant to Rule 9141, service shall be made upon counsel or the representative. The Adjudicator, at its discretion, may also order that service be made upon the person.

**9133. Service of Papers Other Than Complaints, Orders, Notices, or Decisions**

**(a) Service on Each Party**

Other than a complaint, order, notice, or decision, any paper, including an answer and a motion, shall be served on each Party by the Party on whose behalf such paper was prepared or by his or her counsel or representative.

**(b) How Served**

The paper shall be served pursuant to Rule 9134.



**(c) Filing Requirement**

The paper that is served upon a Party, along with the certificate of service executed in connection with the service upon such Party, shall be filed with the Nasdaq Regulation Department pursuant to Rule 9135.

**(d) Service upon Counsel or Other Person Acting in Representative Capacity**

Whenever service is required to be made upon a person represented by counsel or a representative who has filed a notice of appearance pursuant to Rule 9141, service shall be made upon counsel or the representative. The Adjudicator, at its discretion, may also order that service be made upon the person.

**9134. Methods of, Procedures for Service****(a) Methods**

The following methods of service are permitted:

**(1) Personal Service**

Personal service may be accomplished by handing a copy of the papers to the person required to be served; leaving a copy at the person's office with an employee or other person in charge thereof; or leaving a copy at the person's dwelling or usual place of abode with a person of suitable age and discretion then residing therein;

**(2) Service by Mail by U.S. Postal Service**

Service by mail may be accomplished by mailing the papers through the U.S. Postal Service by using first class mail, first class certified mail, first class registered mail, or Express Mail, except that a complaint shall be served upon a Respondent by U.S. Postal Service first class certified mail or Express Mail; or

**(3) Service by Courier**

Service by courier may be accomplished by sending the papers through a courier service that generates a written confirmation of receipt or of attempts at delivery.

**(b) Procedures****(1) Service on Natural Persons**

Papers served on a natural person may be served at the natural person's residential address, as reflected in the Central Registration Depository, if applicable. When a Party or other person responsible for serving such person has actual knowledge that the natural person's Central Registration Depository address is out of date, duplicate copies shall be served on the natural person at the natural person's last known residential address and the

business address in the Central Registration Depository of the entity with which the natural person is employed or affiliated. Papers may also be served at the business address of the entity with which the natural person is employed or affiliated, as reflected in the Central Registration Depository, or at a business address, such as a branch office, at which the natural person is employed, or at which the natural person is physically present during a normal business day. The Hearing Officer may waive the requirement of serving documents (other than complaints) at the addresses listed in the Central Registration Depository if there is evidence that these addresses are no longer valid, and there is a more current address available. If a natural person is represented by counsel or a representative, papers served on the natural person, excluding a complaint or a document initiating a proceeding, shall be served on the counsel or representative.

## **(2) Service on Entities**

Papers served on an entity shall be made by service on an officer, partner of a partnership, managing or general agent, a contact employee as set forth on Form BD, or any other agent authorized by appointment or by law to accept service. Such papers shall be served at the entity's business address as reflected in the Central Registration Depository, if applicable; provided, however, that when the Party or other person responsible for serving such entity has actual knowledge that an entity's Central Registration Depository address is out of date, duplicate copies shall be served at the entity's last known address. If an entity is represented by counsel or a representative, papers served on such entity, excluding a complaint or document initiating a proceeding, shall be served on such counsel or representative.

## **(3) When Service Is Complete**

Personal service and service by courier or express delivery are complete upon delivery. Service by mail is complete upon mailing.

## **9135. Filing of Papers with Adjudicator: Procedure**

### **(a) When to File**

Papers that are required to be filed with an Adjudicator within a time limit specified by the Adjudicator or within a time limit set forth in the Rules shall be deemed timely if received within the time limit, unless otherwise ordered by an Adjudicator, except complaints, which shall be deemed timely filed upon mailing or delivery to the Office of Hearing Officers. Other papers that are required to be filed shall be deemed timely if, on the same day such papers are served, they are also hand-delivered, mailed via U.S. Postal service first class mail, or sent by courier to the Office of Hearing Officers.

### **(b) Where to File**

All papers required to be filed pursuant to the Rule 9200 Series and any notice of appeal or review required to be filed pursuant to the Rule 9300 Series shall be filed with the Office of Hearing Officers. All other papers required to be filed pursuant to the Rule

9000 Series shall be filed where specified in the Rule, or if not specified in the Rule, with the Adjudicator, unless the Adjudicator orders otherwise.

**(c) Certificate of Service**

Papers filed with an Adjudicator or the Office of Hearing Officers shall be accompanied by a certificate of service stating the name of the person or persons served, the date on which service is made, the method of service and, if service is not made in person, the address to which service is made. Such certificate shall be executed by the person who made the service. If the method of service on a Party is different from the method of service on any other Party, the certificate shall state why such different method was used.

**9136. Filing of Papers: Form**

**(a) Specifications**

Papers filed in connection with any proceeding under the Rule 9200 Series and the Rule 9300 Series shall:

**(1)** be on unglazed white paper measuring 8 1/2 × 11 inches, but to the extent that the reduction of a larger document would render it illegible, such document may be filed on larger paper;

**(2)** be typewritten or printed in either 10 or 12 point typeface or otherwise reproduced by a process that produces a permanent and plainly legible copy;

**(3)** include at the head of the paper, or on a title page, the title of the proceeding, the names of the Parties, the subject of the particular paper or pleading, and the number assigned to the proceeding;

**(4)** be paginated at the bottom of the page and with all margins at least one inch wide;

**(5)** be double-spaced, with double-spaced footnotes and single-spaced indented quotations; and

**(6)** be stapled, clipped, or otherwise fastened in the upper left corner, but not bound.

**(b) Signature Required**

All papers shall be signed and dated pursuant to Rule 9137.

**(c) Number of Copies**

A signed original and three copies of all papers shall be filed with the Adjudicator.

**(d) Form of Briefs**

A brief containing more than ten pages shall include a table of contents, and an alphabetized table of cases, statutes, and other authorities cited, with references to the pages of the brief wherein they are cited.

**(e) Scandalous or Impertinent Matter**

Any scandalous or impertinent matter contained in any brief, pleading, or other filing, or in connection with any oral presentation in a proceeding may be stricken on order of an Adjudicator. Any matter stricken by an Adjudicator by this Rule shall be marked "Stricken" and preserved. Matters stricken in a proceeding governed by the Rule 9200 Series shall be preserved under Rule 9267(b).

**9137. Filing of Papers: Signature Requirement and Effect**

**(a) General Requirements**

Following the issuance of a complaint in a disciplinary proceeding, or the initiation of another proceeding, every filing of a Party represented by counsel or a representative shall be signed by at least one counsel or representative of record in his or her name and shall state the business address and telephone number of such counsel or representative. A Party who appears on his or her own behalf shall sign his or her individual name and state his or her address and telephone number on every filing.

**(b) Effect of Signature**

**(1)** The signature of a counsel, representative, or Party shall constitute a certification that:

**(A)** the person signing the filing has read the filing;

**(B)** to the best of his or her knowledge, information, and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

**(C)** the filing is not made for any improper purpose, such as to harass, cause unnecessary delay, or needlessly to increase the cost of adjudication.

**(2)** If a filing is not signed, an Adjudicator may strike the filing, unless it is signed promptly after the omission is called to the attention of the person making the filing.

**9138. Computation of Time**

**(a) Calendar Day**

In the Rule 9000 Series, "day" means calendar day.

**(b) Formula**

In computing any period of time, the day of the act, event, or default from which the period of time designated in the Code 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, not including any additional time for service by mail allowed by paragraph (c).

**(c) Additional Time For Service by Mail**

If service is made by U.S. Postal Service first class, certified, or registered mail, three days shall be added to the prescribed period for response.

**9140. Proceedings**

**9141. Appearance and Practice; Notice of Appearance**

**(a) Representing Oneself**

In any proceeding, a person may appear on his or her own behalf. When a person first makes any filing or otherwise appears on his or her own behalf before an Adjudicator in a proceeding, he or she shall file with the Adjudicator, or otherwise state on the record, and keep current, an address at which any notice or other written communication required to be served upon or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours.

**(b) Representing Others**

A person shall not be represented before an Adjudicator, except as provided in this paragraph. Subject to the prohibitions of Rules 9150 and 9280, a person may be represented in any proceeding by an attorney at law admitted to practice before the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States. A member of a partnership may represent the partnership; and a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association. When a person first makes any filing or otherwise appears in a representative capacity before an Adjudicator in a proceeding, that person shall file with the Adjudicator, and keep current a Notice of Appearance. The Notice of Appearance is a written notice stating the name of the proceeding; the representative's name, business address, and telephone number; and the name and address of the person or persons represented. Any individual appearing or practicing in a representative capacity before an Adjudicator may be required to file a power of attorney with the Adjudicator showing his or her authority to act in such capacity.

**9142. Withdrawal by Attorney or Representative**

An attorney for a Party or other person authorized to represent others by Rule 9141 may withdraw by giving notice to the Adjudicator. The notice shall be in writing, set forth the

good cause for withdrawal, and, unless circumstances do not permit, be given at least 30 days prior to withdrawal.

### **9143. Ex Parte Communications**

#### **(a) Prohibited Communications**

Unless on notice and opportunity for all Parties to participate, or to the extent required for the disposition of ex parte matters as authorized by the Rule 9000 Series:

**(1)** No Party, or counsel to or representative of a Party, or Interested Staff shall make or knowingly cause to be made an ex parte communication relevant to the merits of a proceeding to an Adjudicator who is participating in a decision with respect to that proceeding, or to Nasdaq Staff who is participating or advising in the decision of an Adjudicator with respect to that proceeding; and

**(2)** No Adjudicator who is participating in a decision with respect to a proceeding, or no Nasdaq Staff who is participating or advising in the decision of an Adjudicator with respect to a proceeding shall make or knowingly cause to be made to a Party, a counsel or representative to a Party, or Nasdaq Staff an ex parte communication relevant to the merits of that proceeding.

#### **(b) Disclosure of Prohibited Communication**

An Adjudicator who is participating in a decision with respect to a proceeding, or Nasdaq Staff who is participating or advising in the decision of an Adjudicator, who receives, makes, or knowingly causes to be made a communication prohibited by this Rule shall place in the record of the proceeding:

**(1)** all such written communications;

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

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

#### **(c) Remedies**

Upon receipt of a communication made or knowingly caused to be made by any Party, any counsel or representative to a Party, or any Interested Staff in violation of subparagraph (a)(1), the Nasdaq Regulation Department or an Adjudicator may, to the extent consistent with the interests of justice, the policies underlying the Act, and Nasdaq's Rules, order the Party responsible for the communication, or the Party who may benefit from the ex parte communication made, to show cause why the Party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected by reason of such ex parte communication. All participants to a

proceeding may respond to any allegations or contentions contained in a prohibited ex parte communication placed in the record. Such responses shall be placed in the record.

**(d) Timing**

In a disciplinary proceeding governed by the Rule 9200 Series and the Rule 9300 Series, the prohibitions of this Rule shall apply beginning with the authorization of a complaint as provided in Rule 9211, unless the person responsible for the communication has knowledge that the complaint shall be authorized, in which case the prohibitions shall apply beginning at the time of his or her acquisition of such knowledge.

**(e) Waiver of Ex Parte Prohibition**

**(1) Offer of Settlement**

If a Respondent submits an offer of settlement under Rule 9270, the submission constitutes a waiver by such Respondent of any claim that the prohibitions against ex parte communications were violated by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance or rejection of such offer of settlement and order of acceptance.

**(2) Letter of Acceptance, Waiver, and Consent**

If a member or a person associated with a member submits an executed letter of acceptance, waiver, and consent under Rule 9216(a), the submission constitutes a waiver by such member or person associated with a member of any claim that the prohibitions against ex parte communications were violated by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

**(3) Minor Rule Violation Plan Letter**

If a member or a person associated with a member submits an executed minor rule violation plan letter under Rule 9216(b), the submission constitutes a waiver by such member or person associated with a member of any claim that the prohibitions against ex parte communications by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter, or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule plan violation letter.

**9144. Separation of Functions**

**(a) Interested Staff**

Except as counsel or a witness in a proceeding or as provided in the Rule 9550 Series, Interested Staff is prohibited from advising an Adjudicator regarding a decision or otherwise participating in a decision of an Adjudicator. An Adjudicator is prohibited from advising Interested Staff regarding a decision or otherwise participating in a decision of Interested Staff, including the decision to issue a complaint and a decision whether to appeal or cross-appeal a disciplinary proceeding to the Nasdaq Review Council.

**(b) Separation of Adjudicators**

A Hearing Officer, including the Chief Hearing Officer, or a Panelist of a Hearing Panel or an Extended Hearing Panel, is prohibited from participating in: a decision whether to issue a complaint pursuant to Rule 9211; a decision whether to appeal or cross-appeal a disciplinary proceeding to the Nasdaq Review Council pursuant to Rule 9311; and a discussion or decision relating to a call for review, a review, or an appeal pursuant to the Rule 9300 Series. A Director is prohibited from participating in a discussion or a decision relating to the above referenced acts with the Review Subcommittee or the Adjudicators referenced above.

**(c) Waiver of Prohibitions of Separation of Functions**

**(1) Offer of Settlement**

If a Respondent submits an offer of settlement under Rule 9270, the submission constitutes a waiver by such Respondent of any claim of violation of paragraph (a) or (b) by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance or rejection of such offer of settlement and order of acceptance.

**(2) Letter of Acceptance, Waiver, and Consent**

If a member or a person associated with a member submits an executed letter of acceptance, waiver, and consent under Rule 9216(a), the submission constitutes a waiver by such member or person associated with a member of any claim of violation of paragraph (a) or (b) by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the proposed letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

**(3) Minor Rule Violation Plan Letter**

If a member or a person associated with a member submits an executed minor rule violation plan letter under Rule 9216(b), the submission constitutes a waiver by such member or person associated with a member of any claim of violation of paragraph (a) or



(b) by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter.

#### **9145. Rules of Evidence; Official Notice**

##### **(a) Rules of Evidence**

The formal rules of evidence shall not apply in a proceeding brought under the Rule 9000 Series.

##### **(b) Official Notice**

In a proceeding governed by the Rule 9000 Series, an Adjudicator may take official notice of such matters as might be judicially noticed by a court, or of other matters within the specialized knowledge of Nasdaq as an expert body. Before an Adjudicator proposes to take official notice of a matter, it shall permit a Party the opportunity to oppose or otherwise comment upon the proposal to take official notice.

#### **9146. Motions**

##### **(a) General Requirement for Motions**

A Party may make a written or oral motion, subject to limitations set forth below. A Party or other person may make a motion under Rule 9146(k), subject to limitations set forth below.

##### **(b) Adjudicator May Require a Written Motion**

If a Party makes an oral motion, an Adjudicator may order that such motion be set forth in writing, after considering the facts and circumstances, including whether:

(1) the hearing or conference in which the Party makes such motion is being recorded; and

(2) the opposing Parties shall be fully informed and shall have adequate notice and opportunity to respond to such motion.

##### **(c) Specificity**

All motions shall state the specific relief requested and the basis therefor.

##### **(d) Time For Filing Opposition or Other Response to Motion**

Unless otherwise ordered by an Adjudicator, any Party may file an opposition or other response to a written motion and the opposition or response shall be filed within 14 days after service of the motion. If no response is filed within the response period, the Party

failing to respond shall be deemed to have waived any objection to the granting of the motion. A Party shall be afforded an opportunity to respond to an oral motion at the time the oral motion is made, unless the Adjudicator orders that the Party shall be granted additional time to respond.

**(e) Oral Argument**

An Adjudicator may allow oral argument on motions. Oral argument may take place in person or by telephone.

**(f) Frivolous Motions**

An Adjudicator may deny dilatory, repetitive, or frivolous motions without awaiting a response.

**(g) No Stay**

Unless otherwise ordered by an Adjudicator, the filing of a motion does not stay a proceeding.

**(h) Reply**

The moving Party shall have no right to reply to the opposition or other response of the other Parties unless an Adjudicator permits a reply to be filed. Unless otherwise ordered by an Adjudicator, a movant's reply submission shall be filed within five days after the Adjudicator serves the order granting the motion to file a reply or a Party serves the opposition or other response to which the Adjudicator previously ordered that a reply could be filed.

**(i) Page Limit, Format Requirements**

Unless otherwise ordered by an Adjudicator, submissions in support of or in opposition to motions shall not exceed ten double-spaced pages, including double-spaced footnotes, exclusive of pages containing any table of contents, table of authorities, or addenda.

**(j) Disposition of Procedural Motions; Disposition of Motions for Summary Disposition**

**(1)** In the Rule 9200 Series, a motion on a procedural matter may be decided by a Hearing Officer. A motion for summary disposition of a cause of action set forth in a complaint shall be decided by a majority vote of the Hearing Panel or, if applicable, the Extended Hearing Panel.

**(2)** In the Rule 9300 Series, a motion on a procedural matter may be decided by Counsel to the Nasdaq Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or the Nasdaq Review Council. A motion for disposition of a cause of action shall be decided by the Nasdaq Review

Council, except that a motion to dismiss a case for abandonment made under Rule 9344 may be decided by the Review Subcommittee.

**(3)** In the Rule 9500 Series, a motion shall be decided by an Adjudicator.

**(k) Motion For Protective Order**

**(1)** A Party, a person who is the owner, subject, or creator of a Document subject to production under Rule 8210 or any other Rule which may be introduced as evidence in a disciplinary proceeding, or a witness who testifies at a hearing in a disciplinary proceeding may file a motion requesting a protective order to limit disclosure or prohibit from disclosure to other Parties, witnesses or other persons, except the Department of Enforcement and Nasdaq Regulation Department staff, Documents or testimony that contain confidential information. The motion shall include a general summary or extract of the Documents or testimony without revealing confidential details. If the movant seeks a protective order against disclosure to other Parties, copies of the Documents shall not be served on the other Parties. Unless the Documents are unavailable, the movant shall file for in camera inspection a sealed copy of the Documents for which the order is sought. If the movant is not a Party, the motion shall be served on each Party by the movant using a method in Rule 9134(a) and filed with the Adjudicator. A motion for a protective order shall be granted only upon a finding that disclosure of the Document or testimony would have a demonstrated adverse business effect on the movant or would involve an unreasonable breach of the movant's personal privacy.

**(2)** If a protective order is granted, the order shall set forth the restrictions on use and disclosure of such Document or testimony. An Adjudicator does not have the authority to issue a protective order that would limit in any manner the use by the staff of Nasdaq Regulation Department of such Documents or testimony in the Nasdaq Regulation Department staff's performance of their regulatory and self-regulatory responsibilities and functions, including the transmittal, without restriction to the recipient, of such Documents or testimony to state, federal, or foreign regulatory authorities or other self-regulatory organizations. An Adjudicator does not have the authority to issue a protective order that purports to protect from production such Documents or testimony in the event that Nasdaq is subject to a subpoena requiring that the Documents or testimony be produced.

**(l) General**

All motions, oppositions or responses, replies, and any other filings made in a proceeding shall comply with Rules 9133, 9134, 9135, 9136 and 9137.

**9147. Rulings On Procedural Matters**

The Nasdaq Board, the Nasdaq Review Council, a Hearing Officer, or any other Adjudicator shall have full authority, except as otherwise provided by the Code, to rule on a procedural motion and any other procedural or administrative matter arising during

the course of a proceeding conducted pursuant to the Code, subject to the rights of review or appeal provided by the Code.

**9148. Interlocutory Review**

Except as provided in Rule 9280, there shall be no interlocutory review of a ruling or order issued by any Adjudicator in a proceeding governed by the Code. If an Adjudicator grants interlocutory review of a ruling or order, such review shall not stay a proceeding, except under Rule 9280 or as otherwise ordered by the Adjudicator.

**9150. Exclusion from Rule 9000 Series Proceeding**

**(a) Exclusion**

An Adjudicator may exclude an attorney for a Party or other person authorized to represent others by Rule 9141 from acting as counsel, acting in any representative capacity, or otherwise appearing in a particular Rule 9000 Series proceeding for contemptuous conduct under Rule 9280 or unethical or improper professional conduct in that proceeding. If an attorney for a Party, or other person authorized to represent others by Rule 9141, is excluded from a disciplinary hearing or conference, or any portion thereof, such attorney or person may seek review by the Nasdaq Review Council of such exclusion under Rule 9280(c).

**(b) Other Proceedings Not Precluded**

Prohibiting an attorney or other person authorized to represent others by Rule 9141 from practicing or appearing in a Nasdaq proceeding shall not preclude Nasdaq from initiating other proceedings against such person.

**9160. Recusal or Disqualification**

No person shall participate as an Adjudicator in a matter governed by the Code as to which he or she has a conflict of interest or bias, or circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case the person shall recuse himself or herself, or shall be disqualified as follows:

**(a) Nasdaq Board**

The Chair of the Nasdaq Board shall have authority to order the disqualification of a Director, and a majority of the Nasdaq Board excluding the Chair of the Nasdaq Board, shall have authority to order the disqualification of the Chair;

**(b) Nasdaq Review Council, Review Subcommittee, or Certain Subcommittees**

The Chair of the Nasdaq Review Council shall have authority to order the disqualification of a member of the Nasdaq Review Council or the Review Subcommittee, a member of a Subcommittee appointed pursuant to Rule 9559(q) or the Rule 9600 Series, a Hearing Panel appointed pursuant to the Rule 9520 Series, and the Statutory Disqualification Committee; and a majority of the Nasdaq Review Council

excluding the Chair of the Nasdaq Review Council shall have authority to order the disqualification of the Chair of the Nasdaq Review Council;

**(c) Rule 9331 Subcommittee or Extended Proceeding Committee**

Disqualification of a Panelist of a Subcommittee or Extended Proceeding Committee appointed under the Rule 9300 Series shall be governed by Rule 9332;

**(d) Reserved**

**(e) Panelist of Hearing Panel or Extended Hearing Panel**

Disqualification of a Panelist of a Hearing Panel or Extended Hearing Panel appointed under the Rule 9200 Series shall be governed by Rule 9234; and

**(f) Hearing Officer**

Disqualification of a Hearing Officer of a Hearing Panel or an Extended Hearing Panel shall be governed by Rule 9233.

**9200. Disciplinary Proceedings**

**9210. Complaint and Answer**

**9211. Authorization of Complaint**

**(a) Complaint**

**(1)** If the Nasdaq Regulation Department or the Department of Enforcement believes that any Nasdaq member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which Nasdaq has jurisdiction to enforce, the Nasdaq Regulation Department or the Department of Enforcement may request authorization from the FINRA Office of Disciplinary Affairs to issue a complaint.

**(2)** The Nasdaq Board shall have the authority to direct the Nasdaq Regulation Department, including the FINRA Office of Disciplinary Affairs, to authorize and the Department of Enforcement to issue a complaint when, on the basis of information and belief, the Nasdaq Board is of the opinion that any Nasdaq member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which Nasdaq has jurisdiction to enforce.

**(b) Commencement of Disciplinary Proceeding**

A disciplinary proceeding shall begin when the complaint is served and filed.

**9212. Complaint Issuance — Requirements, Service, Amendment, Withdrawal, and Docketing****(a) Form, Content, Notice, Docketing, and Service**

(1) If a complaint is authorized, the Nasdaq Regulation Department or the Department of Enforcement shall issue the complaint. Each complaint shall be in writing and signed by the Nasdaq Regulation Department or the Department of Enforcement. The complaint shall specify in reasonable detail the conduct alleged to constitute the violative activity and the rule, regulation, or statutory provision the Respondent is alleged to be violating or to have violated. If the complaint consists of several causes of action, each cause shall be stated separately. Complaints shall be served by the Nasdaq Regulation Department or the Department of Enforcement on each Party pursuant to Rules 9131 and 9134, and filed at the time of service with the Office of Hearing Officers pursuant to Rules 9135, 9136, and 9137.

(2) At the time of issuance of a complaint, the Nasdaq Regulation Department or the Department of Enforcement may propose an appropriate location for the hearing.

**(b) Amendments to Complaint**

The Nasdaq Regulation Department or the Department of Enforcement may file and serve an amended complaint once as a matter of course at any time before the Respondent answers the complaint. Otherwise, upon motion by the Nasdaq Regulation Department or the Department of Enforcement, the Hearing Officer may permit the Nasdaq Regulation Department or the Department of Enforcement to amend the complaint, including amendments so as to make the complaint conform to the evidence presented, after considering whether the Nasdaq Regulation Department or the Department of Enforcement has shown good cause for the amendment and whether any Respondent will suffer any unfair prejudice if the amendment is allowed. Amendments to complaints will be freely granted when justice so requires.

**(c) Withdrawal of Complaint**

With prior leave of the Hearing Officer, the Nasdaq Regulation Department or the Department of Enforcement may withdraw a complaint. If the Nasdaq Regulation Department or the Department of Enforcement withdraws the complaint before the earlier of (1) the Hearing Panel's or, if applicable, the Extended Hearing Panel's, issuance of a ruling on a motion for summary disposition, or (2) the start of the hearing on the merits, the withdrawal of the complaint by the Nasdaq Regulation Department or the Department of Enforcement shall be without prejudice and the Nasdaq Regulation Department or the Department of Enforcement shall be permitted to refile a case based on allegations concerning the same facts and circumstances that are set forth in the withdrawn complaint. If the Nasdaq Regulation Department or the Department of Enforcement requests to withdraw such complaint after the occurrence of either of the two events set forth in (1) and (2) in this paragraph, the Hearing Panel or, if applicable, the Extended

Hearing Panel, after considering the facts and circumstances of the request, shall determine whether the withdrawal shall be granted with prejudice.

**(d) Disciplinary Proceeding Docket**

The Office of Hearing Officers shall promptly record each complaint filed with it in Nasdaq's disciplinary proceeding docket, and record in the disciplinary proceeding docket each event, filing, and change in the status of a disciplinary proceeding.

**9213. Assignment of Hearing Officer and Appointment of Panelists to Hearing Panel or Extended Hearing Panel**

**(a) Assignment of Hearing Officer**

As soon as practicable after the Nasdaq Regulation Department or the Department of Enforcement has filed a complaint with the Office of Hearing Officers, the Chief Hearing Officer shall assign a Hearing Officer to preside over the disciplinary proceeding and shall serve the Parties with notice of the Hearing Officer's assignment pursuant to Rule 9132.

**(b) Appointment of Panelists**

As soon as practicable after assigning a Hearing Officer to preside over a disciplinary proceeding, the Chief Hearing Officer shall appoint Panelists pursuant to Rules 9231 and 9232 to a Hearing Panel or, if the Chief Hearing Officer determines that an Extended Hearing Panel should be appointed, to an Extended Hearing Panel.

**9214. Consolidation or Severance of Disciplinary Proceedings**

**(a) Consolidation Initiated by Chief Hearing Officer**

The Chief Hearing Officer may order the consolidation of two or more disciplinary proceedings, upon his or her own motion, under circumstances where such consolidation would further the efficiency of the disciplinary process, and where the subject complaints involve common questions of law or fact, or one or more of the same Respondents. In determining whether to order the consolidation of such disciplinary proceedings, the Chief Hearing Officer shall consider:

- (1)** whether the same or similar evidence reasonably would be expected to be offered at each of the hearings;
- (2)** whether the proposed consolidation would conserve the time and resources of the Parties; and
- (3)** whether any unfair prejudice would be suffered by one or more Parties as a result of the consolidation.

If the Chief Hearing Officer proposes to consolidate two or more disciplinary proceedings, the Chief Hearing Officer shall serve upon the Parties notice of the proposed consolidation of disciplinary proceedings, together with a copy of each relevant complaint and any answer that has been filed thereto, pursuant to Rule 9132. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to consolidation.

**(b) Consolidation Initiated by a Party**

A Party may file a motion to consolidate two or more disciplinary proceedings if such consolidation would further the efficiency of the disciplinary process, if the subject complaints involve common questions of law or fact or one or more of the same Respondents, or if one or more of the factors favoring consolidation set forth in paragraph (a) appear to be present. If a Party moves to consolidate two or more disciplinary proceedings, the Party shall file such motion, together with a copy of each relevant complaint and any answer thereto that has been filed, with the Office of Hearing Officers, and, pursuant to Rule 9133, shall serve the same upon the Parties in each of the cases proposed to be consolidated. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to consolidation, and shall serve the response upon the Parties in each of the cases proposed to be consolidated. The Chief Hearing Officer shall issue an order approving or denying the request for consolidation.

**(c) Impact on Hearing Panel or Extended Hearing Panel**

If the Chief Hearing Officer issues an order to consolidate two or more disciplinary proceedings for which Hearing Panels or, if applicable, Extended Hearing Panels, have been appointed, the Chief Hearing Officer's order shall specify which Hearing Panel or, if applicable, Extended Hearing Panel, shall preside over the consolidated disciplinary proceeding, or shall appoint a new Hearing Panel or, if applicable, Extended Hearing Panel, to preside, based on the criteria set forth in Rules 9231 and 9232.

**(d) Severance Initiated by Chief Hearing Officer**

The Chief Hearing Officer may order the severance of a disciplinary proceeding into two or more disciplinary proceedings, upon his or her own motion. In determining whether to order the severance of such disciplinary proceedings, the Chief Hearing Officer shall consider:

- (1)** whether the same or similar evidence reasonably would be expected to be offered at each of the possible hearings;
- (2)** whether the severance would conserve the time and resources of the Parties; and
- (3)** whether any unfair prejudice would be suffered by one or more Parties if the severance is (not) ordered.



If the Chief Hearing Officer proposes to sever a disciplinary proceeding, the Chief Hearing Officer shall serve upon the Parties notice of the proposed severance of disciplinary proceedings pursuant to Rule 9132. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to severance.

**(e) Severance Initiated by a Party**

A Party may file a motion to sever a disciplinary proceeding if one or more of the factors favoring severance set forth in paragraph (d) appear to be present. If a Party moves to sever a disciplinary proceeding, the Party shall file such motion with the Office of Hearing Officers, and, pursuant to Rule 9133, shall serve the same upon each of the parties to the action proposed to be severed. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to severance, and shall serve the response upon the Parties in the case proposed to be severed. The Chief Hearing Officer shall issue an order approving or denying the request for severance.

**(f) Impact on Hearing Panel or Extended Hearing Panel of Severance**

If the Chief Hearing Officer issues an order to sever a disciplinary proceeding for which a Hearing Panel or, if applicable, Extended Hearing Panel, has been appointed, the Chief Hearing Officer's order shall specify whether the same Hearing Panel or, if applicable, Extended Hearing Panel, shall preside over the severed disciplinary proceedings, or shall appoint a new Hearing Panel(s) or, if applicable, Extended Hearing Panel(s), to preside over any or all of the severed proceedings, based on the criteria set forth in Rules 9231 and 9232.

**9215. Answer to Complaint**

**(a) Form, Service, Notice**

Pursuant to Rule 9133, each Respondent named in a complaint shall serve an answer to the complaint on all other Parties within 25 days after service of the complaint on such Respondent, and at the time of service shall file such answer with the Office of Hearing Officers pursuant to Rules 9135, 9136 and 9137. The Hearing Officer assigned to a disciplinary proceeding pursuant to Rule 9213 may extend such period for good cause. Upon the receipt of a Respondent's answer, the Office of Hearing Officers shall promptly send written notice of the receipt of such answer to all Parties.

**(b) Content, Affirmative Defenses**

Unless otherwise ordered by the Hearing Officer, an answer shall specifically admit, deny, or state that the Respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation in the complaint. When a Respondent intends to deny only part of an allegation, the Respondent shall specify so much of it as is admitted and deny only the remainder. A statement of lack of information shall be deemed a denial. Any allegation not denied in whole or in part shall be deemed admitted. Any affirmative defense shall be asserted in the answer.

**(c) Motion for More Definite Statement**

A Respondent may file with an answer a motion for a more definite statement of specified matters of fact or law to be considered or determined. Such motion shall state why each such matter of fact or law should be required to be made more definite. If the motion is granted, the order granting such motion shall set the periods for filing such a statement and any answer thereto.

**(d) Amendments to Answer**

Upon motion by a Respondent, the Hearing Officer may, after considering good cause shown by the Respondent and any unfair prejudice which may result to any other Party, permit an answer to be amended.

**(e) Extension of Time to Answer Amended Complaint**

If a complaint is amended pursuant to Rule 9212(b), the time for filing an answer or amended answer shall be the greater of the original time period within which the Respondent is required to respond, or 14 days after service of the amended complaint. If any Respondent has already filed an answer, such Respondent shall have 14 days after service of the amended complaint, unless otherwise ordered by the Hearing Officer, within which to file an amended answer.

**(f) Failure to Answer, Default**

If a Respondent does not file an answer or make any other filing or request related to the complaint with the Office of Hearing Officers within the time required, the Nasdaq Regulation Department or the Department of Enforcement shall send a second notice to such Respondent requiring an answer within 14 days after service of the second notice. The second notice shall state that failure of the Respondent to reply within the period specified shall allow the Hearing Officer, in the exercise of his or her discretion, pursuant to Rule 9269 to: (1) treat as admitted by the Respondent the allegations in the complaint; and (2) issue a default decision against the Respondent. If the Respondent fails to file an answer with the Office of Hearing Officers within the time required, the Hearing Officer may issue a default decision against the Respondent pursuant to Rule 9269.

**9216. Acceptance, Waiver, and Consent; Plan Pursuant to SEC Rule 19d-1(c)(2)**

**(a) Acceptance, Waiver, and Consent Procedures**

**(1)** Notwithstanding Rule 9211, if the Nasdaq Regulation Department or the Department of Enforcement has reason to believe a violation has occurred and the member or associated person does not dispute the violation, the Nasdaq Regulation Department or the Department of Enforcement may prepare and request that the member or associated person execute a letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of

appeal to the Nasdaq Review Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by Nasdaq Regulation Department staff.

**(2)**

**(A)** If a member or person associated with a member submits an executed letter of acceptance, waiver, and consent, by the submission such member or person associated with a member also waives:

**(i)** any right of such member or person associated with a member to claim bias or prejudgment of the Chief Regulatory Officer, the Nasdaq Review Council, or any member of the Nasdaq Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent; and

**(ii)** any right of such member or person associated with a member to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

**(B)** If a letter of acceptance, waiver, and consent is rejected, the member or associated person shall be bound by the waivers made under subparagraphs (a)(1) and (a)(2)(A) for conduct by persons or bodies occurring during the period beginning on the date the letter of acceptance, waiver, and consent was executed and submitted and ending upon the rejection of the letter of acceptance, waiver, and consent.

**(3)** If the member or associated person executes the letter of acceptance, waiver, and consent, it shall be submitted to the Nasdaq Review Council. The Review Subcommittee or the Office of Disciplinary Affairs may accept such letter or refer it to the Nasdaq Review Council for acceptance or rejection by the Nasdaq Review Council. The Review Subcommittee may reject such letter or refer it to the Nasdaq Review Council for acceptance or rejection by the Nasdaq Review Council.

**(4)** If the letter is accepted by the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs, it shall be deemed final and shall constitute the complaint, answer, and decision in the matter. If the letter is rejected by the Review Subcommittee or the Nasdaq Review Council, the Nasdaq Regulation Department may take any other appropriate disciplinary action with respect to the alleged violation or

violations. If the letter is rejected, the member or associated person shall not be prejudiced by the execution of the letter of acceptance, waiver, and consent under subparagraph (a)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

**(b) Procedure for Violation Under Plan Pursuant to SEC Rule 19d-1(c)(2)**

**(1)** Notwithstanding Rule 9211, the Nasdaq Review Council may, subject to the requirements set forth in subparagraphs (b)(2) through (b)(4) and in SEC Rule 19d-1(c)(2), impose a fine (not to exceed \$2,500) and/or a censure on any member or associated person with respect to any rule listed in IM-9216. If the Nasdaq Regulation Department or the Department of Enforcement has reason to believe a violation has occurred and if the member or associated person does not dispute the violation, the Nasdaq Regulation Department or the Department of Enforcement may prepare and request that the member or associated person execute a minor rule violation plan letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the Nasdaq Review Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by Nasdaq Regulation Department staff.

**(2)**

**(A)** If a member or person associated with a member submits an executed minor rule violation plan letter, by the submission such member or person associated with a member also waives:

**(i)** any right of such member or person associated with a member to claim bias or prejudice of the Chief Regulatory Officer, the Nasdaq Review Council, or any member of the Nasdaq Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter; and

**(ii)** any right of such member or person associated with a member to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter.

(B) If a minor rule violation plan letter is rejected, the member or person associated with a member shall be bound by the waivers made under subparagraphs (b)(1) and (b)(2)(A) for conduct by persons or bodies occurring during the period beginning on the date the minor rule violation plan letter was executed and submitted and ending upon the rejection of the minor rule violation plan letter.

(3) If the member or associated person executes the minor rule violation plan letter, it shall be submitted to the Nasdaq Review Council. The Review Subcommittee or the Office of Disciplinary Affairs may accept such letter or refer it to the Nasdaq Review Council for acceptance or rejection by the Nasdaq Review Council. The Review Subcommittee may reject such letter or refer it to the Nasdaq Review Council for acceptance or rejection by the Nasdaq Review Council.

(4) If the letter is accepted by the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs, it shall be deemed final and Nasdaq shall report the violation to the Commission as required by the Commission pursuant to a plan approved under SEC Rule 19d-1(c)(2). If the letter is rejected by the Review Subcommittee or the Nasdaq Review Council, the Nasdaq Regulation Department may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member or associated person shall not be prejudiced by the execution of the minor rule violation plan letter under subparagraph (b)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

**IM-9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)**

- Rules 2210 and 2211 and IM-2210-1, - 2210-4 — Communications with the public.
- Rule 3360 — Failure to timely file reports of short positions on Form NS-1.
- Rule 3110 — Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with the Rules of Nasdaq.
- Rule 8211 — Failure to submit trading data as requested.
- Rule 1013 — Failure to timely submit amendments to Form BD.
- General 4, Section 1.1210.12 — Failure to timely submit amendments to Form U4.
- Rule 1013 — Failure to timely submit amendments to Form U5.
- General 4, Section 1.1240 — Failure to comply with the Firm Element of the continuing education requirements.
- Rule 3010(b) — Failure to timely file reports pursuant to the Taping Rule.

- Rule 3070 — Failure to timely file reports.
- Rule 4619(e) — Failure to timely file notifications pursuant to SEC Regulation M.
- Equity 5, Sections 4 and 5 — Failure to submit data in accordance with the Order Audit Trail System ("OATS").
- Rule 11870 — Failure to abide by Customer Account Transfer Contracts.
- Failure to provide or update contact information as required by Nasdaq Rules.
- Nasdaq Options Market Rules, Chapter X, Section 7 - Penalty for Minor Rule Violations for Options Trading
- SEC Exchange Act Rule 604 — Failure to properly display limit orders.
- SEC Exchange Act Rule 605(b)(5) — Failure to properly update published quotations in certain Electronic Communication Networks ("ECNs").
- SEC Exchange Act Rule 17a-5 — Failure to timely file FOCUS reports and annual audit reports.
- SEC Exchange Act Rule 17a-10 — Failure to timely file Schedule I.

## **9220. Request for Hearing; Extensions of Time, Postponements, Adjournments**

### **9221. Request for Hearing**

#### **(a) Respondent Request for Hearing**

With the filing of any Respondent's answer, such Respondent may:

- (1) request a hearing; and
- (2) propose an appropriate location for the hearing.

If a Respondent requests a hearing, a hearing shall be granted. A Respondent who fails to request a hearing with the filing of his or her answer waives the right to a hearing unless a Hearing Officer, Hearing Panel, or, if applicable, an Extended Hearing Panel, grants, for good cause shown, a later filed motion by such Respondent requesting a hearing.

#### **(b) Hearing Officer Order Requiring Hearing**

In the absence of a request for a hearing from any Respondent, the Hearing Officer may order any complaint set down for hearing.

#### **(c) Authority of Hearing Panel, Extended Hearing Panel to Order Hearing**

If all Respondents waive a hearing, and the Hearing Officer does not order a hearing on his or her own motion, the Hearing Panel or, if applicable, the Extended Hearing Panel, may order a hearing or may consider the matter on the record, as defined in Rule 9267. If fewer than all Respondents waive a hearing, the Hearing Officer, the Hearing Panel, or, if applicable, the Extended Hearing Panel, may, in the exercise of its discretion, order that a hearing be held as to all Respondents. Alternatively, the Hearing Officer, the Hearing Panel, or, if applicable, the Extended Hearing Panel, may conduct a hearing as to only those Respondents who requested a hearing and consider the matter on the record as to those Respondents who waived a hearing.

**(d) Notice of Hearing**

The Hearing Officer shall issue a notice stating the date, time, and place of the hearing, and whether the hearing shall be held before a Hearing Panel or an Extended Hearing Panel, and shall serve such notice on the Parties at least 28 days before the hearing, unless:

- (1) in the discretion of the Hearing Officer, he or she determines that extraordinary circumstances require a shorter notice period; or
- (2) the Parties waive the notice period.

**9222. Extensions of Time, Postponements, and Adjournments**

**(a) Availability**

At any time prior to the issuance of the decision of the Hearing Panel or, if applicable, the Extended Hearing Panel, the Hearing Officer may, for good cause shown, extend or shorten any time limits prescribed by the Code for the filing of any papers and may, consistent with paragraph (b), postpone or adjourn any hearing.

**(b) Limitations on Postponements, Adjournments, and Extensions**

A hearing shall begin at the time and place ordered, unless the Hearing Officer, for good cause shown, changes the place of the hearing, postpones the commencement of the hearing, or adjourns a convened hearing for a reasonable period of time, subject to the limitations in subparagraph (b)(2).

**(1) Additional Considerations**

In considering a motion for the postponement of the start of a hearing or, adjournment once a hearing has begun, the Hearing Officer shall consider:

- (A) the length of the proceeding to date;
- (B) the number of postponements, adjournments, or extensions already granted;

(C) the stage of the proceedings at the time of the request;

(D) potential harm to the investing public if an extension of time, adjournment, or postponement is granted; and

(E) such other matters as justice may require.

**(2) Time Limit**

Postponements, adjournments, or extensions of time for filing papers shall not exceed 28 days unless the Hearing Officer states on the record or provides by written order the reasons a longer period is necessary.

**9230. Appointment of Hearing Panel, Extended Hearing Panel**

**9231. Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel or Replacement Hearing Officer**

**(a) Appointment**

The Chief Hearing Officer shall appoint a Hearing Panel or an Extended Hearing Panel to conduct the disciplinary proceeding and issue a decision.

**(b) Hearing Panel**

The Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in paragraph (e) and in Rule 9234(a), (c), (d), or (e). The Hearing Officer shall serve as the chair of the Hearing Panel. Each Panelist shall be associated with a member of Nasdaq or retired therefrom.

**(1)** The Chief Hearing Officer shall select as a Panelist a person who:

**(A)** previously served on the Nasdaq Review Council;

**(B)** previously served on a disciplinary subcommittee of the Nasdaq Review Council, including a Subcommittee, an Extended Proceeding Committee, or their predecessor subcommittees;

**(C)** previously served as a Director, but does not serve currently in that position;

**(D)** is a FINRA Panelist approved by the Nasdaq Board at least annually, including a person who previously served on the Market Regulation Committee not earlier than four years before the date the complaint was served upon the Respondent who was the first served Respondent in the disciplinary proceeding for which the Hearing Panel or the Extended Hearing Panel is being appointed, or from other sources the Board deems appropriate given the responsibilities of Panelists.



**(c) Extended Hearing Panel**

Upon consideration of the complexity of the issues involved, the probable length of the hearing, or other factors that the Chief Hearing Officer deems material, the Chief Hearing Officer may determine that a matter shall be designated an Extended Hearing, and that such matter shall be considered by an Extended Hearing Panel. The Extended Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in Rule 9234(a), (c), (d), or (e). The Hearing Officer will serve as the chair of the Extended Hearing Panel. The Panelists shall be associated with a member of Nasdaq, or retired therefrom. The Chief Hearing Officer shall have discretion to compensate any or all Panelists of an Extended Hearing Panel at the rate then in effect for arbitrators appointed under FINRA Rule 12000 and 13000 Series. The Chief Hearing Officer shall select as a Panelist a person who meets the criteria set forth in paragraph (b)(1).

**(d) Observer**

A person who is qualified to serve as a Panelist may be designated by the Chief Hearing Officer to serve as an observer to a Hearing Panel or an Extended Hearing Panel. If the Chief Hearing Officer designates more than two people to serve as observers to a Hearing Panel or an Extended Hearing Panel, the Chief Hearing Officer shall obtain the consent of the Parties. An observer may attend any hearing of a disciplinary proceeding and observe the proceeding, but may not vote or participate in any other manner in the hearing or the deliberations of the Hearing Panel or the Extended Hearing Panel, or participate in the administration of the disciplinary proceeding.

**(e) Appointment of Replacement Hearing Officer**

In the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer shall appoint a replacement Hearing Officer. To ensure fairness to the parties and expedite completion of the proceeding when a replacement Hearing Officer is appointed after the hearing has commenced, the replacement Hearing Officer has discretion to exercise the following powers:

- (1) Allow the Hearing Panelists to resolve the issues in the proceeding and issue a decision without the participation of the replacement Hearing Officer in the decision. The replacement Hearing Officer may advise the Hearing Panelists regarding legal issues, and shall exercise the powers of the Hearing Officer under Rule 9235(a), including preparing and signing the decision on behalf of the Hearing Panel, in accordance with Rule 9268; or
- (2) Certify familiarity with the record and participate in the resolution of the issues in the case and in the issuance of the decision. In exercising this power, the replacement Hearing Officer may recall any witness before the Hearing Panel.

**9232. Criteria for Selection of Panelists and Replacement Panelists**

The Chief Hearing Officer shall select Panelists from the categories of persons eligible to serve as Panelists as set forth in Rule 9231(b)(1)(A) through (D) based upon the following criteria:

- (1) expertise;
- (2) the absence of any conflict of interest or bias, and any appearance thereof;
- (3) availability; and,
- (4) the frequency with which a person has served as a Panelist on a Hearing Panel or an Extended Hearing Panel during the past two years, favoring the selection of a person as a Panelist who has never served or served infrequently as a Panelist during the period.

### **9233. Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Hearing Officers**

#### **(a) Recusal, Withdrawal of Hearing Officer**

If at any time a Hearing Officer determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Hearing Officer shall notify the Chief Hearing Officer and the Chief Hearing Officer shall issue and serve on the Parties a notice stating that the Hearing Officer has withdrawn from the matter. In the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer shall appoint a replacement Hearing Officer. In such a case, the replacement Hearing Officer shall proceed according to Rule 9231(e).

#### **(b) Motion for Disqualification**

A Party may move for the disqualification of a Hearing Officer. A motion shall be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Hearing Officer's fairness might reasonably be questioned, and shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the Party learned of those facts. Such motions shall be filed not later than 15 days after the later of:

- (1) when the Party learned of the facts believed to constitute the disqualification; or
- (2) when the Party was notified of the assignment of the Hearing Officer.

#### **(c) Disposition of Disqualification Motion**

A motion for disqualification of a Hearing Officer shall be decided by the Chief Hearing Officer who shall promptly investigate whether disqualification is required and issue a

written ruling on the motion. In the event of a disqualification of the Hearing Officer, the Chief Hearing Officer shall appoint a replacement Hearing Officer.

### **9234. Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Panelists**

#### **(a) Recusal, Withdrawal of Panelist**

If at any time a Panelist of a Hearing Panel or an Extended Hearing Panel determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Panelist shall notify the Hearing Officer and the Hearing Officer shall issue and serve on the Parties a notice stating that the Panelist has withdrawn from the matter. In the event that a Panelist withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer may, in the exercise of discretion, determine whether to appoint a replacement Panelist. In the event that both Panelists withdraw, are incapacitated, or otherwise are unable to continue service after being appointed, the Chief Hearing Officer shall appoint two replacement Panelists.

#### **(b) Disqualification: Motion of Party; Order of Chief Hearing Officer**

(1) A Party may file a motion to disqualify a Panelist of a Hearing Panel or an Extended Hearing Panel. A motion shall be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Panelist's fairness might reasonably be questioned, and shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the Party learned of those facts.

(2) Such motions shall be filed not later than 15 days after the later of:

(A) when the Party learned of the facts believed to constitute the disqualification; or

(B) when the Party was notified of the appointment of the Panelist.

(3) The Chief Hearing Officer may order the disqualification of a Panelist of a Hearing Panel or an Extended Hearing Panel if the Chief Hearing Officer determines that a conflict of interest or bias exists or circumstances otherwise exist where the Panelist's fairness might reasonably be questioned, and shall state the facts constituting the grounds for disqualification.

#### **(c) Disposition of Disqualification Motion: Challenge to Single Member of Hearing Panel**

If a Party files a motion to disqualify a Panelist of a Hearing Panel or an Extended Hearing Panel, the Hearing Officer shall promptly investigate whether disqualification is required and shall issue a written ruling on the motion. In the event a Panelist is

disqualified, the Chief Hearing Officer may, in the exercise of discretion, appoint a replacement Panelist.

**(d) Disposition of Disqualification Motion: Challenge to Both Panelists of Hearing Panel or Extended Hearing Panel**

If a Party files a motion to disqualify both Panelists of a Hearing Panel or an Extended Hearing Panel, the Hearing Officer shall promptly investigate whether disqualification is required and shall issue a written ruling on the motion. In the event one Panelist is disqualified, the Chief Hearing Officer may, in the exercise of discretion, appoint a replacement Panelist. In the event both Panelists are disqualified, the Chief Hearing Officer shall promptly appoint two persons as replacement Panelists.

**(e) Disposition of Disqualification Motion: Challenge to Both Panelists of Hearing Panel or Extended Hearing Panel and Hearing Officer**

If a Party files a motion to disqualify both Panelists of a Hearing Panel or an Extended Hearing Panel, and the Hearing Officer, the Chief Hearing Officer shall promptly investigate whether disqualification is required and shall issue a written ruling on the motion. In the event a Panelist is disqualified, the Chief Hearing Officer may, in the exercise of discretion, appoint a replacement Panelist. In the event both Panelists are disqualified, the Chief Hearing Officer shall promptly appoint two persons as replacement Panelists. In the event a Hearing Officer and a Panelist are disqualified, the Chief Hearing Officer shall promptly appoint a replacement Hearing Officer. In the event both Panelists and the Hearing Officer are disqualified, the Chief Hearing Officer shall promptly appoint a replacement Hearing Officer and two persons as replacement Panelists.

**(f) Criteria for Replacement Panelist**

If the Chief Hearing Officer appoints a replacement Panelist by operation of this Rule, the Chief Hearing Officer shall do so using the criteria set forth in Rule 9232.

**9235. Hearing Officer Authority**

**(a) Hearing Officer Authority**

The Hearing Officer shall be selected by the Chief Hearing Officer and shall have authority to do all things necessary and appropriate to discharge his or her duties. In addition to the powers exercised by all members of the Hearing Panel or, if applicable, the Extended Hearing Panel, the powers of the Hearing Officer include, but are not limited to:

**(1)** holding pre-hearing and other conferences and requiring the attendance at any such conference of at least one representative of each Party who has authority to negotiate the resolution of issues in controversy;

- (2) regulating the course of the hearing;
- (3) ordering the Parties to present oral arguments at any stage of the disciplinary proceeding;
- (4) resolving any and all procedural and evidentiary matters, discovery requests, and other non-dispositive motions, subject to any limitations set forth elsewhere in the Code;
- (5) reopening any hearing, upon notice to all Parties, prior to the issuance of the decision of the Hearing Panel or, if applicable, the Extended Hearing Panel;
- (6) creating and maintaining the official record of the disciplinary proceeding; and
- (7) drafting a decision that represents the views of the majority of the Hearing Panel or, if applicable, the Extended Hearing Panel.

**(b) Authority in the Absence of Hearing Officer**

If the Hearing Officer appointed to a case is temporarily unavailable or unable for any reason to discharge his or her duties in a particular proceeding under conditions not requiring the appointment of a replacement Hearing Officer, the Chief Hearing Officer or the Deputy Chief Hearing Officer in his or her discretion may exercise the necessary authority in the same manner as if he or she had been appointed Hearing Officer in the particular proceeding.

**9240. Pre-Hearing Conference and Submission**

**9241. Pre-Hearing Conference**

**(a) Purposes**

The purposes of a pre-hearing conference include, but are not limited to:

- (1) expediting the disposition of the proceeding;
- (2) establishing procedures to manage the proceeding efficiently; and
- (3) improving the quality of the hearing through more thorough preparation.

**(b) Procedure**

On his or her own motion or at the request of a Party, the Hearing Officer may, in his or her discretion, order counsel or any Party to meet for a pre-hearing conference. Such conferences also may be held with one or more persons participating by telephone or other remote means.

**(c) Subjects to be Discussed**

At a pre-hearing conference, the Hearing Officer shall schedule an expedited proceeding as required by Rule 9290, and may consider and take action with respect to any or all of the following:

- (1) simplification and clarification of the issues;
- (2) exchange of witness and exhibit lists and copies of exhibits;
- (3) stipulations, admissions of fact, and stipulations concerning the contents, authenticity, or admissibility into evidence of documents;
- (4) matters of which official notice may be taken;
- (5) the schedule for exchanging pre-hearing motions or briefs, if any;
- (6) the method of service and filing of papers by the Parties;
- (7) determination of hearing dates;
- (8) amendments to the complaint or answers thereto;
- (9) production of documents as set forth in Rule 9251; and
- (10) such other matters as may aid in the orderly and expeditious disposition of the proceeding.

**(d) Scheduling**

An initial pre-hearing conference, unless determined by the Hearing Officer to be unnecessary or premature, shall be held within 21 days after filing of an answer, or after the expiration of the second period provided for filing an answer as set forth in Rule 9215(f). When a complaint names multiple Respondents, the 21-day period shall commence from the later of (i) the date on which the last timely answer was filed, or (ii) if one or more Respondents have failed to answer, from the expiration of the second period provided for filing an answer under Rule 9215(f).

**(e) Pre-hearing Order**

At or following the conclusion of any conference held pursuant to this Rule, the Hearing Officer shall enter a written ruling or order that recites any agreements reached and any procedural determinations made by the Hearing Officer.

**(f) Failure to Appear: Default**

The Hearing Officer may issue a default decision, pursuant to Rule 9269, against a Party that fails to appear, in person or through counsel or a representative, at a pre-hearing conference of which the Party has been due notice.

#### **9242. Pre-Hearing Submission**

##### **(a) Requirement to Furnish Information**

Prior to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, the Hearing Officer, in the exercise of his or her discretion, may order a Party to furnish to all other Parties and the Hearing Panel or, if applicable, the Extended Hearing Panel, such information as deemed appropriate, including any or all of the following:

- (1) an outline or narrative summary of a Party's case or defense;
- (2) the legal theories upon which a Party shall rely;
- (3) a list and copies of documents that a Party intends to introduce at the hearing;
- (4) a list of witnesses who shall testify on a Party's behalf, including the witnesses' names, occupations, addresses, and a brief summary of their expected testimony; and,
- (5) if a witness shall be called to testify as an expert, a statement of the expert's qualifications, a listing of other proceedings in which the expert has given expert testimony, a list of the expert's publications, and copies of those publications that are not readily available to the other Parties and the Hearing Panel or, if applicable, the Extended Hearing Panel.

#### **9250. Discovery**

##### **9251. Inspection and Copying of Documents in Possession of Staff**

###### **(a) Documents to be Available for Inspection and Copying**

(1) Unless otherwise provided by this Rule, or by order of the Hearing Officer, the Nasdaq Regulation Department or the Department of Enforcement shall make available for inspection and copying by any Respondent, Documents prepared or obtained by Interested Staff in connection with the investigation that led to the institution of proceedings. Such Documents include but are not limited to:

- (A) requests for information issued pursuant to Rule 8210;
- (B) every other written request directed to persons not employed by Nasdaq to provide Documents or to be interviewed;
- (C) the Documents provided in response to any such requests described in (A) and (B) above;

(D) all transcripts and transcript exhibits; and

(E) all other Documents obtained from persons not employed by Nasdaq.

(2) The Nasdaq Regulation Department or the Department of Enforcement shall promptly inform the Hearing Officer and each other Party if, after the issuance of a complaint, requests for information under Rule 8210 are issued under the same investigative file number under which the investigation leading to the institution of disciplinary proceedings was conducted. If Interested Staff receives Documents pursuant to a request for information under Rule 8210 after Documents have been made available to a Respondent for inspection and copying as set forth in paragraph (a), and if such Documents are material and relevant to the disciplinary proceeding in which such Respondent is a Party, the additional Documents shall be made available to the Respondent not later than 14 days after the Interested Staff receives such Documents. If a hearing on the merits is scheduled to begin, Interested Staff shall make the additional Documents available to the Respondent not less than ten days before the hearing. If Interested Staff receives such Documents ten or fewer days before a hearing on the merits is scheduled to begin or after such hearing begins, Interested Staff shall make the additional Documents available immediately to the Respondent.

(3) Nothing in subparagraph (a)(1) shall limit the discretion of the Nasdaq Regulation Department or the Department of Enforcement to make available any other Document or the authority of the Hearing Officer to order the production of any other Document.

**(b) Documents That May Be Withheld**

(1) The Nasdaq Regulation Department or the Department of Enforcement may withhold a Document if:

(A) the Document is privileged or constitutes attorney work product;

(B) the Document is an examination or inspection report, an internal memorandum, or other note or writing prepared by a Nasdaq employee that shall not be offered in evidence;

(C) the Document would disclose (i) an examination, investigatory or enforcement technique or guideline of Nasdaq, a federal, state, or foreign regulatory authority, or any self-regulatory organization; (ii) the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization that furnished information or was furnished information on a confidential basis regarding an investigation, an examination, an enforcement proceeding, or any other type of civil or criminal enforcement action; or (iii) an examination, an investigation, an enforcement proceeding, or any other type of civil or criminal enforcement action under consideration by, or initiated by Nasdaq, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or



(D) the Hearing Officer grants leave to withhold a Document or category of Documents as not relevant to the subject matter of the proceeding, or for other good cause shown.

(2) Nothing in subparagraph (b)(1) authorizes the Nasdaq Regulation Department or the Department of Enforcement to withhold a Document, or a part thereof, that contains material exculpatory evidence.

**(c) Withheld Document List**

The Hearing Officer may require the Nasdaq Regulation Department or the Department of Enforcement to submit to the Hearing Officer a list of Documents withheld pursuant to subparagraphs (b)(1)(A) through (D) or to submit to the Hearing Officer any Document withheld. Upon review, the Hearing Officer may order the Nasdaq Regulation Department or the Department of Enforcement to make the list or any Document withheld available to the other Parties for inspection and copying. A motion to require the Nasdaq Regulation Department or the Department of Enforcement to produce a list of Documents withheld pursuant to paragraph (b) shall be based upon some reason to believe that a Document is being withheld in violation of the Code.

**(d) Timing of Inspection and Copying**

The Hearing Officer shall determine the schedule of production of documents pursuant to this Rule. Unless otherwise ordered by the Hearing Officer, the Nasdaq Regulation Department or the Department of Enforcement shall commence making Documents available to a Respondent for inspection and copying pursuant to this Rule not later than 21 days after service of the Respondent's answer or, if there are multiple Respondents, not later than 21 days after the last timely answer is filed. If a Respondent in a multi-Respondent case fails to answer, the Nasdaq Regulation Department or the Department of Enforcement shall make Documents available to all other Respondents not later than the later of:

(1) 21 days after the filing date of the last timely answer, or

(2) the expiration of the second period provided for filing an answer as set forth in Rule 9215(f).

**(e) Place and Time of Inspection and Copying**

Documents subject to inspection and copying pursuant to this Rule shall be made available to the Respondent for inspection and copying at the Nasdaq office where they are ordinarily maintained, or at such other location as the Hearing Officer, in his or her discretion, shall designate, or as the Parties otherwise agree. A Respondent shall be given access to the Documents during normal business hours. A Respondent shall not be given custody of or be permitted to remove the Documents.

**(f) Copying Costs**

A Respondent may obtain a photocopy of all Documents made available for inspection. A Respondent shall be responsible for the cost of photocopying. Unless otherwise ordered, charges for copies made at the request of a Respondent shall be at a rate to be established by the Nasdaq.

**(g) Failure to Make Documents Available — Harmless Error**

In the event that a Document required to be made available to a Respondent pursuant to this Rule is not made available by the Nasdaq Regulation Department or the Department of Enforcement, no rehearing or amended decision of a proceeding already heard or decided shall be required unless the Respondent establishes that the failure to make the Document available was not harmless error. The Hearing Officer, or, upon appeal or review, a Subcommittee, an Extended Proceeding Committee, or the Nasdaq Review Council, shall determine whether the failure to make the document available was not harmless error.

**9252. Requests for Information**

**(a) Content and Timing of Requests**

A Respondent who requests that Nasdaq invoke Rule 8210 to compel the production of Documents or testimony at the hearing shall do so in writing and serve copies on all Parties. Such request shall: be submitted to the Hearing Officer no later than 21 days before the scheduled hearing date; describe with specificity the Documents, the category or type of Documents, or the testimony sought; state why the Documents, the category or type of Documents, or the testimony are material; describe the requesting Party's previous efforts to obtain the Documents, the category or type of Documents, or the testimony through other means; and state whether the custodian of each Document, or the custodian of the category or type of Documents, or each proposed witness is subject to Nasdaq's jurisdiction.

**(b) Standards for Issuance**

A request that the Nasdaq Regulation Department compel the production of Documents or testimony shall be granted only upon a showing that: the information sought is relevant, material, and non-cumulative; the requesting Party has previously attempted in good faith to obtain the desired Documents and testimony through other means but has been unsuccessful in such efforts; and each of the persons from whom the Documents and testimony are sought is subject to Nasdaq's jurisdiction. In addition, the Hearing Officer shall consider whether the request is unreasonable, oppressive, excessive in scope, or unduly burdensome, and whether the request should be denied, limited, or modified.

**(c) Limitations on Requests**

If, after consideration of all the circumstances, the Hearing Officer determines that a request submitted pursuant to this Rule is unreasonable, oppressive, excessive in scope,

or unduly burdensome, he or she shall deny the request, or grant it only upon such conditions as fairness requires. In making the foregoing determination, the Hearing Officer may inquire of the other Parties whether they shall stipulate to the facts sought to be proved by the Documents or testimony sought. If the Hearing Officer grants the request, the Hearing Officer shall order that requested Documents be produced to all Parties not less than ten days before the hearing, and order that witnesses whose testimony was requested appear and testify at the hearing. If the Hearing Officer grants the request ten or fewer days before a hearing on the merits is scheduled to begin or after such hearing begins, the Documents or testimony shall be produced immediately to all Parties.

### **9253. Production of Witness Statements**

#### **(a) Availability**

Notwithstanding the provisions of Rule 9251(b),

**(1)** A Respondent in a disciplinary proceeding may file a motion requesting that the Nasdaq Regulation Department or the Department of Enforcement produce for inspection and copying any statement of any person called or to be called as a witness by the Nasdaq Regulation Department or the Department of Enforcement that pertains, or is expected to pertain, to his or her direct testimony and which is "a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement," as that phrase is used in 18 U.S.C. § 3500(e)(2).

**(2)** A Respondent in a disciplinary proceeding may also file a motion requesting that the Nasdaq Regulation Department or the Department of Enforcement produce for inspection and copying any contemporaneously written statement made by an Interested Staff member during a routine examination or inspection about the substance of oral statements made by a non-Nasdaq person when (a) either the Interested Staff member or non-Nasdaq person is called as a witness by the Nasdaq Regulation Department or the Department of Enforcement, and (b) that portion of the statement for which production is sought directly relates to the Interested Staff member's testimony or the testimony of the non-Nasdaq witness.

#### **(b) Failure to Produce — Harmless Error**

In the event that a statement required to be made available for inspection and copying by a Respondent is not provided by the Nasdaq Regulation Department or the Department of Enforcement, there shall be no rehearing of a proceeding already heard, or issuance of an amended decision in a proceeding already decided, unless the Respondent establishes that the failure to provide the statement was not harmless error. The Hearing Officer, or upon appeal or review, a Subcommittee, an Extended Proceeding Committee, or the Nasdaq Review Council, shall determine whether the failure to provide any statement was not harmless error.

**9260. Hearing and Decision****9261. Evidence and Procedure in Hearing****(a) Submission of Documentary Evidence and List of Witnesses Before Hearing**

No later than ten days before the hearing, or at such earlier date as may be specified by the Hearing Officer, each Party shall submit to all other Parties and to the Hearing Officer copies of documentary evidence and the names of the witnesses each Party intends to present at the hearing.

**(b) Party's Right to Be Heard**

If a hearing is held, a Party shall be entitled to be heard in person, by counsel, or by the Party's representative.

**(c) Request to Submit Additional Evidence**

Notwithstanding paragraph (a), a Party, for good cause shown, may seek to submit any additional evidence at the hearing as the Hearing Officer, in his or her discretion, determines may be relevant and necessary for a complete record.

**9262. Testimony**

A person who is subject to the jurisdiction of Nasdaq shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

**9263. Evidence: Admissibility****(a) Criteria for Receiving and Excluding Evidence**

The Hearing Officer shall receive relevant evidence, and may exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unduly prejudicial.

**(b) Objections**

Objections to the admission or exclusion of evidence shall be made on the record and shall succinctly state the grounds relied upon. Excluded material shall be deemed a supplemental document, which shall be attached to the record and retained under Rule 9267.

**9264. Motion for Summary Disposition****(a) Pre-hearing**

After a Respondent's answer has been filed and Documents have been made available to that Respondent for inspection and copying pursuant to Rule 9251, the Respondent or the Nasdaq Regulation Department or the Department of Enforcement, without leave of the Hearing Officer, may make a motion for summary disposition of any or all the causes of

action in the complaint with respect to that Respondent, as well as any defense raised in a Respondent's answer. All pre-hearing motions for summary disposition and supporting papers shall be filed at least 21 days before the time set for the hearing, or at such earlier time as ordered by the Hearing Officer. Notwithstanding the provisions of Rule 9146(d), any opposition or response to a pre-hearing motion for summary disposition shall be filed at least seven days before the time set for the hearing.

**(b) After Commencement of Hearing on Merits**

After a hearing on the merits has commenced, a Respondent or the Nasdaq Regulation Department or the Department of Enforcement may make a motion for summary disposition of any or all of the causes of action in the complaint with respect to that Respondent or defenses raised in that Respondent's answer only with leave of the Hearing Officer.

**(c) Case Not Fully Adjudicated on Motion**

If on motion under this rule a decision is not rendered upon the whole case or for all the relief asked and a hearing is necessary, the Hearing Panel or, if applicable, the Extended Hearing Panel, at the hearing of the motion, by examining the pleadings and the evidence before it and by questioning counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, and directing such further proceedings in the action as are just. Upon the hearing of the action the facts so specified shall be deemed established, and the hearing shall be conducted accordingly.

**(d) Form of Papers**

A motion for summary disposition pursuant to paragraph (a) shall be accompanied by the following: a statement of undisputed facts; a supporting memorandum of points and authorities; and affidavits or declarations that set forth such facts as would be admissible at the hearing and show affirmatively that the affiant is competent to testify to the matters stated therein. A memorandum of points and authorities in support or opposition shall not exceed 35 pages.

**(e) Rulings on Motion**

The Hearing Officer may promptly deny or defer decisions on any motion for summary disposition, however, only the Hearing Panel or, if applicable, the Extended Hearing Panel, may grant a motion for summary disposition, except the Hearing Officer may grant motions for summary disposition with respect to questions of jurisdiction. The Hearing Panel or, if applicable, the Extended Hearing Panel, may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the Party that files the motion is entitled to summary disposition as a matter of law. If a Party files a motion under paragraph (a), the facts alleged in the pleadings of the Party against

whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by the non-moving Party, by uncontested affidavits or declarations, or by facts officially noticed pursuant to Rule 9145. If a Party opposing a motion for summary disposition made under paragraph (a) cannot present, by affidavit prior to the hearing, facts essential to justify the Party's opposition to the motion, the Hearing Panel or, if applicable, the Extended Hearing Panel, may deny the motion for summary disposition or defer the decision on the motion.

## **9265. Record of Hearing**

### **(a) Recordation**

A hearing shall be recorded by a court reporter and a transcript shall be prepared. Unless otherwise ordered by a Hearing Officer, a pre-hearing conference shall be recorded by a court reporter and a transcript shall be prepared.

### **(b) Availability of a Transcript**

A transcript of a pre-hearing conference and a transcript of a hearing shall be available to a Party for purchase from the court reporter at prescribed rates. A witness may purchase from the court reporter a transcript of his or her own testimony.

### **(c) Transcript Correction**

Prior to the filing of post-hearing briefs or proposed findings and conclusions, or within such earlier time as ordered by the Hearing Officer, a Party or witness may seek to correct his or her transcript. A proposed correction of the transcript shall be submitted to the Hearing Officer by affidavit. Upon notice to all Parties to the disciplinary proceeding, the Hearing Officer may order the correction to the transcript as requested or sua sponte.

## **9266. Proposed Findings of Fact, Conclusions of Law, and Post-Hearing Briefs**

### **(a) Discretion of Hearing Officer to Require Proposed Findings of Fact, Conclusions of Law, and Post-Hearing Briefs**

At the discretion of the Hearing Officer, the Parties may be ordered to file proposed findings of facts and conclusions of law, or post-hearing briefs, or both. The Hearing Officer may order that such proposed findings and conclusions be filed together with, or as part of, post-hearing briefs.

### **(b) Reference to Record Required**

Proposed findings of fact or other statements of fact in briefs shall be supported by specific references to the record.

### **(c) Period for Filing**

In any case in which the Hearing Officer ordered the filing of proposed findings or conclusions of law, or post-hearing briefs, the Hearing Officer shall, after consultation with the Parties, prescribe the period within which proposed findings and conclusions of law and post-hearing briefs are to be filed. Such period shall be reasonable under all the circumstances but the total period allowed for the filing of post-hearing submissions shall not exceed 60 days after the conclusion of the hearing unless the Hearing Officer, for good cause shown, permits a different period and sets forth in an order the reasons why a longer period is necessary.

**(d) Form, Length of Papers**

Unless the Hearing Officer orders otherwise, each post-hearing submission shall not exceed 25 pages, exclusive of cover sheets, tables of contents, and tables of authorities.

**9267. Record; Supplemental Documents Attached to Record; Retention**

**(a) Contents of the Record, Retention**

The record shall consist of:

- (1) the complaint, answers, each notice of hearing, pre-hearing order, and any amendments thereto;
- (2) each application, motion, submission, and other paper, and any amendments, motions, objections, and exceptions to or regarding them;
- (3) each transcript of a pre-hearing conference and of a hearing, and each stipulation, transcript of testimony, Document, and other item admitted into evidence;
- (4) each written communication accepted at the discretion of the Hearing Officer;
- (5) with respect to a motion to disqualify a Hearing Officer under Rule 9233 or a Panelist under Rule 9234, each affidavit or transcript of testimony taken and the ruling made in connection with the request;
- (6) all proposed findings and conclusions;
- (7) each written ruling, order, and decision issued by the Chief Hearing Officer, Hearing Officer, Hearing Panel or, if applicable, Extended Hearing Panel; and,
- (8) any other Document or item accepted into the record by the Hearing Officer, the Hearing Panel or, if applicable, the Extended Hearing Panel.

**(b) Supplemental Documents Attached To Record; Retention**

- (1) A supplemental Document attached to the record is any Document submitted to the Hearing Officer that did not become part of the record, including:

(A) a Document not admitted by the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel;

(B) any matter stricken from any filing or stricken during an oral presentation, including any matter stricken from any filing or stricken during any oral presentation because the Adjudicator determined it was scandalous or impertinent as provided in Rule 9136(e); and

(C) a list of Documents, if any, that a Respondent unsuccessfully sought by motion to inspect and copy under Rule 9251(c).

(2) A supplemental Document attached to the record shall not constitute part of the record, but shall be retained until the date upon which Nasdaq's decision becomes final disciplinary action or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

**(c) Substitution of Copies**

Parties may submit to the Hearing Officer for substitution a true copy of a Document in the record.

**9268. Decision of Hearing Panel or Extended Hearing Panel**

**(a) Majority Decision**

Within 60 days after the final date allowed for filing proposed findings of fact, conclusions of law, and post-hearing briefs, or by a date established at the discretion of the Chief Hearing Officer, the Hearing Officer shall prepare a written decision that reflects the views of the Hearing Panel or, if applicable, the Extended Hearing Panel, as determined by majority vote.

**(b) Contents of Decision**

The decision shall include:

(1) a statement describing the investigative or other origin of the disciplinary proceeding;

(2) the specific statutory or rule provisions that were alleged to have been violated;

(3) a statement setting forth the findings of fact with respect to any act or practice the Respondent was alleged to have committed or omitted;

(4) the conclusions of the Hearing Panel, or Extended Hearing Panel, as to whether the Respondent violated any provision alleged in the complaint;

(5) a statement of the Hearing Panel, or the Extended Hearing Panel, in support of the disposition of the principal issues raised in the proceeding;



(6) a statement describing any sanction imposed, the reasons therefor, and the date upon which such sanction shall become effective. Unless otherwise provided in the decision, the sanction(s) shall become effective on a date to be determined by Nasdaq Regulation staff; and

(7) a statement, when the sanctions include a permanent cease and desist order, that is consistent with the requirements of Rule 9291(a) concerning the content, scope, and form of a permanent cease and desist order.

**(c) Dissenting Opinion**

Within 65 days after the final date allowed for filing proposed findings of fact and conclusions of law, and post-hearings briefs, or by a date established at the discretion of the Chief Hearing Officer, the Hearing Officer or any Panelist may prepare a written dissenting opinion.

**(d) Service, Notice, And Dissemination Requirements**

The Office of Hearing Officers shall promptly serve the decision of the Hearing Panel, or the Extended Hearing Panel, and any dissenting opinion on the Parties; publish notice of the decision and any dissenting opinion in the Central Registration Depository; and provide a copy of the decision and any dissenting opinion to each member of Nasdaq with which a Respondent is associated.

**(e) Appeal or Review**

(1) If not timely appealed pursuant to Rule 9311 or timely called for review pursuant to Rule 9312, the majority decision shall constitute final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1).

(2) The majority decision with respect to a Nasdaq member that is an affiliate of Nasdaq within the meaning of Rule 2160 shall constitute final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1) and may not be appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312.

**9269. Default Decisions**

**(a) Issuance of Default Decisions**

(1) The Hearing Officer may issue a default decision against a Respondent that fails to answer the complaint within the time afforded under Rule 9215, or a Party that fails to appear at any hearing that a Party is required to attend under the Rule 9200 Series of which the Party has due notice.

(2) If the defaulting Party is the Respondent, the Hearing Officer may deem the allegations against that Respondent admitted. If the Defaulting Party is the Nasdaq

Regulation Department or the Department of Enforcement, the Hearing Officer may issue a default decision ordering that the complaint be dismissed with prejudice.

(3) The Hearing Officer may order a Party that fails to appear at the pre-hearing conference or the hearing to pay the costs incurred by other Parties in connection with their appearance.

(4) The Office of Hearing Officers shall provide a copy of the default decision to each Nasdaq member with which a Respondent is associated.

#### **(b) Contents of Decision**

The contents of a default decision shall conform to the requirements of Rule 9268(b).

#### **(c) Review of Default Decision**

A Party may, for good cause shown, file a motion to set aside a default, dismissal, and the imposition of costs. Upon a showing of good cause, the Hearing Officer that entered the original order shall decide the motion. If the Hearing Officer that issued the original order is not available, the Chief Hearing Officer shall appoint another Hearing Officer to decide the motion.

#### **(d) Final Disciplinary Action of Nasdaq; Effectiveness of Sanctions**

(1) If a default decision is not appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312 within 25 days after the date the Office of Hearing Officers serves it on the Parties, the default decision shall become the final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1). Unless otherwise provided in the default decision, the sanctions shall become effective on a date to be determined by Nasdaq Regulation Department staff, except that a bar or expulsion shall become effective immediately upon the default decision becoming the final disciplinary action of Nasdaq. The decision shall be served on a Respondent by courier, facsimile or other means reasonably likely to obtain prompt service when the sanction is a bar or an expulsion.

(2) A default decision with respect to a Nasdaq member that is an affiliate of Nasdaq within the meaning of Rule 2160 shall constitute final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1) and may not be appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312.

### **9270. Settlement Procedure**

#### **(a) When Offer Allowed; No Stay of Proceeding**

A Respondent who is notified that a proceeding has been instituted against him or her may propose in writing an offer of settlement at any time. If a Respondent proposes an offer of settlement before the hearing on the merits has begun, the making of an offer of settlement shall not stay the proceeding, unless otherwise decided by the Hearing Officer.

If a Respondent proposes an offer of settlement after the hearing on the merits has begun, the making of an offer of settlement shall not stay the proceeding, unless otherwise decided by the Hearing Panel or, if applicable, the Extended Hearing Panel.

**(b) Settlement Offer Shall Conform to Rule**

A Respondent who makes an offer of settlement shall do so in conformity with the provisions of this Rule and shall not make such an offer of settlement frivolously or propose a sanction inconsistent with the seriousness of the violations to be found.

**(c) Content and Signature Requirements**

An offer of settlement shall be in writing and signed by the person making the offer, and, if the person is represented by counsel or a representative, signed also by the counsel or representative. The offer of settlement shall contain in reasonable detail:

- (1) a statement describing the investigative or other origin of the disciplinary action;
- (2) the specific statutory or rule provisions that the member or associated person is alleged to have violated;
- (3) a statement containing the acts or practices which the member or associated person is alleged to have engaged in or omitted;
- (4) a statement consenting to findings of fact and violations consistent with the statements contained in the offer of settlement required by subparagraphs (c)(2) and (c)(3);
- (5) a proposed sanction to be imposed that is consistent with the current sanction guidelines or, if inconsistent with the sanction guidelines, a detailed statement supporting the proposed sanction;
- (6) if applicable, a proposed permanent cease and desist order to be imposed that is consistent with the requirements of Rule 9291(a) concerning the content, scope, and form of a permanent cease and desist order; and
- (7) the effective date of any sanction(s) imposed, or a statement that the effective date of the sanction(s) will be a date to be determined by Nasdaq Regulation Department staff.

**(d) Waiver**

(1) If a Respondent submits an offer of settlement, by the submission such Respondent waives:

(A) any right of such Respondent to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the Nasdaq Review Council, the

Commission, and the courts, or any right otherwise to challenge or contest the validity of the order issued, if the offer of settlement and order of acceptance are accepted;

**(B)** any right of such Respondent to claim bias or prejudgment of the Chief Hearing Officer, Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, a Panelist on a Hearing Panel, or, if applicable, an Extended Hearing Panel, the Chief Regulatory Officer, the Nasdaq Review Council, or any member of the Nasdaq Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance, or rejection of such offer of settlement and order of acceptance; and

**(C)** any right of such Respondent to claim that a person or body violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of settlement, including acceptance or rejection of such offer of settlement and order of acceptance.

**(2)** If an offer of settlement and an order of acceptance are rejected, the Respondent shall be bound by the waivers made in this paragraph (d) for conduct by persons or bodies occurring during the period beginning from the date the offer of settlement was submitted and ending upon the rejection of the offer of settlement and order of acceptance.

**(e) Uncontested Offers of Settlement**

If a Respondent makes an offer of settlement and the Nasdaq Regulation Department or the Department of Enforcement does not oppose it, the offer of settlement is uncontested. If an offer of settlement is determined to be uncontested by the Nasdaq Regulation Department or the Department of Enforcement before a hearing on the merits has begun, the Nasdaq Regulation Department or the Department of Enforcement shall transmit the uncontested offer of settlement and a proposed order of acceptance to the Nasdaq Review Council (or to the Office of Disciplinary Affairs, in the case of a Respondent that is an affiliate of Nasdaq within the meaning of Rule 2160) with its recommendation. If an offer of settlement is determined to be uncontested by the Nasdaq Regulation Department or the Department of Enforcement after a hearing on the merits has begun, the Nasdaq Regulation Department or the Department of Enforcement shall transmit the offer of settlement and a proposed order of acceptance to the Hearing Panel or, if applicable, the Extended Hearing Panel for acceptance or rejection. If accepted by the Hearing Panel or, if applicable, Extended Hearing Panel, the offer of settlement and the order of acceptance shall be forwarded to the Nasdaq Review Council (or to the Office of Disciplinary Affairs, in the case of a Respondent that is an affiliate of Nasdaq within the meaning of Rule 2160) to accept or reject.

**(1)** A proposed order of acceptance shall make findings of fact, including a statement of the rule, regulation, or statutory provision violated, and impose sanctions (including, if

applicable, a permanent cease and desist order) consistent with the terms of the offer of settlement.

(2) Before an offer of settlement and an order of acceptance shall become effective, they shall be submitted to and accepted by the Nasdaq Review Council or the Office of Disciplinary Affairs. The Office of Disciplinary Affairs may accept such offer of settlement and order of acceptance or refer them to the Nasdaq Review Council. The Review Subcommittee may accept or reject such offer of settlement and order of acceptance or refer them to the Nasdaq Review Council for acceptance or rejection by the Nasdaq Review Council. In the case of a Respondent that is an affiliate of Nasdaq within the meaning of Rule 2160, the offer of settlement and order of acceptance shall be accepted or rejected by the Office of Disciplinary Affairs and shall not be referred to the Nasdaq Review Council.

(3) If the offer of settlement and order of acceptance are accepted by the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs, they shall become final and the Director of the Office of Disciplinary Affairs shall issue the order and notify the Office of Hearing Officers. The Nasdaq Regulation Department or the Department of Enforcement shall provide a copy of an issued order of acceptance to each Nasdaq member with which a Respondent is associated.

#### **(f) Contested Offers of Settlement**

If a Respondent makes an offer of settlement and the Nasdaq Regulation Department or the Department of Enforcement opposes it, the offer of settlement is contested. When the Nasdaq Regulation Department or the Department of Enforcement opposes an offer of settlement, the Respondent's written offer and the Nasdaq Regulation Department or the Department of Enforcement's written opposition shall be submitted to a Hearing Panel or, if applicable, an Extended Hearing Panel. The Hearing Panel or, if applicable, the Extended Hearing Panel, may order the Nasdaq Regulation Department or the Department of Enforcement and the Respondent to attend a settlement conference.

(1) If a contested offer of settlement is approved by the Hearing Panel or, if applicable, Extended Hearing Panel, the Hearing Officer shall draft an order of acceptance of the offer of settlement. The order of acceptance shall make findings of fact, including a statement of the rule, regulation, or statutory provision violated, and impose sanctions (including, if applicable, a permanent cease and desist order) consistent with the terms of the offer of settlement. The offer of settlement, any written opposition thereto, and the order of acceptance shall be forwarded to the Nasdaq Review Council (or to the Office of Disciplinary Affairs, in the case of a Respondent that is an affiliate of Nasdaq within the meaning of Rule 2160) to accept or reject.

(2) Before an offer of settlement and order of acceptance shall become effective, they shall be submitted to, and accepted by, the Nasdaq Review Council or the Office of Disciplinary Affairs. The Review Subcommittee may accept or reject such offer of settlement and order of acceptance or refer them to the Nasdaq Review Council for

acceptance or rejection by the Nasdaq Review Council. In the case of a Respondent that is an affiliate of Nasdaq within the meaning of Rule 2160, the offer of settlement and order of acceptance shall be accepted or rejected by the Office of Disciplinary Affairs and shall not be referred to the Nasdaq Review Council.

**(3)** If the offer of settlement and order of acceptance are accepted by the Office of Disciplinary Affairs, the Nasdaq Review Council or the Review Subcommittee, the Chief Regulatory Officer shall issue the order and notify the Office of Hearing Officers, and provide a copy of an issued order of acceptance to each Nasdaq member with which a Respondent is associated.

**(g) Final Disciplinary Action**

The proceeding shall conclude as of the date the order of acceptance is issued. The order of acceptance shall constitute final disciplinary action of Nasdaq. The sanction shall take effect as set forth in the order.

**(h) Rejection of Offer of Settlement**

If an uncontested offer of settlement or an order of acceptance is rejected by the Hearing Panel or, if applicable, the Extended Hearing Panel, the Review Subcommittee, the Office of Disciplinary Affairs, or the Nasdaq Review Council, the Respondent shall be notified in writing and the offer of settlement and proposed order of acceptance shall be deemed withdrawn. If a contested offer of settlement or an order of acceptance is rejected by the Hearing Panel or, if applicable, the Extended Hearing Panel, the Review Subcommittee, the Office of Disciplinary Affairs, or the Nasdaq Review Council, the Respondent shall be notified in writing and the offer of settlement and proposed order of acceptance shall be deemed withdrawn. The rejected offer and proposed order of acceptance shall not constitute a part of the record in any proceeding against the Respondent making the offer.

**(i) Disciplinary Proceeding With Multiple Respondents**

When a disciplinary proceeding names multiple Respondents, settlement offers may be accepted or rejected as to any one or all of the Respondents submitting offers. The proceedings shall thereafter be terminated as to those Respondents whose offers of settlement are accepted, but such Respondents may be required to participate in any hearing conducted as to those Respondents that did not submit offers of settlement or whose offers of settlement were rejected.

**(j) No Prejudice from Rejected Offer of Settlement**

If an offer of settlement is rejected by a Hearing Panel or, if applicable, an Extended Hearing Panel, the Review Subcommittee, the Office of Disciplinary Affairs, or the Nasdaq Review Council, the Respondent shall not be prejudiced by the offer, which may

not be introduced into evidence in connection with the determination of the issues involved in the pending complaint or in any other proceeding.

### **9280. Contemptuous Conduct**

#### **(a) Persons Subject to Sanctions**

If a Party, attorney for a Party, or other person authorized to represent others by Rule 9141, engages in conduct in violation of an order of a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, or other contemptuous conduct during a proceeding, a Hearing Officer, Hearing Panel or, if applicable, an Extended Hearing Panel, may:

- (1) subject the Party, attorney for a Party, or other person authorized to represent others by Rule 9141, to the sanctions set forth in paragraph (b); and
- (2) exclude an attorney for a Party, or other person authorized to represent others by Rule 9141, under Rule 9150.

#### **(b) Sanctions Other Than Exclusion**

A Hearing Officer, Hearing Panel or, if applicable, an Extended Hearing Panel, may make such orders as are just in regard to a Party, an attorney for a Party, or other person authorized to represent others by Rule 9141.

(1) Such orders may include:

- (A) an order providing that the matters on which the order is made or any other designated facts shall be taken to be established for the purposes of the disciplinary proceeding in accordance with the claim of the Party obtaining the order;
  - (B) an order providing that the disobedient Party may not support or oppose designated claims or defenses, or may not introduce designated matters in evidence;
  - (C) an order providing that pleadings or a specified part of the pleading shall be stricken, or an order providing that the proceeding shall be stayed until the Party subject to the order obeys it;
  - (D) in lieu of any of the foregoing orders or in addition thereto, an order providing that contemptuous conduct includes the failure to obey any order; and
  - (E) an order as provided in subparagraphs (A), (B), and (C) where a Party has failed to comply with an order to produce a person for examination, unless the Party failing to comply shows that such Party is unable to produce such person for examination.
- (2) A Party that without substantial justification fails to disclose information required by the Rule 9240 Series and the Rule 9250 Series or otherwise required by order of the

Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel, shall not, unless such failure is harmless, be permitted to use as evidence at a hearing, in a motion or in any other filing of papers, or in oral argument, any witness or information not so disclosed. In addition to, or in lieu of this sanction, the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. These sanctions may include any of the sanctions provided for in subparagraphs (b)(1)(A) through (C).

#### **(c) Nasdaq Review Council Review of Exclusions**

If an attorney for a Party, or other person authorized to represent others by Rule 9141, is excluded from a disciplinary hearing or conference, or any portion thereof, such attorney or other person may seek review of the exclusion by filing a motion to vacate with the Nasdaq Review Council. Such motion to vacate shall be filed and served on all Parties within five days after service of the exclusion order. Any response shall be filed with the Nasdaq Review Council and served on all Parties within five days after the service of the motion to vacate. The Nasdaq Review Council or the Review Subcommittee shall consider such motion on an expedited basis and promptly issue a written order. The filing of a motion to vacate shall stay all aspects of the disciplinary proceeding until at least seven days after service of the order of the Nasdaq Review Council or the Review Subcommittee. The review proceedings shall be conducted on the basis of the written record without oral argument.

#### **(d) Adjournment**

The hearing, conferences, or other activities relating to the disciplinary proceeding shall be stayed pending the review by the Nasdaq Review Council or the Review Subcommittee of an exclusion order in paragraph (c). In the event that the Nasdaq Review Council or the Review Subcommittee upholds an exclusion of an attorney or other person authorized to represent others by Rule 9141, the Hearing Officer may, upon motion by a Party represented by an attorney or other person subject to an order of exclusion, grant an adjournment to allow the retention of new counsel or selection of a new representative. In determining whether to grant an adjournment or the length of an adjournment, the Hearing Officer shall consider whether there are other counsel or representatives of record on behalf of the Party, the availability of other counsel or other members of an excluded attorney's firm, or the availability of other representatives for the Party, and any other relevant factors.

#### **9290. Expedited Disciplinary Proceedings**

For any disciplinary proceeding, the subject matter of which also is subject to a temporary cease and desist proceeding initiated pursuant to Rule 9810 or a temporary cease and desist order, hearings shall be held and decisions shall be rendered at the earliest possible time. An expedited hearing schedule shall be determined at a pre-hearing conference held in accordance with Rule 9241.

#### **9291. Permanent Cease and Desist Orders**



**(a) Content, Scope and Form Requirements**

When a decision issued under Rule 9268 or Rule 9269 or an order of acceptance issued under Rule 9270 imposes a permanent cease and desist order, it shall:

- (1) order a Respondent (and any successor of a Respondent, where the Respondent is a member firm) to cease and desist permanently from violating a specific rule or statutory provision;
- (2) set forth the violation; and
- (3) describe in reasonable detail the act or acts the Respondent (and any successor of a Respondent, where the Respondent is a member firm) shall take or refrain from taking.

**(b) Delivery Requirement**

Where a Respondent is a member firm, Respondent shall deliver a copy of a permanent cease and desist order, within one business day of receiving it, to its associated persons.

**9300. Review of Disciplinary Proceeding by Nasdaq Review Council and Nasdaq Board; Application for Commission Review****9310. Appeal to or Review by Nasdaq Review Council****9311. Appeal by Any Party; Cross-Appeal****(a) Time to File Notice of Appeal**

A Respondent or the Nasdaq Regulation Department or the Department of Enforcement may file a written notice of appeal within 25 days after service of a decision issued pursuant to Rule 9268 or Rule 9269; provided, however, that a decision with respect to a Respondent that is an affiliate of Nasdaq within the meaning of Rule 2160 may not be appealed to the Nasdaq Review Council..

**(b) Effect**

An appeal to the Nasdaq Review Council from a decision issued pursuant to Rule 9268 or Rule 9269 shall operate as a stay of that decision until the Nasdaq Review Council issues a decision pursuant to Rule 9349 or, in cases called for discretionary review by the Nasdaq Board, until a decision is issued pursuant to Rule 9351. Any such appeal, however, will not stay a decision, or that part of a decision, that imposes a permanent cease and desist order.

**(c) Notice of Appeal Content and Signature Requirements**

A Party appealing pursuant to this Rule shall file a written notice of appeal with the Office of Hearing Officers and serve the notice on the Parties. The notice of appeal shall

be signed by the appealing Party, or his or her counsel or representative, and shall contain:

- (1) the name of the disciplinary proceeding;
- (2) the disciplinary proceeding docket number;
- (3) the name of the Party on whose behalf the appeal is made;
- (4) a statement on whether oral argument before the Nasdaq Review Council is requested; and
- (5) a brief statement of the findings, conclusions, or sanctions as to which exceptions are taken.

**(d) Notice of Cross-Appeal**

A Party who is served with a notice of appeal may file a written notice of cross-appeal and serve the notice of cross-appeal on the Parties. The notice of cross-appeal shall be filed within five days after service of the notice of appeal. The notice of cross-appeal shall be signed by the Party cross-appealing, or his or her counsel, and shall contain the information set forth in subparagraphs (c)(1), (c)(2), (c)(4), and (c)(5), and the name of the Party on whose behalf the cross-appeal is made.

**(e) Waiver of Issues Not Raised**

The Nasdaq Review Council may, in its discretion, deem waived any issue not raised in the notice of appeal or cross-appeal. The Nasdaq Review Council, the Review Subcommittee, a Subcommittee, the Chief Regulatory Officer or, if applicable, an Extended Proceeding Committee, shall provide the Parties with notice of, and an opportunity to submit briefs on, any issue that shall be considered by the Nasdaq Review Council if such issue was not previously set forth in the notice of appeal. Parties may submit motions to either the Review Subcommittee or the Nasdaq Review Council challenging requests for briefing made by the Chief Regulatory Officer under this Rule of issues that were not previously set forth in the notice of appeal.

**(f) Withdrawal of Notice of Appeal or Cross-Appeal**

A Party may withdraw a notice of appeal or a notice of cross-appeal filed by him or her at any time by filing a written notice of withdrawal of appeal or cross-appeal with the Office of Hearing Officers and serving notice thereof on the Parties. The notice of withdrawal of appeal or cross-appeal shall contain: the name of the disciplinary proceeding; the disciplinary proceeding docket number; and the name of the Party on whose behalf the notice of appeal or cross-appeal was filed previously. The notice of withdrawal of appeal or cross-appeal shall be signed by the Party, or his or her counsel or

representative. Upon the withdrawal of a notice of appeal, any outstanding cross-appeal shall be treated as an appeal unless it is withdrawn.

### **9312. Review Proceeding Initiated By the Nasdaq Review Council**

#### **(a) Call for Review**

##### **(1) Rule 9268 Decision**

A decision issued pursuant to Rule 9268 may be subject to a call for review by any member of the Nasdaq Review Council or, pursuant to authority delegated from the Nasdaq Review Council, by any member of the Review Subcommittee. A decision issued pursuant to Rule 9268 shall be subject to a call for review within 45 days after the date of service of the decision. If called for review, such decision shall be reviewed by the Nasdaq Review Council.

##### **(2) Rule 9269 Decision**

A default decision issued pursuant to Rule 9269 shall be subject to a call for review by the Chief Regulatory Officer, on his or her own motion within 25 days after the date of service of the decision. If called for review, such decision shall be reviewed by the Nasdaq Review Council.

##### **(3) Decision Regarding Affiliate of Nasdaq**

Notwithstanding anything herein to the contrary, a decision with respect to a member that is an affiliate of Nasdaq within the meaning of Rule 2160 may not be called for review by the Nasdaq Review Council.

#### **(b) Effect**

Institution of review by a member of the Nasdaq Review Council on his or her own motion, a member of the Review Subcommittee on his or her own motion, or the Chief Regulatory Officer, on his or her own motion, shall operate as a stay of a final decision issued pursuant to Rule 9268 or Rule 9269 as to all Parties subject to the notice of review, until the Nasdaq Review Council issues a decision pursuant to Rule 9349, or, in cases called for discretionary review by the Nasdaq Board, until a decision is issued pursuant to Rule 9351. Institution of any such review, however, will not stay a decision, or that part of a decision, that imposes a permanent cease and desist order.

#### **(c) Requirements**

**(1)** If a member of the Nasdaq Review Council, a member of the Review Subcommittee, or, for a disciplinary proceeding decided under Rule 9269, the Chief Regulatory Officer determines to call a case for review, a written notice of review shall be served promptly on each Party to the proceeding and filed with the Office of Hearing Officers. Such notice of review shall contain:

- (A) the name of the disciplinary proceeding;
- (B) the disciplinary proceeding docket number; and
- (C) a brief statement of the findings, conclusions, or sanctions with respect to which the Nasdaq Review Council, the Review Subcommittee, or the Chief Regulatory Officer determined that a call for review was necessary.

(2) The statement contained in the notice of review shall not limit the scope of the Nasdaq Review Council's authority under Rule 9346 to review any issues raised in the record. The Nasdaq Review Council, the Review Subcommittee, a Subcommittee, the Chief Regulatory Officer or, if applicable, an Extended Proceeding Committee, shall provide the Parties with notice of, and an opportunity to submit briefs on, any issue that shall be considered by the Nasdaq Review Council if such issue was not previously set forth in the notice of review. Parties may submit motions to either the Review Subcommittee or the Nasdaq Review Council challenging requests for briefing made by the Chief Regulatory Officer under this Rule of issues that were not previously set forth in the notice of appeal.

#### **(d) Effect of Withdrawal of Notice of Appeal, Cross-Appeal**

If the review of a disciplinary proceeding by the Nasdaq Review Council is terminated before the Nasdaq Review Council issues a decision on the merits because all appealing Parties file a notice of withdrawal of appeal and no Party previously filed a notice of cross-appeal, or all Parties who previously filed a notice of cross-appeal file a notice of withdrawal of cross-appeal:

- (1) a member of the Nasdaq Review Council or the Review Subcommittee shall have the right to call for review a decision issued pursuant to Rule 9268 in accordance with Rule 9312(a)(1), except that the 45 day period during which a call for review may be made shall begin on the day Nasdaq receives the last filed notice of withdrawal of appeal or, if applicable, the last filed notice of withdrawal of cross-appeal; and,
- (2) the Chief Regulatory Officer shall have the right to call for review a decision issued pursuant to Rule 9269 in accordance with Rule 9312(a)(2), except that the 25 day period during which a call for review may be made shall begin on the day Nasdaq receives the last filed notice of withdrawal of appeal or, if applicable, the last filed notice of withdrawal of cross-appeal.

#### **9313. Counsel to Nasdaq Review Council**

##### **(a) Authority**

A Counsel to the Nasdaq Review Council shall have authority to take ministerial and administrative actions to further the efficient administration of a proceeding, including the authority to:

- (1) direct the Office of Hearing Officers to complete and transmit a record of a disciplinary proceeding to the Nasdaq Review Council in accordance with Rule 9267;
- (2) establish or amend a briefing schedule under Rule 9347(b) but not shorten a briefing schedule except with the consent of the Parties;
- (3) permit a brief or any other document required to be filed to vary from the requirements of the Rule 9130 Series as provided in Rule 9347(a);
- (4) establish the date, time, and location of an oral argument and provide for notice of the hearing under Rule 9341;
- (5) for other than a Party and counsel or a person acting in a representative capacity, determine who may attend a hearing;
- (6) rule on a motion by a Party to request to lengthen or shorten a period of time prescribed by the Code for the filing of any papers, or request that a hearing be postponed or adjourned under Rule 9322, except that a period may not be shortened and a hearing may not be postponed or adjourned without the consent of the Parties; and
- (7) create and maintain the official record of the disciplinary proceeding on appeal or review.

**(b) Review**

A Party seeking the review of a decision of a Counsel to the Nasdaq Review Council may make a motion to the Nasdaq Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee.

**9320. Transmission of Record; Extensions of Time, Postponements, Adjournments**

**9321. Transmission of Record**

Within 21 days after the filing of a notice of appeal or notice of review, or at such later time as the Nasdaq Review Council may designate, the Office of Hearing Officers shall assemble and prepare an index to the record, transmit the record and the index to the Nasdaq Review Council, and serve copies of the index upon all Parties. The Hearing Officer who participated in the disciplinary proceeding, or the Chief Hearing Officer, shall certify that the record transmitted to the Nasdaq Review Council is complete.

**9322. Extensions of Time, Postponements, Adjournments**

**(a) Availability**

At any time prior to the issuance of a decision pursuant to Rule 9349, the Nasdaq Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or Counsel to the Nasdaq Review Council, for good cause shown, may extend or shorten a period prescribed by the Code for the filing of any

papers, except that Counsel to the Nasdaq Review Council may shorten a period so prescribed only with the consent of the Parties. The Nasdaq Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or Counsel to the Nasdaq Review Council, for good cause shown, may postpone or adjourn a hearing consistent with paragraph (b), except that Counsel to the Nasdaq Review Council may postpone or adjourn a hearing only with the consent of the Parties.

**(b) Limitations on Postponements, Adjournments, and Changes in Location**

Oral argument shall begin at the time and place ordered, unless the Nasdaq Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or Counsel to the Nasdaq Review Council, for good cause shown, postpones, adjourns, or changes the location of the oral argument, except that Counsel to the Nasdaq Review Council may postpone or adjourn the oral argument only with the consent of the Parties. In considering a motion for the postponement or adjournment of an oral argument, the Nasdaq Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or Counsel to the Nasdaq Review Council shall consider, in addition to any other relevant factors:

- (1) the length of time the disciplinary proceeding has been pending to date, and the timeliness of the request for a postponement, an adjournment, or an extension;
- (2) the number of postponements, adjournments, or extensions already granted;
- (3) the stage of the proceedings at the time of the request;
- (4) the prejudice to the other Parties;
- (5) the potential harm to the investing public if an extension of time, an adjournment, or a postponement is granted; and
- (6) any other matter that justice may require.

**9330. Appointment of Subcommittee or Extended Proceeding Committee; Disqualification and Recusal**

**9331. Appointment of Subcommittee or Extended Proceeding Committee**

**(a) Appointment by Nasdaq Review Council**

Following the filing of a notice of appeal pursuant to Rule 9311 or a notice of review pursuant to Rule 9312, the Nasdaq Review Council or the Review Subcommittee shall appoint a Subcommittee or an Extended Proceeding Committee to participate, subject to Rule 9345, in a disciplinary proceeding appealed or called for review.

- (1) Subcommittee

Except as provided in subparagraph (2), for each disciplinary proceeding appealed or called for review, the Nasdaq Review Council or the Review Subcommittee shall appoint a Subcommittee to participate, subject to Rule 9345, in the appeal or review. A Subcommittee shall be composed of two or more persons who shall be current or former members of the Nasdaq Review Council or former Directors.

**(2) Extended Proceeding Committee**

Upon consideration of the volume and complexity of the certified record, or other factors the Nasdaq Review Council or the Review Subcommittee deems material, the Nasdaq Review Council or the Review Subcommittee may determine that a disciplinary proceeding appealed or called for review shall be designated an Extended Proceeding and shall appoint an Extended Proceeding Committee to participate, subject to Rule 9345, in the appeal or review. The Extended Proceeding Committee shall be composed of two or more persons who shall be current or former members of the Nasdaq Review Council or former Directors. The Review Subcommittee shall have discretion to compensate any or all Panelists of an Extended Proceeding Committee at the rate then in effect for arbitrators appointed under the FINRA Rule 12000 and 13000 Series.

**(b) Function**

If a hearing is held, the Subcommittee or, if applicable, the Extended Proceeding Committee, shall hear oral arguments and consider, if allowed under Rule 9346(b), any new evidence. Based on the hearing and the record on appeal or review, the Subcommittee or, if applicable, the Extended Hearing Committee, shall make a recommendation to the Nasdaq Review Council regarding the disposition of all matters on appeal, cross-appeal, or review. The recommendation shall be in the form of a written recommended decision.

**9332. Disqualification and Recusal**

**(a) Recusal, Withdrawal of Member or Panelist**

If at any time a member of the Nasdaq Review Council, including a member of the Review Subcommittee, a Panelist of a Subcommittee or an Extended Proceeding Committee, or a Counsel to the Nasdaq Review Council determines that the member, the Panelist, or the Counsel to the Nasdaq Review Council has a conflict of interest or bias or circumstances otherwise exist where the fairness of the member, the Panelist, or the Counsel to the Nasdaq Review Council might reasonably be questioned, the member, the Panelist, or the Counsel to Nasdaq Review Council shall notify the Chair of the Nasdaq Review Council, and the Chair of the Nasdaq Review Council shall issue and serve on the Parties a notice stating that the member, the Panelist, or the Counsel to the Nasdaq Review Council has withdrawn from the matter. In the event that a Panelist withdraws, is incapacitated, or is otherwise unable to continue service after a hearing has been convened, the Chair of the Nasdaq Review Council shall appoint a replacement Panelist. In the event that a member of the Review Subcommittee withdraws, is incapacitated, or is otherwise unable to continue service after assignment, the Chair of the Nasdaq Review

Council shall appoint another member of the Nasdaq Review Council to serve on the Review Subcommittee for the limited purpose of considering the issues raised in the disciplinary proceeding in which the withdrawal action was taken. The replacement member of the Review Subcommittee must have the same classification (Industry or Non-Industry) as the member who withdrew. In the event that a Counsel to the Nasdaq Review Council withdraws, is incapacitated, or is otherwise unable to continue service after assignment, the Chief Regulatory Officer shall assign a replacement Counsel to the Nasdaq Review Council.

**(b) Motion for Disqualification**

A Party may move for the disqualification of a member of the Nasdaq Review Council, the Review Subcommittee, a Panelist of a Subcommittee or an Extended Proceeding Committee, or a Counsel to the Nasdaq Review Council. All such motions shall be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the fairness of the member, the Panelist, or the Counsel to the Nasdaq Review Council might reasonably be questioned, and shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the Party learned of those facts. Such motions shall be filed not later than 15 days after the later of:

- (1) when the Party learned of the facts believed to constitute the disqualification; or
- (2) when the Party was notified of the composition of the Subcommittee or, if applicable, the Extended Proceeding Committee or the assignment to the disciplinary proceeding of the Counsel to the Nasdaq Review Council.

**(c) Disposition of Disqualification Motions: Challenges to Single Member of Nasdaq Review Council or Review Subcommittee, Single Panelist of Subcommittee or Extended Hearing Committee, or Counsel to the Nasdaq Review Council**

Motions for disqualification of a member of the Nasdaq Review Council, including a member of the Review Subcommittee, a Panelist of a Subcommittee or an Extended Proceeding Committee, or a Counsel to the Nasdaq Review Council shall be decided by the Chair of the Nasdaq Review Council, who shall promptly determine whether disqualification is required and issue a written ruling on the motion. If a member of the Review Subcommittee is disqualified, the Chair of the Nasdaq Review Council shall appoint another member of the Nasdaq Review Council to serve on the Review Subcommittee for the limited purpose of considering the issues raised in the disciplinary proceeding in which the motion was made. The replacement member of the Review Subcommittee must have the same classification (Member, Industry or Non-Industry) as the member being replaced. If a Panelist is disqualified, the Chair of the Nasdaq Review Council shall appoint a replacement Panelist. If a Counsel is disqualified, the Chief Regulatory Officer shall assign a replacement Counsel to the Nasdaq Review Council.



**(d) Disposition of Disqualification Motions: Challenges to Multiple Members or Panelists****(1) Nasdaq Review Council**

If a Party files a motion to disqualify more than one member of the Nasdaq Review Council, the Chair of the Nasdaq Review Council shall promptly determine whether disqualification is required, and shall issue a written ruling on the matter. In the event of such disqualification, the remaining members of the Nasdaq Review Council shall consider the review or appeal of the disciplinary matter.

**(2) Review Subcommittee**

If a Party files a motion to disqualify more than one member of the Review Subcommittee, the Chair of the Nasdaq Review Council shall promptly determine whether disqualification is required, and shall issue a written ruling on the matter. If members of the Review Subcommittee are disqualified, the Chair of the Nasdaq Review Council shall appoint other members of the Nasdaq Review Council to serve on the Review Subcommittee for the limited purpose of considering the issues raised in the disciplinary proceeding in which the motion was made. The replacement members of the Review Subcommittee must have the same classification (Member, Industry or Non-Industry) as the members being replaced.

**(3) Subcommittee; Extended Proceeding Committee**

If a Party files a motion to disqualify more than one Panelist of a Subcommittee or an Extended Proceeding Committee, the Chair of the Nasdaq Review Council shall promptly determine whether disqualification is required, and shall issue a written ruling on the motion. If multiple Panelists are disqualified, the Chair of the Nasdaq Review Council shall appoint replacement Panelists.

**9340. Proceedings****9341. Oral Argument****(a) Request for Oral Argument**

A Party may request oral argument before the Subcommittee or, if applicable, the Extended Proceeding Committee. Oral argument shall be requested in writing either in the Party's notice of appeal or cross-appeal or within 15 days after service of the Nasdaq Review Council's notice of review. Subject to the limitations of Rules 9342 and 9344, oral argument shall be granted if timely requested. The right to oral argument set forth in this Rule is unaffected by a Party's waiver of, or failure to request, a hearing pursuant to the Rule 9200 Series.

**(b) Discretion to Proceed With or Without Oral Argument**

In the absence of a request for oral argument, the Subcommittee or, if applicable, the Extended Proceeding Committee, in its discretion, may order that a matter be set down for oral argument or may consider the matter on the basis of the record.

**(c) Notice Regarding Oral Argument**

If oral argument is held, a notice stating the date, time, and location of the oral argument shall be served on the Parties at least 21 days before the hearing. The Parties may agree in writing to waive the notice period or, in extraordinary circumstances, the Subcommittee or, if applicable, the Extended Proceeding Committee, or Counsel to the Nasdaq Review Council may provide for a shorter notice period, except that Counsel to the Nasdaq Review Council may provide for a shorter notice period only with the consent of the Parties.

**(d) Attendance Required**

The Parties shall make oral arguments before the Subcommittee or, if applicable, the Extended Proceeding Committee. Unless otherwise agreed to by all of the Parties, all Panelists comprising the Subcommittee or, if applicable, the Extended Proceeding Committee shall be present for the oral argument.

**(e) Time Limits**

Unless the Subcommittee or, if applicable, the Extended Proceeding Committee, orders otherwise for good cause shown, each Party's oral argument before the Subcommittee or, if applicable, the Extended Proceeding Committee, shall be limited to a total of 30 minutes.

**(f) Recordation; Transcript Correction**

**(1)** Oral arguments shall be recorded by a court reporter and a transcript shall be prepared.

**(2)** A transcript of a hearing shall be available to a Party for purchase from the court reporter at prescribed rates. A witness may purchase a transcript of his or her own testimony from the court reporter.

**(3)** Prior to the filing of post-hearing briefs or within such earlier time as reasonably ordered by the Subcommittee or, if applicable, the Extended Proceeding Committee, a Party or witness may seek to correct his or her transcript. A proposed correction of the transcript shall be submitted by affidavit to the Subcommittee or, if applicable, the Extended Proceeding Committee. Upon notice to all Parties to the disciplinary proceeding, the Subcommittee or, if applicable, the Extended Proceeding Committee may order the correction to the transcript as requested or sua sponte.

**9342. Failure to Appear at Oral Argument**

A Party who requests oral argument but fails to appear after being duly notified shall be deemed to have waived any opportunity for oral argument provided under the Rule 9300 Series. The Subcommittee or, if applicable, the Extended Proceeding Committee, shall permit argument to go forward as to those Parties who appear. The Subcommittee or, if applicable, the Extended Proceeding Committee, in the exercise of its discretion, may consider the matter on the basis of the record without oral argument as to those Parties who failed to appear.

**9343. Disposition Without Oral Argument**

If an oral argument is not held, the matter shall be considered by a Subcommittee or, if applicable, an Extended Proceeding Committee, on the basis of the record, as defined in Rule 9267, and supplemented by any written materials submitted to or issued by the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Nasdaq Review Council in connection with the appeal, cross-appeal, or call for review.

**9344. Failure to Participate Below; Abandonment of Appeal**

**(a) Failure to Participate Below**

When an appealing Party did not participate in the disciplinary proceeding before a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, but shows good cause for the failure to participate, the Nasdaq Review Council or the Review Subcommittee may dismiss the appeal and remand the matter for further proceedings, or may order that the appeal proceed. If the appealing Party did not participate in the disciplinary proceeding before a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, and fails to show good cause for the failure to participate, the matter shall be considered by the Subcommittee or, if applicable, the Extended Proceeding Committee, and the Nasdaq Review Council on the basis of the record and other documents, as provided in Rules 9346 and 9347. Alternatively, the Nasdaq Review Council or Review Subcommittee may remand the disciplinary proceeding with instructions. For purposes of this paragraph, failure to participate shall include failure to file an answer or otherwise respond to a complaint, or failure to appear at a scheduled hearing, but shall not include failure to request a hearing pursuant to Rule 9221.

**(b) Abandonment of Appeal**

If an appealing Party fails to advise the Nasdaq Review Council or the Review Subcommittee of the basis for seeking review or otherwise fails to provide information or submit a written brief in response to a request pursuant to Rules 9346 and 9347, the Nasdaq Review Council or the Review Subcommittee may dismiss the appeal as abandoned, and the decision of the Hearing Officer, the Hearing Panel or, if applicable, the Extended Hearing Panel, shall become the final disciplinary action of Nasdaq. If a cross-appealing Party fails to advise the Nasdaq Review Council or the Review Subcommittee of the basis for seeking review or otherwise fails to provide information or submit a written brief in response to a request pursuant to Rules 9346 and 9347, the Nasdaq Review Council or the Review Subcommittee may dismiss the cross-appeal as

abandoned. Upon a showing of good cause, the Nasdaq Review Council may withdraw any dismissal entered pursuant to this Rule.

**9345. Subcommittee or Extended Proceeding Committee Recommended Decision to Nasdaq Review Council**

A Subcommittee or, if applicable, an Extended Proceeding Committee, shall present a recommended decision in writing to the Nasdaq Review Council before the meeting of the Nasdaq Review Council at which the disciplinary proceeding shall be considered.

**9346. Evidence in Nasdaq Review Council Proceedings**

**(a) Scope of Review**

Except as otherwise set forth in this paragraph, the Nasdaq Review Council's review shall be limited to consideration of:

**(1)** the record, as defined in Rule 9267, supplemented by briefs and other papers submitted to the Subcommittee or, if applicable, the Extended Proceeding Committee, and the Nasdaq Review Council; and

**(2)** any oral argument permitted under this Code.

A Party may introduce additional evidence only with prior approval of the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Nasdaq Review Council, upon a showing that extraordinary circumstances exist under paragraph (b). If an appealing Party shows good cause for failure to participate in the disciplinary proceeding below, the Nasdaq Review Council may hear evidence and consider the disciplinary proceeding pursuant to Rule 9344(a).

**(b) Leave to Introduce Additional Evidence**

A Party may apply to the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Nasdaq Review Council for leave to introduce additional evidence by motion filed not later than 30 days after the Office of Hearing Officers transmits to the Nasdaq Review Council and serves upon all Parties the index to the record, pursuant to Rule 9321. The motion shall describe each item of proposed new evidence, demonstrate that there was good cause for failing to introduce it below, demonstrate why the evidence is material to the proceeding, and be filed and served. The Party may attach the documentary evidence as an exhibit to the motion. By a motion filed in accordance with Rule 9146, a Party may request an extension of the period during which a Party may file a motion for leave to introduce additional evidence. A Party shall demonstrate that there was good cause for failing to file the motion for leave to introduce additional evidence during the period prescribed.

**(c) Motion In Opposition; Motion to Introduce Rebuttal Evidence**

A Party may file an opposition to a motion, as provided in Rule 9146(d), for leave to introduce new evidence, and may move for leave to introduce rebuttal evidence in response to the proposed new evidence. A Party who moves to introduce rebuttal evidence in response to the proposed new evidence of another Party shall describe each item of proposed rebuttal evidence and explain why the evidence is material to the proceeding, and shall file and serve such motion.

**(d) Discretion Regarding Review of Additional Evidence**

Upon consideration of any motion to introduce additional evidence and any opposition thereto, the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Nasdaq Review Council may permit the evidence to be introduced into the record on review, or the Nasdaq Review Council may remand the disciplinary proceeding for further proceedings consistent with its ruling or for further fact finding.

**(e) Requirements for Submitting Additional Documentary Evidence**

A Party that is permitted to introduce additional documentary evidence before the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Nasdaq Review Council pursuant to paragraph (d) shall make copies of the evidence available to the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Nasdaq Review Council, and to all Parties at such time as the Subcommittee or, if applicable, the Extended Proceeding Committee, the Nasdaq Review Council, or Counsel to the Nasdaq Review Council may specify.

**(f) Subcommittee or Extended Proceeding Committee Order Requiring Additional Evidence**

On its own motion, the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Nasdaq Review Council may order that the record be supplemented with such additional evidence as it may deem relevant. Among other things, the Subcommittee, or if applicable, the Extended Proceeding Committee, or the Nasdaq Review Council may order a Respondent who asserts his or her inability to pay a monetary sanction to file a sworn financial statement and to keep such statement current as ordered by the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Nasdaq Review Council.

**(g) Rules of Evidence Not Applicable**

The formal rules of evidence shall not apply.

**(h) Testimony**

A person who is subject to the jurisdiction of Nasdaq shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

**9347. Filing of Papers in Nasdaq Review Council Proceedings****(a) Briefs; Reply Briefs; Requirements**

Parties may file briefs in connection with proceedings governed by the Rule 9300 Series. Briefs shall be confined to the particular matters at issue. An exception to findings, conclusions, or sanctions shall be supported by citation to the relevant portions of the record, including references to specific pages relied upon, and by concise argument, including citation of such statutes, decisions, and other authorities as may be relevant. If an exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief, an appendix thereto, or by citation to the record. Parties may file reply briefs. If a Party files a reply brief, such brief shall be limited to matters in reply. All briefs shall conform to the requirements of the Rule 9130 Series, and, except with advance leave of the Subcommittee or, if applicable, the Extended Proceeding Committee, the Nasdaq Review Council, the Review Subcommittee, or Counsel to the Nasdaq Review Council, exclusive of pages containing tables of contents or tables of authorities, a brief other than a reply brief shall not exceed 25 double-spaced pages, and a reply brief shall not exceed 12 double-spaced pages.

**(b) Timely Filing of Briefs**

Briefs shall be due upon dates established by the Subcommittee or, if applicable, the Extended Proceeding Committee, the Nasdaq Review Council, the Review Subcommittee, or Counsel to the Nasdaq Review Council in a scheduling order. Unless the Subcommittee or, if applicable, the Extended Proceeding Committee, the Nasdaq Review Council, the Review Subcommittee, or Counsel to the Nasdaq Review Council specifies otherwise, opening briefs shall be submitted not less than 21 days from the date of the scheduling order, and answering briefs shall be submitted 21 days thereafter. When reply briefs are submitted, such briefs shall be filed not later than ten days after service of the answering brief. Counsel to the Nasdaq Review Council may not shorten a period previously established for the filing of briefs except with the consent of the Parties. The time periods listed in this provision are only applicable to the filing of opening briefs, answering briefs, and reply briefs.

**9348. Powers of the Nasdaq Review Council on Review**

In any appeal or review proceeding pursuant to the Rule 9300 Series, the Nasdaq Review Council may affirm, dismiss, modify, or reverse with respect to each finding, or remand the disciplinary proceeding with instructions. The Nasdaq Review Council may affirm, modify, reverse, increase, or reduce any sanction, (including the terms of any permanent cease and desist order) or impose any other fitting sanction.

**9349. Nasdaq Review Council Formal Consideration; Decision****(a) Decision of Nasdaq Review Council, Including Remand**

In an appeal or review of a disciplinary proceeding governed by the Rule 9300 Series that is not withdrawn or dismissed prior to a decision on the merits, the Nasdaq Review Council, after considering all matters presented in the appeal or review and the written

recommended decision of the Subcommittee or, if applicable, the Extended Proceeding Committee, may affirm, dismiss, modify or reverse the decision of the Hearing Panel or, if applicable, Extended Hearing Panel, with respect to each Respondent who has appealed or cross-appealed or is subject to a call for review. The Nasdaq Review Council may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction. Alternatively, the Nasdaq Review Council or the Review Subcommittee may remand the disciplinary proceeding with instructions. The Nasdaq Review Council shall prepare a proposed written decision pursuant to paragraph (b).

**(b) Contents of Decision**

The decision shall include:

- (1) a statement describing the investigative or other origin of the disciplinary proceeding;
- (2) the specific statutory or rule provisions that were alleged to have been violated;
- (3) a statement setting forth the findings of fact with respect to any act or practice the Respondent was alleged to have committed or omitted;
- (4) the conclusions as to whether the Respondent violated any provision alleged in the complaint;
- (5) a statement in support of the disposition of the principal issues raised in the proceeding; and
- (6) a statement describing any sanction imposed, the reasons therefor, and, pursuant to Rule 9360, the date upon which such sanction shall become effective.

**(c) Issuance of Decision After Expiration of Call for Review Period**

The Nasdaq Review Council shall provide its proposed written decision to the Nasdaq Board. The Nasdaq Board may call the disciplinary proceeding for review pursuant to Rule 9351. If the Nasdaq Board does not call the disciplinary proceeding for review, the proposed written decision of the Nasdaq Review Council shall become final, and the Nasdaq Review Council shall serve its written decision on the Parties and provide a copy to each member of Nasdaq with which a Respondent is associated. The decision shall constitute the final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1), unless the Nasdaq Review Council remands the proceeding.

**9350. Discretionary Review by Board**

**9351. Discretionary Review by Nasdaq Board**

**(a) Call for Review by Director**

A Director may call a disciplinary proceeding for review by the Nasdaq Board if the call for review is made within the period prescribed in paragraph (b); provided, however, that

a decision with respect to a member that is an affiliate of Nasdaq within the meaning of Rule 2160 may not be called for review.

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

**(1)** A Director shall make his or her call for review not later than the next meeting of the Nasdaq Board that is at least 15 days after the date on which the Nasdaq Board receives the proposed written decision of the Nasdaq Review Council.

**(2) Waiver**

By a unanimous vote of the Nasdaq Board, the Nasdaq Board may shorten the period in subparagraph (1) to less than 15 days. By an affirmative vote of the majority of the Nasdaq Board then in office, the Nasdaq Board may, during the 15 day period in subparagraph (1), vote to extend the period in subparagraph (1) to more than 15 days.

**(c) Review at Next Meeting**

If a Director calls a disciplinary proceeding for review within the period prescribed in paragraph (b), the Nasdaq Board shall review the disciplinary proceeding not later than the next meeting of the Nasdaq Board. The Nasdaq Board may order the Parties (excluding any Respondent who did not appeal or cross-appeal, or as to whom the issues appealed or called for review do not apply) to file briefs in connection with the review proceedings pursuant to this Rule.

**(d) Decision of Nasdaq Board, Including Remand**

After review, the Nasdaq Board may affirm, modify, or reverse the proposed written decision of the Nasdaq Review Council. The Nasdaq Board may affirm, modify, reverse, increase, or reduce any sanction (including the terms of any permanent cease and desist order), or impose any other fitting sanction. Alternatively, the Nasdaq Board may remand the disciplinary proceeding with instructions. The Nasdaq Board shall prepare a written decision that includes all of the elements described in Rule 9349(b)(1) through (6).

**(e) Issuance of Decision After Expiration of Call for Review Period**

The Nasdaq Board shall issue and serve its written decision on the Parties and provide a copy to each member of Nasdaq with which a Respondent is associated. The decision shall constitute the final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1), unless the Nasdaq Board remands the proceeding.

**9360. Effectiveness of Sanctions**

Unless otherwise provided in the decision issued under Rule 9349 or Rule 9351, a sanction (other than a bar, an expulsion, or a permanent cease and desist order) specified in a decision constituting final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1) shall become effective on a date to be determined by Nasdaq staff (or the



Hearing Panel, Extended Hearing Panel, or Office of Disciplinary Affairs in the case of a decision with respect to an affiliate of Nasdaq within the meaning of Rule 2160). A bar, an expulsion, or a permanent cease and desist order shall become effective upon service of the decision constituting final disciplinary action of Nasdaq, unless otherwise specified therein. Nasdaq shall serve the decision on a Respondent by courier, facsimile or other means reasonably likely to obtain prompt service when the sanction is a bar, an expulsion, or a permanent cease and desist order.

### **9370. Application to Commission for Review**

#### **(a) Appeal to Commission; Effect**

A Respondent aggrieved by final disciplinary action pursuant to the Rule 9200 Series or the Rule 9300 Series may apply for review by the Commission pursuant to Section 19(d)(2) of the Act. The filing with the Commission of an application for review by the Commission shall stay the effectiveness of any sanction, other than a bar or an expulsion, imposed in a decision constituting final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1).

#### **(b) Notification to Member**

Nasdaq shall promptly notify any member with which a Respondent is associated if the Respondent files an application for review to the Commission.

### **9400. Expedited Client Suspension Proceeding**

#### **(a) Initiation of Proceeding**

- (1) *Scope of Authority.* With the prior written authorization of the Chief Regulatory Officer ("CRO") or such other senior officers as the CRO may designate, the Nasdaq Regulation Department or the Department of Enforcement may initiate an expedited suspension proceeding with respect to alleged violations of Rule 2170 or Chapter III, Section 16 (Disruptive Quoting and Trading Activity Prohibited).
- (2) *Service of Notice.* The Exchange or FINRA shall initiate the proceeding by serving a notice on a Member or associated person of a Member (hereinafter "Respondent"). The Exchange or FINRA shall serve the notice by personal service or overnight commercial courier. The notice shall be effective upon service.
- (3) *Content of Notice.* The notice shall state whether the Exchange is requesting the Respondent to be required to take action or to refrain from taking action. The notice shall be accompanied by:
  - (A) a declaration of facts, signed by a person with knowledge of the facts contained therein, that specifies the acts that constitute the alleged violation; and

(B) a proposed order that contains the required elements of a suspension order (except the date and hour of the order's issuance), which are set forth in subparagraph (d)(2) of this Rule).

(b) Appointment of Hearing Officers and Hearing Panel

- (1) As soon as practicable after the Exchange or FINRA initiates a suspension proceeding, a Hearing Panel shall be assigned in accordance with paragraph (a) of Rule 9231(b).
- (2) If at any time a Hearing Officer determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, or if a Party files a motion to disqualify a Hearing Officer, the recusal and disqualification proceeding shall be conducted in accordance with Rules 9233(a), except that:
  - (A) a motion seeking disqualification of a Hearing Officer must be filed no later than 5 days after the announcement of the Hearing Panel; and
  - (B) the Exchange may file a brief in opposition to the Respondent's motion no later than 5 days after service thereof.

(c) Hearing

- (1) *When Held.* The hearing shall be held not later than 15 days after service of the notice initiating the suspension proceeding, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. If a Hearing Officer is recused or disqualified, the hearing shall be held not later than five days after a replacement Hearing Officer is appointed.
- (2) *Service of Notice of Hearing.* A notice of date, time, and place of the hearing shall be served on the Parties not later than seven days before the hearing, unless otherwise ordered by the Chairman of the Hearing Panel. Service shall be made by personal service or overnight commercial courier. The notice shall be effective upon service.
- (3) *Authority of Hearing Officers.* A Hearing Officer shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth in Rule 9235.
- (4) *Witnesses.* A person who is subject to the jurisdiction of the Exchange shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.
- (5) *Additional Information.* At any time during its consideration, the Hearing Panel may direct a Party to submit additional information. Any additional information

submitted shall be provided to all Parties at least one day before the Hearing Panel renders its decision.

(6) *Transcript*. The hearing shall be recorded by a court reporter and a written transcript thereof shall be prepared. A transcript of the hearing shall be available to the Parties for purchase from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Panel within a reasonable time determined by the Hearing Panel. Upon notice to all the Parties to the proceeding, the Hearing Panel may order corrections to the transcript as requested or sua sponte.

(7) *Record and Evidence Not Admitted*. The record shall consist of the notice initiating the proceeding, the declaration, and the proposed order described in subparagraph (a)(3) above; the transcript of the hearing; all evidence considered by the Hearing Panel; and any other document or item accepted into the record by the Hearing Panel. The Nasdaq Regulation Department shall be the custodian of the record. Proffered evidence that is not accepted into the record by the Hearing Panel shall be retained by the custodian of the record until the date when the Exchange's decision becomes final or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

(8) *Failure to Appear at a Hearing*. If a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a suspension order without further proceedings. If the Exchange or FINRA fails to appear at a hearing for which it has notice, the Hearing Panel may order that the suspension proceeding be dismissed.

(d) Issuance of Suspension Order by Hearing Panel

(1) *Basis for Issuance*. The Hearing Panel shall issue a written decision stating whether a suspension order shall be imposed. The Hearing Panel shall issue the decision not later than ten days after receipt of the hearing transcript, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. A suspension order shall be imposed if the Hearing Panel finds:

(A) by a preponderance of the evidence that the alleged violation specified in the notice has occurred; and

(B) that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

(2) *Content, Scope, and Form of Order*. A suspension order shall:

(A) be limited to: (i) ordering a Respondent to cease and desist from violating Rule 2170 or Chapter III, Section 16, and/or (ii) ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of Rule 2170 or Chapter III, Section 16;

(B) set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order;

(C) describe in reasonable detail the act or acts the Respondent is to take or refrain from taking and to suspend the Respondent unless and until such action is taken or refrained from; and

(D) include the date and hour of its issuance.

(3) *Duration of Order.* A suspension order shall remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to paragraph (e), below.

(4) *Service.* The Hearing Panel's decision and any suspension order shall be served by personal service or overnight commercial courier. The suspension order shall be effective upon service.

(e) *Review by Hearing Panel.* At any time after the Respondent is served with a suspension order, a Party may apply to the Hearing Panel to have the order modified, set aside, limited, or revoked. The application shall set forth with specificity the facts that support the request. The Hearing Panel shall respond to the request in writing within ten days after receipt of the request, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. The Hearing Panel's response shall be served on the Respondent via personal service or overnight commercial courier. The filing of an application under this Rule shall not stay the effectiveness of the suspension order.

(f) *Application to SEC for Review.* Sanctions imposed pursuant to this Rule constitute final and immediately effective disciplinary sanctions imposed by the Exchange. The right to have any action under this Rule reviewed by the SEC is governed by Section 19 of the Exchange Act. The filing of an application for review shall not stay the effectiveness of a suspension order unless the SEC otherwise orders.

## **9500. Other Proceedings**

### **9510. Reserved**

### **9520. Eligibility Proceedings**

### **9521. Purpose and Definitions**

#### **(a) Purpose**

The Rule 9520 Series sets forth procedures for a person to become or remain associated with a member, notwithstanding the existence of a statutory disqualification as defined in the Nasdaq By-Laws and for a current member or person associated with a member to obtain relief from the eligibility or qualification requirements of the Nasdaq By-Laws and the Rules of Nasdaq. Such actions hereinafter are referred to as "eligibility proceedings."

**(b) Definitions**

**(1)** The term "Application" means FINRA's Form MC-400 for individuals or Form MC-400A for members, filed with the Central Registration Depository/Public Disclosure.

**(2)** The term "disqualified member" means a broker, dealer, municipal securities broker or dealer, government securities broker or dealer, or member that is or becomes subject to a disqualification or is otherwise ineligible for membership under the Nasdaq By-Laws.

**(3)** The term "disqualified person" means an associated person or person seeking to become an associated person who is or becomes subject to a disqualification or is otherwise ineligible for association under the Nasdaq By-Laws.

**(4)** The term "sponsoring member" means the member or applicant for membership pursuant to Rule 1013 that is sponsoring the association or continued association of a disqualified person to be admitted, readmitted, or permitted to continue in association.

**9522. Initiation of Eligibility Proceeding; Member Regulation Consideration**

**(a) Initiation**

**(1) Issuance of Notice of Disqualification or Ineligibility**

If staff of the Department of Member Regulation has reason to believe that a disqualification exists or that a member or person associated with a member otherwise fails to meet the eligibility requirements of Nasdaq, staff of the Department of Member Regulation shall issue a written notice to the member or applicant for membership under Rule 1013. The notice shall specify the grounds for such disqualification or ineligibility. Staff of the Department of Member Regulation shall not issue such written notice to members or applicants for membership under Rule 1013 with respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, unless the member or applicant for membership under Nasdaq Rule 1013 is required to file an application pursuant to a Regulatory Alert entitled "Eligibility Proceedings: Amendments to Nasdaq Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications" (the "SD Regulatory Alert").

**(2) Notice Regarding a Member**

A notice issued to a disqualified member shall state that the disqualified member may apply for relief by filing an application or, in the case of a matter set forth in Rule

9522(e)(1), a written request for relief, within ten business days after service of the notice. If the member fails to file the application or, where appropriate, the written request for relief, within the 10-day period, the membership of the member shall be canceled, unless the Department of Member Regulation grants an extension for good cause shown.

**(3) Notice Regarding an Associated Person**

A notice issued regarding a disqualified person to a member or applicant for membership under Rule 1013 shall state that such member or applicant for membership may file an application on behalf of itself and such person or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, within ten business days after service of the notice. If the member fails to file the application or, where appropriate, the written request for relief, within the 10-day period, the registration of the disqualified person shall be revoked, unless the Department of Member Regulation grants an extension for good cause shown.

**(4) Service**

A notice issued under this section shall be served by facsimile or pursuant to Rules 9131 and 9134.

**(b) Obligation of Member to Initiate Proceeding**

(1) A member shall file an application or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, with the Central Registration Depository/ Public Disclosure, if the member determines prior to receiving a notice under paragraph (a) that:

**(A)** it has become a disqualified member;

**(B)** a person associated with such member or whose association is proposed by an applicant for membership under Rule 1013 has become a disqualified person; or

**(C)** the member or applicant for membership under Rule 1013 wishes to sponsor the association of a person who is a disqualified person.

(2) For any disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, a member shall not file an application unless instructed to do so by the SD Regulatory Alert.

**(c) Withdrawal of Application**

A member may withdraw its application or written request for relief prior to a hearing by filing a written notice with the Central Registration Depository/Public Disclosure pursuant to Rules 9135, 9136, and 9137. A member may withdraw its application after

the start of a hearing but prior to the issuance of a decision by the Nasdaq Review Council by filing a written notice with Nasdaq Review Council and the Office of General Counsel pursuant to Rules 9135, 9136, and 9137.

**(d) Ex Parte Communications**

The prohibitions against ex parte communications set forth in Rule 9143 shall become effective under the Rule 9520 Series when Nasdaq Regulation Department staff has initiated the eligibility proceeding and Nasdaq Regulation Department staff has knowledge that a member intends to file an application or written request for relief pursuant to the Rule 9520 Series.

**(e) Member Regulation Consideration**

**(1) Matters that may be Approved by the Department of Member Regulation without the Filing of an Application**

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, is authorized to approve a written request for relief from the eligibility requirements by a disqualified member or a sponsoring member without the filing of an application by such disqualified member or sponsoring member if a disqualified member or disqualified person is subject to one or more of the following conditions but is not otherwise subject to disqualification:

**(A)** a disqualified member or disqualified person is subject to a disqualification based on an injunction that was entered ten or more years prior to the proposed admission or continuance by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, foreign person performing a function substantially equivalent to any of the above, entity or person required to be registered under the Commodity Exchange Act, or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

**(B)** a sponsoring member makes a request to change the supervisor of a disqualified person; or

**(C)** a disqualified member or sponsoring member is a member of both Nasdaq and another self-regulatory organization; and:

**(i)** the other self-regulatory organization intends to file a Notice under SEC Rule 19h-1 approving the membership continuance of the disqualified member or, in the case of a

sponsoring member, the proposed association or continued association of the disqualified person; and

**(ii)** the Department of Member Regulation concurs with that determination.

**(2)** Matters that may be Approved by the Department of Member Regulation after the Filing of an Application

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, is authorized to approve an application filed by a disqualified member or sponsoring member if the disqualified member or disqualified person is subject to one or more of the following conditions but is not otherwise subject to disqualification (other than a matter set forth in subparagraph(e)(1)):

**(A)** The disqualified person is already a participant in, a member of, or a person associated with a member of, a self-regulatory organization (other than Nasdaq), and the terms and conditions of the proposed admission to Nasdaq are the same in all material respects as those imposed or not disapproved in connection with such person's prior admission or continuance pursuant to an order of the Commission under SEC Rule 19h-1 or other substantially equivalent written communication;

**(B)** The Department of Member Regulation finds, after reasonable inquiry, that except for the identity of the employer concerned, the terms and conditions of the proposed admission or continuance are the same in all material respects as those imposed or not disapproved in connection with a prior admission or continuance of the disqualified person pursuant to an order of the Commission under SEC Rule 19h-1 or other substantially equivalent written communication, and that there is no intervening conduct or other circumstance that would cause the employment to be inconsistent with the public interest or the protection of investors;

**(C)** The disqualification previously was a basis for the institution of an administrative proceeding pursuant to a provision of the federal securities laws, and was considered by the Commission in determining a sanction against such disqualified person in the proceeding; and the Commission concluded in such proceeding that it would not restrict or limit the future securities activities of such disqualified person in the capacity now proposed, or, if it imposed any such restrictions or limitations for a specified time period, such time period has elapsed; or

**(D)** The disqualification consists of a court order or judgment of injunction or conviction, and such order or judgment:

**(i)** expressly includes a provision that, on the basis of such order or judgment, the Commission will not institute a proceeding against such person pursuant to Section 15(b) or 15B of the Act or that the future securities activities of such persons in the capacity now proposed will not be restricted or limited; or



(ii) includes such restrictions or limitations for a specified time period and such time period has elapsed;

(E) The disqualified person's functions are purely clerical and/or ministerial in nature; or

(F) The disqualification arises from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arises under Section 3(a)(39)(E) of the Exchange Act.

**(3) Rights of Disqualified Member, Sponsoring Member, Disqualified Person, and Department of Member Regulation**

(A) In the event the Department of Member Regulation does not approve a written request for relief from the eligibility requirements pursuant to subparagraph (e)(1), the disqualified member or sponsoring member may file an application, and such member shall have the right to proceed under Rule 9523 or 9524, as applicable. The Department of Member Regulation may require a disqualified member or sponsoring member to file an application with the Central Registration Depository/Public Disclosure, notwithstanding the provisions of subparagraph (e)(1).

(B) In the event the Department of Member Regulation does not approve an application pursuant to subparagraph (e)(2), the disqualified member or sponsoring member shall have the right to proceed under Rule 9523 or 9524, as applicable.

**9523. Acceptance of Member Regulation Recommendations and Supervisory Plans by Consent Pursuant to SEC Rule 19h-1**

(a) With respect to all disqualifications, except those arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, after an application is filed, the Department of Member Regulation may recommend the membership or continued membership of a disqualified member or sponsoring member or the association or continuing association of a disqualified person pursuant to a supervisory plan where the disqualified member, sponsoring member, and/or disqualified person, as the case may be, consent to the recommendation and the imposition of the supervisory plan. The disqualified member, sponsoring member, and/or disqualified person, as the case may be, shall execute a letter consenting to the imposition of the supervisory plan.

(1) If a disqualified member, sponsoring member, and/or disqualified person submitted an executed letter consenting to a supervisory plan, by the submission of such letter, the disqualified member, sponsoring member and/or disqualified person waive:

(A) the right to a hearing before a Hearing Panel and any right of appeal to the Nasdaq Review Council, the Commission, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted.

(B) any right of the disqualified member, sponsoring member, and/or disqualified person to claim bias or prejudice by the Department of Member Regulation, the Chief

Regulatory Officer, the Nasdaq Review Council, or any member of the Nasdaq Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the Department of Member Regulation's recommendation or the supervisory plan, or other consideration of the recommendation or supervisory plan, including acceptance or rejection of such recommendation or supervisory plan; and

(C) any right of the disqualified member, sponsoring member, and/or disqualified person to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the recommendation or supervisory plan, or other consideration of the recommendation or supervisory plan, including acceptance or rejection of such recommendation or supervisory plan.

(2) If a recommendation or supervisory plan is rejected, the disqualified member, sponsoring member, and/or disqualified person shall be bound by the waivers made under subparagraph (a)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and shall have the right to proceed under this rule and Rule 9524, as applicable.

(3) If the disqualified member, sponsoring member, and/or disqualified person execute the letter consenting to the supervisory plan, it shall be submitted to the Nasdaq Regulation Department by the Department of Member Regulation with a proposed Notice under SEC Rule 19h-1, where required. The Nasdaq Regulation Department shall forward the supervisory plan and proposed Notice under SEC Rule 19h-1, if any, to the Chairman of the Statutory Disqualification Committee, acting on behalf of the Nasdaq Review Council. The Chairman of the Statutory Disqualification Committee may accept or reject the recommendation of the Department of Member Regulation and the supervisory plan or refer them to the Nasdaq Review Council for acceptance or rejection by the Nasdaq Review Council.

(4) If the recommendation and supervisory plan are accepted by the Nasdaq Review Council or the Chairman of the Statutory Disqualification Committee it shall be deemed final and, where required, the proposed Notice under SEC Rule 19h-1 will be filed by Nasdaq. If the recommendation and supervisory plan are rejected by the Chairman of the Statutory Disqualification Committee or the Nasdaq Review Council, the Nasdaq Regulation Department may take any other appropriate action with respect to the disqualified member, sponsoring member, and/or disqualified person. If the recommendation and supervisory plan are rejected, the disqualified member, sponsoring member, and/or disqualified person shall not be prejudiced by the execution of the letter consenting to the supervisory plan under subparagraph (a) and the letter may not be introduced into evidence in any proceeding.

(b) With respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, after an application is filed, in approving an application under Rule

9522(e)(2)(F), the Department of Member Regulation is authorized to accept the membership or continued membership of a disqualified member or sponsoring member or the association or continuing association of a disqualified person pursuant to a supervisory plan where the disqualified member, sponsoring member, and/or disqualified persons, as the case may be, consent to the imposition of the supervisory plan. The disqualified member, sponsoring member, and/or disqualified person, as the case may be, shall execute a letter consenting to the imposition of the supervisory plan. The Department of Member Regulation shall prepare a proposed Notice under SEC Rule 19h-1, where required, and Nasdaq shall file such Notice.

- (1) If a disqualified member, sponsoring member, and/or disqualified person submitted an executed letter consenting to a supervisory plan, by the submission of such letter, the disqualified member, sponsoring member and/or disqualified person waives:
  - (A) the right to a hearing before a Hearing Panel and any right of appeal to the Nasdaq Review Council, the SEC, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted;
  - (B) any right of the disqualified member, sponsoring member, and/or disqualified person to claim bias or prejudice by the Department of Member Regulation or the General Counsel in connection with such person's or body's participation in discussions regarding the terms and conditions of the Department of Member Regulation's recommended supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such recommendation or supervisory plan; and
  - (C) any right of the disqualified member, sponsoring member, and/or disqualified person to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such supervisory plan.
- (2) If the supervisory plan is rejected, the disqualified member, sponsoring member, and/or disqualified person shall be bound by the waivers made under paragraph (b)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and shall have the right to proceed under Rule 9524.

#### **9524. Nasdaq Review Council Consideration**

##### **(a) Hearing Panel Consideration**

##### **(1) Appointment of Hearing Panel**

When the disqualified member, sponsoring firm, or applicant requests a hearing, the Nasdaq Review Council or the Review Subcommittee shall appoint a Hearing Panel composed of two or more members, who shall be current or former members of the Nasdaq Review Council or the Statutory Disqualification Committee or former Directors (provided, however, that current members of the Nasdaq Review Council shall not serve on a Hearing Panel with respect to an affiliate of Nasdaq within the meaning of Rule 2160). The Hearing Panel shall conduct a hearing and recommend a decision on the request for relief.

**(2) Notice of Hearing**

The disqualified member or sponsoring member, as the case may be, and the Department of Member Regulation shall be notified via mail, facsimile, or overnight courier of the location, time, and date of the hearing not less than fourteen business days before the hearing, unless the parties agree to shorten the time period.

**(3) Transmission of Documents**

**(A)** Upon receipt of an application, the Central Registration Depository shall gather all of the information necessary to process the application, including (i) the Central Registration Depository records for the disqualified member, sponsoring member, and/or disqualified person, as the case may be, and the proposed supervisor; and (ii) all of the information submitted by the disqualified member or sponsoring member in support of the application. The Central Registration Depository will prepare an index of these documents, and simultaneously provide this index and copies of the documents to the disqualified member or sponsoring member, as the case may be, the Nasdaq Regulation Department, and the Department of Member Regulation. Such documents shall be served on the disqualified member or sponsoring member, as the case may be, by mail, facsimile, or overnight courier as soon as practicable. The Department of Member Regulation shall serve its recommendation and its supporting documents on the Nasdaq Regulation Department and the disqualified member or sponsoring member, as the case may be, within ten business days of the hearing, unless the Parties agree otherwise. The disqualified member or sponsoring member, as the case may be, shall serve its documents on the Nasdaq Regulation Department and the Department of Member Regulation within ten business days of the hearing, unless the Parties agree otherwise. Nasdaq Regulation shall forward all documents transmitted to it pursuant to this subparagraph (a)(3) to the Hearing Panel.

**(B)** Not less than ten business days before the hearing, the Department of Member Regulation, which shall act as a Party in the eligibility proceeding, and the disqualified member or sponsoring member, as the case may be, shall serve proposed exhibit and witness lists on each other and the Nasdaq Regulation Department. The exhibit and witness lists shall be served by facsimile or overnight courier.

**(C)** At any time prior to the issuance of its recommendation, the Hearing Panel may order the Parties to supplement the record with any additional information that the Hearing Panel deems necessary.

**(4) Rights of Disqualified Member, Sponsoring Member, Disqualified Person, and Department of Member Regulation**

The disqualified member, sponsoring member, and/or disqualified person, as the case may be, and, the Department of Member Regulation, shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence.

**(5) Extensions of Time, Postponements, and Adjournments**

At any time prior to the issuance of the decision of the Hearing Panel, after obtaining consent of all the Parties, the Hearing Panel may extend or shorten any time limits prescribed by the Code for the filing of any papers and may postpone or adjourn any hearing.

**(6) Recordation of Hearing**

The hearing shall be recorded and a transcript prepared by a court reporter. The disqualified member, sponsoring member, and/or disqualified person, as the case may be, may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Panel within a reasonable time determined by the Hearing Panel. Upon notice to the participants in the hearing, the Hearing Panel may order corrections to the transcript as requested or sua sponte.

**(7) Record**

The record shall consist of:

- (A)** the notice issued pursuant to Rule 9522(a), if applicable;
- (B)** all documents relied upon in issuing the notice under Rule 9522(a), if applicable;
- (C)** the application for relief filed pursuant to Rule 9522(b);
- (D)** any other submissions by the disqualified member, sponsoring member, and/or disqualified person, as the case may be, and the Department of Member Regulation;
- (E)** any evidence considered at the hearing; and
- (F)** the transcript of the hearing and any corrections thereto.

**(8) Custodian of the Record**

The custodian of the record shall be the Nasdaq Regulation Department.

**(9) Evidence Not Admitted**

Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the custodian of the record until the date when Nasdaq's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

**(10) Recommendation**

On the basis of the record, the Hearing Panel shall present a recommended decision in writing on the request for relief to the Statutory Disqualification Committee. After considering the record and recommendation of the Hearing Panel, the Statutory Disqualification Committee shall present its recommended decision in writing to the Nasdaq Review Council. Notwithstanding the foregoing, with respect to a Nasdaq member that is an affiliate of Nasdaq within the meaning of Rule 2140, the Hearing Panel shall prepare a final decision meeting the requirements of Rule 9524(b)(2), which shall not be reviewed by the Statutory Disqualification Committee or the Nasdaq Review Council, and may not be called for review by the Nasdaq Board pursuant to Rule 9525.

**(b) Decision****(1) Decision of the Nasdaq Review Council**

After considering all matters presented in the request for relief, the Statutory Disqualification Committee's recommended decision, the public interest, and the protection of investors, the Nasdaq Review Council may grant or deny the request for relief, and, if relief is granted, impose conditions on the disqualified member, sponsoring member, and/or disqualified person, as the case may be. At any time prior to the issuance of its recommendation, the Nasdaq Review Council may order the Parties to supplement the record with any additional information that the Nasdaq Review Council deems necessary. Alternatively, the Nasdaq Review Council may remand the eligibility proceeding. The Nasdaq Review Council shall prepare a proposed written decision pursuant to subparagraph (b)(2).

**(2) Contents of Decision**

The decision shall include:

**(A)** a description of the origin of the eligibility proceeding and the nature of the disqualification;

**(B)** a description of the prospective business or employment requested to be engaged in; and

**(C)** a statement in support of the disposition of the request for relief, which, if granted, includes any of the applicable elements under SEC Rule 19h-1(e) and a description of any conditions that are imposed on the disqualified member, sponsoring member, or disqualified person, as the case may be.

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

The Nasdaq Review Council shall provide its proposed written decision to the Nasdaq Board. The Nasdaq Board may call the eligibility proceeding for review pursuant to Rule 9525. If the Nasdaq Board does not call the eligibility proceeding for review, the proposed written decision of the Nasdaq Review Council shall become final, and the Nasdaq Review Council shall serve its written decision on the disqualified member, sponsoring member, and/or disqualified person, as the case may be, and the Department of Member Regulation pursuant to Rules 9132 and 9134. In the case of a decision with respect to a Nasdaq member that is an affiliate of Nasdaq within the meaning of Rule 2160, the decision of the Hearing Panel shall become final without being provided to the Nasdaq Board, and the Hearing Panel shall serve its written decision.

The decision shall constitute final action of Nasdaq, unless the Nasdaq Review Council remands the eligibility proceeding. A decision to deny re-entry or continued association shall be effective immediately. A decision to approve shall be effective after the Commission issues an acknowledgment letter or, in cases involving Commission ordered sanctions, an order.

**9525. Discretionary Review by the Nasdaq Board**

**(a) Call for Review by Director**

A Director may call an eligibility proceeding for review by the Nasdaq 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 not later than the next meeting of the Nasdaq Board that is at least 15 days after the date on which the Nasdaq Board receives the proposed written decision of the Nasdaq Review Council. By a unanimous vote of the Nasdaq Board, the Nasdaq Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the Nasdaq Board then in office, the Nasdaq 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 an eligibility proceeding for review within the period prescribed in paragraph (b), the Nasdaq Board shall review the eligibility proceeding not later than the

next meeting of the Nasdaq Board. The Nasdaq Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

**(d) Decision of Nasdaq Board, Including Remand**

After review, the Nasdaq Board may affirm, modify, or reverse the proposed written decision of the Nasdaq Review Council. Alternatively, the Nasdaq Board may remand the eligibility proceeding with instructions. The Nasdaq Board shall prepare a written decision that includes all of the elements described in Rule 9524(b)(2).

**(e) Issuance of Decision**

The Nasdaq Board shall issue and serve its written decision on the disqualified member, sponsoring member, and/or disqualified person, as the case may be, and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall constitute the final action of Nasdaq, unless the Nasdaq Board remands the proceeding. A decision to deny re-entry or continued association shall be effective immediately. A decision to approve shall be effective after the Commission issues an acknowledgment letter or, in cases involving Commission-ordered sanctions, an order.

**9526. Expedited Review**

**(a) Direction by Executive Committee**

Notwithstanding Rules 9524 and 9525, the Nasdaq Board Executive Committee, upon request of the Statutory Disqualification Committee, may direct an expedited review of a recommended written decision of the Statutory Disqualification Committee if the Nasdaq Board Executive Committee determines that expedited review is necessary for the protection of investors.

**(b) Call for Review Period**

If a recommended decision is subject to expedited review, a Director may call the eligibility proceeding for review within seven days after receipt of the recommended written decision.

**(c) No Call for Review**

If no Director calls the proceeding for review within the time prescribed, the decision shall become final, and the Statutory Disqualification Committee shall serve the decision on the disqualified member, sponsoring member, and/or disqualified person, as the case may be, and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall constitute final action of Nasdaq. The decision shall be effective upon approval by the Commission.

**(d) Call for Review**



If a Director calls the eligibility proceeding for review within the prescribed time, a review panel shall meet and conduct a review not later than 14 days after the call for review. The review panel shall be composed of the Nasdaq Board Executive Committee, except that the Director who calls the proceeding for review shall serve on the review panel in lieu of a member of the Executive Committee who has the same classification (Member, Industry, Non-Industry, or Public) as such Director. The review panel may affirm, modify, or reverse the recommended written decision of the Statutory Disqualification Committee or remand the eligibility proceeding with instructions. The review panel shall prepare, issue, and serve its decision pursuant to Rule 9525(d) and (e).

**9527. Application to Commission for Review**

The right to have any action taken pursuant to this Rule Series reviewed by the Commission is governed by Section 19 of the Act. The filing of an application for review shall not stay the effectiveness of final action by Nasdaq, unless the Commission otherwise orders.

**9530. Reserved**

**9531. Reserved**

**9532. Reserved**

**9533. Reserved**

**9534. Reserved**

**9535. Reserved**

**9536. Reserved**

**9537. Reserved**

**9550. Expedited Proceedings**

**9551. Reserved**

**9552. Failure to Provide Information or Keep Information Current**

**(a) Notice of Suspension of Member, Person Associated with a Member or Person Subject to Nasdaq's Jurisdiction if Corrective Action is Not Taken**

If a member, person associated with a member or person subject to Nasdaq's jurisdiction fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the Nasdaq By-Laws or the Nasdaq Rules, or fails to keep its membership application or supporting documents current, Nasdaq Regulation staff may provide written notice to such member or person specifying the nature of the failure and stating that the failure to take corrective action within 21 days after service of the notice will result in suspension of membership or of association of the person with any member.

**(b) Service of Notice of Suspension**

Except as provided below, Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) shall serve the member or person with such notice (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

**(c) Contents of Notice**

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Nasdaq action. The notice shall state when the Nasdaq action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Nasdaq action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**(d) Effective Date of Suspension**

The suspension referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

**(e) Request for Hearing**

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the Nasdaq action.

**(f) Request for Termination of the Suspension**

A member or person subject to a suspension pursuant to this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the FINRA department or office that issued the notice or, if another FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the FINRA department or office that is so designated. The head of the appropriate department or office may grant relief for good cause shown.

**(g) Settlement Procedure**

Uncontested offers of settlement shall be permitted under this Rule and shall conform to the requirements of Rule 9270, except that, if an uncontested offer of settlement, made under Rule 9270(e) after a hearing on the merits has begun, is accepted by the Hearing Officer, the Hearing Officer shall issue the order of acceptance, which shall constitute final Nasdaq action. Contested offers of settlement shall not be considered in proceedings initiated under this Rule.

**(h) Defaults**

A member or person who is suspended under this Rule and fails to request termination of the suspension within three months of issuance of the original notice of suspension will automatically be expelled or barred.

**9553. Failure to Pay Nasdaq Dues, Fees and Other Charges**

**(a) Notice of Suspension, Cancellation or Bar**

If a member, person associated with a member or person subject to Nasdaq's jurisdiction fails to pay any fees, dues, assessment or other charge required to be paid under the Nasdaq By-Laws or Rules, or to submit a required report or information related to such payment, Nasdaq Regulation Department staff may issue a written notice to such member or person stating that the failure to comply within 21 days of service of the notice will

result in a suspension or cancellation of membership or a suspension or bar from associating with any member.

**(b) Service of Notice of Suspension, Cancellation or Bar**

Except as provided below, Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) shall serve the member or person with such notice (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

**(c) Contents of Notice**

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Nasdaq action. The notice shall state when the Nasdaq action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Nasdaq action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**(d) Effective Date of Suspension, Cancellation or Bar**

The suspension, cancellation or bar referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

**(e) Request for Hearing**

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the Nasdaq action.

**(f) Failure to Request Hearing**

If a member or person does not timely request a hearing, the suspension, cancellation or bar specified in the notice shall become effective 21 days after service of the notice and the notice shall constitute final Nasdaq action.

**(g) Request for Termination of the Suspension**

A member or person subject to a suspension under this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the FINRA department or office that issued the notice or, if another FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**9554. Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution**

**(a) Notice of Suspension or Cancellation**

If a member, person associated with a member or person subject to Nasdaq's jurisdiction fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under the Nasdaq By-Laws, or a FINRA order of restitution or FINRA settlement agreement providing for restitution, Nasdaq Regulation Department staff may provide written notice to such member or person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension from associating with any member.

**(b) Service of Notice of Suspension or Cancellation**

Except as provided below, Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) shall serve the member or person with such notice (or upon counsel

representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

**(c) Contents of Notice**

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Nasdaq action. The notice shall state when the Nasdaq action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Nasdaq action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**(d) Effective Date of Suspension or Cancellation**

The suspension or cancellation referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

**(e) Request for Hearing**

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the Nasdaq action.

**(f) Failure to Request Hearing**

If a member or person does not timely request a hearing, the suspension or cancellation specified in the notice shall become effective 21 days after the service of the notice and the notice shall constitute final Nasdaq action.

**(g) Request for Termination of the Suspension**

A member or person subject to a suspension under this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the FINRA department or office that issued the notice or, if another FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**9555. Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services****(a) Notice to Member or Person of Suspension, Cancellation, Bar, or Limitation or Prohibition on Access to Services**

**(1)** If a member or an associated person does not meet the eligibility or qualification standards set forth in the Nasdaq By-Laws or Rules, Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) may provide written notice to such member or person stating that the failure to become eligible or qualified will result in a suspension or cancellation of membership or a suspension or bar from associating with any member.

**(2)** If a member, associated person, or other person does not meet the prerequisites for access to services offered by Nasdaq or a member thereof or cannot be permitted to continue to have access to services offered by Nasdaq or a member thereof with safety to investors, creditors, members, or Nasdaq, Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) may provide written notice to such member or person limiting or prohibiting access to services offered by Nasdaq or a member thereof.

**(b) Service of Notice**

Except as provided below, Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) shall serve the member or person with such notice (or upon counsel

representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

**(c) Contents of Notice**

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Nasdaq action. The notice shall state when the Nasdaq action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Nasdaq action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**(d) Effective Date of Limitation, Prohibition, Suspension, Cancellation or Bar**

The limitation, prohibition, suspension, cancellation or bar referenced in a notice issued under this Rule shall become effective 14 days after service of the notice, except that the effective date for a notice of a limitation or prohibition on access to services offered by Nasdaq or a member thereof with respect to services to which the member or person does



not have access shall be upon service of the notice. A request for a hearing, pursuant to Rule 9559, shall stay the effectiveness of the notice, except that the effectiveness of a notice of a limitation or prohibition on access to services offered by Nasdaq or a member thereof with respect to services to which the member or person does not have access shall not be stayed by a request for a hearing.

**(e) Request for Hearing**

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made within 14 days after service of the notice. A request for a hearing must set forth with specificity any and all defenses to the Nasdaq action.

**(f) Failure to Request Hearing**

If a member or person does not timely request a hearing, the limitation, prohibition, suspension, cancellation or bar specified in the notice shall become effective 14 days after service of the notice, except that the effective date for a notice of a limitation or prohibition on access to services offered by Nasdaq or a member thereof with respect to services to which the member or person does not have access shall be upon service of the notice. The notice shall constitute final Nasdaq action if the member or person does not request a hearing within 14 days after service of the notice.

**(g) Request for Termination of the Limitation, Prohibition or Suspension**

A member or person subject to a limitation, prohibition or suspension under this Rule may file a written request for termination of the limitation, prohibition or suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the Nasdaq or FINRA department or office that issued the notice or, if another Nasdaq or FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the Nasdaq or FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**9556. Failure to Comply with Temporary and Permanent Cease and Desist Orders  
(a) Notice of Suspension, Cancellation or Bar**

If a member, person associated with a member or person subject to Nasdaq's jurisdiction fails to comply with a temporary or permanent cease and desist order issued under the Rule 9200, 9300 or 9800 Series, Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq), after receiving written authorization from the Chief Regulatory Officer, may issue a notice to such member or person stating that the failure to comply with the temporary or permanent cease and desist order within seven days of service of the notice will result in a suspension or cancellation of membership or a suspension or bar from associating with any member.

**(b) Service of Notice**

Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) shall serve the member or person subject to a notice issued under this Rule (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) by facsimile, email, overnight courier or personal delivery. Papers served on a member, person or counsel for such member or person, or other person authorized to represent others under Rule 9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a member or person, (b)(1) and (2) of Rule 9134. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141 by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

**(c) Contents of Notice**

The notice shall explicitly identify the provision of the permanent or temporary cease and desist order that is alleged to have been violated and shall contain a statement of facts specifying the alleged violation. The notice shall state when the Nasdaq action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Nasdaq action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**(d) Effective Date of Suspension, Cancellation or Bar**

The suspension, cancellation or bar referenced in a notice issued and served under this Rule shall become effective seven days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

**(e) Request for a Hearing**

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the Nasdaq action.

**(f) Failure to Request Hearing**

If a member or person does not timely request a hearing, the suspension, cancellation or bar specified in the notice shall become effective seven days after the service of the notice and the notice shall constitute final Nasdaq action.

**(g) Request for Termination of the Suspension**

A member or person subject to a suspension imposed after the process described in paragraphs (a) through (f) of this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the Nasdaq or FINRA department or office that issued the notice or, if another Nasdaq or FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the Nasdaq or FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**(h) Subsequent Proceedings**

If a member, person associated with a member or person subject to Nasdaq's jurisdiction fails to comply with a temporary or permanent cease and desist order issued under the Rule 9200, 9300, or 9800 Series, and has previously been served under paragraph (a) of this Rule with a notice for a failure to comply with any provision of the same temporary or permanent cease and desist order, Nasdaq Regulation Department staff, after receiving written authorization from the Chief Regulatory Officer, may file a petition with the Office of Hearing Officers seeking a hearing pursuant to Rule 9559 and the imposition of any fitting sanctions for such member's or person's failure to comply with the temporary or permanent cease and desist order.

- (1) The petition shall be served in accordance with paragraph (b) of this Rule, and it shall be filed with the Office of Hearing Officers.

- (2) The petition shall explicitly identify the provision of the permanent or temporary cease and desist order that is alleged to have been violated, contain a statement of facts specifying the alleged violation, describe with particularity the sanctions that Nasdaq Regulation Department staff seeks to have imposed, and note that a hearing under Rule 9559 is requested. Nasdaq Regulation Department staff may seek the imposition of any fitting sanction.
- (3) Upon the filing of the petition, Rule 9559 shall govern the proceeding. Respondent's full compliance with the temporary or permanent cease and desist order is not a ground for dismissing a proceeding brought pursuant to this paragraph (h).
- (4) The Nasdaq Department that filed the petition can withdraw it without prejudice and shall be permitted to refile a petition based on allegations concerning the same facts and circumstances that are set forth in the withdrawn petition.

**9557. Procedures for Regulating Activities Under Rules 4110A and 4120A Regarding a Member Experiencing Financial or Operational Difficulties**

**(a) Notice of Requirements and/or Restrictions; Nasdaq Action**

Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) may issue a notice directing a member to comply with the provisions of Rule 4110A or 4120A or restrict its business activities, either by limiting or ceasing to conduct those activities consistent with Rule 4110A or 4120A, if Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) has reason to believe that a condition specified in Rule 4110A or 4120A exists. A notice served under this Rule shall constitute Nasdaq action.

**(b) Service of Notice**

Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) shall serve the member subject to a notice issued under this Rule (or upon counsel representing the member, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member) by facsimile, email, overnight courier or personal delivery. Papers served on a member, counsel for such member, or other person authorized to represent others under Rule 9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a member, (b)(2) of Rule 9134. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with

paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on counsel for a member, or other person authorized to represent others under Rule 9141 by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

**(c) Contents of Notice**

A notice issued under this Rule shall:

- (1) state the specific grounds and include the factual basis for the Nasdaq action;
- (2) specify the date of the notice and the requirements and/or restrictions being imposed by the notice;
- (3) state that the requirements and/or restrictions imposed by the notice are immediately effective;
- (4) specify the conditions for complying with and, where applicable, avoiding or terminating the requirements and/or restrictions imposed by the notice;
- (5) inform the member that, pursuant to paragraph (f) of this Rule, the failure to comply with the requirements and/or restrictions imposed by an effective notice under this Rule shall be deemed, without further notice from Nasdaq Regulation Department staff, to result in automatic and immediate suspension unless Nasdaq Regulation Department staff issues a letter of withdrawal of all requirements and/or restrictions imposed by the notice pursuant to paragraph (g)(2) of this Rule;
- (6) explain that the member may make a request for a letter of withdrawal of the notice pursuant to paragraph (e) of this Rule;
- (7) state that, in addition to making a request for a letter of withdrawal of the notice, the member may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559;
- (8) inform the member of the applicable deadline for filing a request for a hearing and state that a request for a hearing must set forth with specificity any and all defenses to the Nasdaq action; and
- (9) explain that, pursuant to Rule 9559(n), a Hearing Panel may approve or withdraw the requirements and/or restrictions imposed by the notice, and that if the Hearing Panel approves the requirements and/or restrictions imposed by the notice and finds that the

member has not complied with all of them, the Hearing Panel shall impose an immediate suspension on the member.

**(d) Effectiveness of the Requirements and/or Restrictions**

The requirements and/or restrictions imposed by a notice issued and served under this Rule are immediately effective, except that a timely request for a hearing shall stay the effective date for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less), unless Nasdaq's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate) determines that such a stay cannot be permitted with safety to investors, creditors or other members. Such a determination by Nasdaq's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate) cannot be appealed. An extension of the stay period is not permitted. Where a timely request for a hearing stays the action for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less), the notice shall not be deemed to have taken effect during that entire period.

Any requirements and/or restrictions imposed by an effective notice shall remain in effect unless Nasdaq Regulation Department staff shall remove or reduce the requirements and/or restrictions pursuant to a letter of withdrawal of the notice issued as set forth in paragraph (g)(2) of this Rule.

**(e) Request for a Letter of Withdrawal of the Notice; Request for a Hearing**

A member served with a notice under this Rule may request from Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) a letter of withdrawal of the notice pursuant to paragraph (g)(2) of this Rule and/or file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559.

- (1) A request for a letter of withdrawal of the notice may be made at any time after service of a notice under this Rule. The member making the request must demonstrate to the satisfaction of Nasdaq Regulation Department staff that the requirements and/or restrictions imposed by the notice should be removed or reduced. If such a request is denied by Nasdaq Regulation Department staff, the member shall not be precluded from making a subsequent request or requests.
- (2) A request for a hearing shall be made within two business days after service of a notice under this Rule. A request for a hearing must set forth with specificity any and all defenses to the Nasdaq action. A request for a hearing may seek to contest:
  - (A) the validity of the requirements and/or restrictions imposed by the notice (as the same may have been reduced by a letter of withdrawal pursuant to paragraph (g)(2) of this Rule, where applicable); and/or

(B) Nasdaq Regulation Department staff's determination not to issue a letter of withdrawal of all requirements and/or restrictions imposed by the notice, if such was requested by the member.

**(f) Enforcement of Notice**

A member that has failed to comply with the requirements and/or restrictions imposed by an effective notice under this Rule shall be deemed, without further notice from Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq), automatically and immediately suspended. Such suspension shall remain in effect unless Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) shall issue a letter, pursuant to paragraph (g)(2) of this Rule, stating that the suspension is lifted.

**(g) Additional Requirements and/or Restrictions or the Removal or Reduction of Requirements and/or Restrictions; Letter of Withdrawal of the Notice**

**(1) Additional Requirements and/or Restrictions**

If a member continues to experience financial or operational difficulty specified in Rule 4110A or 4120A, notwithstanding an effective notice, Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) may impose additional requirements and/or restrictions by serving an additional notice under paragraph (b) of this Rule. The additional notice shall inform the member that it may apply for relief from the additional requirements and/or restrictions by filing a written request for a letter of withdrawal of the notice and/or a written request for a hearing before the Office of Hearing Officers under Rule 9559. The procedures delineated in this Rule shall be applicable to such additional notice.

**(2) Removal or Reduction of Requirements and/or Restrictions and/or Lifting of Suspension; Letter of Withdrawal**

**(A) Removal or Reduction of Requirements and/or Restrictions**

If, upon the member's demonstration to the satisfaction of Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq), Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) determines that any requirements and/or restrictions imposed by a notice under this Rule should be removed or reduced, Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) shall serve the member, pursuant to paragraph (b) of this Rule, a written letter of withdrawal that shall, in the sole discretion of Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq), withdraw the notice in whole or in part. A notice that is withdrawn in part shall remain in force, unless Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) shall remove the remaining requirements and/or restrictions.

**(B) Lifting of Suspension**

If, upon the member's demonstration to the satisfaction of Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq), Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) determines that a suspension imposed by a notice under this Rule should be lifted, Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) shall serve the member, pursuant to paragraph (b) of this Rule, a letter that shall, in the sole discretion of Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq), lift the suspension. Where all or some of the requirements and/or restrictions imposed by a notice issued under this Rule remain in force, the letter shall state that the member's failure to continue to comply with those requirements and/or restrictions that remain effective shall result in the member being immediately suspended.

**(h)** For purposes of this Rule, "Nasdaq Regulation Department staff" shall mean:

- (1) the head of the Nasdaq department or office (or FINRA acting on behalf of the Nasdaq) that issued the notice, or his or her written officer delegate; or
- (2) if another Nasdaq (or FINRA acting on behalf of Nasdaq) department or office is named as the party handling the matter on behalf of the issuing department or office, the head of the Nasdaq (or FINRA acting on behalf of Nasdaq) department or office that is so designated, or his or her written officer delegate.

#### **9558. Summary Proceedings for Actions Authorized by Section 6(d)(3) of the Act**

##### **(a) Notice of Initiation of Summary Proceedings**

The Chief Regulatory Officer of Nasdaq may provide written authorization to FINRA staff to issue on a case-by-case basis a written notice that summarily:

- (1)** suspends a member, person associated with a member or person subject to Nasdaq's jurisdiction who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization;
- (2)** suspends a member who is in such financial or operating difficulty that Association staff determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or Nasdaq; or
- (3)** limits or prohibits any person with respect to access to services offered by Nasdaq if paragraphs (1) or (2) of this Rule or the provisions of Section 6(d)(3) of the Act applies to such person or, in the case of a person who is not a member, if the Chief Regulatory Officer of Nasdaq 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 Nasdaq, and so notifies the Commission.



**(b) Service of Notice**

Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) shall serve the member or person subject to a notice issued under this Rule (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) by facsimile, email, overnight courier, or personal delivery. Papers served on a member, person or counsel for such member or person, or other person authorized to represent others under Rule 9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a member or person, (b)(1) and (2) of Rule 9134. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141 by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

**(c) Contents of Notice**

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Nasdaq action. The notice shall state when the Nasdaq action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Nasdaq action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**(d) Effective Date of Limitation, Prohibition or Suspension**

The limitation, prohibition or suspension referenced in a notice issued and served under this Rule is immediately effective. The limitation, prohibition or suspension specified in the notice shall remain in effect unless, after a timely written request for a hearing and written request for a stay, the Chief Hearing Officer or Hearing Officer assigned to the matter finds good cause exists to stay the limitation, prohibition or suspension.

**(e) Request for a Hearing and Stay**

A member or person subject to a notice issued under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made within seven days after service of the notice issued under this Rule. A request for a hearing must set forth with specificity any and all defenses to the Nasdaq action.

A member or person subject to a notice issued under this Rule may, concurrent with or after filing a request for a hearing, file with the Office of Hearing Officers a written request for a stay of the limitation, prohibition or suspension specified in the notice. A request for a stay must set forth with specificity any and all relevant facts and arguments supporting the request for a stay.

**(f) Failure to Request Hearing**

If a member or person subject to a notice issued under this Rule does not timely request a hearing within the time period specified in paragraph (e) of this Rule, the notice shall constitute final Nasdaq action.

**(g) Request for Termination of the Limitation, Prohibition or Suspension**

A member or person subject to a limitation, prohibition or suspension under this Rule may file a written request for termination of the limitation, prohibition or suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the FINRA department or office that issued the notice or, if another FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series****(a) Applicability**

The hearing procedures under this Rule shall apply to a member, person associated with a member, person subject to Nasdaq's jurisdiction or other person who is served with a notice issued under the Rule 9550 Series and who timely requests a hearing or who is

served with a petition instituting an expedited proceeding under Rule 9556(h). For purposes of this Rule, such members or persons shall be referred to as respondents.

**(b) Computation of Time**

Rule 9138 shall govern the computation of time in proceedings brought under the Rule 9550 Series, except that intermediate Saturdays, Sundays and Federal holidays shall be included in the computation in proceedings brought under Rules 9556 through 9558, unless otherwise specified.

**(c) Stays**

(1) Unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown, a timely request for a hearing shall stay the effectiveness of a notice issued under Rules 9552 through 9556, except that (A) the effectiveness of a notice of a limitation or prohibition on access to services offered by Nasdaq or a member thereof under Rule 9555 with respect to services to which the member or person does not have access shall not be stayed by a request for a hearing; and (B) this paragraph has no applicability to a petition instituting an expedited proceeding under Rule 9556(h).

(2) A timely request for a hearing shall stay the effectiveness of a notice issued under Rule 9557 for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less), unless Nasdaq's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate) determines that a notice under Rule 9557 shall not be stayed. Where a notice under Rule 9557 is stayed by a request for a hearing, such stay shall remain in effect only for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less) and shall not be extended.

(3) A timely request for a hearing shall not stay the effectiveness of a notice issued under Rule 9558, unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown.

**(d) Appointment and Authority of Hearing Officer and/or Hearing Panel**

(1) For proceedings initiated under Rules 9553, 9554, and 9556(h), the Chief Hearing Officer shall appoint a Hearing Officer to preside over and act as the sole adjudicator for the matter.

(2) For proceedings initiated under Rules 9552, 9555, 9556 (except Rule 9556(h)), 9557 and 9558, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer and two Panelists. The Hearing Officer shall serve as the chair of the Hearing Panel. For proceedings initiated under Rules 9552, 9555, 9556 (except Rule 9556(h)) and 9558, the Chief Hearing Officer shall select as Panelists persons who meet

the qualifications delineated in Rules 9231 and 9232. For proceedings initiated under Rule 9557, the Chief Hearing Officer shall select as Panelists current or former members of the Nasdaq Financial Responsibility Committee.

**(3)** Rules 9231(e), 9233 and 9234 shall govern disqualification, recusal or withdrawal of a Hearing Officer or, if applicable, Hearing Panelist.

**(4)** A Hearing Officer appointed pursuant to this provision shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rules 9235 and 9280.

**(5)** Hearings under the Rule 9550 Series shall be held by telephone conference, unless the Hearing Officer orders otherwise for good cause shown.

**(6)** For good cause shown, or with the consent of all of the parties to a proceeding, the Hearing Officer or, if applicable, the Hearing Panel may extend or shorten any time limits prescribed by this Rule other than those relating to Rule 9557.

**(e) Consolidation or Severance of Proceedings**

Rule 9214 shall govern the consolidation or severance of proceedings, except that, where one of the notices that are the subject of consolidation under this Rule requires that a hearing be held before a Hearing Panel, the hearing of the consolidated matters shall be held before a Hearing Panel. Where two consolidated matters contain different timelines under this Rule, the Chief Hearing Officer or Hearing Officer assigned to the matter has discretion to determine which timeline is appropriate under the facts and circumstances of the case. Where one of the consolidated matters includes an action brought under a Rule that does not permit a stay of the effectiveness of the notice or where Nasdaq's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate), in the case of Rule 9557, or Hearing Officer, in the case of Rule 9558(d), determines that a request for a hearing shall not stay the effectiveness of the notice, the limitation, prohibition, condition, requirement, restriction, or suspension specified in the notice shall not be stayed pending resolution of the case. Where one of the consolidated matters includes an action brought under Rule 9557 that is stayed for up to ten business days, the requirement and/or restriction specified in the notice shall not be further stayed.

**(f) Time of Hearing**

(1) A hearing shall be held within five business days after a respondent subject to a notice issued under Rule 9557 files a written request for a hearing with the Office of Hearing Officers.

(2) A hearing shall be held within ten days after a respondent is served a petition seeking an expedited proceeding issued under Rule 9556(h).

- (3) A hearing shall be held within 14 days after a respondent subject to a notice issued under Rules 9556 (except Rule 9556(h)) and 9558 files a written request for a hearing with the Office of Hearing Officers.
- (4) A hearing shall be held within 30 days after a respondent subject to a notice issued under Rules 9552 through 9555 files a written request for a hearing with the Office of Hearing Officers.
- (5) The timelines established by paragraphs (f)(1) through (f)(4) confer no substantive rights on the parties.

**(g) Notice of Hearing**

The Hearing Officer shall issue a notice stating the date, time, and place of the hearing as follows:

- (1) At least two business days prior to the hearing in the case of an action brought pursuant to Rule 9557;
- (2) At least six days prior to the hearing in the case of an action brought pursuant to Rule 9556(h);
- (3) At least seven days prior to the hearing in the case of an action brought pursuant to Rules 9556 (except Rule 9556(h)) and 9558; and
- (4) At least 21 days prior to the hearing in the case of an action brought pursuant to Rules 9552 through 9555.

**(h) Transmission of Documents**

**(1)** Not less than two business days before the hearing in an action brought under Rule 9557, not less than six days before the hearing in an action brought under Rule 9556(h), not less than seven days before the hearing in an action brought under Rules 9556 (except Rule 9556(h)) and 9558, and not less than 14 days before the hearing in an action brought under Rules 9552 through 9555, Nasdaq Regulation Department staff shall provide to the respondent who requested the hearing or the respondent who has received a petition pursuant to Rule 9556(h), by facsimile, email, overnight courier or personal delivery, all documents that were considered in issuing the notice unless a document meets the criteria of Rule 9251(b)(1)(A), (B) or (C). Documents served by facsimile or email shall also be served by either overnight courier or personal delivery. A document that meets the criteria in this paragraph shall not constitute part of the record, but shall be retained until the date upon which the Nasdaq's final decision is served or, if applicable, upon the conclusion of any review by the Securities and Exchange Commission or the federal courts.

**(2)** Not less than two business days before the hearing in an action brought under Rule 9557, not less than three days before the hearing in an action brought under Rules 9556 and 9558, and not less than seven days before the hearing in an action brought under Rules 9552 through 9555, the parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile, email, by overnight courier or personal delivery. Documents served by facsimile or email shall also be served by either overnight courier or personal delivery.

**(i) Evidence**

Formal rules of evidence shall not apply to a hearing under this Rule Series. Rules 9262 and 9263 shall govern testimony and the admissibility of evidence.

**(j) Additional Information**

The Hearing Officer or, if applicable, the Hearing Panel may direct the Parties to submit additional information.

**(k) Record of Hearing**

Rule 9265 shall govern the requirements for the record of the hearing.

**(l) Record of Proceeding**

Rule 9267 shall govern the record of the proceeding.

**(m) Failure to Appear at a Pre-Hearing Conference or Hearing or to Comply with a Hearing Officer Order Requiring the Production of Information**

Failure of any respondent to appear before the Hearing Officer or, if applicable, the Hearing Panel at any status conference, pre-hearing conference or hearing, or to comply with any order of the Hearing Officer or, if applicable, Hearing Panel requiring production of information to support any defense to the notice or petition that respondent has raised, shall be considered an abandonment of the respondent's defense and waiver of any opportunity for a hearing provided by the Rule 9550 Series. In such cases:

- (1) The notice issued under the Rule 9550 Series shall be deemed to be final Nasdaq action. The Hearing Officer or, if applicable, the Hearing Panel may permit the hearing to go forward as to those parties who appear and otherwise comply with this Rule.
- (2) The Hearing Officer may issue a default decision against a respondent who is the subject of a petition filed pursuant to Rule 9556(h) and may deem the allegations against that respondent admitted. The contents of a default decision shall conform to the content requirements of Rule 9559(p). A respondent may, for good cause shown, file a motion to set aside a default. Upon a showing of good cause, the Hearing

Officer that entered the original order shall decide the motion. If the Hearing Officer is not available, the Chief Hearing Officer shall appoint another Hearing Officer to decide the motion. If a default decision is not called for review pursuant to Rule 9559(q), the default decision shall become the final Nasdaq action.

**(n) Sanctions, Costs and Remands**

**(1)** In any action brought under the Rule 9550 Series, other than an action brought under Rule 9556(h) or Rule 9557, the Hearing Officer or, if applicable, the Hearing Panel may approve, modify or withdraw any and all sanctions, requirements, restrictions or limitations imposed by the notice and, pursuant to Rule 8310(a), may also impose any other fitting sanction.

**(2)** In an action brought under Rule 9556(h), the Hearing Officer may impose any fitting sanction.

**(3)** In an action brought under Rule 9557, the Hearing Panel shall approve or withdraw the requirements and/or restrictions imposed by the notice. If the Hearing Panel approves the requirements and/or restrictions and finds that the respondent has not complied with all of them, the Hearing Panel shall impose an immediate suspension on the respondent that shall remain in effect unless Nasdaq Regulation Department staff issues a letter of withdrawal of all requirements and/or restrictions pursuant to Rule 9557(g)(2).

**(4)** The Hearing Officer or, if applicable, the Hearing Panel may impose costs pursuant to Rule 8330 regarding all actions brought under the Rule 9550 Series.

**(5)** In any action brought under the Rule 9550 Series, other than an action brought under Rule 9556(h) or Rule 9557, the Hearing Officer or, if applicable, the Hearing Panel may remand the matter to the department or office that issued the notice for further consideration of specified matters.

**(o) Timing of Decision**

**(1) Proceedings initiated under Rules 9553 and 9554**

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision and provide it to the Nasdaq Review Council's Review Subcommittee.

**(2) Proceedings initiated under Rules 9556 and 9558**

Within 21 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision that reflects the views of the Hearing Panel, as determined by majority vote, and provide it to the Nasdaq Review Council's Review Subcommittee.

**(3) Proceedings initiated under Rules 9552 and 9555**

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision that reflects the views of the Hearing Panel, as determined by majority vote, and provide it to the Nasdaq Review Council's Review Subcommittee.

**(4) Proceedings initiated under Rule 9557**

**(A) Written Order**

Within two business days of the date of the close of the hearing, the Office of Hearing Officers shall issue a written order that reflects the Hearing Panel's summary determinations, as decided by majority vote, and shall serve the Hearing Panel's written order on the Parties. The Hearing Panel's written order under Rule 9557 is effective when issued. The Hearing Panel's written order will be followed by a written decision explaining the reasons for the Hearing Panel's summary determinations, as required by paragraphs (o)(4)(B) and (p) of this Rule.

**(B) Written Decision**

Within seven days of the issuance of the Hearing Panel's written order, the Office of Hearing Officers shall issue a written decision that complies with the requirements of paragraph (p) of this Rule and shall serve the Hearing Panel's written decision on the Parties.

**(5)** If not timely called for review by the Nasdaq Review Council's Review Subcommittee pursuant to paragraph (q) of this Rule, the Hearing Officer's or, if applicable, the Hearing Panel's written decision shall constitute final Nasdaq action. For decisions issued under Rules 9552 through 9556 and 9558, the Office of Hearing Officers shall promptly serve the decision of the Hearing Officer or, if applicable, the Hearing Panel on the Parties and provide a copy to each Nasdaq member with which the respondent is associated.

**(6)** The timelines established by paragraphs (o)(1) through (5) confer no substantive rights on the parties.

**(p) Contents of Decision**

The decision, which for purposes of Rule 9557 means the written decision issued under paragraph (o)(4)(B) of this Rule, shall include:

**(1)** a statement describing the investigative or other origin of the notice issued under the Rule 9550 Series;

**(2)** the specific statutory or rule provision alleged to have been violated or providing the authority for the Nasdaq action;



- (3)** a statement setting forth the findings of fact with respect to any act or practice the respondent was alleged to have committed or omitted or any condition specified in the notice;
  - (4)** the conclusions of the Hearing Officer or, if applicable, Hearing Panel regarding the alleged violation or condition specified in the notice;
  - (5)** a statement of the Hearing Officer or, if applicable, Hearing Panel in support of the disposition of the principal issues raised in the proceeding; and
  - (6)** a statement describing any sanction, requirement, restriction or limitation imposed, the reasons therefore, and the date upon which such sanction, requirement, restriction or limitation shall become effective.
- (q)** Call for Review by the Nasdaq Review Council

**(1)** For proceedings initiated under the Rule 9550 Series (other than Rule 9557), the Nasdaq Review Council's Review Subcommittee may call for review a proposed decision prepared by a Hearing Officer or, if applicable, Hearing Panel within 21 days after receipt of the decision from the Office of Hearing Officers; provided, however, that a decision under the Rule 9550 Series with respect to a Nasdaq member that is an affiliate of Nasdaq within the meaning of Rule 2160 shall constitute final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1) and may not be called for review pursuant to Rule 9559. For proceedings initiated under Rule 9557, the Nasdaq Review Council's Review Subcommittee may call for review a written decision issued under paragraph (o)(4)(B) of this Rule by a Hearing Panel within 14 days after receipt of the written decision from the Office of Hearing Officers. Rule 9313(a) is incorporated herein by reference.

**(2)** If the Review Subcommittee calls the proceeding for review within the prescribed time, a Subcommittee of the Nasdaq Review Council shall meet and conduct a review not later than 40 days after the call for review. The Subcommittee shall be composed pursuant to Rule 9331(a)(1). The Subcommittee may elect to hold a hearing or decide the matter on the basis of the record made before the Hearing Officer or, if applicable, the Hearing Panel. Not later than 60 days after the call for review, the Subcommittee shall make its recommendation to the Nasdaq Review Council. Not later than 60 days after receipt of the Subcommittee's recommendation, the Nasdaq Review Council shall serve a final written decision on the parties via overnight courier or facsimile. The Nasdaq Review Council may affirm, modify or reverse the decision of the Hearing Officer or, if applicable, the Hearing Panel. The Nasdaq Review Council also may impose any other fitting sanction, pursuant to Rule 8310(a), and may impose costs, pursuant to 8330. In addition, the Nasdaq Review Council may remand the matter to the Office of Hearing Officers for further consideration of specified matters.

**(3)** For good cause shown, or with the consent of all of the parties to a proceeding, the Review Subcommittee, the Nasdaq Review Council Subcommittee or the Nasdaq Review

Council may extend or shorten any time limits prescribed by this Rule other than those relating to Rule 9557.

(4) The Nasdaq Review Council's written decision shall constitute final Nasdaq action.

(5) The Nasdaq Review Council shall promptly serve the decision on the Parties and provide a copy of the decision to each Nasdaq member with which the respondent is associated.

(6) The timelines established by paragraphs (q)(1)-(5) confer no substantive rights on the parties.

(r) Reserved

(s) Application to Commission for Review

The right to have any action pursuant to this Rule reviewed by the Securities and Exchange Commission is governed by Section 19(f) of the Securities Exchange Act. The filing of an application for review by the Securities and Exchange Commission shall not stay the effectiveness of final Nasdaq action, unless the Securities and Exchange Commission otherwise orders.

## **9600. Procedures for Exemptions**

### **9610. Application**

(a) Where to File

A member seeking exemptive relief as specifically permitted under any Nasdaq Rule referencing the 9600 Series shall file a written application with the appropriate FINRA department or staff and provide a copy of the application to the Nasdaq Regulation Department.

(b) Content

An application filed pursuant to this Rule shall contain the member's name and address, the name of a person associated with the member who will serve as the primary contact for the application, the Rule from which the member is seeking an exemption, and a detailed statement of the grounds for granting the exemption. If the member does not want the application or the decision on the application to be publicly available in whole or in part, the member also shall include in its application a detailed statement, including supporting facts, showing good cause for treating the application or decision as confidential in whole or in part.

(c) Applicant

A member that files an application under this Rule is referred to as "Applicant" hereinafter in the Rule 9600 Series.

**9620. Decision**

After considering an application, Nasdaq Regulation staff shall issue a written decision setting forth its findings and conclusions. The decision shall be served on the Applicant pursuant to Rules 9132 and 9134. After the decision is served on the Applicant, the application and decision shall be publicly available unless Nasdaq Regulation staff determines that the Applicant has shown good cause for treating the application or decision as confidential in whole or in part.

**9630. Appeal****(a) Notice**

An Applicant may file a written notice of appeal within 15 calendar days after service of a decision issued under Rule 9620. The notice of appeal shall be filed with the Nasdaq Regulation Department, with a copy of the notice also provided to the appropriate Nasdaq Regulation Department staff. The notice of appeal shall contain a brief statement of the findings and conclusions as to which exception is taken. Appeals of decisions issued by Nasdaq Regulation Department staff pursuant to Rule 9620 shall be decided by the Nasdaq Review Council, except with respect to exemptive relief under General 4, Section 1.1210.03, which shall be decided by the Waiver Subcommittee of the Nasdaq Review Council. If the Applicant does not want the decision on the appeal to be publicly available in whole or in part, the Applicant also shall include in its notice of appeal a detailed statement, including supporting facts, showing good cause for treating the decision as confidential in whole or in part. The notice of appeal shall be signed by the Applicant.

**(b) Expedited Review**

Where the failure to promptly review a decision to deny a request for exemption would unduly or unfairly harm the Applicant, the Nasdaq Review Council or the Waiver Subcommittee of the Nasdaq Review Council, as the case may be, shall provide expedited review.

**(c) Withdrawal of Appeal**

An Applicant may withdraw its notice of appeal at any time by filing a written notice of withdrawal of appeal with the Nasdaq Review Council.

**(d) Oral Argument**

**(1)** Subject to paragraph (2) below, following the filing of a notice of appeal, the Nasdaq Review Council or Review Subcommittee may order oral argument and may designate a Subcommittee to hear such oral argument. The Subcommittee may consider any new evidence if the Applicant can show good cause for not including it in its application, and the Subcommittee will recommend to the Nasdaq Review Council a disposition of all matters on appeal.

(2) With respect to exemptive relief requested under General 4, Section 1.1210.03, the Waiver Subcommittee of the Nasdaq Review Council may order oral argument and consider any new evidence if the Applicant can show good cause for not including it in its application.

(e) Decision

(1) Subject to paragraph (2) below, after considering all matters on appeal, and, as applicable, the Subcommittee's recommendation, the Nasdaq Review Council shall affirm, modify, or reverse the decision issued under Rule 9620. The Nasdaq Review Council shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant. The decision shall be served pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute final action of Nasdaq.

(2) With respect to exemptive relief requested under General 4, Section 1.1210.03, after considering all matters on appeal, the Waiver Subcommittee of the Nasdaq Review Council shall affirm, modify, or reverse the decision issued under Rule 9620. The Waiver Subcommittee shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant. The decision shall be served pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute final action of Nasdaq. The Waiver Subcommittee shall retain the discretion to refer the appeal to the Nasdaq Review Council, in which case the Nasdaq Review Council shall act on such appeal pursuant to its authority under this 9600 Series.

**9700. Reserved**

**9800. Temporary Cease and Desist Orders**

**9810. Initiation of Proceeding**

**(a) Nasdaq Regulation Department or Department of Enforcement**

With the prior written authorization of FINRA's Chief Executive Officer or such other senior officers as the Chief Executive Officer may designate, and the Nasdaq Chief Regulatory Officer, the Nasdaq Regulation Department or the Department of Enforcement may initiate a temporary cease and desist proceeding with respect to alleged violations of Section 10(b) of the Exchange Act and SEC Rule 10b-5 thereunder; SEC Rules 15g-1 through 15g-9; Nasdaq Rule 2010A (if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or based on violations of Section 17(a) of the Securities Act); Nasdaq Rule 2120; or Nasdaq Rule 2150 (if the alleged violation is misuse or conversion of customer assets). The Nasdaq Regulation Department or the Department of Enforcement shall initiate the proceeding by serving a notice on a member or associated person (hereinafter "Respondent") (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) and filing a copy thereof with the Office of Hearing Officers. The Nasdaq Regulation Department or the Department of Enforcement shall serve the

notice by personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Nasdaq Regulation Department or the Department of Enforcement shall send an additional copy of the notice by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The notice shall be effective when service is complete.

**(b) Contents of Notice**

The notice shall set forth the rule or statutory provision that the Respondent is alleged to have violated and that the Nasdaq Regulation Department or the Department of Enforcement is seeking to have the Respondent ordered to cease violating. The notice also shall state whether the Nasdaq Regulation Department or the Department of Enforcement is requesting the Respondent to be required to take action, refrain from taking action or both. The notice shall be accompanied by:

- (1) a declaration of facts, signed by a person with knowledge of the facts contained therein, that specifies the acts or omissions that constitute the alleged violation;
- (2) a memorandum of points and authorities setting forth the legal theories upon which the Department of Enforcement relies; and
- (3) a proposed order that contains the required elements of a temporary cease and desist order (except the date and hour of the order's issuance), which are set forth in Rule 9840(b).

**(c) Authority to Approve Settlements**

If the Parties agree to the terms of the proposed temporary cease and desist order, the Hearing Officer shall have the authority to approve and issue the order.

**(d) Filing of Underlying Complaint**

If the Nasdaq Regulation Department or the Department of Enforcement has not issued a complaint under Rule 9211 against the Respondent relating to the subject matter of the temporary cease and desist proceeding and alleging violations of the rule or statutory provision specified in the notice described in paragraph (b), the Nasdaq Regulation Department or the Department of Enforcement shall serve and file such a complaint with the notice initiating the temporary cease and desist proceeding. Service of the complaint can be made in accordance with the service provisions in paragraph (a).

**9820. Appointment of Hearing Officer and Hearing Panel**

(a) As soon as practicable after the Nasdaq Regulation Department or the Department of Enforcement files a copy of the notice initiating a temporary cease and desist proceeding with the Office of Hearing Officers, the Chief Hearing Officer shall assign a Hearing

Officer to preside over the temporary cease and desist proceeding. The Chief Hearing Officer shall appoint two Panelists to serve on a Hearing Panel with the Hearing Officer. Each Panelist shall be associated with a member of Nasdaq or retired therefrom. The Chief Hearing Officer shall select as a Panelist a person who:

- (1) previously served on the Nasdaq Review Council;
- (2) previously served on a disciplinary subcommittee of the Nasdaq Review Council, including a Subcommittee, an Extended Proceeding Committee, or their predecessor subcommittees;
- (3) previously served as a Director, but does not currently serve in any of these positions;
- (4) served on the FINRA National Adjudicatory Council or on a disciplinary subcommittee of the FINRA National Adjudicatory Council prior to the date that Nasdaq commenced operating as a national securities exchange; or
- (5) is a FINRA Panelist approved by the Nasdaq Board at least annually, or is drawn from other sources the Board deems appropriate given the responsibilities of Panelists.

(b) If at any time a Hearing Officer or Hearing Panelist determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, or if a Party files a motion to disqualify a Hearing Officer or Hearing Panelist, the recusal and disqualification proceeding shall be conducted in accordance with Rules 9233 and 9234, except that:

- (1) a motion seeking disqualification of a Hearing Officer or Hearing Panelist must be filed no later than 5 days after the later of the events described in paragraph (b) of Rules 9233 and 9234; and
- (2) the Chief Hearing Officer shall appoint a replacement Panelist using the criteria set forth in paragraph (a) of this Rule.

### **9830. Hearing**

#### **(a) When Held**

The hearing shall be held not later than 15 days after service of the notice and filing initiating the temporary cease and desist proceeding, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. If a Hearing Officer or Hearing Panelist is recused or disqualified, the hearing shall be held not later than five days after a replacement Hearing Officer or Hearing Panelist is appointed.

#### **(b) Service of Notice of Hearing**

The Office of Hearing Officers shall serve a notice of date, time, and place of the hearing on the Nasdaq Regulation Department or the Department of Enforcement and the Respondent (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) not later than seven days before the hearing, unless otherwise ordered by the Hearing Officer. Service shall be made by personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Office of Hearing Officers shall send an additional copy of the notice by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The notice shall be effective when service is complete.

**(c) Authority of Hearing Officer**

The Hearing Officer shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rule 9235.

**(d) Witnesses**

A person who is subject to the jurisdiction of Nasdaq shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

**(e) Additional Information**

Prior to the hearing, the Hearing Officer may order a Party to furnish to all other Parties and the Hearing Panel such information as deemed appropriate, including any or all of the pre-hearing submissions described in Rule 9242(a). The documentary evidence submitted by the Parties pursuant to this paragraph shall not become part of the record, unless the Hearing Officer or Hearing Panel orders some or all of such evidence included pursuant to Rule 9830(g). At any time during the Hearing Panel's consideration, the Hearing Panel may direct a Party to submit additional information. Any additional information submitted shall be provided to all Parties at least one day before the Hearing Panel renders its decision.

**(f) Transcript**

The hearing shall be recorded by a court reporter and a written transcript thereof shall be prepared. A transcript of the hearing shall be available to the Parties for purchase from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Panel within a reasonable time determined by the Hearing Panel. Upon notice to all the Parties to the proceeding, the Hearing Panel may order corrections to the transcript as requested or sua sponte.

**(g) Record and Evidence Not Admitted**

The record shall consist of the notice initiating the proceeding, the declaration, and the proposed order described in Rule 9810(b); the transcript of the hearing; all evidence considered by the Hearing Panel; and any other document or item accepted into the record by the Hearing Officer or the Hearing Panel. The Office of Hearing Officers shall be the custodian of the record. Proffered evidence that is not accepted into the record by the Hearing Panel shall be retained by the custodian of the record until the date when Nasdaq's decision becomes final or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

**(h) Failure to Appear at Hearing**

If a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a temporary cease and desist order without further proceedings. If the Nasdaq Regulation Department or the Department of Enforcement fails to appear at a hearing for which it has notice, the Hearing Panel may order that the temporary cease and desist proceeding be dismissed.

**9840. Issuance of Temporary Cease and Desist Order by Hearing Panel****(a) Basis for Issuance**

The Hearing Panel shall issue a written decision stating whether a temporary cease and desist order shall be imposed. The Hearing Panel shall issue the decision not later than ten days after receipt of the hearing transcript, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. A temporary cease and desist order shall be imposed if the Hearing Panel finds:

- (1) that the Nasdaq Regulation Department or the Department of Enforcement has made a showing of a likelihood of success on the merits; and
- (2) that the alleged violative conduct or continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors prior to the completion of the underlying disciplinary proceeding under the Rule 9200 and 9300 Series.

**(b) Content, Scope, and Form of Order**

A temporary cease and desist order shall:

- (1) be limited to ordering a Respondent (and any successor of a Respondent, where the Respondent is a member firm) to cease and desist from violating a specific rule or statutory provision, and, where applicable, to ordering a Respondent (and any successor of a Respondent, where the Respondent is a member firm) to cease and desist from dissipating or converting assets or causing other harm to investors;



(2) set forth the alleged violation and the significant dissipation or conversion of assets or other significant harm to investors that is likely to result without the issuance of an order;

(3) describe in reasonable detail the act or acts the Respondent (and any successor of a Respondent, where the Respondent is a member firm) shall take, refrain from taking, or both; and

(4) include the date and hour of its issuance.

**(c) Duration of Order**

A temporary cease and desist order shall remain effective and enforceable until the issuance of a decision under Rule 9268 or Rule 9269, or until a settlement offer is accepted pursuant to Rule 9270.

**(d) Service and Dissemination Requirements**

The Office of Hearing Officers shall serve the Hearing Panel's decision and any temporary cease and desist order on the Nasdaq Regulation Department or the Department of Enforcement and the Respondent (or upon counsel representing the Respondent or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) by personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Office of Hearing Officers shall send an additional copy of the Hearing Panel's decision and any temporary cease and desist order by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The temporary cease and desist order shall be effective when service is complete. The Office of Hearing Officers shall provide a copy of the temporary cease and desist order to each Nasdaq member with which a Respondent is associated.

**(e) Delivery Requirement**

Where a Respondent is a member firm, Respondent shall deliver a copy of a temporary cease and desist order, within one business day of receiving it, to its associated persons.

**9850. Review by Hearing Panel**

At any time after the Office of Hearing Officers serves the Respondent (or counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) with a temporary cease and desist order, a Party may apply to the Hearing Panel to have the order modified, set aside, limited, or suspended. The application shall set forth with specificity the facts that support the request. The Hearing Panel that presided over the temporary cease and desist order

proceeding shall retain jurisdiction to modify, set aside, limit, or suspend the temporary cease and desist order, unless at the time the application is filed a Hearing Panel has already been appointed in the underlying disciplinary proceeding commenced under Rule 9211 in which case the Hearing Panel appointed in the disciplinary proceeding has jurisdiction. The Hearing Panel shall respond to the request in writing within ten days after receipt of the request, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. The Hearing Panel's response shall be served on the Respondent (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) via personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Office of Hearing Officers shall send an additional copy of the temporary cease and desist order by personal service or overnight commercial courier. The filing of an application under this Rule shall not stay the effectiveness of the temporary cease and desist order.

#### **9860. Violation of Temporary Cease and Desist Orders**

A Respondent who violates a temporary cease and desist order imposed under this Rule Series may have its association or membership suspended or canceled or be subject to any fitting sanction under Rule 9556. The Chief Regulatory Officer of Nasdaq must authorize the initiation of any such proceeding in writing.

#### **9870. Application to SEC for Review**

Temporary cease and desist orders issued pursuant to this Rule Series constitute final and immediately effective disciplinary sanctions imposed by Nasdaq. The right to have any action under this Rule Series reviewed by the SEC is governed by Section 19 of the Exchange Act. The filing of an application for review shall not stay the effectiveness of the temporary cease and desist order, unless the SEC otherwise orders.]

\* \* \* \* \*

### **[Options Rules**

#### **Chapter I General Provisions**

##### **Sec. 1 Definitions**

(a) With respect to these Exchange Rules, the following terms shall have the meanings specified in this Section 1. A term defined elsewhere in the Rules of the Exchange shall have the same meaning with respect to this Chapter I, unless otherwise defined below.

(1) The term "aggregate exercise price" means the exercise price of an options contract multiplied by the number of units of the underlying security covered by the options contract.

(2) The term "American-style option" means an options contract that, subject to the provisions of Options 5, Section 101 of these NOM Rules (relating to the cutoff time for

exercise instructions) and to the Rules of the Clearing Corporation, may be exercised at any time from its commencement time until its expiration.

(3) The term "associated person" or "person associated with a Participant" means any partner, officer, director, or branch manager of an Options Participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Participant or any employee of a Participant.

(4) The term "bid" means a limit order to buy one or more options contracts.

(5) The term "Board" means the Board of Directors of The Nasdaq Stock Market LLC.

(6) The term "call" means an options contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase from the Clearing Corporation the number of shares of the underlying security covered by the options contract.

(7) Reserved.

(8) The term "Clearing Corporation" means The Options Clearing Corporation.

(9) The term "Clearing Participant" means a Participant that is self-clearing or a Participant that clears NOM Transactions for other Participants of NOM.

(10) The term "closing purchase transaction" means a NOM Transaction that reduces or eliminates a short position in an options contract.

(11) The term "closing writing transaction" means a NOM Transaction that reduces or eliminates a long position in an options contract.

(12) The term "covered short position" means (i) an options position where the obligation of the writer of a call option is secured by a "specific deposit" or an "escrow deposit" meeting the conditions of Rules 610(f) or 610(g), respectively, of the Rules of the Clearing Corporation, or the writer holds in the same account as the short position, on a share-for-share basis, a long position either in the underlying security or in an options contract of the same class of options where the exercise price of the options contract in such long position is equal to or less than the exercise price of the options contract in such short position; and (ii) an options position where the writer of a put option holds in the same account as the short position, on a share-for-share basis, a long position in an options contract of the same class of options where the exercise price of the options contract in such long position is equal to or greater than the exercise price of the options contract in such short position.

(13) The term "Customer" means a Public Customer or a broker-dealer.

- (14) The term "Customer Order" means an agency order for the account of a Public Customer, as defined herein or a broker-dealer.
- (15) The term "discretion" means the authority of a broker or dealer to determine for a Customer the type of option, the class or series of options, the number of contracts, or whether options are to be bought or sold.
- (16) The term "European-style option" means an options contract that, subject to the provisions of Options 5, Section 101 of these Rules (relating to the cutoff time for exercise instructions) and to the Rules of the Clearing Corporation, can be exercised only on the business day of expiration, or, in the case of option contracts expiring on a day that is not a business day, the last business day prior to its expiration date.
- (17) The term "Exchange" means The Nasdaq Stock Market LLC.
- (18) The term "Exchange Act" means the Securities Exchange Act of 1934, as amended, or Rules thereunder.
- (19) The term "exercise price" means the specified price per unit at which the underlying security may be purchased or sold upon the exercise of an options contract.
- (20) The terms "he," "him" or "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.
- (21) The term "index option" means an options contract that is an option on a broad-based, narrow-based or micro narrow-based index of equity securities prices.
- (22) The term "individual equity option" means an options contract which is an option on an equity security.
- (23) The term "long position" means a person's interest as the holder of one or more options contracts.
- (24) The term "MarketWatch" means a unit within Nasdaq Regulation that is responsible for the real-time surveillance and regulation of the trading of options on NOM.
- (25) The terms "Nasdaq Options Order Entry Firm" or "Order Entry Firm" or "OEF" mean those Options Participants representing as agent Customer Orders on NOM and those non-Market Maker Participants conducting proprietary trading.
- (26) The term "Nasdaq Options Market Maker" or "Options Market Maker" means an Options Participant registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VII of these Rules.

- (27) The term "Nasdaq Rules" means the Rules of The Nasdaq Stock Market LLC.
- (28) The term "NOM" means The Nasdaq Options Market or Nasdaq Stock Exchange Options Market, an options trading facility of the Exchange under Section 3(a)(2) of the Exchange Act.
- (29) The term "NOM Book" means the electronic book of orders maintained by the NOM Trading System.
- (30) The term "NOM Rules" or "Rules of NOM" means the Rules of The Nasdaq Options Market.
- (31) The term "NOM Transaction" means a transaction involving an options contract that is effected on or through NOM or its facilities or systems.
- (32) The term "Nasdaq Regulation" means the Department of Nasdaq that supervises and administers the regulatory functions of Nasdaq, including the administration of any regulatory services agreements with another self-regulatory organization to which Nasdaq is a party.
- (33) The term "NBBO" means the national best bid or offer as calculated by NOM based on market information received by NOM from OPRA.
- (34) The term "offer" means a limit order to sell one or more options contracts.
- (35) The term "opening purchase transaction" means a NOM Transaction that creates or increases a long position in an options contract.
- (36) The term "opening writing transaction" means a NOM Transaction that creates or increases a short position in an options contract.
- (37) The term "options contract" means a put or a call issued, or subject to issuance by the Clearing Corporation pursuant to the Rules of the Clearing Corporation.
- (38) The term "options market close" or "market close" means the time specified by NOM for the cessation of trading in contracts on NOM for options on that market day.
- (39) The term "options market open" or "market open" means the time specified by NOM for the commencement of trading in contracts on NOM for options on that market day.
- (40) The term "Options Participant" or "Participant" means a firm, or organization that is registered with the Exchange pursuant to Chapter II of these Rules for purposes of participating in options trading on NOM as a "Nasdaq Options Order Entry Firm" or "Nasdaq Options Market Maker".

- (41) The term "Options Principal" means a person engaged in the management and supervision of the Options Participant's business pertaining to options contracts that has responsibility for the overall oversight of the Options Participant's options related activities on the Exchange.
- (42) The term "Options Participation Agreement" means the agreement to be executed by Options Participants to qualify to participate on NOM.
- (43) The term "OPRA" means the Options Price Reporting Authority.
- (44) The term "order" means a firm commitment to buy or sell options contracts as defined in Section 1(d) of Chapter VI.
- (45) The term "outstanding" means an options contract which has been issued by the Clearing Corporation and has neither been the subject of a closing writing transaction nor has reached its expiration date.
- (46) The term "pre-opening" means the period prior to the market open on NOM, beginning at a time specified by NOM, during which Participants may log on to the Trading System and submit, amend and withdraw orders, but no trading can occur.
- (47) The term "primary market" means, in the case of securities listed on Nasdaq, the market that is identified as the listing market pursuant to Section X(d) of the approved national market system plan governing the trading of Nasdaq-listed securities, and, in the case of securities listed on another national securities exchange, the market that is identified as the listing market pursuant to Section XI of the Consolidated Tape association Plan.
- (48) The term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Participant or a Public Customer may, without limitation, be a Professional. All Professional orders shall be appropriately marked by Participants.
- (i) Calculation of Professional Orders. With respect to computing the number of orders in listed options per day on average during a calendar month for its own beneficial account(s), the following shall apply:
- (a) Each order is counted toward the number of orders, regardless of the options exchange to which the order was routed in determining Professional orders.
  - (b) A cancel and replace order which replaces a prior order shall be counted as a second order, or multiple new orders in the case of "singlestrike algorithms" which track the NBBO. A cancel message is not an order.

(c) An order that converts into multiple subordinate orders to achieve an execution strategy shall be counted as one order per side and series, even if the order is routed away. An order that cancels and replaces the resulting subordinate order and results in multiple sides/series shall be counted as a new order per side and series. An order that cancels and replaces the subordinate order on the same side and series will count as one order. For purposes of counting Public Customer orders, if one Public Customer order on the same side and series is subsequently broken-up by a broker into multiple orders for purposes of execution or routed away, this order will count as one order.

(49) The term "Public Customer" means a person that is not a broker or dealer in securities.

(50) The term "Public Customer Order" means an order for the account of a Public Customer.

(51) The term "put" means an options contract under which the holder of the option has the right, in accordance with the terms and provisions of the option and the Rules of the OCC, to sell to the Clearing Corporation the number of units of the underlying security covered by the options contract, at a price per unit equal to the exercise price, upon the timely exercise of such option.

(52) The term "Quarterly Option Series" means a series in an options class that is approved for listing and trading on the Exchange in which the series is opened for trading on any business day and expires at the close of business on the last business day of a calendar quarter.

(53) The term "quote" or "quotation" means a bid or offer entered by a Market Maker as a firm order that updates the Market Maker's previous bid or offer, if any.

(54) The term "Responsible Person" shall mean a United States-based officer, director or management-level employee of an Options Participant, who is registered with the Exchange as an Options Principal, responsible for the direct supervision and control of associated persons of that Options Participant.

(55) The term "Rules of the Clearing Corporation" or "Rules of the OCC" means the Certificate of Incorporation, the By-Laws and the Rules of the Clearing Corporation, and all written interpretations thereof, as may be in effect from time to time.

(56) The term "SEC" or "Commission" means the United States Securities and Exchange Commission.

(57) Reserved.

(58) The term "short position" means a person's interest as the writer of one or more options contracts.

(59) The term "Short Term Option Series" means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Wednesday or Friday of the next business week, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday, respectively. For a series listed pursuant to this section for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

(60) The term "SRO" means a self-regulatory organization as defined in Section 3(a)(26) of the Exchange Act.

(61) The term "Trading System" means the automated trading system used by NOM for the trading of options contracts.

(62) The term "type of option" means the classification of an options contract as either a put or a call.

(63) The term "uncovered" means a short position in an options contract that is not covered.

(64) Reserved.

(65) The term "closing index value" in respect of a particular index means the current index value calculated at the close of business on the day of exercise, or, if the day of exercise is not a trading day, on the last trading day before exercise (P.M.-settled), unless the settlement value of the index is based on the opening price of each component issue on the primary market (A.M.- settled).

(66) The term "foreign currency" means the standard unit of the official medium of exchange of a sovereign government or the Euro including the United States Government (e.g., the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, the Japanese yen, the Mexican peso, the Brazilian real, the Chinese yuan, the Danish krone, the New Zealand dollar, the Norwegian krone, the Russian ruble, the South African rand, the South Korean won, the Swedish krona, or the United States dollar).

(67) The term "in-the-money" shall mean the following: for call options, all strike prices at or below the offer in the underlying security on the primary listing market; for put options, all strike prices at or above the bid in the underlying security on the primary listing market. This definition shall only apply for purposes of Market Maker quoting obligations in Chapter VII, Section 6.



(68) The term "out-of-the-money" shall mean the following: for call options, all strike prices above the offer in the underlying security on the primary listing market; for put options, all strike prices below the bid in the underlying security on the primary listing market. This definition shall only apply for purposes of Market Maker quoting obligations in Chapter VII, Section 6.

(69) An "account number" shall mean a number assigned to a Participant. Participants may have more than one account number.

(70) A "badge" shall mean an account number, which may contain letters and/or numbers, assigned to NOM Market Makers. A NOM Market Maker account may be associated with multiple badges.

(71) A "mnemonic" shall mean an acronym comprised of letters and/or numbers assigned to Participants. A Participant account may be associated with multiple mnemonics.

(72) The term "class" means, when applied to options, all option contracts of the same type and style covering the same underlying interest; provided, however, that OTC options and listed options that would otherwise constitute a single class of options shall constitute separate classes. When applied to futures, the term "class" means all futures covering the same underlying interest.

(73) The term "series," when used in respect of options, means all option contracts of the same class and having otherwise identical terms including exercise price (or, in the case of delayed start option contracts that do not yet have a set exercise price, the same exercise price setting formula and exercise price setting date), expiration date, unit of trading and, in the case of futures options or commodity options, series marker if any; and when used in respect of futures, means all futures of the same class having identical terms, including the same maturity date and series marker, if any.

(74) The term "underlying security" when used in respect of any contract other than a cash-settled contract means the security or other asset which the Corporation is obligated to sell or purchase upon exercise or maturity of the contract. When used in respect of a cash-settled contract, the term means the index or other underlying interest on which the exercise settlement amount or final settlement price is based.

## **Sec. 2 Applicability**

(a) These are the Nasdaq Rules applicable to the trading of options contracts issued by The Options Clearing Corporation through NOM, Nasdaq's options trading facility, the terms and conditions of such contracts, the exercise and settlement thereof, the handling of orders, and the conduct of accounts and other matters relating to options trading on NOM.

(b) Except to the extent that specific NOM Rules govern or unless the context otherwise requires, the provisions of the Nasdaq Rules shall be applicable to Options Participants and to the trading of option contracts on NOM and, for purposes of their application with

respect to Options Participants and options trading, shall be interpreted in light of the nature of options trading and the NOM market, and the fact that options on NOM shall be traded electronically through the Trading System. To the extent that the provisions of the NOM Rules are inconsistent with any other provisions of the Nasdaq Rules, the NOM Rules shall control.

(c) For the purposes of cross-referencing, interpreting and applying Nasdaq Rules to the NOM Rules: 1) a reference to "members" of Nasdaq shall be functionally equivalent to "Participants" in NOM, whether NOM Market Makers, Order Entry Firms or both.

(d) For marketing and other purposes, the Nasdaq Options Exchange Facility may be referred to as the "Nasdaq Stock Market Options Exchange" or "Nasdaq Options Market" or "NOM".

(e) These Rules generally require Options Participants conducting business with the public to comply with applicable requirements of the United States federal securities laws and regulations promulgated thereunder by the Securities and Exchange Commission. To the extent that certain aspects of the federal securities laws and regulations promulgated thereunder do not apply to non-U.S. firms conducting business with non-U.S. customers, these Rules shall be interpreted accordingly, so long as such interpretation is consistent with the maintenance of a fair and orderly options market. In such case, however, such non-U.S. Options Participants must comply with all reasonably comparable laws and regulations of their home countries or of the home countries of their customers, as applicable.

### **Sec. 3 Regulation of Nasdaq and its Members**

Nasdaq and the Financial Industry Regulatory Authority ("FINRA") are parties to the Regulatory Services Agreement dated as of June 28, 2000, as amended ("Regulatory Contract"). Pursuant thereto, FINRA has agreed to perform certain functions described in these Rules on behalf of Nasdaq. NOM Rules that refer to Nasdaq Regulation, Nasdaq Regulation staff, NOM staff, and NOM departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of Nasdaq pursuant to the Regulatory Contract.

Notwithstanding the fact that Nasdaq has entered into the Regulatory Contract with FINRA Regulation to perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions.

In addition, Nasdaq has incorporated by reference certain FINRA, Chicago Board Options Exchange ("CBOE"), and New York Stock Exchange ("NYSE") rules. Nasdaq members shall comply with these rules and interpretations as if such rules and interpretations were part of Nasdaq's rules.

## **Chapter II Participation**

### **Sec. 1 Options Participation**

(a) These Rules establish a new category of Nasdaq member participation called "Options Participant." Only Options Participants may transact business on NOM via the Trading System. Options Participants may trade options for their own proprietary accounts or, if authorized to do so under applicable law, and consistent with these NOM Rules and with applicable law and SEC rules and regulations, may conduct business on behalf of Customers.

(b) A prospective Options Participant must:

- i. complete an Options Participant Application in the form prescribed by the Exchange;
- ii. provide such other information as required by the Exchange;
- iii. be an existing member or become a member of the Exchange, pursuant to the 1000 rules series, and continue to abide by the requirements of the 1000 Series with respect to participation in NOM.; and
- iv. enter into an Options Participant Agreement in the form specified by the Exchange, agree to abide by the same as it has been or shall be from time to time amended, and pledge to abide by the Rules of the Exchange as amended from time to time, and by all circulars, notices, directives or decisions adopted pursuant to or made in accordance with the Rules of the Exchange; and
- v. be under the supervision and control of a Responsible Person.

(c) Upon completion of the application, the Exchange, or person(s) designated by the Exchange ("designee") shall consider whether to approve the application, unless there is just cause for delay. In its consideration process, the Exchange may conduct such investigation as it deems appropriate and may take such steps as it deems necessary to confirm the information provided by the applicant. Within 30 days after the Exchange or its designee has completed its consideration of an application, it shall provide written notice of the action of the Exchange, specifying in the case of disapproval of an application the grounds therefore.

(d) These NOM Rules place no limit on the number of qualifying entities that may become Options Participants. However, based on system constraints or capacity restrictions, approval of qualifying applications for Options Participants may, in limited circumstances, be temporarily deferred. To the extent that the Board places limitations on otherwise qualified applicants to act as Options Participants, such limits shall be objectively determined and submitted to the Commission for approval pursuant to a rule change filing under Section 19(b) of the Exchange Act.

(e) Options Participant status cannot be leased or transferred except in the event of a change in control or corporate reorganization involving an Options Participant. In such a case, Options Participant status may be transferred to a qualified affiliate or successor upon written notice to the Exchange or its designee.

(f) Every Options Participant shall file with NOM and keep current an address where notices may be served, including current addresses of each Responsible Person, as specified in Paragraph (b)(v) of this Section 1.

## **Sec. 2 Requirements for Options Participation**

(a) Options Participants may be corporations, partnerships, limited liability companies or sole proprietorships organized under the laws of a jurisdiction of the United States, or such other jurisdictions as the Exchange may approve.

(b) Options Participants must be Options Clearing Participants or establish a clearing arrangement with a Clearing Participant.

(c) Options Participants must have demonstrated ability to adhere to all applicable Exchange, SEC, Clearing Corporation and Federal Reserve Board policies, rules and regulations related to the trading of options, including those concerning record-keeping, reporting, finance and trading procedures and be able to satisfactorily demonstrate reasonably adequate systems capability and capacity.

(d) All associated persons of Options Participants who are not themselves Responsible Persons must be under the supervision of a U.S.-based Responsible Person.

(e) Every Options Participant shall have as the principal purpose of being a Participant the conduct of a securities business. Such a purpose shall be deemed to exist if and so long as:

i. the Participant has qualified and acts in respect of its business on NOM as either an OEF or a Options Market Maker, or both; and

ii. all transactions effected by the Participant are in compliance with Section 11(a) of the Exchange Act and the rules and regulations adopted thereunder.

(f) Every Options Participant shall at all times maintain membership in another registered options exchange that is not registered solely under Section 6(g) of the Securities Exchange Act of 1934, or in FINRA. Options Participants that transact business with customers shall at all times be members of the FINRA.

## **Sec. 3 Persons Associated with Options Participants**

(a) Persons associated with Options Participants shall be bound by the Rules of the Exchange and the Rules of the Clearing Corporation.

(b) Each Options Participant shall file with the Exchange and keep current a list and descriptive identification of those persons associated with the Options Participant who are its executive officers, directors, principal shareholders, and general partners. Such persons shall file with the Exchange a Uniform application for Securities Industry Registration or Transfer (Form U- 4).

**Sec. 4 Good Standing for Options Participants**

(a) To remain in good standing, all Options Participants must:

- i. continue to satisfy the qualification requirements specified by the Exchange, as amended from time to time by the Exchange;
- ii. comply with the Rules of the Exchange; and
- iii. pay on a timely basis such participation, transaction and other fees as the Exchange and/or NOM shall prescribe.

(b) The good standing of an Options Participant may be suspended, terminated or otherwise withdrawn, as provided in the Nasdaq 9550 Rules, if any of the conditions of Section 2 or 3 of this Chapter II are not met or the Options Participant violates any of its agreements with the Exchange and/or NOM or any of the provisions of the Exchange Rules.

(c) Unless an Options Participant is in good standing, the Participant shall have no rights or privileges of options participation except as otherwise provided by law or the Rules, shall not hold himself or itself out for any purpose as a Participant, and shall not deal with the Exchange and/or NOM on any basis except as a non-Participant.

**Chapter III Business Conduct****Sec. 1 Adherence to Law**

No Options Participant shall engage in conduct in violation of the Exchange Act or Rules thereunder, the Rules of the Exchange or the Rules of the Clearing Corporation insofar as they relate to the reporting or clearance of any Exchange transaction, or any written interpretation thereof. Every Options Participant shall supervise persons associated with the Participant to assure compliance therewith.

**Sec. 2 Conduct and Compliance with the Rules**

(a) Each Options Participant shall be responsible for ensuring that all arrangements made and systems used in connection with business conducted on NOM, and the transaction of such business itself, comply with the Options Participant's and associated persons' obligations under the Rules of the Exchange, the Rules of the Clearing Corporation and any other relevant laws, rules, interpretations and obligations. In accordance with the NOM Rules and in connection with business conducted on NOM, each Options Participant shall:

- i. have adequate arrangements to ensure that all staff involved in the conduct of business on NOM are suitable, adequately trained and properly supervised;
- ii. be responsible for the acts and conduct of each associated person,

- iii. establish its trading arrangements such that each Participant is able to meet the requirements set out in Section 1 of this Chapter and that all other relevant obligations contained in the Rules are complied with;
- iv. implement suitable security measures such that only those individuals explicitly authorized by the Options Participant to trade may gain access to passwords and security keys;
- v. ensure that any trading access granted to individuals (whether employees of the Options Participant or otherwise), for example by way of order routing systems, is adequately controlled and supervised, including appropriate checks before any orders are submitted to the Trading System; and
- vi. ensure that accurate information is input into the System, including, but not limited to, the Options Participant's capacity.

### **Sec. 3 Rumors**

No Options Participant or person associated with an Options Participant shall circulate, in any manner, rumors of a character which might affect market conditions in any security; provided, however, that this Section shall not prohibit discussion of unsubstantiated information, so long as its source and unverified nature are disclosed.

### **Sec. 4 Prevention of the Misuse of Material Nonpublic Information**

(a) Every Options Participant shall establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the Participant's business, to prevent the misuse of material nonpublic information by such Participant or persons associated with such Participant in violation of the federal securities laws or the Rules thereunder, and the Rules of the Exchange.

(b) Misuse of material nonpublic information includes, but is not limited to:

- i. trading in any securities issued by a corporation, or in any related securities or related options or other derivative securities, while in possession of material nonpublic information concerning that corporation;
- ii. trading in an underlying security or related options or other derivative securities, while in possession of material nonpublic information concerning imminent transactions in the underlying security or related securities; and
- iii. disclosing to another person any material nonpublic information involving a corporation whose shares are publicly traded or disclosing an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material nonpublic information.

(c) Each Options Participant shall establish, maintain and enforce the following policies and procedures as appropriate for the nature of each Participant's business:

- i. All associated persons must be advised in writing of the prohibition against the misuse of material nonpublic information.
  - ii. Signed attestations from the Participant and all associated persons affirming their awareness of, and agreement to abide by, the aforementioned prohibitions must be maintained for at least three (3) years, the first two (2) years in an easily accessible place.
  - iii. Records of all brokerage accounts maintained by the Participant and all associated persons must be acquired and maintained for at least three (3) years, the first two (2) years in an easily accessible place, and such brokerage accounts must be reviewed periodically by the Participant for the purpose of detecting the possible misuse of material nonpublic information.
  - iv. Any business dealings the Participant may have with any corporation whose securities are publicly traded, or any other circumstances that may result in the Participant receiving, in the ordinary course of business, material nonpublic information concerning any such corporation, must be identified and documented.
- (d) Participants that are required to file Form X-17A-5 under the Exchange Act or Rules thereunder, with the Exchange on an annual basis only, shall, contemporaneously with those submissions, file attestations signed by such Participants stating that the procedures mandated by this Section have been established, enforced and maintained.
- (e) Any Options Participant or associated person who becomes aware of any possible misuse of material nonpublic information must promptly notify Nasdaq Regulation.
- (f) It may be considered conduct inconsistent with just and equitable principles of trade for any Participant or person associated with a Participant who has knowledge of all material terms and conditions of:
- (i) an order and a solicited order,
  - (ii) an order being facilitated or submitted to NOM for price improvement (e.g., price improving orders), or
  - (iii) orders being crossed;

the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option for the same underlying security as any option that is the subject of the order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument until (a) the terms and conditions of the order and any changes in the terms and conditions of the order of which the Participant or person associated with the Participant has knowledge are disclosed, or (b) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received. The terms of an order are "disclosed" to NOM Option Participants when the order is entered into the NOM Book. For purposes of this Paragraph (f), an order to buy or sell a "related

instrument" means, in reference to an index option, an order to buy or sell securities comprising 10% or more of the component securities in the index or an order to buy or sell a futures contract on an economically equivalent index.

### **Sec. 5 Disciplinary Action by Other Organizations**

Every Options Participant shall promptly notify Nasdaq Regulation in writing of any disciplinary action, including the basis therefore, taken by any national securities exchange or registered securities association, clearing corporation, commodity futures market or government regulatory body against the Options Participant or its associated persons who are directly involved in derivatives trading, and shall similarly notify Nasdaq Regulation of any disciplinary action taken by the Options Participant itself against any of its associated persons who are directly involved in derivatives trading involving suspension, termination, the withholding of commissions or imposition of fines in excess of \$2,500, or any other significant limitation on activities.

### **Sec. 6 Other Restrictions on Participants**

Whenever the Exchange shall find that an Options Participant has failed to perform on its contracts or is insolvent or is in such financial or operational condition or is otherwise conducting business in such a manner that it cannot safely conduct business with Customers, creditors or the Exchange, the Exchange may summarily suspend the Options Participant in accordance with Chapter X (Summary Suspension) or may impose such conditions and restrictions upon the Options Participant as the Exchange considers reasonably necessary for the protection of the Exchange, NOM, and the Customers of such Options Participant.

### **Sec. 7 Position Limits**

(a) No Options Participant shall make, for any account in which it has an interest or for the account of any Customer, an opening transaction on any exchange if the Options Participant has reason to believe that as a result of such transaction the Options Participant or its Customer would, acting alone or in concert with others, directly or indirectly:

(i) exceed the applicable position limit fixed from time to time by the Chicago Board Options Exchange for any options contract traded on NOM and the Chicago Board Options Exchange, notwithstanding the foregoing options contracts overlying SPDR® S&P 500® exchange-traded fund ("SPY ETF" or "SPY") shall have a position limit of 1,800,000 contracts on the same side of the market; or

(ii) exceed the position limit fixed by NOM from time to time for any options contract traded on NOM but not traded on the Chicago Board Options Exchange;

(iii) exceed the applicable position limit fixed from time to time by another exchange for an options contract not traded on NOM, when the Options Participant is not a member of the other exchange on which the transaction was effected; or



(iv) exceed the applicable position limit fixed from time-to-time by PHLX with respect to U.S. Dollar-Settled Foreign Currency Options.

(b) Should an Options Participant have reason to believe that a position in any account in which it has an interest or for the account of any Customer of such Options Participant is in excess of the applicable limit, such Options Participant shall promptly take the action necessary to bring the position into compliance.

### **Sec. 8 Exemptions from Position Limits**

An Options Participant may rely upon any available exemptions from applicable position limits granted from time to time by another Options Exchange for any options contract traded on NOM provided that such Options Participant (1) provides Nasdaq Regulation with a copy of any written exemption issued by another Options Exchange or a written, description of any exemption issued by another Options Exchange other than in writing containing sufficient detail for Nasdaq Regulation to verify the validity of that exemption with the issuing Exchange, and (2) fulfills all conditions precedent for such exemption and complies at all times with the requirements of such exemptions with respect to its trading on NOM.

### **Sec. 9 Exercise Limits**

(a) No Options Participant shall exercise, for any account in which it has an interest or for the account of any Customer, a long position in any options contract where such Options Participant or Customer, acting alone or in concert with others, directly or indirectly, has or will have:

(i) exceeded the applicable exercise limit fixed from time to time by the Chicago Board Options Exchange for any options contract traded on NOM and the Chicago Board Options Exchange, notwithstanding the foregoing options contracts overlying SPDR® S&P 500® exchange-traded fund ("SPY ETF" or "SPY") shall have an exercise limit of 1,800,000 contracts on the same side of the market;

(ii) exceeded the exercise limit fixed by NOM from time to time for any options contract traded on NOM but not traded on the Chicago Board Options Exchange;

(iii) exceeded the applicable exercise limit fixed from time to time by another exchange for an options contract not traded on NOM, when the Options Participant is not a member of the other exchange on which the transaction was effected; or

(iv) exceeded the applicable exercise limit fixed from time-to-time by PHLX with respect to U.S. Dollar-Settled Foreign Currency Options.

(b) an Options Market Maker that has been granted an exemption to position limits pursuant to Section 8 of this Chapter III (Exemption to Position Limits), the number of contracts which can be exercised over a five (5) business day period shall equal the Market Maker's exempted position.

**Sec. 10 Reports Related to Position Limits**

Each Options Participant shall maintain and furnish to Nasdaq Regulation all reports required by the applicable rule of any Options Exchange of which it is a member with respect to reports related to position limits.

**Sec. 11 Liquidation Positions**

(a) Whenever Nasdaq Regulation shall find that a person or group of persons acting in concert holds or controls, or is obligated in respect of, an aggregate position (whether long or short) in all options contracts or one or more classes or series traded on NOM in excess of the applicable position limit established pursuant to Section 7 of this Chapter III (Position Limits), it may order all Options Participants carrying a position in options contracts of such classes or series for such person or persons to liquidate such positions as expeditiously as possible, consistent with the maintenance of a fair and orderly market.

(b) Whenever such an order is given, no Options Participant shall accept any order to purchase, sell or exercise any options contract for the account of the person or persons named in the order, unless and until Nasdaq Regulation expressly approves such person or persons for options transactions.

**Sec. 12 Other Restrictions on Options Transactions and Exercises**

(a) NOM may impose such restrictions on transactions or exercises in one or more series of options of any class traded on NOM as Nasdaq Regulation in its judgment deems advisable in the interests of maintaining a fair and orderly market in options contracts or in underlying securities, or otherwise deems advisable in the public interest or for the protection of investors.

i. During the effectiveness of such restrictions, no Options Participant shall, for any account in which it has an interest or for the account of any Customer, engage in any transaction or exercise in contravention of such restrictions.

ii. Notwithstanding the foregoing, during the ten (10) business days prior to the expiration date of a given series of options, other than index options, which shall include such expiration date for an option contract that expires on a business day, no restriction on exercise under this Section may be in effect with respect to that series of options. With respect to index options, restrictions on exercise may be in effect until the opening of business on the business day of their expiration or, in the case of an option contract expiring on a day that is not a business day, on the last business day before the expiration date.

iii. Exercises of American-style, cash-settled index options shall be prohibited during any time when trading in such options is delayed, halted, or suspended, subject to the following exceptions:

1) The exercise of an American-style, cash-settled index option may be processed and given effect in accordance with and subject to the Rules of the Clearing Corporation while trading in the option is delayed, halted, or suspended if it can be documented, in a

form prescribed by Nasdaq Regulation, that the decision to exercise the option was made during allowable time frames prior to the delay, halt, or suspension;

2) Exercises of expiring American-style, cash-settled index options shall not be prohibited on the business day of expiration, or in the case of an option contract expiring on a day that is not a business day, the last business day prior to their expiration;

3) Exercises of American-style, cash-settled index options shall not be prohibited during a trading halt that occurs at or after 4:00 p.m. Eastern time. In the event of such a trading halt, exercises may occur through 4:20 p.m. Eastern time. In addition, if trading resumes following such a trading halt pursuant to the procedure described in Section 4 of Chapter V of these Rules, exercises may occur during the resumption of trading and for five (5) minutes after the close of the resumption of trading. The provisions of this subparagraph (a)(iii)(3) are subject to the authority of the Board to impose restrictions on transactions and exercises pursuant to paragraph (a) of this Rule; and

4) NOM may determine to permit the exercise of American-style, cash-settled index options while trading in such options is delayed, halted, or suspended.

(b) Whenever the issuer of a security underlying a call option traded on NOM is engaged or proposes to engage in a public underwritten distribution ("public distribution") of such underlying security or securities exchangeable for or convertible into such underlying security, the underwriters may request that NOM impose restrictions upon all opening writing transactions in such options at a "discount" where the resulting short position will be uncovered ("uncovered opening writing transactions").

i. In addition to a request, the following conditions are necessary for the imposition of restrictions:

1) less than a majority of the securities to be publicly distributed in such distribution are being sold by existing security holders;

2) the underwriters agree to notify Nasdaq Regulation upon the termination of their stabilization activities; and

3) the underwriters initiate stabilization activities in such underlying security on a national securities exchange when the price of such security is either at a "minus" or "zero minus" tick.

ii. Upon receipt of such a request and determination that the conditions listed above are met, Nasdaq Regulation shall impose the requested restrictions as promptly as possible but no earlier than fifteen (15) minutes after Participants shall have been notified and shall terminate such restrictions upon request of the underwriters or when Nasdaq Regulation otherwise discovers that stabilizing transactions by the underwriters has been terminated.

iii. For purposes of paragraph (b) of this Section 12, an uncovered opening writing transaction in a call option will be deemed to be effected at a "discount" when the premium in such transaction is either:

1) in the case of a distribution of the underlying security not involving the issuance of rights and in the case of a distribution of securities exchangeable for or convertible into the underlying security, less than the amount by which the underwriters' stabilization bid for the underlying security exceeds the exercise price of such option; or

2) in the case of a distribution being offered pursuant to rights, less than the amount by which the underwriters' stabilization bid in the underlying security at the subscription price exceeds the exercise price of such option.

### **Sec. 13 Mandatory Systems Testing**

(a) Each Options Participant that Nasdaq designates as required to participate in a system test must conduct or participate in the testing of its computer systems to ascertain the compatibility of such systems with the Exchange's systems in the manner and frequency prescribed by the Exchange. Nasdaq will designate Options Participants as required to participate in a system test based on: (1) the category of the Participant (Market Maker and OEF); (2) the computer system(s) the Participant uses; and (3) the manner in which the Participant connects to the Exchange. Nasdaq will give Participants reasonable notice of any mandatory systems test, which notice will specify the nature of the test and Participants' obligations in participating in the test.

(b) Every Options Participant required by Nasdaq to conduct or participate in testing of computer systems shall provide to the Exchange such reports relating to the testing as the Exchange may prescribe. Participants shall maintain adequate documentation of tests required by this Section 13 and results of such testing for examination by the Exchange.

(c) An Options Participant that is subject to this Section 13 and that fails to conduct or participate in the tests, fails to file the required reports, or fails to maintain the required documentation, may be subject to a summary suspension or other action taken pursuant to Chapter X of these Rules and/or a disciplinary action pursuant to the Rule 9000 Series of the Rules of the Exchange (Disciplining of Members).

### **Sec. 14 Limit on Outstanding Uncovered Short Positions**

(a) Whenever it is determined from the reports of uncovered short positions submitted pursuant to Section 2 of Chapter IX of these Rules (Reports of Uncovered Short Positions), viewed in light of current market conditions in options and in underlying securities, that there are outstanding an excessive number of uncovered short positions in options contracts of a given class traded on NOM or that an excessively high percentage of outstanding short positions in options contracts of a given class traded on NOM are uncovered, Nasdaq Regulation may determine to prohibit Options Participants from any further opening writing transactions on any exchange in options contracts of that class unless the resulting short position will be covered, and Nasdaq Regulation may prohibit the uncovering of any existing covered short positions in one or more series of options of

that class, as it deems appropriate in the interest of maintaining a fair and orderly market in options contracts or in underlying securities.

(b) Nasdaq Regulation may exempt transactions of Options Market Makers from restrictions imposed under this Rule. Such restrictions shall be rescinded upon a determination that they are no longer appropriate.

### **Sec. 15 Significant Business Transactions of Options Clearing Participants**

Significant Business Transactions of Options Clearing Participants shall be governed by this Section 15 and not by Nasdaq Rule 1017. All other Significant Business Transactions of Options Participants shall be subject to Nasdaq Rule 1017.

(a) Except as provided in paragraph (c) below, a Participant that clears Options Market Maker trades is required to notify Nasdaq Regulation in writing fifteen (15) days prior to any of the following proposed significant business transactions ("SBT"):

- i. the combination, merger or consolidation between the Participant and another person engaged in the business of effecting, executing, clearing or financing transactions in securities or futures products;
- ii. the transfer from another person, market maker, broker-dealer, or customer of securities or futures accounts that are significant in size or number to the business of the Participant;
- iii. the assumption or guarantee by the Participant of liabilities of another person engaged in the business of effecting, executing, clearing or financing transactions in securities or futures products, in connection with a direct or indirect acquisition of all or substantially all of the person's assets; or
- iv. termination of the Participant's clearing business or any material part thereof.

(b) Notification of any of the following SBTs shall be made in writing to Nasdaq Regulation, not later than five (5) business days from the date on which the SBT becomes effective:

- i. the sale by the Clearing Participant of a significant part of its assets to another person;
- ii. a change in the identity of any general partner or a change in the beneficial ownership of ten percent (10%) or more of any class of the outstanding stock of any corporate general partner;
- iii. a change in the beneficial ownership of twenty percent (20%) or more of any class of the outstanding stock of the Participant or the issuance of any capital stock of the Participant; or

iv. the acquisition by the Clearing Participant of assets of another person that would constitute a "business" that is "significant," as those terms are defined in Section 11-01 of Regulation S-X under the Exchange Act.

(c) A Clearing Participant is required to notify Nasdaq Regulation in writing thirty (30) days prior to a proposed SBT included in paragraph (a) of this Rule, and such SBT shall be subject to the prior approval of Nasdaq Regulation, if the Participant's Market Maker clearance activities exceed, or would exceed as a result of the proposed SBT, any of the following parameters:

- i. fifteen percent (15%) of cleared NOM Market Maker contract volume for the most recent three (3) months;
- ii. an average of fifteen percent (15%) of the number of NOM Market Makers as of each month and for the most recent three (3) months; or
- iii. twenty-five percent (25%) of NOM Market Maker gross deductions (haircuts) defined by Rule 15c3-1(a)(6) or (c)(2)(x) under the Exchange Act carried by the Clearing Participant in relation to the aggregate of such haircuts carried by all other Clearing Participants for any month end within the most recent three (3) months.

(d) An SBT that comes within paragraph (c) of this Section 15 may be disapproved or conditioned within the thirty (30) day period if Nasdaq Regulation determines that such SBT has the potential to threaten the financial or operational integrity of Market Maker transactions. In making this determination, Nasdaq Regulation may consider, among other relevant matters, the following:

i. The effect of the proposed SBT on the capital size and structure of the resulting Clearing Participant(s), the potential for financial failure and the consequences of any such failure on the NOM market as a whole, and the potential for increased or decreased operational efficiencies arising from the proposed transaction.

ii. The effect of the proposed SBT upon overall concentration of Market Makers, including a comparison of the following measures before and after the proposed transaction:

1) proportion of NOM Market Maker contract volume cleared;

2) proportion of NOM Market Makers cleared; and

3) proportion of Market Maker gross deductions (haircuts) as defined by Rule 15c3-1(a)(6) or (c)(2)(x) under the Exchange Act carried by the Clearing Participant(s) in relation to the aggregate of such deductions carried by other Participants that clear market maker transactions.

iii. The regulatory history of the affected Participants, specifically as it may indicate a tendency to financial or operational weakness.

(e) Transactions that come within paragraph (c) of this Section 15 shall be reviewed according to the following procedures:

i. A Participant must provide promptly, in writing, all information reasonably requested by Nasdaq Regulation. Any information disclosed by Participants pursuant to the requirements of this Section 15 shall be kept confidential by Nasdaq Regulation until such information is otherwise publicly disclosed and shall be used only for purposes of reviewing the proposal.

ii. If Nasdaq Regulation determines, prior to the expiration of the thirty (30) day period, that a proposed SBT may be approved without conditions, Nasdaq Regulation shall promptly so advise the Participant.

iii. All decisions to disapprove or condition a proposed SBT or to impose extraordinary requirements shall be in writing, shall include a statement setting forth the grounds for the decision, and the Participant shall be promptly notified of any such decisions by Nasdaq Regulation.

iv. Notwithstanding any other provisions of the NOM Rules, the Participant may appeal a decision to disapprove or condition a proposed SBT directly to the Board by filing an application for review with the Secretary of the Exchange within fifteen (15) days of the date of service of the decision. Appeal to the Board shall be the exclusive method of reviewing such a decision.

v. An appeal to the Board of a decision to disapprove or condition a proposed SBT shall not operate as a stay of that decision during the pendency of the appeal.

vi. Nasdaq Regulation shall file notice with the SEC in accordance with the provisions of Section 19(d)(1) of the Exchange Act of all final decisions to disapprove or condition a proposed SBT.

(f) Nasdaq Regulation may impose additional financial and/or operational requirements on a Participant that clears Market Maker trades at any time when it determines that the Participant's continuance in business without such requirements has the potential to threaten the financial or operational integrity of Market Maker transactions.

(g) The provisions of this Section 15 do not preclude summary action under Chapter X, Discipline and Summary Suspensions, of these Rules, or other Nasdaq Regulation action pursuant to the NOM Rules.

(h) Nasdaq Regulation, upon approval by the Chief Regulatory Officer of Nasdaq, may exempt a Participant from the requirements of this Section 15, either generally or in respect of specific types of transactions, based on the limited proportion of Market Maker

trades on NOM that are cleared by the Participant or on the limited importance that the clearing of Market Maker trades bears to the total business of the Participant.

### **Sec. 16 Disruptive Quoting and Trading Activity Prohibited**

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

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

(a) Disruptive Quoting and Trading Activity Type 1:

- (i) a party enters multiple limit orders on one side of the market at various price levels (the "Displayed Orders"); and
- (ii) following the entry of the Displayed Orders, the level of supply and demand for the security changes; and
- (iii) the party enters one or more orders on the opposite side of the market of the Displayed Orders (the "Contra-Side Orders") that are subsequently executed; and
- (iv) following the execution of the Contra-Side Orders, the party cancels the Displayed Orders.

(b) Disruptive Quoting and Trading Activity Type 2:

- (i) a party narrows the spread for a security by placing an order inside the NBBO; and
- (ii) the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the order described in paragraph (b)(i).
- (iii) Applicability. For purposes of this Rule, disruptive quoting and trading activity shall include a frequent pattern in which the facts listed above are present. Unless otherwise indicated, the order of the events indicating the pattern does not modify the applicability of the Rule. Further, disruptive quoting and trading activity includes a pattern or practice in which of the quoting and trading activity is conducted on the Exchange as well as a pattern or practice in which some portion of the quoting or trading activity is conducted on the Exchange and the other portions of the quoting or trading activity is conducted on one or more other exchanges.



## Chapter V Regulation of Trading on NOM

### Sec. 1 Access to and Conduct on the NOM Market

(a) *Access to NOM.* Unless otherwise provided in the Rules, no one but a Participant or a person associated with a Participant shall effect any NOM Transactions.

(b) *NOM Conduct.* Participants and persons employed by or associated with any Participant, while using the facilities of NOM, shall not engage in conduct: (i) inconsistent with the maintenance of a fair and orderly market; (ii) apt to impair public confidence in the operations of the Exchange; or (iii) inconsistent with the ordinary and efficient conduct of business. Activities that shall violate the provisions of this paragraph (b) include, but are not limited to, the following:

- i. failure of a Market Maker to provide quotations in accordance with Chapter VII, Section 6 of these Rules;
- ii. failure of a Market Maker to bid or offer within the ranges specified by Chapter VII, Section 5 of these Rules;
- iii. failure of a Participant to supervise a person employed by or associated with such Participant adequately to ensure that person's compliance with this paragraph (b).
- iv. failure to maintain adequate procedures and controls that permit the Options Participant to effectively monitor and supervise the entry of orders by users to prevent the prohibited practices set forth in this paragraph (b) and Chapter III, Section 2 of these Rules;
- v. failure to abide by a determination of Nasdaq Regulation;
- vi. effecting transactions that are manipulative as provided in Rule 2110, 2111, 2120 or any other rule of the Exchange;
- vii. refusal to provide information requested by Nasdaq Regulation; and
- viii. failure to abide by the provisions of the sections of this Chapter V related to limitations on orders.

(c) Subject to the Rules, NOM will provide access to the Trading System to Options Participants in good standing that wish to conduct business on NOM.

(d) Pursuant to the Rules and the arrangements referred to in this Chapter V, Nasdaq Regulation may:

- i. suspend an Options Participant's access to the Trading System following a warning which may be made in writing or verbally (and subsequently confirmed in writing); or

ii. terminate an Options Participant's access to the Trading System by notice in writing.

### **Sec. 2 MarketWatch**

Personnel from MarketWatch, a unit of Nasdaq Regulation, shall monitor and surveil options trading on NOM in order to ensure the maintenance of a fair and orderly market.

### **Sec. 3 Trading Halts**

(a) *Halts.* Nasdaq Regulation may halt trading in any option contract in the interests of a fair and orderly market. The following are among the factors that shall be considered in determining whether the trading in an option contract should be halted:

i. trading in the underlying security has been halted or suspended in the primary market.

ii. the opening of such underlying security has been delayed because of unusual circumstances.

iii. occurrence of an act of God or other event outside NOM's control;

iv. a Trading System technical failure or failures including, but not limited to, the failure of a part of the central processing system, a number of Options Participant trading applications, or the electrical power supply to the system itself or any related system; or;

v. other unusual conditions or circumstances are present.

vi. Trading Pauses. Trading on the Exchange in any option contract shall be halted whenever trading in the underlying security has been paused by the primary listing market.

(A) Trading in such options contracts may be resumed upon a determination by the Exchange that the conditions that led to the pause are no longer present and that the interests of a fair and orderly market are best served by a resumption of trading, which in no circumstances will be before the Exchange has received notification that the underlying security has resumed trading on at least one exchange. If, however, trading has not been resumed on the primary listing market for the underlying security after ten minutes have passed since the underlying security was paused by the primary listing market, trading in such options contracts may be resumed by the Exchange if the underlying security has resumed trading on at least one exchange.

(B) During the halt, the Exchange will maintain existing orders on the book, accept orders, and process cancels, except that Market Maker interest entered pursuant to the obligations contained in Chapter VII, Section 5 is cancelled.

(b) In the event Nasdaq Regulation determines to halt trading, all trading in the effected class or classes of options shall be halted. NOM shall disseminate through its trading facilities and over OPRA a symbol with respect to classes of options indicating that

trading has been halted, and a record of the time and duration of the halt shall be made available to vendors.

(c) No Options Participant or person associated with a Participant shall effect a trade on NOM in any options class in which trading has been halted under the provisions of this Section 3 during the time in which the halt remains in effect.

(d) Capitalized terms used in this paragraph shall have the same meaning as provided for in the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, as it may be amended from time to time ("LULD Plan"). During a Limit State and Straddle State in the Underlying NMS stock:

(i) The Exchange will not open an affected option.

(ii) After the opening, the Exchange shall reject Market Orders, as defined in Chapter VI, Section 1, and shall notify Participants of the reason for such rejection.

(iii) When evaluating whether a Market Maker has met the intra-day quoting obligations of Chapter VII, Section 6(d) in options overlying NMS stocks, the Exchange will not consider as part of the trading day the time that an NMS stock underlying an option was in a Limit State or Straddle State.

(iv) Trades are not subject to an obvious error or catastrophic error review pursuant to Chapter V, Sections 6(c) or (d). Nothing in this provision shall prevent trades from review on Exchange motion pursuant to Chapter V, Section 6(c)(3), or subject to nullification or adjustment pursuant to Chapter V, Section 6(e) - (j).

(e) The Exchange shall halt trading in all options whenever the equities markets initiate a market-wide trading halt commonly known as a circuit breaker in response to extraordinary market conditions.

***Commentary:*** . . .

.01 The Exchange shall nullify any transaction that occurs with respect to equity options (including options overlying ETFs), during a regulatory halt as declared by the primary listing market for the underlying security.

**Sec. 4 Resumption of Trading After a Halt**

Trading in an option that has been the subject of a halt under Section 3 of this Chapter V shall be resumed upon the determination by Nasdaq Regulation, that the conditions which led to the halt are no longer present or that the interests of a fair and orderly market are best served by a resumption of trading. Trading shall resume according to the process set forth in Chapter VI, Section 8 of these rules.

**Sec. 5 Unusual Market Conditions**

(a) NOM staff may determine that the level of trading activities or the existence of unusual market conditions is such that NOM is incapable of collecting, processing, and making available to quotation vendors the data for the option in a manner that accurately reflects the current state of the market on NOM. Upon making such a determination, Nasdaq Regulation shall designate the market in such option to be "fast." When a market for an option is declared fast, Nasdaq Regulation will provide notice that NOM quotations are not firm by appending an appropriate indicator to the NOM quotations.

(b) If a market is declared fast, Nasdaq Regulation shall have the power to do one or more of the following with respect to the class or classes involved:

i. Suspend the minimum size requirement as permitted under Chapter VII, Section 6 (Market Maker Quotations) of these Rules.

ii. Take such other actions as are deemed in the interest of maintaining a fair and orderly market.

(c) Nasdaq Regulation will monitor the activity or conditions that caused a fast market to be declared, and shall review the condition of such market at least every thirty (30) minutes. Regular trading procedures shall be resumed when NOM determines that the conditions supporting a fast market declaration no longer exist. Nasdaq Regulation will provide notice that its quotations are once again firm by removing the indicator from the NOM quotations.

(d) If the conditions supporting a fast market declaration cannot be managed utilizing one or more of the procedures contained in this Section 6, then Nasdaq Regulation, shall instruct Nasdaq operations to halt trading in the class or classes so affected.

(e) Nasdaq Regulation shall instruct Nasdaq operations to halt trading in all options whenever a marketwide trading halt is initiated on the New York Stock Exchange (commonly known as a "circuit breaker") in response to extraordinary market conditions.

### **Sec. 6 Nullification and Adjustment of Options Transactions including Obvious Errors**

The Exchange may nullify a transaction or adjust the execution price of a transaction in accordance with this Rule. However, the determination as to whether a trade was executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. A trade may be nullified or adjusted on the terms that all parties to a particular transaction agree, provided, however, that such agreement to nullify or adjust must be conveyed to the Exchange in a manner prescribed by the Exchange prior to 8:30 a.m. Eastern Time on the first trading day following the execution. It is considered conduct inconsistent with just and equitable principles of trade for any Participant to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.

(a) *Definitions.*

- (1) *Customer*. For purposes of this Rule, a Customer shall not include any broker-dealer or Professional.
- (2) *Erroneous Sell/Buy Transaction*. For purposes of this Rule, an "erroneous sell transaction" is one in which the price received by the person selling the option is erroneously low, and an "erroneous buy transaction" is one in which the price paid by the person purchasing the option is erroneously high.
- (3) *Official*. For purposes of this Rule, the term " Official" shall mean an Exchange staff member or contract employee designated as such by the Chief Regulatory Officer. A list of individual Officials shall be displayed on the Exchange website. The Chief Regulatory Officer shall maintain the list of Officials and update the website each time a name is added to, or deleted from, the list of Officials. In the event no Official is available to rule on a particular matter, the Chief Regulatory Officer or his/her designee shall rule on such matter.
- (4) *Size Adjustment Modifier*. For purposes of this Rule, the Size Adjustment Modifier will be applied to individual transactions as follows:

<b>Number of Contracts per Execution</b>	<b>Adjustment - Theoretical Price (TP) Plus/Minus</b>
1-50	N/A
51-250	2 times adjustment amount
251-1000	2.5 times adjustment amount
1001 or more	3 times adjustment amount

(b) *Theoretical Price*. Upon receipt of a request for review and prior to any review of a transaction execution price, the "Theoretical Price" for the option must be determined. For purposes of this Rule, if the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is the last NBB just prior to the trade in question with respect to an erroneous sell transaction or the last NBO just prior to the trade in question with respect to an erroneous buy transaction unless one of the exceptions in sub-paragraphs (b)(1) through (3) below exists. For purposes of this provision, when a single order received by the Exchange is executed at multiple price levels, the last NBB and last NBO just prior to the trade in question would be the last NBB and last NBO just prior to Exchange's receipt of the order. The Exchange will rely on this paragraph (b) and Commentary .04 of this Rule when determining Theoretical Price.

- (1) *Transactions at the Open*. For a transaction occurring as part of the Opening Process (as defined in Chapter VI, Section 8) the Exchange will determine the Theoretical Price if there is no NBB or NBO for the affected series just prior to

the erroneous transaction or if the bid/ask differential of the NBB and NBO just prior to the erroneous transaction is equal to or greater than the Minimum Amount set forth in the chart contained in sub-paragraph (b)(3) below. If the bid/ask differential is less than the Minimum Amount, the Theoretical Price is the NBB or NBO just prior to the erroneous transaction.

(2) *No Valid Quotes* The Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes. Quotes that are not valid are:

- (A) all quotes in the applicable option series published at a time where the last NBB is higher than the last NBO in such series (a "crossed market");
- (B) quotes published by the Exchange that were submitted by either party to the transaction in question;
- (C) quotes published by another options exchange if either party to the transaction in question submitted the quotes in the series representing such options exchange's best bid or offer, provided that the Exchange will only consider quotes invalid on other options exchanges in up to twenty-five (25) total options series that the party identifies to the Exchange the quotes which were submitted by such party and published by other options exchanges; and
- (D) quotes published by another options exchange against which the Exchange has declared self-help.

(3) *Wide Quotes*. The Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the erroneous transaction was equal to or greater than the Minimum Amount set forth below and there was a bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction. If there was no bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction then the Theoretical Price of an option series is the last NBB or NBO just prior to the transaction in question, as set forth in paragraph (b) above.

<b>Bid Price at Time of Trade</b>	<b>Minimum Amount</b>
Below \$2.00	\$0.75
\$2.00 to \$5.00	\$1.25
Above \$5.00 to \$10.00	\$1.50

Above \$10.00 to \$20.00	\$2.50
Above \$20.00 to \$50.00	\$3.00
Above \$50.00 to \$100.00	\$4.50
Above \$100.00	\$6.00

(c) *Obvious Errors.*

(1) *Definition.* For purposes of this Rule, an Obvious Error will be deemed to have occurred when the Exchange receives a properly submitted filing where the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

<b>Theoretical Price</b>	<b>Minimum Amount</b>
Below \$2.00	\$0.25
\$2.00 to \$5.00	\$0.40
Above \$5.00 to \$10.00	\$0.50
Above \$10.00 to \$20.00	\$0.80
Above \$20.00 to \$50.00	\$1.00
Above \$50.00 to \$100.00	\$1.50
Above \$100.00	\$2.00

(2) *Time Deadline.* A party that believes that it participated in a transaction that was the result of an Obvious Error must notify an Official in the manner specified from time to time by the Exchange in a notice distributed to Participants. Such notification must be received by an Official within the timeframes specified below:

(A) *Customer Orders.* For an execution of a Customer order, a filing must be received by the Exchange within thirty (30) minutes of the execution, subject to sub-paragraph (C) below; and

(B) *"Non-Customer" Orders.* For an execution of any order other than a Customer order, a filing must be received by the Exchange within fifteen (15) minutes of the execution, subject to sub-paragraph (C) below.

- (C) *Linkage Trades*. Any other options exchange will have a total of forty-five (45) minutes for Customer orders and thirty (30) minutes for non-Customer orders, measured from the time of execution on the Exchange, to file with the Exchange for review of transactions routed to the Exchange from that options exchange and executed on the Exchange ("linkage trades"). This includes filings on behalf of another options exchange filed by a third-party routing broker if such third-party broker identifies the affected transactions as linkage trades. In order to facilitate timely reviews of linkage trades the Exchange will accept filings from either the other options exchange or, if applicable, the third-party routing broker that routed the applicable order(s). The additional fifteen (15) minutes provided with respect to linkage trades shall only apply to the extent the options exchange that originally received and routed the order to the Exchange itself received a timely filing from the entering participant (i.e., within 30 minutes if a Customer order or 15 minutes if a non-Customer order).
- (3) *Acting on Own Motion*. The President or designee thereof, who is an officer of the Exchange (collectively "Exchange officer") may review a transaction believed to be erroneous on his/her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. A transaction reviewed pursuant to this paragraph may be nullified or adjusted only if it is determined by the Exchange officer that the transaction is erroneous in accordance with the provisions of this Rule, provided that the time deadlines of sub-paragraph (c)(2) above shall not apply. The Exchange officer shall act as soon as possible after becoming aware of the transaction, and ordinarily would be expected to act on the same day that the transaction occurred. In no event shall the Exchange officer act later than 8:30 a.m. Eastern Time on the next trading day following the date of the transaction in question. A party affected by a determination to nullify or adjust a transaction pursuant to this provision may appeal such determination in accordance with paragraph (k) below; however, a determination by an Exchange officer not to review a transaction or determination not to nullify or adjust a transaction for which a review was conducted on an Exchange officer's own motion is not appealable. If a transaction is reviewed and a determination is rendered pursuant to another provision of this Rule, no additional relief may be granted under this provision.
- (4) *Adjust or Bust*. If it is determined that an Obvious Error has occurred, the Exchange shall take one of the actions listed below. Upon taking final action, the Exchange shall promptly notify both parties to the trade electronically or via telephone.
- (A) *Non-Customer Transactions*. Where neither party to the transaction is a Customer, the execution price of the transaction will be adjusted by the Official pursuant to the table below. Any non-Customer Obvious Error exceeding 50



contracts will be subject to the Size Adjustment Modifier defined in sub-paragraph (a)(4) above.

<b>Theoretical Price (TP)</b>	<b>Buy Transaction Adjustment - TP Plus</b>	<b>Sell Transaction Adjustment - TP Minus</b>
Below \$3.00	\$0.15	\$0.15
At or above \$3.00	\$0.30	\$0.30

(B) *Customer Transactions*. Where at least one party to the Obvious Error is a Customer, the trade will be nullified, subject to subparagraph (C) below.

(C) If any Participant submits requests to the Exchange for review of transactions pursuant to this rule, and in aggregate that Participant has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, where at least one party to the Obvious Error is a non-Customer, the Exchange will apply the non-Customer adjustment criteria set forth in sub-paragraph (A) above to such transactions.

(d) *Catastrophic Errors*.

(1) *Definition*. For purposes of this Rule, a Catastrophic Error will be deemed to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

<b>Theoretical Price</b>	<b>Minimum Amount</b>
Below \$2.00	\$0.50
\$2.00 to \$5.00	\$1.00
Above \$5.00 to \$10.00	\$1.50
Above \$10.00 to \$20.00	\$2.00
Above \$20.00 to \$50.00	\$2.50
Above \$50.00 to \$100.00	\$3.00
Above \$100.00	\$4.00

(2) *Time Deadline*. A party that believes that it participated in a transaction that was the result of a Catastrophic Error must notify the Exchange's Officials in the

manner specified from time to time by the Exchange in a notice distributed to Participants. Such notification must be received by the Exchange's Officials by 8:30 a.m. Eastern Time on the first trading day following the execution. For transactions in an expiring options series that take place on an expiration day, a party must notify the Exchange's Officials within 45 minutes after the close of trading that same day.

- (3) *Adjust or Bust*. If it is determined that a Catastrophic Error has occurred, the Exchange shall take action as set forth below. Upon taking final action, the Exchange shall promptly notify both parties to the trade electronically or via telephone. In the event of a Catastrophic Error, the execution price of the transaction will be adjusted by the Official pursuant to the table below. Any Customer order subject to this sub-paragraph will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price.

<b>Theoretical Price (TP)</b>	<b>Buy Transaction Adjustment - TP Plus</b>	<b>Sell Transaction Adjustment - TP Minus</b>
Below \$2.00	\$0.50	\$0.50
\$2.00 to \$5.00	\$1.00	\$1.00
\$5.00 to \$10.00	\$1.50	\$1.50
\$10.00 to \$20.00	\$2.00	\$2.00
\$20.00 to \$50.00	\$2.50	\$2.50
\$50.00 to \$100.00	\$3.00	\$3.00
Above \$100.00	\$4.00	\$4.00

(e) *Significant Market Events*.

- (1) Definition. For purposes of this Rule, a Significant Market Event will be deemed to have occurred when: criterion (A) below is met or exceeded or the sum of all applicable event statistics, where each is expressed as a percentage of the relevant threshold in criteria (A) through (D) below, is greater than or equal to 150% and 75% or more of at least one category is reached, provided that no single category can contribute more than 100% to the sum and any category contributing more than 100% will be rounded down to 100%. All criteria set forth below will be measured in aggregate across all exchanges.

- (A) Transactions that are potentially erroneous would result in a total Worst-Case Adjustment Penalty of \$30,000,000, where the Worst- Case Adjustment Penalty is computed as the sum, across all potentially erroneous trades, of:
- (i) \$0.30 (i.e., the largest Transaction Adjustment value listed in sub-paragraph (e)(3)(A) below); times
  - (ii) the contract multiplier for each traded contract; times
  - (iii) the number of contracts for each trade; times
  - (iv) the appropriate Size Adjustment Modifier for each trade, if any, as defined in sub-paragraph (e)(3)(A) below.
- (B) Transactions involving 500,000 options contracts are potentially erroneous;
- (C) Transactions with a notional value (i.e., number of contracts traded multiplied by the option premium multiplied by the contract multiplier) of \$100,000,000 are potentially erroneous;
- (D) 10,000 transactions are potentially erroneous.
- (2) **Coordination with Other Options Exchanges** . To ensure consistent application across options exchanges, in the event of a suspected Significant Market Event, the Exchange shall initiate a coordinated review of potentially erroneous transactions with all other affected options exchanges to determine the full scope of the event. When this paragraph is invoked, the Exchange will promptly coordinate with the other options exchanges to determine the appropriate review period as well as select one or more specific points in time prior to the transactions in question and use one or more specific points in time to determine Theoretical Price. Other than the selected points in time, if applicable, the Exchange will determine Theoretical Price in accordance with paragraph (b) above.
- (3) *Adjust or Bust*. If it is determined that a Significant Market Event has occurred then, using the parameters agreed as set forth in sub-paragraph (e)(2) above, if applicable, an Official will determine whether any or all transactions under review qualify as Obvious Errors. The Exchange shall take one of the actions listed below with respect to all transactions that qualify as Obvious Errors pursuant to sub-paragraph (c)(1) above. Upon taking final action, the Exchange shall promptly notify both parties to the trade electronically or via telephone.

(A) The execution price of each affected transaction will be adjusted by an Official to the price provided below unless both parties agree to adjust the transaction to a different price or agree to bust the trade. In the context of a Significant Market Event, any error exceeding 50 contracts will be subject to the Size Adjustment Modifier defined in subparagraph (a)(4) above.

<b>Theoretical Price (TP)</b>	<b>Buy Transaction Adjustment - TP Plus</b>	<b>Sell Transaction Adjustment - TP Minus</b>
Below \$3.00	\$0.15	\$0.15
At or above \$3.00	\$0.30	\$0.30

(B) Where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price.

(4) *Nullification of Transactions.* If the Exchange, in consultation with other options exchanges, determines that timely adjustment is not feasible due to the extraordinary nature of the situation, then the Exchange will nullify some or all transactions arising out of the Significant Market Event during the review period selected by the Exchange and other options exchanges consistent with this paragraph. To the extent the Exchange, in consultation with other options exchanges, determines to nullify less than all transactions arising out of the Significant Market Event, those transactions subject to nullification will be selected based upon objective criteria with a view toward maintaining a fair and orderly market and the protection of investors and the public interest.

(5) *Final Rulings.* With respect to rulings made pursuant to this paragraph, the number of affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. Accordingly, rulings by the Exchange pursuant to this paragraph are non-appealable.

(f) *Trading Halts.* The Exchange shall nullify any transaction that occurs during a trading halt in the affected option on the Exchange pursuant to Commentary .03 of this Rule.

(g) *Erroneous Print in Underlying.* A trade resulting from an erroneous print(s) disseminated by the underlying market that is later nullified by that underlying market shall be adjusted or busted as set forth in sub-paragraph (c)(4) of this Rule, provided a party notifies an Official in a timely manner as set forth below. For purposes of this paragraph, a trade resulting from an erroneous print(s) shall mean any options trade executed during a period of time for which one or more executions in the underlying security are nullified and for one second thereafter. If a party

believes that it participated in an erroneous transaction resulting from an erroneous print(s) pursuant to this paragraph it must notify an Official within the timeframes set forth in sub-paragraph (c)(2) above, with the allowed notification timeframe commencing at the time of notification by the underlying market(s) of nullification of transactions in the underlying security. If multiple underlying markets nullify trades in the underlying security, the allowed notification timeframe will commence at the time of the first market's notification.

(h) *Erroneous Quote in Underlying*. A trade resulting from an erroneous quote(s) in the underlying security shall be adjusted or busted as set forth in subparagraph (c)(4) this Rule, provided a party notifies an Official in a timely manner as set forth below. An erroneous quote occurs when the underlying security has a width of at least \$1.00 and has a width at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of this paragraph, the average quote width shall be determined by adding the quote widths of sample quotations at regular 15- second intervals during the four-minute time period referenced above (excluding the quote(s) in question) and dividing by the number of quotes during such time period (excluding the quote(s) in question). If a party believes that it participated in an erroneous transaction resulting from an erroneous quote(s) pursuant to this paragraph it must notify an Official in accordance with subparagraph (c)(2) above.

(i) Reserved.

(j) *Linkage Trades*. If the Exchange routes an order pursuant to the Plan (as defined in Chapter XII, Section 1(17)) that results in a transaction on another options exchange (a "Linkage Trade") and such options exchange subsequently nullifies or adjusts the Linkage Trade pursuant to its rules, the Exchange will perform all actions necessary to complete the nullification or adjustment of the Linkage Trade.

(k) *Verifiable Disruption or Malfunction of Exchange Systems*. Parties to a trade may have a trade nullified or its price adjusted if it resulted from a verifiable disruption or malfunction of Exchange execution, dissemination, or communication systems that caused a quote/order to trade in excess of its disseminated size (e.g. a quote/order that is frozen, because of an Exchange system error, and repeatedly traded). Parties to a trade may have a trade nullified or its price adjusted if it resulted from a verifiable disruption or malfunction of an Exchange dissemination or communication system that prevented a member from updating or canceling a quote/order for which the member is responsible where there is Exchange documentation providing that the member sought to update or cancel the quote/order.

(l) *Appeals*. A party to a transaction affected by a decision made under this section may appeal that decision to the Nasdaq Review Council. An appeal must be made in writing, and must be received by Nasdaq within thirty (30) minutes after the person

making the appeal is given the notification of the determination being appealed. The Nasdaq Review Council may review any decision appealed, including whether a complaint was timely, whether an Obvious Error or Catastrophic Error occurred, whether the correct Theoretical Price was used, and whether an adjustment was made at the correct price.

- (1) A Nasdaq Review Council panel will be comprised minimally of representatives of one (1) member engaged in Market Making and two (2) industry representatives not engaged in Market Making. At no time should a review panel have more than 50% members engaged in Market Making.
- (2) The Nasdaq Review Council, pursuant to the standards set forth in this rule, shall affirm, modify, or reverse the determination.
- (3) The decision of the Nasdaq Review Council pursuant to an appeal, or a determination by a Nasdaq Official that is not appealed, shall be final and binding upon all parties and shall constitute final Nasdaq action on the matter in issue. Any determination by a Nasdaq Official or the Nasdaq Review Council shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.
- (4) The party initiating the appeal shall be assessed a \$500.00 fee if the Nasdaq Review Council upholds the decision of the Nasdaq Official. In addition, in instances where Nasdaq, on behalf of an Options Participant, requests a determination by another market center that a transaction is clearly erroneous, Nasdaq will pass any resulting charges through to the relevant Options Participant.

***Commentary:*** . . .

**.01** Reserved.

**.02** For the purposes of this Rule, to the extent the provisions of this Rule would result in the Exchange applying an adjustment of an erroneous sell transaction to a price lower than the execution price or an erroneous buy transaction to a price higher than the execution price, the Exchange will not adjust or nullify the transaction, but rather, the execution price will stand.

**.03** Trading Halts. Trades on the Exchange will be nullified when:

- (A) The trade occurred during a trading halt in the affected option on the Exchange;
- (B) Respecting equity options (including options overlying ETFs), the trade occurred during a trading halt on the primary market for the underlying security; or

(C) Respecting index options, the trade occurred during a trading halt on the primary market in underlying securities representing more than 10 percent of the current index value for stock index options.

**.04 Exchange Determining Theoretical Price.** For purposes of this Rule, when the Exchange must determine Theoretical Price pursuant to sub-paragraphs (b)(1)-(3) of this Rule (i.e., at the open, when there are no valid quotes or when there is a wide quote), then the Exchange will determine Theoretical Price as follows.

(a) The Exchange will request Theoretical Price from the third party vendor defined in paragraph (d) below ("TP Provider") to which the Exchange and all other options exchanges have subscribed. The Exchange will apply the Theoretical Price provided by the TP Provider, except as otherwise described below.

(b) To the extent an Official of the Exchange believes that the Theoretical Price provided by the TP Provider is fundamentally incorrect and cannot be used consistent with the maintenance of a fair and orderly market, the Official shall contact the TP Provider to notify the TP Provider of the reason the Official believes such Theoretical Price is inaccurate and to request a review and correction of the calculated Theoretical Price. The Exchange shall also promptly provide electronic notice to other options exchanges that the TP Provider has been contacted consistent with this paragraph and include a brief explanation of the reason for the request.

(c) An Official of the Exchange may determine the Theoretical Price if the TP Provider has experienced a systems issue that has rendered its services unavailable to accurately calculate Theoretical Price and such issue cannot be corrected in a timely manner.

(d) The current TP Provider to which the Exchange and all other options exchanges have subscribed is: CBOE Livevol, LLC. Neither the Exchange, the TP Provider, nor any affiliate of the TP Provider (the TP Provider and its affiliates are referred to collectively as the "TP Provider"), makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of the TP Provider pursuant to this Commentary .04. The TP Provider does not guarantee the accuracy or completeness of the calculated Theoretical Price. The TP Provider disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to such Theoretical Price. Neither the Exchange nor the TP Provider shall have any liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the use of such Theoretical Price or arising out of any errors or delays in calculating such Theoretical Price.

## **Sec. 7 Audit Trail**

(a) *Order Identification.* When entering orders on NOM, each Options Participant shall submit order information in such form as may be prescribed by Nasdaq in order to allow NOM to properly prioritize and match orders and report resulting transactions to the Clearing Corporation.

(b) An Options Participant must ensure that each options order received from a Customer for execution on NOM is recorded and time-stamped immediately. The order record must be time-stamped again on execution and also at the time of any modification or cancellation of the order by the Customer. Order records relating to NOM must contain the following information at a minimum:

- i. a unique order identification;
- ii. the underlying security;
- iii. opening/closing designation;
- iv. the identity of the Clearing Participant;
- v. Options Participant identification;
- vi. Participant Capacity;
- vii. identity of the individual/terminal completing the order ticket;
- viii. customer identification;
- ix. account identification;
- x. buy/sell;
- xi. contract volume;
- xii. contract month;
- xiii. exercise price;
- xiv. put/call;
- xv. price or price limit, price range or strategy price;
- xvi. special instructions (e.g ., GTC); and
- xvii. and such other information as may be required by NOM.

(c) An Options Participant that employs an electronic system for order routing or order management which complies with NOM requirements will be deemed to be complying with the requirements of this Section if the required information is recorded in electronic form rather than in written form.



(d) In addition to any related requirement under applicable securities laws, information recorded pursuant to this Section must be retained by Options Participants for a period of no less than three (3) years after the date of the transaction.

### **Sec. 8 Failure to Pay Premium**

(a) When the Clearing Corporation shall reject a NOM Transaction because of the failure of the Clearing Participant acting on behalf of the purchaser to pay the aggregate premiums due thereon as required by the Rules of the Clearing Corporation, the Options Participant acting as or on behalf of the writer shall have the right either to cancel the transaction by giving notice thereof to the Clearing Participant or to enter into a closing writing transaction in respect of the same options contract that was the subject of the rejected NOM Transaction for the account of the defaulting Clearing Participant.

(b) Such action shall be taken as soon as possible, and in any event not later than 10:00 A.M. EST on the business day following the day the NOM Transaction was rejected by the Clearing Corporation.

### **Sec. 9 Limitation of Liability**

(a) Except as provided for in Rule 4626, NOM and its affiliates shall not be liable for any losses, damages, or other claims arising out of the NOM Trading System or its use. Any losses, damages, or other claims, related to a failure of the NOM Trading System to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, message, or other data entered into, or created by, the NOM Trading System shall be absorbed by the member, or the member sponsoring the customer, that entered the order, message, or other data into the NOM Trading System.

## **Chapter VI Trading Systems**

### **Sec. 1 Definitions**

The following definitions apply to Chapter VI for the trading of options listed on NOM.

(a) The term "System" shall mean the automated system for order execution and trade reporting owned and operated by The Nasdaq Options Market LLC. The Nasdaq Options Market comprises:

- (1) an order execution service that enables Participants to automatically execute transactions in System Securities; and provides Participants with sufficient monitoring and updating capability to participate in an automated execution environment;
- (2) a trade reporting service that submits "locked-in" trades for clearing to a registered clearing agency for clearance and settlement; transmits last-sale reports of transactions automatically to the Options Price Reporting Authority for dissemination to the public and industry; and provides participants with monitoring and risk management capabilities to facilitate participation in a "locked-in" trading environment; and

(3) the data feeds described in Section 19.

(b) The term "System Securities" shall mean all options that are currently trading on NOM pursuant to Options 4. All other options shall be "Non System Securities."

(c) The term "Participant" shall include Options Market Makers and Options Order Entry Firms that are registered to enter orders into the System.

(d) The term "Order" shall mean a single order submitted to the System by a Participant that is eligible to submit such orders.

(e) The term "Order Type" shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1) Cancel-replacement order shall mean a single message for the immediate cancellation of a previously received order and the replacement of that order with a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety, the replacement order is automatically canceled or reduced by the number of contracts that were executed. The replacement order will not retain the priority of the cancelled order except when the replacement order reduces the size of the order and all other terms and conditions are retained.

(2) "Limit Orders" are orders to buy or sell an option at a specified price or better. A limit order is marketable when, for a limit order to buy, at the time it is entered into the System, the order is priced at the current inside offer or higher, or for a limit order to sell, at the time it is entered into the System, the order is priced at the inside bid or lower.

(3) "Minimum Quantity Orders" are orders that require that a specified minimum quantity of contracts be obtained, or the order is cancelled. Minimum Quantity Orders are treated as having a time-in-force designation of Immediate or Cancel. Minimum Quantity Orders received prior to the opening cross or after market close will be rejected.

(4) Reserved.

(5) "Market Orders" are orders to buy or sell at the best price available at the time of execution. Participants can designate that their Market Orders not executed after a pre-established period of time, as established by the Exchange, will be cancelled back to the Participant.

(6) "Price Improving Orders" are orders to buy or sell an option at a specified price at an increment smaller than the minimum price variation in the security. Price Improving Orders may be entered in increments as small as one cent. Price Improving Orders that are available for display shall be displayed at the minimum price variation in that security and shall be rounded up for sell orders and rounded down for buy orders.

(7) The term "On the Open Order" shall mean an order with a designated time-in-force of "OPG". An On the Open Order will be executable only during the Opening Cross. If such order is not executed in its entirety during the Opening Cross, the order, or any unexecuted portion of such order, will be cancelled back to the entering participant.

(8) "Intermarket Sweep Order" or "ISO" are limit orders that are designated as ISOs in the manner prescribed by Nasdaq and are executed within the System by Participants at multiple price levels without respect to Protected Quotations of other Eligible Exchanges as defined in Chapter XII, Section 1. ISOs may have any time-in-force designation except WAIT, are handled within the System pursuant to Chapter VI, Section 10 and shall not be eligible for routing as set out in Chapter VI, Section 11.

Simultaneously with the routing of an ISO to the System, one or more additional limit orders, as necessary, are routed by the entering party to execute against the full displayed size of any protected bid or offer (as defined in Chapter XII, Section 1) in the case of a limit order to sell or buy with a price that is superior to the limit price of the limit order identified as an intermarket sweep order (as defined in Chapter XII, Section 1). These additional routed orders must be identified as ISOs.

(9) "One-cancels-the-other" shall mean an order entered by a Market Maker that consists of a buy order and a sell order treated as a unit; the full execution of one of the orders causes the other to be canceled.

(10) "All-or-none" shall mean a market or limit order which is to be executed in its entirety or not at all. All-or-None Orders are treated as having a time-in-force designation of Immediate or Cancel. All-or-None Orders received prior to the opening cross or after market close will be rejected.

(11) "Post-Only Orders" are orders that will not remove liquidity from the System. Post-Only Orders are to be ranked and executed on the Exchange or cancelled, as appropriate, without routing away to another market. Post-Only Orders are evaluated at the time of entry with respect to locking or crossing other orders as follows: (i) if a Post-Only Order would lock or cross an order on the System, the order will be re-priced to \$.01 below the current low offer (for bids) or above the current best bid (for offers) and displayed by the System at one minimum price increment below the current low offer (for bids) or above the current best bid (for offers); and (ii) if a Post-Only Order would not lock or cross an order on the System but would lock or cross the NBBO as reflected in the protected quotation of another market center, the order will be handled pursuant to Chapter VI, Section 7(b)(3)(C). Participants may choose to have their Post-Only Orders returned whenever the order would lock or cross the NBBO or be placed on the book at a price other than its limit price. Post-Only Orders received prior to the opening will be eligible for execution during the opening cross and will be processed as per Chapter VI, Section 8. Post-Only Orders received after market close will be rejected. Post-Only Orders may not have a time-in-force designation of Good Til Cancelled or Immediate or Cancel.

(f) The term "Order Size" shall mean the number of contracts up to 999,999 associated with the Order.

(g) The term "Time in Force" shall mean the period of time that the System will hold an order for potential execution, and shall include:

(1) "On the Open Order" or "OPG" shall mean for orders so designated, that if after entry into the System, the order is not fully executed in its entirety during the Opening Cross, the order, or any unexecuted portion of such order, will be cancelled back to the entering participant.

(2) "Immediate Or Cancel" or "IOC" shall mean for orders so designated, that if after entry into the System a marketable order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant. IOC Orders shall be available for entry from the time prior to market open specified by the Exchange on its website until market close and for potential execution from 9:30 a.m. until market close. IOC Orders entered between the time specified by the Exchange on its website and 9:30 a.m. Eastern Time will be held within the System until 9:30 a.m. at which time the System shall determine whether such orders are marketable.

(3) "DAY" shall mean for orders so designated, that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until market close, unless canceled by the entering party, after which it shall be returned to the entering party. DAY Orders shall be available for entry from the time prior to market open specified by the Exchange on its website until market close and for potential execution from 9:30 a.m. until market close.

(4) "Good Til Cancelled" or "GTC" shall mean for orders so designated, that if after entry into System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. GTC Orders shall be available for entry from the time prior to market open specified by the Exchange on its website until market close and for potential execution from 9:30 a.m. until market close.

(5) "WAIT" shall mean for orders so designated, that upon entry into the System, the order is held for one second without processing for potential display and/or execution. After one second, the order is processed for potential display and/or execution in accordance with all order entry instructions as determined by the entering party.

(h) The term "System Book Feed" shall mean a data feed for System securities.

## **Sec. 2 Days and Hours of Business**

(a) The System operates and shall be available to accept bids and offers and orders from the time prior to market open specified by the Exchange on its website to market close on each business day, unless modified by NOM. Orders and bids and offers shall be open

and available for execution as of 9:30 a.m. Eastern Time and shall close as of 4:00 p.m. Eastern Time except for option contracts on certain fund shares or broad-based indexes which will close as of 4:15 p.m. Eastern Time.

(b) Except for unusual conditions as may be determined by the Board, hours during which transactions in options on individual stocks may be made on NOM shall correspond to the normal business days and hours for business set forth in the rules of the primary market trading the securities underlying NOM options. Notwithstanding the foregoing, transactions may be effected in options contracts on Fund Shares, as defined in Options 4, Section 3(i); and in options contracts on exchange-traded notes including Index-Linked Securities, as defined in Options 4, Section 3(l), on NOM until 4:15 p.m.

(c) NOM shall not be open for business on any holiday observed by The Nasdaq Stock Market, LLC.

### **Sec. 3 Units of Trading**

The unit of trading in each series of options traded on NOM shall be the unit of trading established for that series by the Clearing Corporation pursuant to the Rules of the Clearing Corporation and the agreements of Nasdaq with the Clearing Corporation.

### **Sec. 4 Meaning of Premium Quotes and Orders**

(a) *General.* Except as provided in paragraph (b), orders shall be expressed in terms of dollars per unit of the underlying security. For example, a bid of "5" shall represent a bid of \$500 for an options contract having a unit of trading consisting of 100 shares of an underlying security, or a bid of \$550 for an options contract having a unit of trading consisting of 110 shares of an underlying security.

(i) *Mini Options.* Bids and offers for an option contract overlying 10 shares shall be expressed in terms of dollars per 1/10th part of the total value of the contract. An offer of ".50" shall represent an offer of \$5.00 on an option contract having a unit of trading consisting of 10 shares.

(b) *Special Cases.* Orders for an options contract for which NOM has established an adjusted unit of trading in accordance with Section 4 of this Chapter VI shall be expressed in terms of dollars per 1/100 part of the total securities and/or other property constituting such adjusted unit of trading. For example, an offer of "3" shall represent an offer of \$300 for an options contract having a unit of trading consisting of 100 shares of an underlying security plus ten (10) rights.

(c) All options on foreign currencies where the underlying foreign currency is not the U.S. dollar shall have a minimum increment of \$.01.

(d) In the case of options on foreign currencies, all bids or offers shall be expressed in terms of U.S. dollars per unit of the underlying foreign currency. E.g., a bid of "3.25" for a premium on a \$170 strike price option on the British pound shall represent a bid to pay \$325 per option contract.

**Sec. 5 Minimum Increments**

(a) The Board may establish minimum quoting increments for options contracts traded on NOM. Such minimum increments established by the Board will be designated as a stated policy, practice, or interpretation with respect to the administration of this Section within the meaning of Section 19 of the Exchange Act and will be filed with the SEC as a rule change for effectiveness upon filing. Until such time as the Board makes a change in the increments, the following principles shall apply:

- (1) If the options series is trading at less than \$3.00, five (5) cents;
- (2) If the options series is trading at \$3.00 or higher, ten (10) cents; and
- (3) For a pilot period scheduled to expire on December 31, 2019 or the date of permanent approval, if earlier, if the options series is trading pursuant to the Penny Pilot program one (1) cent if the options series is trading at less than \$3.00, five (5) cents if the options series is trading at \$3.00 or higher, unless for QQQQs, SPY and IWM where the minimum quoting increment will be one cent for all series regardless of price. A list of such options shall be communicated to membership via an Options Trader Alert ("OTA") posted on the Exchange's web site.

The Exchange may replace any pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the pilot, based on trading activity in the previous six months. The replacement issues may be added to the pilot on the second trading day in the first month of each quarter.

- (4) All Mini Options contracts shall have a minimum price variation as set forth in Options 4, Supplementary Material .08 to Section 6.

(b) The minimum trading increment for options contracts traded on NOM will be one (1) cent for all series.

(c) A quote submitted to the System with an invalid trading increment will be re-priced. The quote will be rounded up to the nearest valid minimum price variation for offers and rounded down for bids.

**Sec. 6 Entry and Display of Quotes**

**OTTO functionality implementation shall be delayed until Q2 2020. The Exchange will issue an Options Trader Alert notifying Participants when this functionality will be available.**

(a) All bids or offers made and accepted on NOM in accordance with the NOM Rules shall constitute binding contracts, subject to applicable requirements of the Rules of the Exchange and the Rules of the Clearing Corporation.

(b) Quotes are subject to the following requirements and conditions:

- (1) Market Makers may generate and submit option quotations.
- (2) The System shall time-stamp a quote which shall determine the time ranking of the quote for purposes of processing the quote.
- (3) Market Makers may enter bids and/or offers in the form of a two-sided quote. Only one quote may be submitted at a time for an option series.
- (4) The System accepts quotes beginning at a time specified by the Exchange and communicated on the Exchange's web site.
- (5) **Firm Quote.** When quotes in options on another market or markets are subject to relief from the firm quote requirement set forth in the SEC Quote Rule, orders and quotes will receive an automatic execution at or better than the NBBO based on the best bid or offer in markets whose quotes are not subject to such relief. Such determination may be made by way of notification from another market that its quotes are not firm or are unreliable; administrative message from the Option Price Reporting Authority ("OPRA"); quotes received from another market designated as "not firm" using the appropriate indicator; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are not firm. The Exchange shall maintain a record of each instance in which another exchange's quotes are excluded from the Exchange's calculation of NBBO, and shall notify such other exchange that its quotes have been so excluded. Where quotes in options on another market or markets previously subject to relief from the firm quote requirement set forth in the Quote Rule are no longer subject to such relief, such quotations will be included in the calculation of NBBO for such options. Such determination may be made by way of notification from another market that its quotes are firm; administrative message from OPRA; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are firm.
- (6) **Trade-Through Compliance and Locked or Crossed Markets.** A quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. If, at the time of entry, a quote would cause a locked or crossed market violation or would cause a trade-through, violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.
- (7) Quotes submitted to the System are subject to following: risk protections provided for in Chapter VI, Section 18. Quotes submitted with minimum increments that are not valid pursuant to Chapter VI, Section 5

will be rounded up to the nearest minimum price variation for offers and rounded down to the nearest minimum price variation for bids.

(c) Quotes will be displayed in the System as described in Chapter VI, Section 19.

### **Sec. 7 Entry and Display of Orders**

(a) Participants can enter orders into the System, subject to the following requirements and conditions:

- (1) Participants shall be permitted to transmit to the System multiple orders at single as well as multiple price levels.
- (2) The System accepts orders beginning at a time specified by the Exchange and communicated on the Exchange's web site.
- (3) The System shall time-stamp an order which shall determine the time ranking of the order for purposes of processing the order.
- (4) Orders submitted to the System are subject to the following: risk protections within Chapter VI, Section 18 and the restrictions of order types within Chapter VI, Section 21(b). Orders may execute at multiple prices.
- (5) Nullification by Mutual Agreement. Trades may be nullified if all parties participating in the trade agree to the nullification. In such case, one party must notify the Exchange and the Exchange promptly will disseminate the nullification to OPRA. It is considered conduct inconsistent with just and equitable principles of trade for a party to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.

(b) **NBBO Price Protection.** Orders, other than Intermarket Sweep Orders (as defined in Rule Chapter XII, Section 1(9)) will not be automatically executed by the System at prices inferior to the NBBO (as defined in Chapter XII, Section 1(11)). There is no NBBO price protection with respect to any other market whose quotations are Non-Firm (as defined in Chapter XII, Section 1(12)).

(c) The System automatically executes eligible orders using the Exchange's displayed best bid and offer ("BBO") or the Exchange's non-displayed order book ("internal BBO"). The contract size associated with Displayed Price Improving Orders to buy (sell) are displayed at the MPV below (above) the price of the Price Improving Order. Price Improving Orders will not be permitted to create a locked or crossed market or to cause a trade through violation.

(d) **Trade-Through Compliance and Locked or Crossed Markets.** An order will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. An order that is designated by the member as routable will be routed in compliance with applicable Trade-Through and Locked and



Crossed Markets restrictions. An order that is designated by a member as non-routable will be re-priced in order to comply with applicable Trade-Through and Locked and Crossed Markets restrictions. If, at the time of entry, an order that the entering party has elected not to make eligible for routing would cause a locked or crossed market violation or would cause a trade-through violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.

(e) Orders will be displayed in the System as described in Chapter VI, Section 19.

### **Sec. 8 Nasdaq Opening and Halt Cross**

**OTTO functionality implementation shall be delayed until Q2 2020. The Exchange will issue an Options Trader Alert notifying Participants when this functionality will be available.**

(a) Definitions. For the purposes of this rule the term:

(1) "Imbalance" shall mean the number of contracts of Eligible Interest that may not be matched with other order contracts at a particular price at any given time.

(2) "Order Imbalance Indicator" shall mean a message disseminated by electronic means containing information about Eligible Interest and the price in penny increments at which such interest would execute at the time of dissemination. The Order Imbalance Indicator shall disseminate the following information:

(A) "Current Reference Price" shall mean an indication of what the opening cross price would be at a particular point in time.

(B) the number of contracts of Eligible Interest that are paired at the Current Reference Price;

(C) the size of any Imbalance; and

(D) the buy/sell direction of any Imbalance.

(3) "Nasdaq Opening Cross" shall mean the process for opening or resuming trading pursuant to this rule and shall include the process for determining the price at which Eligible Interest shall be executed at the open of trading for the day, or the open of trading for a halted option, and the process for executing that Eligible Interest.

(4) "Eligible Interest" shall mean any quotation or any order that may be entered into the system and designated with a time-in-force of IOC (immediate-or-cancel), DAY (day order), GTC (good-till-cancelled), and OPG (On the Open Order). However, orders received via FIX and OTTO protocol prior to the Nasdaq Opening Cross designated with a time-in-force of IOC will be rejected and shall not be considered eligible interest. Orders received via QUO and quotes received via SQF prior to the Nasdaq Opening

Cross designated with a time-in-force of IOC will remain in-force through the opening and shall be cancelled immediately after the opening.

(5) "Market for the Underlying Security" shall mean either the primary listing market, the primary volume market (defined as the market with the most liquidity in that underlying security for the previous two calendar months), or the first market to open the underlying security, as determined by the Exchange on an issue-by-issue basis and announced to the membership on the Exchange's web site.

(6) "Valid Width National Best Bid or Offer" or "Valid Width NBBO" shall mean the combination of all away market quotes and any combination of NOM-registered Market Maker orders and quotes received over the QUO or SQF Protocols within a specified bid/ask differential as established and published by the Exchange. The Valid Width NBBO will be configurable by underlying, and tables with valid width differentials will be posted by Nasdaq on its website. Away markets that are crossed will void all Valid Width NBBO calculations. If any Market Maker orders or quotes on NOM are crossed internally, then all such orders and quotes will be excluded from the Valid Width NBBO calculation.

(7) "Away Best Bid or Offer" or "ABBO" shall mean the displayed National Best Bid or Offer not including the Exchange's Best Bid or Offer.

(b) Processing of Nasdaq Opening Cross. For the opening of trading of System securities, the Opening Cross shall occur at or after 9:30, if the dissemination of a regular market hours quote or trade (as determined by the Exchange) by the Market for the Underlying Security has occurred (or, in the case of index options, the Exchange has received the opening price of the underlying index). Or, in the case of a trading halt, the Opening Cross shall occur when trading resumes pursuant to Chapter V, Section 4. Market hours trading shall commence or, in the case of a halted option, resume when the Nasdaq Opening Cross concludes.

In each case, the opening of trading or resumption of trading after a halt of System securities will be dependent on the following criteria, provided the ABBO is not crossed:

(1) If there is a possible trade on NOM, a Valid Width NBBO must be present.

(2) If no trade is possible on NOM, then NOM will open dependent upon one of the following:

(A) A Valid Width NBBO is present;

(B) A certain number of other options exchanges (as determined by the Exchange) have disseminated a firm quote on OPRA; or

(C) A certain period of time (as determined by the Exchange) has elapsed.

(3) Nasdaq shall disseminate by electronic means an Order Imbalance Indicator every 5 seconds beginning between 9:20 and 9:28, or a shorter dissemination interval as established by the Exchange, with the default being set at 9:25 a.m. The start of dissemination, and a dissemination interval, shall be posted by Nasdaq on its website.

(4)

(A) The Nasdaq Opening Cross shall occur at the price that maximizes the number of contracts of Eligible Interest in NOM to be executed at or within the ABBO and within a defined range, as established and published by the Exchange, of the Valid Width NBBO.

(B) If more than one price exists under subparagraph (A), and there are no contracts that would remain unexecuted in the cross, the Nasdaq Opening Cross shall occur at the midpoint price, rounded to the penny closest to the price of the last execution in that series (and in the absence of a previous execution price, the price will round up, if necessary) of (1) the National Best Bid or the last offer on NOM against which contracts will be traded whichever is higher, and (2) the National Best Offer or the last bid on NOM against which contracts will be traded whichever is lower.

(C) If more than one price exists under subparagraph (A), and contracts would remain unexecuted in the cross, then the opening price will be the highest/lowest price, in the case of a buy/sell imbalance, at which the maximum number of contracts can trade which is equal to or within a defined range, as established and published by the Exchange, of the Valid Width NBBO on the contra side of the imbalance that would not trade through the ABBO.

Regarding unexecuted contracts:

(i) If unexecuted contracts remain with a limit price that is equal to the opening price, then the remaining unexecuted contracts will be posted at the opening price, displayed one minimum price variation (MPV) away if displaying at the opening price would lock or cross the ABBO, with the contra-side NOM BBO reflected as firm;

(ii) If unexecuted contracts remain with a limit price that is through the opening price, and there is a contra side ABBO at the opening price, then the remaining unexecuted contracts will be posted at the opening price, displayed one minimum price variation (MPV) away, with the contra side NOM BBO reflected as firm and order handling of any remaining interest will be done in accordance with the routing and time-in-force instructions of such interest with the opening price representing the reference price set forth in Chapter VI, Section 10;

(iii) If unexecuted contracts remain with a limit price that is through the opening price, and there is no contra side ABBO at the opening price, then the remaining contracts will be posted at the opening price, with the contra-side NOM BBO reflected as non-firm; and

(iv) Order handling of any residual unexecuted contracts will be done in accordance with Chapter VI, Section 10(7), with the opening price representing the reference price.

(5) If the Nasdaq Opening Cross price is selected and fewer than all contracts of Eligible Interest that are available in NOM would be executed, all Eligible Interest shall be executed at the Nasdaq Opening Cross price in accordance with the execution algorithm assigned to the associated underlying option.

(6) All Eligible Interest executed in the Nasdaq Opening Cross shall be executed at the Nasdaq Opening Cross price, trade reported anonymously, and disseminated via a national market system plan. The Nasdaq Opening Cross price shall be the Nasdaq Official Opening Price for options that participate in the Nasdaq Opening Cross.

(7) If the conditions specified in (b) above have occurred, but there is an imbalance containing marketable routable interest, then one additional Order Imbalance Indicator will be disseminated, after which the cross will occur, executing the maximum number of contracts at the price provided for in subsection (b)(4) of this Section 8. Any remaining Imbalance will be canceled, posted, or routed as per the directions on the customer's order.

(c) Absence of Opening Cross. If an Opening Cross in a symbol is not initiated before the conclusion of the Opening Order Cancel Timer, a firm may elect to have orders returned by providing written notification to the Exchange. These orders include all non GTC orders received over the FIX protocol. The Opening Order Cancel Timer represents a period of time since the underlying market has opened, and shall be established and disseminated by Nasdaq on its website.

## **Sec. 9 Reserved**

## **Sec. 10 Book Processing**

System orders shall be executed through the Nasdaq Book Process set forth below:

(1) Execution Algorithm - The Exchange will determine to apply, for each option, one of the following execution algorithms described in paragraphs (A) or (B). The Exchange will issue an Options Alert specifying which execution algorithm will govern which options any time it is modified.

(A) Price/Time - The System shall execute trading interest within the System in price/time priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Within each price level, if there are two or more quotes or orders at the best price, trading interest will be executed in time priority.

(B) Size Pro-Rata - The System shall execute trading interest within the System in price priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Within

each price level, if there are two or more quotes or orders at the best price, trading interest will be executed based on the size of each Participant's quote or order as a percentage of the total size of all orders and quotes resting at that price. If the result is not a whole number, it will be rounded down to the nearest whole number. If there are residual contracts remaining after rounding, such contracts will be distributed one contract at a time to the remaining Participants in time priority.

(C) Priority Overlays Applicable to Size Pro-Rata Execution Algorithm: the Exchange will apply the following designated Participant priority overlays, which are always in effect when the Size Pro-Rata execution algorithm is in effect.

(i) Public Customer Priority: the highest bid and lowest offer shall have priority except that Public Customer orders shall have priority over non-Public Customer orders at the same price. If there are two or more Public Customer orders for the same options series at the same price, priority shall be afforded to such Public Customer orders in the sequence in which they are received by the System. For purposes of this Rule, a Public Customer order does not include a Professional Order.

(ii) Market Maker Priority: After all Public Customer orders have been fully executed, Options Market Makers shall have priority over all other Participant orders at the same price. If there are two or more Options Market Maker quotes and orders for the same options series at the same price, those shall be executed based on the Size Pro-Rata execution algorithm. If there are contracts remaining after all Market Maker interest has been fully executed, such contracts shall be executed based on the Size Pro-Rata execution algorithm.

(2) Decrementation - Upon execution, an order shall be reduced by an amount equal to the size of that execution.

(3) Price Improvement - any potential price improvement resulting from an execution in the System shall accrue to the party that is removing liquidity previously posted to the Book.

(4) Nasdaq-listed options that are the subject of a trading halt initiated pursuant to Chapter V, Section 3, shall open for trading at the time specified by Nasdaq pursuant to Chapter V, Section 4. When the System opens, orders shall be added to the book in time priority and executed as described above in Subsection (1).

(5) **Zero-Bid Option Series.** In the case where the bid price for any options contract is \$0.00, a market order accepted into the System to sell that series shall be considered a limit order to sell at a price equal to the minimum trading increment as defined in Chapter VI, Section 5. Orders will be placed on the limit order book in the order in which they were received by the System. With respect to market orders to sell which are submitted

prior to the Opening and persist after the Opening, those orders are posted at a price equal to the minimum trading increment as defined in Chapter VI, Section 5.

(6) Routing - All System orders entered by Participants directing or permitting routing to other market centers shall be routed for potential display and/or execution as set forth in Section 11 below.

(7) *Market Access.* In addition to the Exchange Rules regarding routing to away trading centers, Nasdaq Execution Services, LLC, as defined in Chapter VI, Section 11(e) has, pursuant to Rule 15c3-5 under the Act, implemented certain tests designed to mitigate risks associated with providing the Exchange's Members with access to such away trading centers. Pursuant to the policies and procedures developed by Nasdaq Execution Services, LLC to comply with Rule 15c3-5, if an order or series of orders are deemed to be violative of applicable pre-trade requirements under Rule 15c3-5, the order will be rejected prior to routing and/or NES will seek to cancel the order if it has been routed.

### **Sec. 11 Order Routing**

(a) NOM offers two routing strategies, SEEK and SRCH. Each of these routing strategies will be explained in more detail below. An order may in the alternative be marked Do Not Route or "DNR". The Exchange notes that for purposes of this rule the System will route SEEK and SRCH Orders with no other contingencies. The System checks the Order Book for available contracts for potential execution against the SEEK or SRCH orders. After the System checks the Order Book for available contracts, orders are sent to other available market centers for potential execution. For purposes of this rule, a Route Timer shall not exceed one second and shall begin at the time orders are accepted into the System, and the System will consider whether an order can be routed at the conclusion of each Route Timer. For purposes of this rule, NOM's opening process is governed by Chapter VI, Section 8 and includes an opening after a trading halt ("Opening Process").

Routing instructions may be combined with all available order types and times-in-force, with the exception of order types and times-in-force whose terms are inconsistent with the terms of a particular routing instruction. The term "System routing table" refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. The Exchange reserves the right to maintain a different System routing table for different routing instructions and to modify the System routing table at any time without notice. The order routing process shall be available to Participants from 9:30 a.m. Eastern Time until market close and shall route orders as described below. Participants can designate orders as either available for routing or not available for routing. All routing of orders shall comply with Chapter XII, Options Order Protection and Locked and Crossed Market Rules.

(i) **Priority of Routed Orders.** Orders sent to other markets do not retain time priority with respect to other orders in the System and the System shall continue to

execute other orders while routed orders are away at another market center. Once routed by the System, an order becomes subject to the rules and procedures of the away market including, but not limited to, order cancellation. A routed order can be for less than the original incoming order's size. If a routed order is subsequently returned, in whole or in part, that routed order, or its remainder, shall receive a new time stamp reflecting the time of its return to the System, unless any portion of the original order remains on the System, in which case the routed order shall retain its timestamp and its priority.

(ii) Options Participants whose orders are routed to away markets shall be obligated to honor such trades that are executed on away markets to the same extent they would be obligated to honor a trade executed on the Exchange.

(A) NOM shall route orders in options via Nasdaq Execution Services, LLC ("NES"), a broker-dealer that is a member of an unaffiliated SRO which is the designated examining authority for the broker-dealer. NES serves as the Routing Facility of NOM. The sole function of the Routing Facility will be to route orders in options listed and open for trading on NOM to away markets either directly or through one or more third-party unaffiliated routing broker-dealers pursuant to NOM rules on behalf of NOM. The Exchange and NES may not use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority. The Routing Facility is subject to regulation as a facility of Nasdaq, including the requirement to file proposed rule changes under Section 19 of the Act.

(B) Use of NES to route orders to other market centers is optional. Parties that do not desire to use NES must designate orders as not available for routing (a DNR Order), as described in subparagraph (iii)(A) below.

(C) NOM shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and its facilities (including the Routing Facility), and any other entity; or, where there is a routing broker, the Exchange, the Routing Facility and any routing broker, and any other entity, including any affiliate of the routing broker (and if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services).

(D) The books, records, premises, officers, directors, agents, and employees of the Routing Facility, as a facility of the Exchange, shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the Exchange for purposes of and subject to oversight

pursuant to the Exchange Act. The books and records of the Routing Facility, as a facility of the Exchange, shall be subject at all times to inspection and copying by the Exchange and the Commission.

(E) *Market Access*. In addition to the Exchange Rules regarding routing to away trading centers, NES has, pursuant to Rule 15c3-5 under the Act, implemented certain tests designed to mitigate risks associated with providing the Exchange's Members with access to such away trading centers. Pursuant to the policies and procedures developed by NES to comply with Rule 15c3-5, if an order or series of orders are deemed to be violative of applicable pre-trade requirements under Rule 15c3-5, the order will be rejected prior to routing and/or NES will seek to cancel the order if it has been routed.

(F) The Exchange will determine the logic that provides when, how, and where orders are routed away to other exchanges. Except as provided in subparagraph (f) below, the routing broker(s) cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order.

(iii) The following order types are available:

(A) **DNR Order**. A DNR Order will never be routed outside of the Exchange regardless of the prices displayed by away markets. A DNR Order may execute on the Exchange at a price equal to or better than, but not inferior to, the best away market price but, if that best away market remains, the DNR Order will remain in the Exchange book and be displayed at a price one minimum price variation ("MPV") away from that ABBO. Any incoming order interacting with such a resting DNR Order will execute at the ABBO price, unless (1) the ABBO is improved to a price which crosses the DNR's displayed price, in which case the incoming order will execute at the previous ABBO price; (2) the ABBO is improved to a price which locks the DNR's displayed price, in which case the incoming order will execute at the DNR's displayed price. Should the best away market move to an inferior price level, the DNR Order will automatically re-price from its one MPV inferior to the original away best bid/offer price to one MPV away from the new away best bid/offer price or its original limit price.

(B) **SEEK Order**. SEEK is a routing option pursuant to which an order will first check the System for available contracts for execution, and then is sent to other available market centers for potential execution.

(1) If a SEEK is received during the Opening Process it may route as part of the Opening Cross pursuant to Chapter VI, Section 8(b)(7).



(2) A SEEK Order received after the Opening Process that is marketable against the ABBO will route immediately after exhausting all Exchange BBO interest at the same or better price.

(3) If the SEEK Order still has remaining size after an initial route attempt, it may: (i) trade at the next Exchange BBO price (or prices) if the SEEK Order price is locking or crossing that price (or prices) up to the next ABBO price, and/or (ii) be entered into the Order Book at its limit price if not locking or crossing the Exchange BBO or the ABBO, except a Price Improving SEEK Order will book at its limit price and display one MPV inferior to its limit price. If the SEEK Order trades at the next Exchange BBO price (or prices) and the SEEK Order still has remaining size after the execution, then it may start a Route Timer if the SEEK Order is locking or crossing the ABBO, provided the SEEK Order is not booked at its limit price.

(4) If during the Route Timer, the ABBO markets move such that the SEEK Order is no longer marketable against the ABBO, it may: (i) trade at the next Exchange BBO price (or prices) if the SEEK Order price is locking or crossing that price (or prices), and/or (ii) be entered into the Order Book at its limit price (or one MPV inferior to its limit price for Price Improving Orders) if not locking or crossing the Exchange BBO. A SEEK Order will be included in the displayed Exchange BBO, unless the SEEK Order locks or crosses the ABBO, in which case it will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO. If there exists a locked ABBO when the SEEK Order is entered onto the Order Book, the SEEK Order will display at the locked ABBO price. If during the Route Timer any new interest arrives opposite the SEEK Order that is marketable against the SEEK Order, such interest will trade against the SEEK Order at the ABBO price unless the ABBO is improved to a price which crosses the SEEK Order's displayed price, in which case the incoming order will execute at the previous ABBO price. When checking the Order Book, the System will seek to execute at the price at which it would send the order to an away market. Eligible unexecuted orders will continue to be routed as described in paragraph (B)(3).

(5) SEEK Orders booked at their limit price will subsequently be treated as DNR and will not be eligible for routing until the next time the option series is subject to an Opening Process pursuant to Chapter VI, Section 8.

(C) **SRCH Order.** SRCH Order is a routing option pursuant to which an order will first check the System for available contracts for execution, and then is sent to other available market centers for potential execution.

- (1). If a SRCH Order is received during the Opening Process it may route as part of the Opening Cross pursuant to Chapter VI, Section 8(b)(7).
  - (2) A SRCH Order received after the Opening Process that is marketable against the ABBO will route immediately after exhausting all Exchange BBO interest at the same or better price.
  - (3) If the SRCH Order still has remaining size after an initial route attempt, it may: (i) trade at the next Exchange BBO price (or prices) if the SRCH Order price is locking or crossing that price (or prices) up to the next ABBO price, and/or (ii) be entered into the Order Book at its limit price if not locking or crossing the Exchange BBO or the ABBO, except a Price Improving SRCH Order will book at its limit price and display one MPV inferior to its limit price. If the SRCH Order trades at the next Exchange BBO price (or prices) and the SRCH Order still has remaining size after the execution, then it may start a Route Timer if the SRCH Order is locking or crossing the ABBO.
  - (4) If during the Route Timer, the ABBO markets move such that the SRCH Order is no longer marketable against the ABBO, it may: (i) trade at the next Exchange BBO price (or prices) if the SRCH Order price is locking or crossing that price (or prices), and/or (ii) be entered into the Order Book at its limit price (or one MPV inferior to its limit price for Price Improving Orders) if not locking or crossing the Exchange BBO. A SRCH Order will be included in the displayed Exchange BBO, unless the SRCH Order locks or crosses the ABBO, in which case it will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO. If there exists a locked ABBO when the SRCH Order is entered onto the Order Book, the SRCH Order will display at the locked ABBO price. If during the Route Timer any new interest arrives opposite the SRCH Order that is marketable against the SRCH Order, such interest will trade against the SRCH Order at the ABBO price, unless the ABBO is improved to a price which crosses the SRCH Order's displayed price, in which case the incoming order will execute at the previous ABBO price. When checking the Order Book, the System will seek to execute at the price at which it would send the order to an away market. Eligible unexecuted orders will continue to be routed as described in paragraph (C)(3).
  - (5) While on the Order Book at the limit price, should the SRCH Order subsequently be locked or crossed by another market center, it may attempt to route at the conclusion of the Route Timer.
- (b) Cancellation of Orders and Error Account
- (1) The Exchange or NES may cancel orders as either deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, NES, or a routing destination. The Exchange or NES shall provide notice of the cancellation to affected members as soon as practicable.

- (2) NES shall maintain an error account for the purpose of addressing positions that result from a technical or systems issue at NES, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders ("error positions").
- (A) For purposes of this Section 11(g), an error position shall not include any position that results from an order submitted by a member to the Exchange that is executed on the Exchange and automatically processed for clearance and settlement on a locked-in basis.
- (B) Except as provided in Section 11(g)(2)(C), NES shall not (i) accept any positions in its error account from an account of a member, or (ii) permit any member to transfer any positions from the member's account to NES's error account.
- (C) If a technical or systems issue results in the Exchange not having valid clearing instructions for a member to a trade, NES may assume that member's side of the trade so that the trade can be automatically processed for clearance and settlement on a locked-in basis.
- (3) In connection with a particular technical or systems issue, NES or the Exchange shall either (i) assign all resulting error positions to members in accordance with subparagraph (A) below, or (ii) have all resulting error positions liquidated in accordance with subparagraph (B) below. Any determination to assign or liquidate error positions, as well as any resulting assignments, shall be made in a nondiscriminatory fashion.
- (A) NES or the Exchange shall assign all error positions resulting from a particular technical or systems issue to the members affected by that technical or systems issue if NES or the Exchange:
- (i) determines that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the members affected by that technical or systems issue;
  - (ii) determines that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the members affected by that technical or systems issue; and
  - (iii) has not determined to cancel all orders affected by that technical or systems issue in accordance with subparagraph (g)(1) above.
- (B) If NES or the Exchange is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected members in accordance with subparagraph (A) above, or if NES or the Exchange determines to cancel all orders affected by the technical or systems issue in accordance with subparagraph

- (g)(1) above, then NES shall liquidate the error positions as soon as practicable. NES shall:
- (i) provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading; and
  - (ii) establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer and NES/the Exchange associated with the liquidation of the error positions.
- (4) NES and the Exchange shall make and keep records to document all determinations to treat positions as error positions and all determinations for the assignment of error positions to members or the liquidation of error positions, as well as records associated with the liquidation of error positions through the third-party broker-dealer.

## **Sec. 12 Anonymity**

- (a) The transaction reports produced by the System will indicate the details of the transactions, and shall not reveal contra party identities.
- (b) Nasdaq shall reveal a Participant's identity in the following circumstances:
- (1) when a registered clearing agency ceases to act for a participant, or the Participant's clearing firm, and the registered clearing agency determines not to guarantee the settlement of the Participant's trades;
  - (2) for regulatory purposes or to comply with an order of an arbitrator or court;
  - (3) if both Participants to the transaction consent;
  - (4) Unless otherwise instructed by a member, Nasdaq will reveal to a member, no later than the end of the day on the date an anonymous trade was executed, when the member's Order has been decremented by another Order submitted by that same member.

## **Sec. 13 Transaction Price Binding**

The price at which an order is executed shall be binding notwithstanding that an erroneous report in respect thereto may have been rendered, or no report rendered. A report shall not be binding if an order was not actually executed but was reported to have been executed in error.

## **Sec. 14 Authorization to Give Up**

- (a) General. All transactions will automatically clear through the Participant's guarantor at the time of the trade. For each transaction in which a Participant participates, the

Participant may indicate, through post-trade allocation, any Options Clearing Corporation (“OCC”) number of a Clearing Participant through which a transaction will be cleared (“Give Up”), provided the Clearing Participant has not elected to Opt In, as defined and described in paragraph (b) below, and restrict one or more of its OCC number(s) (“Restricted OCC Number”). A Participant may Give Up a Restricted OCC Number provided the Participant has written authorization as described in paragraph (b)(ii) below (“Authorized Participant”).

(b) *Opt In.* Clearing Participants may request the Exchange restrict one or more of their OCC clearing numbers (“Opt In”) as described in subparagraph (i) below. If a Clearing Participant Opts In, the Exchange will require written authorization from the Clearing Participant permitting a Participant to Give Up a Clearing Participant’s Restricted OCC Number. An Opt In would remain in effect until the Clearing Participant terminates the Opt In as described in subparagraph (iii) below. If a Clearing Participant does not Opt In, that Clearing Participant’s OCC number would be subject to Give Up by any Participant.

(i) *Clearing Participant Process to Opt In.* A Clearing Participant may Opt In by sending a completed “Clearing Member Restriction Form” listing all Restricted OCC Numbers and Authorized Participants. A Clearing Participant may elect to restrict one or more OCC clearing numbers that are registered in its name at OCC. The Clearing Participant would be required to submit the Clearing Member Restriction Form to the Exchange’s Membership Department as described on the form. Once submitted, the Exchange requires ninety days before a Restricted OCC Number is effective within the System.

(ii) *Participant Give Up Process for Restricted OCC Numbers.* A Participant desiring to Give Up a Restricted OCC Number must become an Authorized Participant. The Clearing Participant will be required to authorize a Participant as described in subparagraph (i) or (iii), unless the Restricted OCC Number is already subject to a Letter of Guarantee that the Participant is a party to, as set forth in paragraph (d) below.

(iii) *Amendments to Authorized Participants or Restricted OCC Numbers.* A Clearing Participant may amend its Authorized Participants or Restricted OCC Numbers by submitting a new Clearing Member Restriction Form to the Exchange’s Membership Department indicating the amendment as described on the form. Once a Restricted OCC Number is effective within the System pursuant to paragraph (i) above, the Exchange may permit the Clearing Participant to authorize, or remove authorization for, a Participant to Give Up the Restricted OCC Number intra-day only in unusual circumstances, and on the next business day in all regular circumstances. The Exchange will promptly notify Participants if they are no longer authorized to Give Up a Clearing Participant’s Restricted OCC Number. If a Clearing Participant removes a Restricted OCC Number, any Participant may Give Up that OCC clearing number once the removal has become effective on or before the next business day.

(c) *System.* The System will not allow an unauthorized Give Up with a Restricted OCC Number to be submitted at the firm mnemonic level at the point of order entry.

(d) *Letter of Guarantee.* A clearing arrangement subject to a Letter of Guarantee would immediately permit the Give Up of a Restricted OCC Number by the Participant that is party to the arrangement.

(e) An intentional misuse of this rule is impermissible, and may be treated as a violation of Nasdaq Rule 2010A and Chapter III, Section 1.

### **Sec. 15 Submission for Clearance**

(a) All options transactions effected on NOM shall be submitted for clearance to the Clearing Corporation, and all such transactions shall be subject to the Rules of the Clearing Corporation. Every Clearing Participant shall be responsible for the clearance of NOM Transactions of such Clearing Participant and of each Options Participant that gives up such Clearing Participant's name pursuant to a Letter of Guarantee, written authorization to become an Authorized Participant under Chapter VI, Section 14, or other authorization given by such Clearing Participant to such Options Participant, which authorization must be submitted to Nasdaq.

(b) On each business day at or prior to such time as may be prescribed by the Clearing Corporation, NOM shall furnish the Clearing Corporation a report of each Clearing Participant's matched trades.

### **Sec. 16 Fees, Dues and Other Charges**

(a) The Board of Directors shall have the power (i) to establish, assess and levy such fees, dues and other charges (including, without limitation, any extraordinary assessments) upon Participants and any other persons using the facilities or services of the Exchange, and upon applicants for and persons being admitted, registered, qualified and/or initiated to any such status, in each case as the Board of Directors may from time to time establish by resolution or in the Rules of the Exchange (which shall be deemed to include any schedule of fees, dues, other charges and penalties as may be in effect from time to time), (ii) to establish rebates, credits and discounts with respect to any of the foregoing, (iii) to establish programs whereby the Exchange shares or permits any person to participate in any identified source of revenues (less any expenses or other charges as the Exchange shall determine) of the Exchange, (iv) to provide for the direct reimbursement to the Exchange of any cost, expense or category thereof, and (v) except insofar as otherwise specified or provided for in the By-Laws, to establish and assess penalties for failure to pay any fees, dues or charges owed to the Exchange, including, without limitation, termination of membership (which membership may be reissued) and forfeiture of all rights as a member. The Board of Directors may authorize any committee thereof or the Chair of the Board of Directors to exercise any powers of the Board of Directors with respect to the assessment of fees, dues, other charges and penalties authorized in accordance with this Section.

(b) Without limiting the generality of the provisions of the By-Laws, the Board of Directors may, from time to time, fix and impose charges upon Participants, measured by their respective net commissions on transactions effected on the Exchange. Such charges shall be payable at such times and shall be collected in such manner as may be determined by the Board of Directors.

(c) The obligation of Participants to abide by the provisions of these By-Laws and the Rules of the Exchange shall include, without limitation, the obligation to pay all applicable fees, dues and other charges imposed thereon by these By-Laws or the Rules of the Exchange.

(d) The Board of Directors or their designee may suspend or terminate, after due notice, any permit or rights of any Participant or employee thereof using facilities or services of the Exchange, or enjoying any of the privileges therein, who shall not pay dues, fees, other charges, other monies due and owed the Exchange, fines and/or other monetary sanctions in accordance with the Rules of the Exchange.

### **Sec. 17 Message Traffic Mitigation**

For the purpose of message traffic mitigation, based on NOM's traffic with respect to target traffic levels and in accordance with NOM's overall objective of reducing both peak and overall traffic:

(a) NOM will periodically delist options with an average daily volume ("ADV") of less than 100 contracts. Nasdaq will, on a monthly basis, determine the ADV for each series listed on NOM and delist the current series and not list the next series after expiration where the ADV is less than 100 contracts. For options series traded solely on NOM, Nasdaq will delay delisting until there is no open interest in that options series.

(b) NOM will implement a process by which an outbound quote message that has not been sent, but is about to be sent, will not be sent if a more current quote message for the same series is available for sending. This replace on queue functionality will be applied to all options series listed on the Nasdaq Options Market in real time and will not delay the sending of any messages.

(c) When the size associated with a bid or offer increases by an amount less than or equal to a percentage (never to exceed 20%) of the size associated with the previously disseminated bid or offer, NOM will not disseminate the new bid or offer

(d) All message traffic mitigation mechanisms which are used on NOM will be identical for the OPRA "top of the book" broadcast.

### **Sec. 18 Risk Protections**

(a) The following are order risk protections on NOM:

- (1) **Order Price Protection ("OPP").** OPP is a feature of the System that prevents certain day limit, good til cancelled, and immediate or cancel orders at prices outside

of pre-set standard limits from being accepted by the System. OPP applies to all options but does not apply to market orders or Intermarket Sweep Orders. OPP does not apply to orders entered through QUO.

(A) OPP is operational each trading day after the opening until the close of trading, except during trading halts. OPP may be temporarily deactivated on an intra-day basis at the Exchange's discretion.

(B) OPP will reject incoming orders that exceed certain parameters according to the following algorithm:

(i) If the better of the NBBO or the internal market BBO (the "Reference BBO") on the contra-side of an incoming order is greater than \$1.00, orders with a limit more than the greater of the below will cause the order to be rejected by the System upon receipt.

(A) 50% through such contra-side Reference BBO; or

(B) a configurable dollar amount not to exceed \$1.00 through such contra-side Reference BBO as specified by the Exchange announced via an Options Trader Alert.

(ii) If the Reference BBO on the contra-side of an incoming order is less than or equal to \$1.00, orders with a limit more than the greater of the below will cause the order to be rejected by the System upon receipt.

(A) 100% through such contra-side Reference BBO; or

(B) a configurable dollar amount not to exceed \$1.00 through such contra-side Reference BBO as specified by the Exchange announced via an Options Trader Alert.

(2) **Market Order Spread Protection.** System Orders that are Market Orders will be rejected if the best of the NBBO and the internal market BBO (the "Reference BBO") is wider than a preset threshold at the time the order is received by the System. Market Order Spread Protection shall not apply to the Opening Process or during a trading halt. The Exchange may establish different thresholds for one or more series or classes of options.

(b) The following are order and quote risk protections on NOM:

(1) **Acceptable Trade Range.** The system will calculate an Acceptable Trade Range to limit the range of prices at which an order/quote will be allowed to execute. The Acceptable Trade Range is calculated by taking the reference price, plus or minus a value to be determined by the Exchange. (i.e., the reference price - (x) for sell



orders/quotes and the reference price + (x) for buy orders/quotes). Upon receipt of a new order/quote, the reference price is the NBB for sell orders/quotes and the NBO for buy orders/quotes or the last price at which the order/quote is posted whichever is higher for a buy order/quote or lower for a sell order/quote.

(A) If an order/quote reaches the outer limit of the Acceptable Trade Range (the "Threshold Price") without being fully executed, it will be posted at the Threshold Price for a brief period, not to exceed one second ("Posting Period"), to allow more liquidity to be collected. Upon posting, either the current Threshold Price of the order/quote or an updated NBB for buy orders/quotes or the NBO for sell orders/quotes (whichever is higher for a buy order/quote lower for a sell order/quote) then becomes the reference price for calculating a new Acceptable Trade Range. If the order remains unexecuted, a New Acceptable Trade Range will be calculated and the order/quote will execute, route, or post up to the new Acceptable Trade Range Threshold Price. This process will repeat until either i) the order/quote is executed, cancelled, or posted at its limit price or ii) the order/quote has been subject to a configurable number of instances of the Acceptable Trade Range as determined by the Exchange (in which case it will be returned).

(B) During the Posting Period, the Exchange will disseminate as a quotation: (i) the Threshold Price for the remaining size of the order/quote triggering the Acceptable Trade Range and (ii) on the opposite side of the market, the best price will be displayed using the "non-firm" indicator message in accordance with the specifications of the network processor. Following the Posting Period, the Exchange will return to a normal trading state and disseminate its best bid and offer.

(c) The following are Market Maker risk protections on NOM:

(1) **Anti-Internalization.** Quotes and orders entered by Options Market Makers will not be executed against quotes and orders entered on the opposite side of the market by the same market maker using the same Market Maker identifiers, or alternatively, if selected by the Participant, the same account number or Participant identifier. In such a case, the System will cancel the oldest of the quotes or orders back to the entering party prior to execution.

(2) **Quotation Adjustments.**

(A) A NOM Market Maker may provide a specified time period and specified percentage (as these terms are defined below) by which the Exchange's System will automatically remove a NOM Market Maker's quotes and orders in all series of an underlying security submitted through designated NOM protocols, as specified by the Exchange, during a specified time period established by the NOM Market Maker not to exceed 15 seconds ("Percentage-Based Specified

Time Period"). For each series in an option, the System will determine: (i) the percentage that the number of contracts executed in that series represents relative to the number of contracts available at the time of execution plus the number of contracts executed in unexpired prior executions of each side in that series ("Series Percentage"); and (ii) the sum of the Series Percentage in the option issue ("Issue Percentage"). The System tracks and calculates the net impact of positions in the same option issue; long call percentages are offset by short call percentages, and long put percentages are offset by short put percentages in the Issue Percentage. If the Issue Percentage, rounded to the nearest integer, equals or exceeds a percentage established by a NOM Market Maker not less than 1% ("Specified Percentage"), the System will automatically remove a NOM Market Maker's quotes and orders in all series of the underlying security submitted through designated NOM protocols, as specified by the Exchange, during the Percentage-Based Specified Time Period ("Percentage-Based Threshold"). A Percentage-Based Specified Time Period will commence for an option every time an execution occurs in any series in such option and will continue until the System removes quotes and orders as described in (iv) or (v) or the Percentage-Based Specified Time Period expires. A Percentage-Based Specified Time Period operates on a rolling basis among all series in an option in that there may be multiple Percentage-Based Specified Time Periods occurring simultaneously and such Percentage-Based Specified Time periods may overlap.

(B) A NOM Market Maker may provide a specified time period and a volume threshold by which the Exchange's System will automatically remove a NOM Market Maker's quotes and orders in all series of an underlying security submitted through designated NOM protocols, as specified by the Exchange, during a specified time period established by the NOM Market Maker not to exceed 15 seconds ("Volume-Based Specified Time Period") when the NOM Market Maker executes a number of contracts which equals or exceeds the designated number of contracts in all options series in an underlying security ("Volume-Based Threshold"). The NOM Market Maker's Volume-Based Specified Time Period must be the same length of time as designated for purposes of the Percentage Based Threshold. A Volume-Based Specified Time Period will commence for an option every time an execution occurs in any series in such option and will continue until the System removes quotes and orders as described in (f)(iv) or (f)(v) or the Volume-Based Specified Time Period expires. A Volume-Based Specified Time Period operates on a rolling basis among all series in an option in that there may be multiple Volume-Based Specified Time Periods occurring simultaneously and such Volume-Based Specified Time periods may overlap.

(C) A NOM Market Maker or NOM Market Maker Group (multiple affiliated NOM Market Makers is a "Group" as defined by a NOM Participant and provided by such Participant to the Exchange) may provide a specified time period and number of allowable triggers by which the Exchange will automatically remove quotes and orders in all options series in all underlying

issues submitted through designated NOM protocols, as specified by the Exchange ("Multi- Trigger Threshold"). During a specified time period(s) established by the NOM Market Maker not to exceed 15 seconds ("Multi-Trigger Specified Time Period"), the number of times the System automatically removes the NOM Market Maker's or Group's quotes and orders in all options series will be based on the number of triggers of the Percentage-Based Threshold, described in (f)(i) above, as well as the Volume-Based Threshold described in (f)(ii) above. Once the System determines that the number of triggers equals or exceeds a number established by either the NOM Market Maker or Group, during a Multi-Trigger Specified Time Period, the System will automatically remove all quotes and orders in all options series in all underlying issues for that NOM Market Maker or Group. A trigger is defined as the event which causes the System to automatically remove quotes and orders in all options series in an underlying issue. A Multi-Trigger Specified Time Period will commence after every trigger of either the Percentage- Based Threshold or the Volume-Based Threshold and will continue until the System removes quotes and orders as described in (f)(iv) or the Multi-Trigger Specified Time Period expires. The System counts triggers within the Multi-Trigger Specified Time Period across all triggers for the NOM Market Maker or Group. A Multi-Trigger Specified Time Period operates on a rolling basis in that there may be multiple Multi-Trigger Specified Time Periods occurring simultaneously and such Multi-Trigger Specified Time Periods may overlap.

(D) The System will automatically remove quotes in all options in an underlying security when the Percentage-Based Threshold or Volume-Based Threshold has been reached. The System will automatically remove quotes in all options in all underlying securities when the Multi-Trigger Threshold has been reached. The System will send a Purge Notification Message to the NOM Market Maker for all affected options when the above thresholds have been reached.

(i) The Percentage-Based Threshold or Volume-Based Threshold and Multi-Trigger Threshold, are considered independently of each other.

(ii) Marketable orders or quotes will be automatically executed up to the NOM Market Maker's size regardless of whether the execution exceeds the Percentage-Based Threshold or Volume-Based Threshold.

(E) If a NOM Market Maker requests the System to remove quotes and orders in all options series in an underlying security, the System will automatically reset the Percentage-Based Threshold or Volume-Based Specified Time Period(s). The Multi-Trigger Specified Time Period(s) will not automatically reset for the Multi-Trigger Threshold.

(F) When the System removes quotes or orders as a result of the Percentage-Based Threshold or Volume-Based Threshold, the NOM Market Maker must send a re-entry indicator to re-enter the System. When the System removes

quotes or orders as a result of the Multi-Trigger Threshold, the System will not accept orders or quotes through designated protocols until the NOM Market Maker manually requests re-entry. After quotes are removed as a result of the Multi-Trigger Threshold, Exchange staff must set a re-entry indicator in this case to enable re-entry, which will cause the System to send a Reentry Notification Message to the Market Maker for all options series in all underlying issues. The Market Maker's Clearing Firm will be notified regarding the trigger and reentry into the System after quotes are removed as a result of the Multi-Trigger Threshold, provided the Market Maker's Clearing Firm has requested to receive such notification.

(G) The Exchange will require NOM Market Makers to utilize either the Percentage-Based Threshold or the Volume-Based Threshold. The Multi-Trigger Threshold is optional.

### **Sec. 19 Data Feeds and Trade Information**

(a) The following data feeds are offered by NOM:

- (1) Nasdaq ITCH to Trade Options (ITTO) is a data feed that provides full order and quote depth information for individual orders and quotes on the NOM book, last sale information for trades executed on NOM, and Order Imbalance Information as set forth in NOM Rules Chapter VI, Section 8. The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on NOM and identifies if the series is available for closing transactions only.
- (2) Best of Nasdaq Options (BONO) is a data feed that provides the NOM Best Bid and Offer and last sale information for trades executed on NOM. The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on NOM and identifies if the series is available for closing transactions only.

(b) The following order and execution information is available to Participants:

- (1) **Clearing Trade Interface ("CTI")** is a real-time clearing trade update message that is sent to a Participant after an execution has occurred and contains trade details specific to that Participant. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement or "CMTA" or The Options Clearing Corporation or "OCC" number; (ii) Exchange badge or house number; (iii) the Exchange internal firm identifier; (iv) an indicator which will distinguish electronic and non-electronically delivered orders; (v) liquidity indicators and transaction type for billing purposes; and (vi) capacity.

- (2) **TradeInfo**, a user interface, permits a Participant to:(i) search all orders submitted in a particular security or all orders of a particular type, regardless of their status (open, canceled, executed, etc.); (ii) cancellation of open orders at the order, port or firm mnemonic level; (iii) a view of orders and executions; and (iv) download of orders and executions for recordkeeping purposes.
- (3) **FIX DROP** is a real-time order and execution update message that is sent to a Participant after an order been received/modified or an execution has occurred and contains trade details specific to that Participant. The information includes, among other things, the following: (i) executions; (ii) cancellations; (iii) modifications to an existing order; and (iv) busts or post-trade corrections.
- (4) **QUO DROP** provides real-time information regarding orders entered through QUO and the execution of those orders. The QUO DROP data feed is not a trading interface and does not accept order messages.

## **Sec. 20 Exchange Sharing of Participant-Designated Risk Settings**

The Exchange may share any Participant-designated risk settings in the Trading System with the Clearing Participant that clears transactions on behalf of the Participant.

## **Sec. 21 Order and Quote Protocols**

**OTTO functionality implementation shall be delayed until Q2 2020. The Exchange will issue an Options Trader Alert notifying Participants when this functionality will be available.**

(a) **Entry and Display of Orders and Quotes.** Participants may enter orders and quotes into the System as specified below.

(i) The Exchange offers Participants the following protocols for entering orders and quotes respectively:

- (A) "**Financial Information eXchange**" or "**FIX**" is an interface that allows Participants and their Sponsored Customers to connect, send, and receive messages related to orders to and from the Exchange. Features include the following: (1) execution messages; (2) order messages; and (3) risk protection triggers and cancel notifications.
- (B) "**Specialized Quote Feed**" or "**SQF**" is an interface that allows Market Makers to connect, send, and receive messages related to quotes and Immediate-or-Cancel Orders into and from the Exchange. Features include the following: (1) options symbol directory messages (e.g underlying instruments); (2) system event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; and (8) opening imbalance messages. The SQF Purge Interface only

receives and notifies of purge request from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series.

(C) "**Ouch to Trade Options**" or "**OTTO**" is an interface that allows Participants and their Sponsored Customers to connect, send, and receive messages related to orders to and from the Exchange. Features include the following: (1) options symbol directory messages (e.g., underlying); (2) system event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) order messages; and (6) risk protection triggers and cancel notifications.

(D) "**Quote Using Orders**" or "**QUO**" is an interface that allows NOM Market Makers to connect, send, and receive messages related to single-sided orders to and from the Exchange. Order Features include the following: (1) options symbol directory messages (e.g., underlying); (2) system event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) order messages; and (6) risk protection triggers and cancel notifications. Orders submitted by NOM Market Makers over this interface are treated as quotes. Market Makers may only enter interest into QUO in their assigned options series.

## **Sec. 22 Kill Switch**

(a) Nasdaq Options Kill Switch is an optional tool that enables NOM Participants to initiate a message(s) to the System to: (i) promptly remove quotes; and/or (ii) promptly cancel orders. Participants may submit a request to the System to remove/cancel quotes and/or orders based on certain identifier(s) on either a user or group level ("Identifier"). Permissible groups must reside within a single broker-dealer. The System will send an automated message to the NOM Participant when a Kill Switch request has been processed by the Exchange's System.

- (1) If quotes are cancelled by the NOM Participant utilizing the Kill Switch, it will result in the removal of all quotes requested for the Identifier(s). The NOM Participant will be unable to enter any additional quotes for the affected Identifier(s) until re-entry has been enabled pursuant to section (a)(3).
- (2) If orders are cancelled by the NOM Participant utilizing the Kill Switch, it will result in the cancellation of all orders requested for the Identifier(s). The NOM Participant will be unable to enter additional orders for the affected Identifier(s) until re-entry has been enabled pursuant to section (a)(3).
- (3) After quotes and/or orders are removed/cancelled by the NOM Participant utilizing the Kill Switch, the NOM Participant will be unable to enter additional quotes and/or orders for the affected Identifier(s) until the NOM Participant has made a verbal request to the Exchange and Exchange staff has set a re-entry indicator to enable re-entry. Once enabled for re-entry, the System will send a Re-entry Notification Message to the NOM Participant. The applicable Clearing

Participant also will be notified of the re-entry into the System after quotes and/or orders are removed/cancelled as a result of the Kill Switch, provided the Clearing Participant has requested to receive such notification.

### **Sec. 23 Detection of Loss of Communication**

(a) When the SQF Port detects the loss of communication with a NOM Market Maker's Client Application because the Exchange's server does not receive a Heartbeat message for a certain time period ("nn" seconds), the Exchange will automatically logoff the NOM Market Maker's affected Client Application and automatically cancel all of the NOM Market Maker's open quotes. Quotes will be cancelled across all Client Applications that are associated with the same NOM Market Maker ID and underlying issues.

(1) A "Heartbeat" message is a communication which acts as a virtual pulse between the SQF, FIX, QUO or OTTO Port and the Client Application. The Heartbeat message sent by the Participant and subsequently received by the Exchange allows the SQF, FIX, QUO or OTTO Port to continually monitor its connection with the Participant.

(2) SQF Port is the Exchange's System component through which NOM Market Makers communicate their quotes from the Client Application.

(3) FIX and OTTO Ports are the Exchange's System components through which Participants communicate their orders from the Client Application.

(4) QUO is the Exchange's System component through which NOM Market Makers communicate orders from the Client Application.

(5) Client Application is the System component of the Participant through which the Exchange Participant communicates its quotes and orders to the Exchange.

(b) When the FIX Port detects the loss of communication with a Participant's Client Application because the Exchange's server does not receive a Heartbeat message for a certain time period ("nn" seconds), the Exchange will automatically logoff the Participant's affected Client Application and if the Participant has elected to have its orders cancelled pursuant to Chapter VI, Section 6(f) automatically cancel all open orders posted.

(c) When the OTTO Port detects the loss of communication with a Participant's Client Application because the Exchange's server does not receive a Heartbeat message for a certain time period ("nn" seconds), the Exchange will automatically logoff the Participant's affected Client Application and if the Participant has elected to have its orders cancelled pursuant to Chapter VI, Section 6(g) automatically cancel all open orders posted.

(d) When the QUO Port detects the loss of communication with a NOM Market Maker's Client Application because the Exchange's server does not receive a Heartbeat message for a certain time period ("nn" seconds), the Exchange will automatically logoff the NOM Market Maker's affected Client Application and if the NOM Market Maker has elected to have its orders cancelled pursuant to Chapter VI, Section 6(h) automatically cancel all open orders posted.

(e) The default time period ("nn" seconds) for SQF Ports shall be fifteen (15) seconds. A NOM Market Maker may determine another time period of "nn" seconds of no technical connectivity, as required in paragraph (a) above, to trigger the disconnect and must communicate that time to the Exchange. The period of "nn" seconds may be modified to a number between one hundred (100) milliseconds and 99,999 milliseconds for SQF Ports prior to each session of connectivity to the Exchange. This feature is enabled for each NOM Market Maker and may not be disabled.

(1) If the NOM Market Maker systemically changes the default number of "nn" seconds, that new setting shall be in effect throughout the current session of connectivity and will then default back to fifteen seconds. The NOM Market Maker change the default setting systemically prior to each session of connectivity.

(2) If a time period is communicated to the Exchange by calling Exchange operations, the number of "nn" seconds selected by the NOM Market Maker shall persist for each subsequent session of connectivity until the NOM Market Maker either contacts Exchange operations and changes the setting or the NOM Market Maker systemically selects another time period prior to the next session of connectivity.

(f) The default period of "nn" seconds for FIX Ports shall be thirty (30) seconds for the disconnect and, if elected, the removal of orders. If the Participant elects to have its orders removed, in addition to the disconnect, the Participant may determine another time period of "nn" seconds of no technical connectivity, as required in paragraph (b) above, to trigger the disconnect and removal of orders and communicate that time to the Exchange. The period of "nn" seconds may be modified to a number between one (1) second and thirty (30) seconds for FIX Ports prior to each session of connectivity to the Exchange. This feature may be disabled for the removal of orders, however the Participant will be disconnected.

(1) If the Participant systemically changes the default number of "nn" seconds, that new setting shall be in effect throughout the current session of connectivity and will then default back to thirty seconds. The Participant may change the default setting systemically prior to each session of connectivity.

(2) If the time period is communicated to the Exchange by calling Exchange operations, the number of "nn" seconds selected by the Participant shall persist for each subsequent session of connectivity until the Participant either contacts



Exchange operations and changes the setting or the Participant systemically selects another time period prior to the next session of connectivity.

(g) The default time period ("nn" seconds) for OTTO Ports shall be fifteen (15) seconds for the disconnect and, if elected, the removal of orders. If the Participant elects to have its orders removed, in addition to the disconnect, the Participant may determine another time period of "nn" seconds of no technical connectivity, as required in paragraph (c) above, to trigger the disconnect and removal of orders and communicate that time to the Exchange. The period of "nn" seconds may be modified to a number between one hundred (100) milliseconds and 99,999 milliseconds for OTTO Ports prior to each session of connectivity to the Exchange. This feature may be disabled for the removal of orders, however the Participant will be disconnected.

(1) If the Participant systemically changes the default number of "nn" seconds, that new setting shall be in effect throughout the current session of connectivity and will then default back to fifteen seconds. The Participant may change the default setting systemically prior to each session of connectivity.

(2) If a time period is communicated to the Exchange by calling Exchange operations, the number of "nn" seconds selected by the Participant shall persist for each subsequent session of connectivity until the Participant either contacts Exchange operations and changes the setting or the Participant systemically selects another time period prior to the next session of connectivity.

(h) The default time period ("nn" seconds) for QUO Ports shall be fifteen (15) seconds for the disconnect and, if elected, the removal of orders. If the NOM Market Maker elects to have its orders removed, in addition to the disconnect, the NOM Market Maker may determine another time period of "nn" seconds of no technical connectivity, as required in paragraph (d) above, to trigger the disconnect and removal of orders and communicate that time to the Exchange. The period of "nn" seconds may be modified to a number between one hundred (100) milliseconds and 99,999 milliseconds for QUO Ports prior to each session of connectivity to the Exchange. This feature may be disabled for the removal of orders, however the NOM Market Maker will be disconnected.

(1) If the NOM Market Maker systemically changes the default number of "nn" seconds, that new setting shall be in effect throughout the current session of connectivity and will then default back to fifteen seconds. The NOM Market Maker may change the default setting systemically prior to each session of connectivity.

(2) If a time period is communicated to the Exchange by calling Exchange operations, the number of "nn" seconds selected by the NOM Market Maker shall persist for each subsequent session of connectivity until the NOM Market Maker either contacts Exchange operations and changes the setting or the NOM Market Maker systemically selects another time period prior to the next session of connectivity.

(i) The trigger for the SQF, FIX, QUO and OTTO Ports is event and Client Application specific. The automatic cancellation of the NOM Market Maker's quotes for SQF Ports and open orders for FIX, QUO and OTTO Ports entered into the respective SQF, FIX, QUO or OTTO Ports via a particular Client Application will neither impact nor determine the treatment of the quotes of other NOM Market Makers entered into SQF Ports or orders of the same or other Participants entered into the FIX, QUO or OTTO Ports via a separate and distinct Client Application.

## **Chapter VII Market Participants**

### **Sec. 1 Customer Orders and Order Entry Firms**

Order Entry Firms (OEFs) are those Options Participants representing as agent Customer Orders on NOM or trading as principal on NOM.

### **Sec. 2 Market Maker Registration**

Options Participants registered as Market Makers have certain rights and bear certain responsibilities beyond those of other Options Participants. All Market Makers are designated as specialists on NOM for all purposes under the Exchange Act or Rules thereunder.

(a) To register as a Market Maker, a Participant must file an application in writing on such forms as Nasdaq Regulation may prescribe. Nasdaq Regulation reviews applications and considers an applicant's market making ability and such other factors as Nasdaq Regulation deems appropriate in determining whether to approve an applicant's registration as a Market Maker.

(b) The registration of any Participant as a Market Maker may be suspended or terminated by Nasdaq Regulation upon a determination that such Participant has failed to properly perform as a Market Maker.

(c) These Rules place no limit on the number of qualifying entities that may become Market Makers. However, based on system constraints, capacity restrictions or other factors relevant to protecting the integrity of the NOM Trading System the Board or its designee may limit access to the Trading System, for a period to be determined in the Board's discretion, pending any action required to address the issue of concern to the Board. To the extent that the Board places limitations on access to the Trading System on any Participant(s), such limits shall be objectively determined and submitted to the Commission for approval pursuant to a rule change filing under Section 19(b) of the Act.

### **Sec. 3 Continuing Market Maker Registration**

(a) An Options Participant that has qualified as an Options Market Maker may register to make markets in individual options.

(b) An Options Market Maker may become registered in an option by entering a registration request via a Nasdaq approved electronic interface with Nasdaq's systems. Registration shall become effective on the day the registration request is entered.

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

#### **Sec. 4 Good Standing for Market Makers**

(a) To remain in good standing as a Market Maker, the Market Maker must:

i. continue to meet the requirements established in SEC Rule 15c3-1(a)(6)(i), and the general membership requirements set forth in the Rule 1010 Series of the Nasdaq Rules and the requirements for Market Makers as set forth in Nasdaq Rule 4611.

ii. continue to satisfy the Market Maker qualification requirements specified by Nasdaq, as amended from time to time by Nasdaq;

iii. comply with the Rules of the Exchange as well as the Rules of the OCC and the Federal Reserve Board; and

iv. pay on a timely basis such Participation, transaction and other fees as the Exchange and NOM shall prescribe.

(b) The good standing of a Market Maker may be suspended, terminated or otherwise withdrawn, as provided in the Rules, if any of said conditions for approval cease to be maintained or the Market Maker violates any of its agreements with the Exchange or any of the provisions of the Rules.

#### **Sec. 5 Obligations of Market Makers**

(a) In registering as a Market Maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Ordinarily, Market Makers are expected to:

i. During trading hours, a Market Maker must maintain a two-sided market, pursuant to Section 6(d)(i) of this Chapter VII, in those options in which the Market Maker is registered to trade, in a manner that enhances the depth, liquidity and competitiveness of the market.

ii. Reserved.

iii. Engage, to a reasonable degree under the existing circumstances, in dealings for their own accounts when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of (or demand for) a particular option contract, or a temporary distortion of the price relationships between option contracts of the same class.

- iv. Compete with other Market Makers in all options in which the Market Maker is registered to trade.
  - v. Make markets that will be honored for the number of contracts entered into NOM's system in all options in which the Market Maker is registered to trade.
  - vi. Update quotations in response to changed market conditions in all options in which the Market Maker is registered to trade.
  - vii. Maintain active markets in all options in which the Market Maker is registered.
  - viii. Honor all orders that the Trading System routes to away markets pursuant to Chapter XII of these Rules.
- (b) Options Market Makers should not effect purchases or sales on NOM except in a reasonable and orderly manner.
- (c) If Nasdaq Regulation finds any substantial or continued failure by an Options Market Maker to engage in a course of dealings as specified in paragraph (a) of this Section, such Options Market Maker will be subject to disciplinary action or suspension or revocation of registration in one or more of the securities in which the Market Maker is registered. Nothing in this Section will limit any other power of the Board under these Rules, or procedures of NOM with respect to the registration of a Market Maker or in respect of any violation by a Market Maker of the provisions of this Section 5.
- (d) **Market Maker Orders.** Market Makers may enter all order types defined in Chapter VI, Section 1(e) in the options classes to which they are appointed and non-appointed.

### **Sec. 6 Market Maker Quotations**

(a) *Size Associated with Quotes.* A Market Maker's bid and offer for a series of options contracts shall be accompanied by the number of contracts at that price the Market Maker is willing to buy or sell. The best bid and best offer entered by a Market Maker must have a size of at least one (1) contract.

(b) *Two-Sided Quotes.*

A Market Maker that enters a bid (offer) in a series of an option in which he is registered on NOM must enter an offer (bid).

(c) *Firm Quotes.*

i. All quotes and orders entered into the System by Options Participants are firm under this Rule and Rule 602 of Regulation NMS under the Exchange Act ("Rule 602") for the number of contracts specified and according to the requirements of paragraph (a) above.

ii. Market Maker bids and offers are not firm under this Rule and Rule 602:

- 1) for the period prior to the Opening Cross; or
- 2) if any of the circumstances provided in paragraph (b)(3) or (c)(4) of Rule 602 exist.

(d) *Intra-day Quotes*. A Market Maker must enter bids and offers for the options to which it is registered, as follows:

i. A Market Maker must enter bids and offers for the options to which it is registered, except in an assigned options series listed intra-day on the Exchange. On a daily basis, a Market Maker must make markets consistent with the applicable quoting requirements specified below.

(1) Market Makers, associated with the same Options Participant, are collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as NOM may announce in advance, for which that Options Participant's assigned options series are open for trading. Notwithstanding the foregoing, a Market Maker shall not be required to make two-sided markets pursuant to this Chapter VII, Section 6(d)(i)(1) in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater.

(a) An adjusted option series is defined as an option series wherein one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares ("Adjusted Options Series").

(2) Specifically, the Exchange will calculate subparagraph (1) above by (i) taking the total number of seconds the Options Participant disseminates quotes in each assigned options series, excluding Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater for Market Makers; and (ii) dividing that time by the eligible total number of seconds each assigned option series is open for trading that day. Quoting is not required in every assigned options series. Compliance with this requirement is determined by reviewing the aggregate of quoting in assigned options series for the Options Participant.

(3) Nasdaq Regulation may consider exceptions to the requirement to quote 60% (or higher) of the trading day based on demonstrated legal or regulatory requirements or other mitigating circumstances. For purposes of the Exchange's surveillance of an Options Participant compliance with this rule, the Exchange may determine compliance on a monthly basis. The Exchange's monthly compliance evaluation of the quoting requirement does not relieve an Options Participant of the obligation to provide two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against an Options Participant for failing to meet the quoting obligation each trading day.

(4) If a technical failure or limitation of a System of Nasdaq prevents a Market Maker from maintaining, or prevents a Market Maker from communicating to NOM, timely and accurate quotes, the duration of such failure or limitation shall not be included in any of the calculations under this subparagraph (1) with respect to the affected quotes.

ii. Bid/ask Differentials (Quote Spread Parameters). Options on equities (including Exchange-Traded Fund Shares), and on index options must be quoted with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid, including before and during the opening. However, respecting in-the-money series where the market for the underlying security is wider than \$5, the bid/ask differential may be as wide as the spread between the national best bid and offer in the underlying security. The Exchange may establish differences other than the above for one or more series or classes of options.

iii. A Market Maker may be called upon by Nasdaq Regulation to submit a single bid or offer or maintain continuous bids and offers in one or more of the series in options to which the Market Maker is registered whenever, in the judgment of Nasdaq Regulation, it is necessary to do so in the interest of fair and orderly markets.

(e) *Options Classes Other Than Those in Which Registered.* A Market Maker shall be considered an OEF under the Rules in all classes of options listed on NOM. The total number of contracts executed by a Market Maker in options in which it is not registered as a Market Maker shall not exceed 25 percent of the total number of all contracts executed by the Market Maker in any calendar quarter.

(f) Reserved.

## **Sec. 7 Securities Accounts and Orders of Market Makers**

(a) *Identification of Accounts.* In a manner prescribed by Nasdaq Regulation, each Market Maker shall file with Nasdaq Regulation and keep current a list identifying all accounts for stock, options and related securities trading in which the Market Maker may, directly or indirectly, engage in trading activities or over which it exercises investment discretion. No Market Maker shall engage in stock, options or related securities trading in an account which has not been reported pursuant to this Section.

(b) *Reports of Orders.* Each Market Maker shall, upon request and in the prescribed form, report to Nasdaq Regulation every order entered by the Market Maker for the purchase or sale of (i) a security underlying options traded on NOM, or (ii) a security convertible into or exchangeable for such underlying security, as well as opening and closing positions in all such securities held in each account reported pursuant to paragraph (a) of this Section. The report pertaining to orders must include the terms of each order, identification of the brokerage firms through which the orders were entered, the times of entry or cancellation, the times report of execution were received and, if all or part of the order was executed, the quantity and execution price.

(c) *Joint Accounts*. No Market Maker shall, directly or indirectly, hold any interest or participate in any joint account for buying or selling any options contract unless each participant in such joint account is an Options Participant and unless such account is reported to, and not disapproved by, Nasdaq Regulation. Such reports in a form prescribed by Nasdaq Regulation shall be filed with Nasdaq Regulation before any transaction is effected on NOM for such joint account. A participant in a joint account must:

- i. Be either a Market Maker or a Clearing Participant that carries the joint account.
- ii. File and keep current a completed application on such form as is prescribed by Nasdaq Regulation.
- iii. Be jointly and severally responsible for assuring that the account complies with all the Rules of the Exchange.
- iv. Not be a Market Maker registered to the same options classes to which the joint account holder is also registered as a Market Maker.

Coimmentary .01 Reports of accounts and transactions required to be filed with NOM pursuant to this Rule relate only to accounts in which a Market Maker, as an individual, directly or indirectly controls trading activities or has a direct interest in the profits or losses of such account. Such reports would be required for accounts over which a Market Maker exercises investment discretion as well as a Market Maker's proprietary accounts.

### **Sec. 8 Letters of Guarantee**

(a) *Required of Each Options Participant*. No Options Participant shall make any transactions on NOM unless a Letter of Guarantee has been issued for such Participant by a Clearing Participant and filed with Nasdaq Regulation, and unless such Letter of Guarantee has not been revoked pursuant to paragraph (c) of this Section.

(b) *Terms of Letter of Guarantee*. A Letter of Guarantee shall provide that the issuing Clearing Participant accepts financial responsibilities for all NOM Transactions made by the guaranteed Participant.

(c) *Revocation of Letter of Guarantee*. A Letter of Guarantee filed with Nasdaq Regulation shall remain in effect until a written notice of revocation has been filed with Nasdaq Regulation by the Guarantor Clearing Participant. A revocation shall in no way relieve a Clearing Participant of responsibility for transactions guaranteed prior to the effective date of such revocation.

### **Sec. 9 Financial Requirements for Market Makers**

(a) Each Market Maker shall maintain (i) net liquidating equity in its Market Maker account of not less than \$200,000, and in conformity with such guidelines as the Board may establish from time to time, and (ii) net capital sufficient to comply with the requirements of Exchange Act Rule 15c3-1. Each Market Maker which is a Clearing

Participant shall also maintain net capital sufficient to comply with the requirements of the Clearing Corporation. This equity requirement, as well as all other provisions of the section (including capital maintenance requirements), applies to each Market Maker account, without regard to the number of Market Maker accounts per firm. The term "net liquidating equity" means the sum of positive cash balances and long securities positions less negative cash balances and short securities positions.

(b) Each Market Maker that makes an arrangement to finance his transactions as a Market Maker must identify in writing to Nasdaq Regulation the source of the financing and its terms. Nasdaq Regulation must be informed immediately of the intention of any party to terminate or change any such arrangement.

### **Sec. 10 Reserved**

Reserved.

### **Sec. 11 Mass Cancellation of Trading Interest**

An Options Participant may simultaneously cancel all its bids, offers, and orders in all series of options by requesting NOM operations staff to effect such cancellation.

### **Sec. 12 Limitations on Order Entry**

(a) **Limitations on Principal Transactions.** With respect to orders routed to NOM, Options Participants may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on NOM for at least one (1) second or (ii) the Options Participant has been bidding or offering on NOM for at least one (1) second prior to receiving an agency order that is executable against such bid or offer. With respect to Price Improving Orders, the exposure requirement of subsection (i) is satisfied if the displayable portion of the order is displayed at its displayable price for one second.

(1) This Rule prevents Options Participants from executing agency orders to increase its economic gain from trading against the order without first giving other trading interest on NOM an opportunity to either trade with the agency order or to trade at the execution price when the Options Participant was already bidding or offering on the book. However, the Exchange recognizes that it may be possible for an Options Participant to establish a relationship with a customer or other person to deny agency orders the opportunity to interact on NOM and to realize similar economic benefits as it would achieve by executing agency orders as principal. It will be a violation of Section 12 for an Options Participant to be a party to any arrangement designed to circumvent Section 12 by providing an opportunity for a customer to regularly execute against agency orders handled by the Options Participant immediately upon their entry into NOM.

(b) **Limit Orders.** Options Participants shall not enter Public Customer limit orders into the System in the same options series, for the account or accounts of the same or related beneficial owners, in such a manner that the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such options contract on a regular or continuous basis. In determining whether a beneficial owner effectively is



operating as a market maker, the Exchange will consider, among other things: the simultaneous or near-simultaneous entry of limit orders to buy and sell the same options contract and the entry of multiple limit orders at different prices in the same options series.

(c) **Limitations on Solicitation Orders.** An Options Participant may not execute an order it represents as agent on NOM against orders solicited from members and non-member broker-dealers, whether such solicited orders are entered into NOM directly by the Options Participant or by the solicited party (either directly or through another Options Participant), if the Options Participant fails to expose orders on NOM as required by this Rule.

(d) Prior to or after submitting an order to NOM, an Options Participant cannot inform another Options Participant or any other third party of any of the terms of the order for purposes of violating Chapter VII, Section 12.

## **Chapter IX Records, Reports and Audits**

### **Sec. 1 Maintenance, Retention and Furnishing of Books, Records and Other Information**

(a) Each Options Participant shall make, keep current and preserve such books and records as Nasdaq Regulation may prescribe pursuant to the Rules of the Exchange and as may be prescribed by the Exchange Act and the rules and regulations thereunder.

(b) No Options Participant shall refuse to make available to Nasdaq Regulation such books, records or other information as may be called for under the Rules of the Exchange or as may be requested in connection with an investigation by Nasdaq Regulation.

(c) All Options Participants shall prepare and make available all books and records as required by the Rules of the Exchange in English and U.S. dollars.

### **Sec. 2 Reports of Uncovered Short Positions**

(a) Upon request of Nasdaq Regulation, each Options Participant shall submit a report of the total uncovered short positions in each options contract of a class dealt in on NOM showing:

- i. positions carried by such Options Participant for its own account and
- ii. positions carried by such Options Participant for the accounts of Customers;
- iii. provided that the Options Participant shall not report positions carried for the accounts of other Options Participants where such other Options Participants report the positions themselves.

(b) Such report shall be submitted not later than the second business day following the date the request is made.

**Sec. 3 Financial Reports and Audits**

Each Options Participant shall submit to Nasdaq Regulation answers to financial questionnaires, reports of income and expenses and additional financial information in the type, form, manner and time prescribed by the Exchange or Nasdaq Regulation under the Rules of the Exchange.

**Sec. 4 Automated Submission of Trade Data**

(a) An Options Participant shall submit requested trade data elements, in such automated format as may be prescribed by Nasdaq Regulation from time to time, in regard to a transaction(s) that is the subject of the particular request for information.

(b) If the transaction was a proprietary transaction effected or caused to be effected by the Options Participant for any account in which such Participant, or any person associated with the Options Participant, is directly or indirectly interested, the Participant shall submit or cause to be submitted, any or all of the following information as requested by Nasdaq Regulation:

- i. Clearing house number or alpha symbol as used by the Options Participant submitting the data;
- ii. Clearing house number(s) or alpha symbol(s) as may be used from time to time, of the Options Participant(s) on the opposite side of the transaction;
- iii. Identifying symbol assigned to the security and where applicable for the options month and series symbols;
- iv. Date transaction was executed;
- v. Number of option contracts for each specific transaction and whether each transaction was an opening or closing purchase or sale, as well as:
  - 1) the number of shares traded or held by accounts for which options data is submitted;
  - 2) where applicable, the number of shares for each specific transaction and whether each transaction was a purchase, sale or short sale;
- vi. Transaction price;
- vii. Account number; and
- viii. Market center where transaction was executed.

(c) If the transaction was effected or caused to be effected by the Options Participant for any Customer, such Options Participant shall submit or cause to be submitted any or all the following information as requested by Nasdaq Regulation:

- i. Data elements (i) through (viii) of paragraph (b) above;
  - ii. If the transaction was effected for a Public Customer, customer name, address(es), branch office number, representative number, whether the order was discretionary, solicited or unsolicited, date the account was opened and employer name and tax identification number(s); and
  - iii. If the transaction was effected for a Participant broker-dealer customer, whether the broker-dealer was acting as a principal or agent on the transaction or transactions that are the subject of Nasdaq Regulation's request.
- (d) In addition to the above trade data elements, an Options Participant shall submit such other information in such automated format as may be prescribed by Nasdaq Regulation, as may from time to time be required.
- (e) Nasdaq Regulation may grant exceptions, in such cases and for such time periods as it deems appropriate, from the requirement that the data elements prescribed in paragraphs (b) and (c) above be submitted to Nasdaq Regulation in an automated format.

### **Sec. 5 Regulatory Cooperation**

- (a) Nasdaq Regulation may enter into agreements that provide for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement and other regulatory purposes, with domestic and foreign self-regulatory organizations, as well as associations and contract markets and the regulators of such markets.
- (b) No Options Participant, partner, officer, director or other person associated with a Participant or other person or entity subject to the jurisdiction of the Exchange or Nasdaq Regulation shall refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding or refuse to furnish documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange or Nasdaq Regulation requests such information or testimony in connection with an inquiry resulting from an agreement entered into by the Exchange or Nasdaq Regulation pursuant to paragraph (a) of this Section, including but not limited to Participants and affiliates of the Intermarket Surveillance Group. The requirements of this paragraph (b) shall apply regardless whether the Exchange or Nasdaq Regulation has itself initiated a form investigation or disciplinary proceeding.
- (c) Whenever information is requested by Nasdaq Regulation pursuant to this Section, the Options Participant or person associated with a Participant from whom the information is requested shall have the same rights and procedural protections in responding to such request as such Participant or person would have in the case of any other request for information initiated by Nasdaq Regulation pursuant to Nasdaq Regulation's investigative powers.

**Sec. 6 Risk Analysis of Market Maker Accounts**

(a) Each Clearing Participant that clears or guarantees the transactions of Market Makers pursuant to Chapter VII, Section 8 of these Rules (Letters of Guarantee), shall establish and maintain written procedures for assessing and monitoring the potential risks to the Participant's capital over a specified range of possible market movements of positions maintained in such Market Maker accounts and such related accounts as Nasdaq Regulation shall from time to time direct.

- i. Current procedures shall be maintained as current and filed with Nasdaq Regulation.
- ii. The procedures shall specify the computations to be made, the frequency of computations, the records to be reviewed and maintained and the position(s) within the organization responsible for the risk management.

(b) Each affected Participant shall at a minimum assess and monitor its potential risk of loss from options Market Maker accounts each business day as of the close of business the prior day through use of a Nasdaq Regulation-approved computerized risk analysis program, which shall comply with at least the minimum standards specified below and such other standards as from time to time may be prescribed by Nasdaq Regulation:

- i. The estimated loss to the Clearing Participant for each Market Maker account (potential account deficit) shall be determined given the impact of broad market movements in reasonable intervals over a range from negative fifteen percent (15%) to positive fifteen percent (15%).
- ii. The Participant shall calculate volatility using a method approved by Nasdaq Regulation, with volatility updated at least weekly. The program must have the capability of expanding volatility when projecting losses throughout the range of broad market movements.
- iii. Options prices shall be estimated through use of recognized options pricing models such as, but not limited to, Black-Scholes and Cox- Reubenstein.
- iv. At a minimum, written reports shall be generated which describe for each market scenario:
  - 1) projected loss per options class by account;
  - 2) projected total loss per options class for all accounts; and
  - 3) projected deficits per account and in aggregate.

Upon direction by Nasdaq Regulation, each affected Participant shall provide to Nasdaq Regulation such information as it may reasonably require with respect to the Participant's risk analysis for any or all of its Market Maker accounts.

**Sec. 7 Anti-Money Laundering Compliance Program**

Each Options Participant shall comply with Nasdaq Rule 3011.

**Chapter X Discipline and Summary Suspensions****Sec. 1 Imposition of Suspension**

(a) An Options Participant or person associated with an Options Participant that has been expelled or suspended from any SRO or barred or suspended from being associated with a Participant of any SRO, or an Options Participant that is in such financial or operating difficulty that Nasdaq Regulation determines that the Options Participant cannot be permitted to continue to do business as a Participant with safety to investors, creditors, other Options Participants, or NOM, may be summarily suspended.

(b) Nasdaq Regulation may limit or prohibit any person with respect to access to services offered by NOM if any of the criteria of the foregoing sentence is applicable to such person or, in the case of a person who is an Options Participant, if the Exchange determines that such person does not meet the qualification requirements or other prerequisites for such access with safety to investors, creditors, Options Participants or the Exchange.

(c) In the event a determination is made to take summary action pursuant to this Section, notice thereof will be sent to the SEC.

(d) Any person aggrieved by any summary action taken under this Section shall be promptly afforded an opportunity for a hearing by Nasdaq Regulation in accordance with the provisions of the 9500 Rules of the Exchange.

(e) A summary suspension or other action taken pursuant to this Chapter IX shall not be deemed to be disciplinary action under the 9500 Rules of the Exchange. The provisions of such 9500 Rules shall be applicable regardless of any action taken pursuant to this Chapter X.

**Sec. 2 Investigation Following Suspension Violations**

(a) Every Options Participant or person associated with a Participant against which action has been taken in accordance with the Summary Suspension procedures of these Rules shall immediately afford every facility required by Nasdaq Regulation for the investigation of his or its affairs and shall forthwith file with the Secretary a written statement covering all information requested, including a complete list of creditors and the amount owing to each and a complete list of each open long and short position in NOM options contracts maintained by the Options Participant and each of his or its Customers.

(b) Paragraph (a) includes, without limitation, the furnishing of such books and records of the Options Participant or person associated with an Options Participant and the giving of such sworn testimony as may be requested by Nasdaq Regulation.

**Sec. 3 Reinstatement Following Suspension***(a) General.*

- i. An Options Participant, person associated with an Options Participant or other person suspended or limited or prohibited with respect to access to services offered by NOM under the Summary Suspension procedures of these Rules may apply for reinstatement within the time period set forth below.
- ii. Notice of an application for reinstatement shall be given to the Secretary by the Participant and shall be posted by Nasdaq Regulation at least five (5) business days prior to the consideration by Nasdaq Regulation of said application.
- iii. Nasdaq Regulation may approve an application for reinstatement if it finds that the applicant is operationally and financially able to conduct his business with safety to investors, creditors, Participants, and NOM.

*(b) Suspension Due to Operating Difficulty.*

- i. An applicant that, by reason of operating difficulty, has been suspended or limited or prohibited with respect to NOM services, must file any application for reinstatement within six (6) months from the date of such action. Such application must include a statement of all actions taken by the applicant to remedy the operational difficulty in question.
- ii. If the applicant fails to receive reinstatement, or if the application is not acted upon ninety (90) days of its submission, the applicant shall be afforded an opportunity for a hearing in accordance with the provisions of the 9000 Rules of the Exchange

*(c) Suspension Due to Financial Difficulty.*

- i. An applicant who, by reason of financial difficulty, has been suspended or limited or prohibited with respect to NOM services, must file any application for reinstatement within thirty (30) days of such action.
- ii. Such application must include a list of all creditors of the applicant a statement of the amount originally owing and the nature of the settlement in each case, and such other information as may be requested by Nasdaq Regulation.
- iii. The Participant status of an Options Participant summarily suspended by reason of financial difficulty may not be disposed of by Nasdaq Regulation until that Participant has been afforded an opportunity for a hearing respecting such summary suspension pursuant to the provisions of the 9000 Rules of the Exchange

**Sec. 4 Failure to Obtain Reinstatement**

If an Options Participant suspended under the provisions of this Chapter X fails or is unable to apply for reinstatement in accordance with Section 3 of this Chapter X or fails

to obtain reinstatement as therein provided, his or its Participant status shall be disposed of by Nasdaq Regulation in accordance with the 9500 Rules of the Exchange

### **Sec. 5 Termination of Rights by Suspension**

An Options Participant suspended under the provisions of this Chapter X shall be deprived during the term of his or its suspension of all rights and privileges of Participation.

### **Sec. 6 Contracts of Suspended Participants**

(a) When an Options Participant, other than a Clearing Participant, is suspended pursuant to Chapter X of these Rules (Summary Suspension), all open short positions of the suspended Options Participant in options contracts and all open positions resulting from exercise of options contracts, other than positions that are secured in full by a specific deposit or escrow deposit in accordance with the Rules of the Clearing Corporation, shall be closed without unnecessary delay by all Participants carrying such positions for the account of the suspended Participant; provided that Nasdaq Regulation may cause the foregoing requirement to be temporarily waived for such period as it may determine if it shall deem such temporary waiver to be in the interest of the public or the other Participants of NOM.

(b) No temporary waiver hereunder by Nasdaq Regulation shall relieve the suspended Options Participant of its obligations or of damages, nor shall it waive the close out requirements of any other Rules.

(c) When a Clearing Participant is suspended pursuant to Chapter X (Summary Suspension) of these Rules, the positions of such Clearing Participant shall be closed out in accordance with the Rules of the Clearing Corporation.

### **Sec. 7 Penalty for Minor Rule Violations**

The following NOM rule and policy violations may be determined by Nasdaq Regulation to be minor in nature. If so, Nasdaq Regulation may, with respect to any such violation, proceed under the 9200 Series Rules of the Exchange and impose the fine set forth below. Nasdaq Regulation is not required to proceed under said Sections as to any rule violation and may, whenever such action is deemed appropriate, commence a disciplinary proceeding under the 9200 Series Rules of the Exchange as to any such violation. A subsequent violation is calculated on the basis of a rolling 24-month period ("Period").

(a) *Position Limit Violations.* Violations of Chapter III, Section 7 of these Rules (Position Limit) are subject to fines as follows:

<b>Number of Cumulative Violations Within Any Twenty four Month Rolling Period*</b>	<b>Sanction (Imposed on Exchange Members or violations occurring in all other accounts)</b>
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First Offense	\$500
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Second Offense	\$1,000
Third Offense	\$2,500
Fourth and Each Subsequent Offense	\$5,000

\*A violation that consists of (i) a 1 trade date overage, (ii) a consecutive string of trade date overage violations where the position does not change or where a steady reduction in the overage occurs, or (iii) a consecutive string of trade date overage violations resulting from other mitigating circumstances, may be deemed to constitute one offense, provided that the violations are inadvertent.

(b) *Order Entry*. Violations of Chapter VII, Section 6(a) - (c) of these Rules, (Market Maker Quotations) regarding restrictions on orders entered by Market Makers, will be subject to the fines listed below. Each paragraph of such sections subject to this Rule shall be treated separately for purposes of determining the number of cumulative violations.

**Number of Violations Fine Amount Within One Period**

1 to 5	Letter of Caution
6 to 10	\$500
11 to 15	\$1000
16 to 20	\$2000

(c) *Quotes*. Violations of Chapter VII, Section 6(d) of these Rules regarding Market Maker intra-day quoting shall be subject to the fines listed below. Violations of the rule that continue over consecutive trading days will be subject to a separate fine, pursuant to this paragraph (d), for each day during which the violation occurs and is continuing up to a limit of fifteen consecutive trading days. In calculating fine thresholds for each Market Maker, all violations occurring within the Period in any of the Market Makers registered series are to be added together.

**Number of Cumulative Fine Amount Violations Within One Period**

1	Letter of Caution
2 or more	\$300 per day

(d) *LOPR Reporting and Position Limit Violations*. Violations of Chapter III, Section 7-10 of these Rules regarding position limits and maintaining and furnishing reports related to applicable position limits for Options contracts.

FINE SCHEDULE

LOPR Reporting

Position Limits



First Offense	\$1,000	\$500
Second Offense	\$2,500	\$1,000
Subsequent Offense	\$5,000	\$2,500

(e) *Expiring Exercise Declaration Rules.* Violations of Options 5, Section 100 of these Rules regarding exercise of Options Contracts, allocation of exercise notices and delivery and payment of the underlying security.

FINE SCHEDULE	Individual	Firm
First Offense	\$500	\$1,000
Second Offense	\$1,000	\$2,500
Subsequent Offense	\$2,500	\$5,000

(f) *Audit Trail Submissions and Record Keeping Requirements.* Chapter V, Sections 7, regarding the submission of audit trail information; and Chapter IX, Sections 1-3 of these Rules regarding information to be recorded, retained and provided upon request by Nasdaq Regulation or other applicable regulatory entity.

FINE SCHEDULE	Audit Trail Information	Records Provisions
First Offense	\$1,500	\$2,000
Second Offense	\$3,000	\$4,000
Subsequent Offense	\$5,000	\$5,000

(g) *Representation of Orders.* Chapter VII, Section 12 of these Rules regarding Options Participants' restriction on execution of principal orders they represent as agent unless proper exposure parameters are applied.

FINE SCHEDULE	
First Offense	\$1,000
Second Offense	\$2,500
Subsequent Offense	\$5,000

(h) *Trade Reporting.* Chapter VI, Sections 14 and 15 of these Rules regarding all transactions effected on NOM shall be submitted for clearance to the Clearing Corporation, the Options Participants' obligation to give up the name of the Clearing Participants and the prompt reporting of any change in this identity to NOM.

FINE SCHEDULE

First Offense	\$1,500
Second Offense	\$3,000
Subsequent Offense	\$5,000

(i) *Locked and Cross Market Violations*. Chapter XII, Section 3 of these Rules (Locked and Crossed Markets) regarding procedures to be followed in the instance of a Locked or a Crossed Market.

#### FINE SCHEDULE

First Offense	\$500
Second Offense	\$1,000
Subsequent Offense	\$2,500

(j) *Trade-Through Violations*. Chapter XII, Section 2(a) of these Rules (Order Protection) regarding trade-throughs.

#### FINE SCHEDULE

First Offense	\$500
Second Offense	\$1,000
Subsequent Offense	\$2,500

(k) *Failure to Timely File Amendments to Form U4, Form U5 and Form BD*. Any member and/or participant organization that is required to file Form U4, Form U5 or Form BD pursuant to Section 1031 of The Nasdaq Stock Market Rules and the Securities and Exchange Act of 1934, and the rules promulgated thereunder, is required to amend the applicable Form U4, Form U5 or Form BD to keep such forms current at all times. Members and/or participant organizations shall amend Form U4, Form U5 and Form BD not later than thirty (30) days after the filer knew of or should have known of the need for the amendment.

#### FINE SCHEDULE (Implemented on a running 12 month period)

First Offense	\$500
Second Offense	\$1,000
Subsequent Offense	\$2,000

### **Chapter XI Doing Business with the Public**

#### **Sec. 1 Eligibility**

An OEF may only transact business with Public Customers if such Participant also is a member of another registered national securities exchange or association with which the Exchange has entered into an agreement under Rule 17d-2 under the Exchange Act pursuant to which such other exchange or association shall be the designated options examining authority for the OEF. Eligibility to transact business with the public shall be based upon an OEF's meeting the general requirements set forth in this Chapter and the net capital requirements set forth in Exchange Act Rule 15c3-1 (Net Capital Requirements). Such approval may be withdrawn if any such requirements cease to be met.

## **Sec. 2 Registration of Options Principals**

No OEF shall be approved to transact options business with the public until those associated persons who are designated as Options Principals have been approved by and registered with the Exchange. Persons engaged in the management and supervision of the OEF's business pertaining to options contracts shall be designated as Options Principals and shall have responsibility for the overall oversight of the OEF's options related activities on the Exchange.

## **Sec. 3 Registration of Representatives**

(a) No OEF shall be approved to transact business with the public until those persons associated with it who are designated representatives have been approved by and registered with the Exchange.

(b) Persons who perform duties for the OEF which are customarily performed by sales representatives or branch office managers shall be designated as representatives of the OEF. A person accepting orders from non-member customers (unless such customer is a broker-dealer registered with the Securities and Exchange Commission) is required to register with the Exchange and to be qualified by passing the General Securities Registered Representative Examination (Series 7).

## **Sec. 4 Other Affiliations of Registered Persons**

Except with the express written permission of Nasdaq Regulation, every registered person shall devote his entire time during business hours to the business of the OEF employing him, or to the business of its affiliates that are engaged in the transaction of business as a broker or dealer in securities or commodities or in such other businesses as have been approved by the OEF's designated examining authority.

## **Sec. 5 Discipline, Suspension, Expulsion of Registered Persons**

The Exchange or Nasdaq Regulation may discipline, suspend or terminate the registration of any registered person for violation of the Rules of the Exchange or the Rules of the Clearing Corporation.

## **Sec. 6 Branch Offices**

(a) Every OEF approved to do options business with the public under this Chapter shall file with Nasdaq Regulation 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.

(b) No branch office of an OEF shall transact options business with the public unless the manager of such branch office has been qualified as a Registered Options and Security Futures Principal; provided, that this requirement shall not apply to branch offices in which not more than three (3) representatives are located so long as the OEF can demonstrate to the satisfaction of Nasdaq Regulation that the options activities of such branch offices are appropriately supervised by a Registered Options and Security Futures Principal.

### **Sec. 7 Opening of Accounts**

(a) *Approval Required.* No OEF shall accept an order from a Public Customer to purchase or write an options contract unless the Public Customer's account has been approved for options transactions in accordance with the provisions of this Section.

(b) *Diligence in Opening Account.* In approving a Public Customer's account for options transactions, an OEF shall exercise due diligence to learn the essential facts as to the Public Customer and his investment objectives and financial situation, and shall make a record of such information, which shall be retained in accordance with SEC Rule 17a-4 under the Exchange Act. Based upon such information, the branch office manager or other Options Principal shall approve in writing the Public Customer's account for options transactions; provided, that if the branch office manager is not an Options Principal, his approval shall within a reasonable time be confirmed by an Options Principal.

i. In fulfilling its obligations under this paragraph (b) with respect to options Public Customers that are natural persons, an OEF shall seek to obtain the following information at a minimum (information shall be obtained for all participants in a joint account):

- 1) investment objectives (e.g., safety of principal, income, growth, trading profits, speculation);
- 2) employment status (name of employer, self-employed or retired);
- 3) estimated annual income from all sources;
- 4) estimated net worth (exclusive of primary residence);
- 5) estimated liquid net worth (cash, securities, other);
- 6) marital status;
- 7) number of dependents;
- 8) age; and
- 9) investment experience and knowledge (e.g., number of years, size, frequency and type of transactions for options, stocks and bonds, commodities, other).

ii. In addition to the information required in subparagraph (b)(i) above, the Public Customer's account records shall contain the following information, if applicable:

- 1) the source or sources of background and financial information (including estimates) concerning the Public Customer;
- 2) discretionary trading authorization, including agreement on file, name, relationship to Public Customer and experience of person holding trading authority;
- 3) date(s) options disclosure document(s) furnished to Public Customer;
- 4) nature and types of transactions for which account is approved (e.g., buying, covered writing, uncovered writing, spreading, discretionary transactions);
- 5) name of representative;
- 6) name of the Options Principal approving account;
- 7) date of approval; and
- 8) dates of verification of currency of account information.

iii. Refusal of a Public Customer to provide any of the information called for in this paragraph (b) shall be so noted on the Public Customer's records at the time the account is opened. Information provided shall be considered together with other information available in determining whether and to what extent to approve the account for options transactions.

*(c) Verification of Public Customer Background and Financial Information.* The background and financial information upon which the account of every new Public Customer that is a natural person has been approved for options trading, including all of the information required in paragraph (b)(ii) of this Section, unless the information is included in the Public Customer's account agreement, shall be sent to the Public Customer for verification or correction within fifteen (15) days after the Public Customer's account has been approved for options transactions. A copy of the background and financial information on file with the OEF shall also be sent to the Public Customer for verification within fifteen (15) days after the OEF becomes aware of any material change in the Public Customer's financial situation. Absent advice from the Public Customer to the contrary, the information will be deemed to be verified.

*(d) Agreements to Be Obtained.* Within fifteen (15) days after a Public Customer's account has been approved for options transactions, an OEF shall obtain from the Public Customer a written agreement that the account shall be handled in accordance with the Rules of the Exchange and the Rules of the Clearing Corporation and that such Public Customer, acting alone or in concert with others, will not violate the position or exercise limits set forth in Chapter III, Section 7 and 9 of these Rules.

(e) *Options Disclosure Documents to Be Furnished.* At or prior to the time a Public Customer's account is approved for options transactions, an OEF shall furnish the Public Customer with one (1) or more current options disclosure documents issued by the OCC in accordance with the requirements of Section 15 of this Chapter XI (Delivery of Current Options Disclosure Documents and Prospectus).

(f) Every OEF transacting business with the public in uncovered options contracts shall develop, implement and maintain specific written procedures governing the conduct of such business that shall at least include the following:

- i. specific criteria and standards to be used in evaluating the suitability of a Public Customer for uncovered short options transactions;
- ii. specific procedures for approval of accounts engaged in writing uncovered short options contracts (which for the purposes of this Section shall include combinations and any transactions that involve naked writing), including written approval of such accounts by an Options Principal;
- iii. designation of a specific Registered Options and Security Futures Principal(s) as responsible for approving accounts that do not meet the specific criteria and standards for writing uncovered short options transactions and for maintaining written records of the reasons for every account so approved;
- iv. establishment of specific minimum net equity requirements for initial approval and maintenance of Public Customer uncovered options accounts; and
- v. requirements that Public Customers approved for writing uncovered short options transactions be provided with a special written description of the risks inherent in writing uncovered short options transactions, at or prior to the initial uncovered short options transaction pursuant to Section 15 of this Chapter XI (Delivery of Current Options Disclosure Documents and Prospectus).

### **Sec. 8 Supervision of Accounts**

(a) *Duty to Supervise - General.* Each member that conducts a public customer options business shall ensure that its written supervisory system policies and procedures pursuant to FINRA Rules 3110, 3120, 3130 and 3170 adequately address the member's public customer options business.

(b) *Duty to Supervise — Non-Participant Accounts.* Every OEF shall develop and implement a written program for the review of the its non-Participant Public Customer accounts and all orders in such accounts, insofar as such accounts and orders relate to options contracts.

(c) *Duty to Supervise — Uncovered Short Options.* Every OEF shall develop and implement specific written procedures concerning the manner of supervision of Public Customer accounts maintaining uncovered short (written) options positions (which for

the purposes of this Section shall include combinations and any transactions that involve naked writing) and specifically providing for frequent supervisory review of such accounts.

(d) Reserved.

(e) *Maintenance of Public Customer Records.* Background and financial information of Public Customers who have been approved for options transactions shall be maintained at the principal supervisory office having jurisdiction over the office servicing a Public Customer's account, or shall have readily accessible and promptly retrievable, information to permit review of each Public Customer's options account on a timely basis to determine:

- i. the compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved;
- ii. the size and frequency of options transactions;
- iii. commission activity in the account;
- iv. profit or loss in the account;
- v. undue concentration in any options class or classes; and
- vi. compliance with the provisions of Regulation T of the Federal Reserve Board.

### **Sec. 9 Suitability of Recommendations**

(a) Every OEF, Options Principal or representative who recommends to a Public Customer the purchase or sale (writing) of any options contract shall have reasonable grounds for believing that the recommendation is not unsuitable for such Public Customer on the basis of the information furnished by such Public Customer after reasonable inquiry as to his investment objectives, financial situation and needs, and any other information known by such OEF, Options Principal or representative.

(b) No OEF, Options Principal or representative shall recommend to a Public Customer an opening transaction in any options contract unless the person making the recommendation has a reasonable basis for believing at the time of making the recommendation that the Public Customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the options contract.

### **Sec. 10 Discretionary Accounts**

(a) *Authorization and Approval Required.* No OEF shall exercise any discretionary power with respect to trading in options contracts in a Public Customer's account unless such

Public Customer has given prior written authorization and the account has been accepted in writing by a Registered Options and Security Futures Principal.

- i. Each participant shall designate specific Registered Options and Security Futures Principals to review discretionary accounts. A Registered Options and Security Futures Principal other than the Registered Options and Security Futures Principal who accepted the account shall review the acceptance of each discretionary account to determine that the Registered Options and Security Futures Principal accepting the account had a reasonable basis for believing that the Public Customer was able to understand and bear the risks of the strategies or transactions proposed, and the reviewing Registered Options and Security Futures Principal shall maintain a record of the basis for his determination.
- ii. Every discretionary order shall be identified as discretionary on the order at the time of its entry into NOM market.
- iii. Discretionary accounts shall receive frequent appropriate supervisory review by a Registered Options and Security Futures Principal who is not exercising the discretionary authority.

(b) *Record of Transactions.* A record shall be made of every options transaction for an account with respect to which an OEF is vested with any discretionary power, such record to include the name of the Public Customer, options class and series, number of contracts, premium, and date and time when such transaction took place.

(c) *Excessive Transactions Prohibited.* No OEF shall effect with or for any Public Customer's account with respect to which such Participant is vested with any discretionary power any transactions of purchase or sale of options contracts that are excessive in size or frequency in view of the financial resources and character of such account.

(d) *Options Programs.* Where the discretionary account utilizes options programs involving the systematic use of one or more options strategies, the Public Customer shall be furnished with a written explanation of the nature and risks of such programs.

(e) *Discretion as to Price or Time Excepted.* This rule shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite number of option contracts in a specified security shall be executed, except that the authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent a specific, written contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretion exercised in an institutional account, as defined in Rule 3110(c)(4), pursuant to valid Good-Till-Cancelled instructions issued on a "not held" basis. Any exercise of time and price discretion must be reflected on the order ticket.



(f) Any participant that does not utilize computerized surveillance tools for the frequent and appropriate review of discretionary account activity must establish and implement procedures to require Registered Options and Security Futures Principal qualified individuals who have been designated to review discretionary accounts to approve and initial each discretionary order on the day entered.

### **Sec. 11 Confirmation to Public Customers**

(a) Every OEF shall promptly furnish to each Public Customer a written confirmation of each transaction in options contracts that shows the underlying security, type of options, expiration month, exercise price, number of options contracts, premium, commissions, date of transaction and settlement date, and shall indicate whether the transaction is a purchase or sale and whether a principal or agency transaction.

(b) The confirmation shall, by appropriate symbols, distinguish between Exchange options transactions and other transactions in option contracts though such confirmation does not need to specify the exchange or exchanges on which such option contracts were executed.

### **Sec. 12 Statement of Accounts to Public Customers**

(a) Every OEF shall send to its Public Customers a statement of account showing security and money positions, entries, interest charges and any special charges that have been assessed against such account during the period covered by the statement; provided, however, that such charges need not be specifically delineated on the statement if they are otherwise accounted for on the statement and have been itemized on transaction confirmations.

(b) With respect to options Public Customers having a general (margin) account, the Public Customer statement shall also provide the mark-to-market price and market value of each options position and other security position in the general (margin) account, the total market value of all positions in the account, the outstanding debit or credit balance in the account, and the general (margin) account equity. For purposes of this paragraph (b), general (margin) account equity shall be computed by subtracting the total of the short security values and any debit balance from the total of the long security values and any credit balance.

(c) The Public Customer statement shall bear a legend stating that further information with respect to commissions and other charges related to the execution of listed options transactions has been included in confirmations of such transactions previously furnished to the Public Customer, and that such information will be made available to the Public Customer promptly upon request.

(d) Public Customer statements shall bear a legend requesting that the Public Customer promptly advise the Participant of any material change in the Public Customer's investment objectives or financial situation.

(e) Public Customer statements shall be sent at least quarterly to all accounts having a money or a security position during the preceding quarter and at least monthly to all accounts having an entry during the preceding month.

### **Sec. 13 Statements of Financial Condition to Public Customers**

Every OEF shall send to each of its Public Customers statements of the Participant's financial condition as required by SEC Rule 17a-5 under the Exchange Act.

### **Sec. 14 Addressing of Communications to Public Customers**

No OEF shall address any communications to a Public Customer in care of any other person unless either: (1) the Public Customer, within the preceding twelve (12) months, has instructed the OEF in writing to send communications in care of such other persons, or (2) duplicate copies are sent to the Public Customer at some other address designated in writing by him.

### **Sec. 15 Delivery of Current Options Disclosure Documents and Prospectus**

(a) *Options Disclosure Documents.* Every OEF shall deliver a current options disclosure document issued by the OCC to each Public Customer at or prior to the time such Public Customer's account is approved for options transactions. Where a Public Customer is a broker or dealer, the OEF shall take reasonable steps to assure that such broker or dealer is furnished reasonable quantities of current options disclosure documents, as requested by the broker or dealer, to enable it to comply with the requirements of this Section 15.

i. The term "current options disclosure document" means, as to any category of underlying security, the most recent edition of such document that meets the requirements of Rule 9b-1 under the Exchange Act.

ii. A copy of each amendment to an options disclosure document shall be furnished to each Public Customer who was previously furnished the options disclosure document to which the amendment pertains, not later than the time a confirmation of a transaction in the category of options to which the amendment pertains is delivered to such Public Customer. Nasdaq Regulation will advise OEFs when an options disclosure document is amended.

(b) The written description of risks required by this Section 15 shall be in a format prescribed by the Exchange or in a format developed by the Participant, provided it contains substantially similar information as the prescribed Exchange format and has received prior written approval of the Exchange.

(c) Below is a sample risk description for use by OEFs to satisfy the requirements of paragraph (b) of this Section 15:

***Special Statement for Uncovered Options Writers.***

*There are special risks associated with uncovered options writing which expose the investor to potentially significant loss. Therefore, this type of strategy may not be suitable for all Public Customers approved for options transactions.*

- 1. The potential loss of uncovered call writing is unlimited. The writer of an uncovered call is in an extremely risky position, and may incur large losses if the value of the underlying instrument increases above the exercise price.*
- 2. As with writing uncovered calls, the risk of writing uncovered put options is substantial. The writer of an uncovered put option bears a risk of loss if the value of the underlying instrument declines below the exercise price. Such loss could be substantial if there is a significant decline in the value of the underlying instrument.*
- 3. Uncovered options writing is thus suitable only for the knowledgeable investor who understands the risks, has the financial capacity and willingness to incur potentially substantial losses, and has sufficient liquid assets to meet applicable margin requirements. In this regard, if the value of the underlying instrument moves against an uncovered writer's options position, the investor's broker may request significant additional margin payments. If an investor does not make such margin payments, the broker may liquidate stock or options positions in the investor's account with little or no prior notice in accordance with the investor's margin agreement.*
- 4. For combination writing, where the investor writes both a put and a call on the same underlying instrument, the potential risk is unlimited.*
- 5. If a secondary market in options were to become unavailable, investors could not engage in closing transactions, and an options writer would remain obligated until expiration or assignment.*
- 6. The writer of an American-style option is subject to being assigned an exercise at any time after he has written the option until the option expires. By contrast, the writer of a European-style option is subject to exercise assignment only during the exercise period. NOTE: It is expected that you will read the booklet entitled CHARACTERISTICS AND RISKS OF STANDARDIZED OPTIONS available from your broker. In particular, your attention is directed to the chapter entitled Risks of Buying and Writing Options. This statement is not intended to enumerate all of the risks entailed in writing uncovered options.*

#### **Sec. 16 Restrictions on Pledge and Lending of Public Customers' Securities**

- (a) No OEF shall lend, either to itself or to others, securities carried for the account of any Public Customer, unless such OEF shall first have obtained a separate written authorization from such Public Customer permitting the lending of the securities.
- (b) Regardless of any agreement between an OEF and a Public Customer authorizing the OEF to lend or pledge such securities, no OEF shall lend or pledge more of such securities than is fair and reasonable in view of the indebtedness of the Public Customer

to such OEF, except such lending as may be specifically authorized under paragraph (c) of this Section 16.

(c) No OEF shall lend securities carried for the account of any Public Customer that have been fully paid for, or that are in excess of the amount that may be loaned in view of the indebtedness of the Public Customer, unless such OEF first obtains from such Public Customer a separate written authorization designating the particular securities to be loaned.

(d) No OEF shall hold securities carried for the account of any Public Customer that have been fully paid for, or that are in excess of the amount that may be pledged in view of the indebtedness of the Public Customer, unless such securities are segregated and identified by a method that clearly indicates the interest of such Public Customer in those securities.

### **Sec. 17 Transactions of Certain Public Customers**

(a) No OEF shall execute any transaction in securities or carry a position in any security in which:

i. an officer or employee of the Exchange, Nasdaq Regulation, NOM or any national securities exchange that is a participant of the Clearing Corporation, or an officer or employee of a corporation in which the Exchange, or such other exchange owns the majority of the capital stock, is directly or indirectly interested, without the prior written consent of the Exchange; or

ii. a partner, officer, director, principal shareholder or employee of another OEF is directly or indirectly interested, without the consent of such other OEF.

(b) Where the required consent has been granted, duplicate reports of the transaction and position shall promptly be sent to the Exchange or OEF, as the case may be.

### **Sec. 18 Guarantees**

No OEF shall guarantee a Public Customer against loss in his account or in any transaction effected with or for such Public Customer.

### **Sec. 19 Profit Sharing**

(a) No OEF, person associated with an OEF or Options Principal shall share directly or indirectly in the profits or losses in any Public Customer's account, whether carried by such OEF, or any other OEF, without the prior written consent of the OEF carrying the account.

(b) Where such consent is obtained, the OEF, person associated with an OEF or Options Principal shall share in the profits or losses in such account only in direct proportion to the financial contribution made to the account by such person.

### **Sec. 20 Assuming Losses**

No OEF shall assume for its own account any position established for a Public Customer in a security traded on the Exchange after a loss to the Public Customer has been established or ascertained, unless the position was created by the OEF's mistake or unless approval of Nasdaq Regulation has first been obtained.

### **Sec. 21 Transfer of Accounts**

Every Options Participant shall expedite the transfer of a customer's account pursuant to Nasdaq Rules IM-2110-7 and 11870.

### **Sec. 22 Communications with Public Customers**

Options Participants and associated persons of Options Participants shall be bound to comply with the Communications with Public Customers rule of the FINRA, as applicable, as though said rules were part of these Rules

### **Sec. 23 Fidelity Bond**

Options Participants approved to transact business with the public under these Rules and every Clearing Participant shall comply with all applicable provisions of Nasdaq Rule 3020.

### **Sec. 24 Public Customer Complaints**

(a) Every OEF conducting a non-Participant Public Customer business shall make and keep current a separate central log, index or other file for all options-related complaints, through which these complaints can easily be identified and retrieved.

(b) The term "options-related complaint" shall mean any written statement by a Public Customer or person acting on behalf of a Public Customer alleging a grievance arising out of or in connection with listed options.

(c) The central file shall be located at the principal place of business of the Participant or such other principal office as shall be designated by the OEF.

i. Each options-related complaint received by a branch office of an OEF shall be forwarded to the office in which the separate, central file is located not later than thirty (30) days after receipt by the branch office.

ii. A copy of every options-related complaint shall be maintained at the branch office that is the subject of a complaint.

(d) At a minimum, the central file shall include:

i. identification of complainant;

ii. date complaint was received;

iii. identification of the representative servicing the account, if applicable;

- iv. a general description of the subject of the complaint; and
- v. a record of what action, if any, has been taken by the Participant with respect to the complaint.

### **Sec. 25 Telephone Solicitation**

Options Participants and associated persons shall comply with all applicable provisions of Nasdaq Rule 2212.

## **Chapter XII Options Order Protection and Locked and Crossed Market Rules**

### **Sec. 1 Definitions**

The following terms shall have the meaning specified in this Rule solely for the purpose of this Chapter XII:

- (1) "Best Bid" and "Best Offer" mean the highest priced Bid and the lowest priced Offer.
- (2) "Bid" or "Offer" means the bid price or the offer price communicated by a member of an Eligible Exchange to any Broker/Dealer, or to any customer, at which it is willing to buy or sell, as either principal or agent, but shall not include indications of interest.
- (3) "Broker/Dealer" means an individual or organization registered with the SEC in accordance with Section 15(b)(1) of the Exchange Act or a foreign broker or dealer exempt from such registration pursuant to Rule 15a-6 under the Exchange Act.
- (4) "Complex Trade" means: (i) the execution of an order in an option series in conjunction with the execution of one or more related order(s) in different option series in the same underlying security occurring at or near the same time in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.0) and for the purpose of executing a particular investment strategy; or (ii) the execution of a stock-option order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock ("convertible security") coupled with the purchase or sale of option contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock or convertible security necessary to create a delta neutral position, but in no case in a ratio greater than eight (8) option contracts per unit of trading of the underlying stock or convertible security established for that series by the Clearing Corporation.
- (5) "Crossed Market" means a quoted market in which a Protected Bid is higher than a Protected Offer in a series of an Eligible Class.
- (6) "Customer" means an individual or organization that is not a Broker/Dealer.

- (7) "Eligible Exchange" means a national securities exchange registered with the SEC in accordance with Section 6(a) of the Exchange Act that: (a) is a Participant Exchange in OCC (as that term is defined in Section VII of the OCC by-laws); (b) is a party to the OPRA Plan (as that term is described in Section I of the OPRA Plan); and (c) if the national securities exchange chooses not to become a party to this Plan, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection.
- (8) "Exchange Act" means the Securities Exchange Act of 1934, as amended.
- (9) "Intermarket Sweep Order (ISO)" means a limit order for an options series that meets the following requirements:
- (a) When routed to an Eligible Exchange, the order is identified as an ISO;
  - (b) Simultaneously with the routing of the order, one or more additional ISOs, as necessary, are routed to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or any Protected Offer, in the case of a limit order to buy, for the options series with a price that is superior to the limit price of the ISO, with such additional orders also marked as ISOs.
- (10) "Locked Market" means a quoted market in which a Protected Bid is equal to a Protected Offer in a series of an Eligible Options Class.
- (11) "NBBO" means the national best bid and offer in an option series as calculated by an Eligible Exchange.
- (12) "Non-Firm" means, with respect to quotations, that Members of an Eligible Exchange are relieved of their obligation to be firm for their quotations pursuant to Rule 602 under the Exchange Act.
- (13) "OCC" means The Options Clearing Corporation.
- (14) "OPRA" means the Options Price Reporting Authority.
- (15) "OPRA Plan" means the plan filed with the SEC pursuant to Section 11Aa(1)(C)(iii) of the Exchange Act, approved by the SEC and declared effective as of January 22, 1976, as from time to time amended.
- (16) "Participant" means an Eligible Exchange whose participation in the Plan has become effective pursuant to Section 3(c) of the Plan.
- (17) "Plan" means the Options Order Protection and Locked/Crossed Market Plan, as such plan may be amended from time to time.

- (18) "Protected Bid" or "Protected Offer" means a Bid or Offer in an options series, respectively, that:
- (a) Is disseminated pursuant to the OPRA Plan; and
  - (b) Is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange.
- (19) "Protected Quotation" means a Protected Bid or Protected Offer.
- (20) "Quotation" means a Bid or Offer.
- (21) "SEC" means the United States Securities and Exchange Commission.
- (22) "Trade-Through" means a transaction in an options series at a price that is lower than a Protected Bid or higher than a Protected Offer.

## **Sec. 2 Order Protection**

- (a) *Avoidance of Trade-Throughs.* Except as provided in paragraphs (b) and (c) below, Members shall not effect Trade-Throughs.
- (b) *Exceptions to Trade-Through Liability.* The provisions of paragraph (a) pertaining to the satisfaction of Trade-Throughs shall not apply under the following circumstances:
- (1) If an Eligible Exchange repeatedly fails to respond within one second to incoming orders attempting to access its Protected Quotations, the Exchange may bypass those Protected Quotations by:
    - (i) Notifying the non-responding Eligible Exchange immediately after (or at the same time as) electing self-help; and
    - (ii) Assessing whether the cause of the problem lies with its own systems and, if so, taking immediate steps to resolve the problem;

Any time a determination to bypass Protected Quotations of an Eligible Exchange is made pursuant to this sub-paragraph, the Exchange must promptly document the reasons supporting such determination.

- (2) The transaction traded through a Protected Quotation being disseminated by an Eligible Exchange during a trading rotation;
- (3) The transaction that constituted the Trade-Through occurred when there was a Crossed Market;
- (4) The transaction that constitutes the Trade-Through is the execution of an order identified as an ISO;



- (5) The transaction that constitutes the Trade-Through is effected by the Exchange while simultaneously routing an ISO to execute against the full displayed size of any better-priced Protected Quotation;
- (6) The Eligible Exchange displaying the Protected Quotation that was traded through had displayed, within one second prior to execution of the Trade-Through, a Best bid or Best offer, as applicable, for the options series with a price that was equal or inferior to the price of the Trade-Through transaction;
- (7) The Protected Quotation traded through was being disseminated from an Eligible Exchange whose Quotations were Non-Firm with respect to such options series;
- (8) The transaction that constituted the Trade-Through was effected as a portion of a Complex Trade;
- (9) The transaction that constituted the Trade-Through was the execution of an order for which, at the time of receipt of the order, a Member 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 was, for a stopped buy order, lower than the national Best Bid in the options series at the time of execution, or, for a stopped sell order, higher than the national Best Offer in the options series at the time of execution;
- (10) The transaction that constituted the Trade-Through was the execution of an order that was stopped at a price that did not Trade-Through an Eligible Exchange at the time of the stop; or
- (11) 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 options series 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.

### **Sec. 3 Locked and Crossed Markets**

(a) *Prohibition.* Except for quotations that fall within the provisions of paragraph (b) of this Rule, Members shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross a Protected Quotation.

(b) *Exceptions.*

- (1) The locking or crossing quotation was displayed at a time when the Exchange was experiencing a failure, material delay, or malfunction of its systems or equipment;

- (2) The locking or crossing quotation was displayed at a time when there is a Crossed Market; or
- (3) The Member simultaneously routed an ISO to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer.

#### **Sec. 4 Deleted**

Deleted.

### **Chapter XIII Margin Requirements**

#### **Sec. 1 General Rule**

No Participant or associated person may effect a transaction or carry an account for a Customer, whether a Participant or non-Participant of NOM, without proper and adequate margin in accordance with this Chapter XIII and Regulation T.

#### **Sec. 2 Time Margin Must be Obtained**

The amount of margin required by this Chapter XIII shall be obtained as promptly as possible and in any event within a reasonable time.

#### **Sec. 3 Margin Requirements**

(a) A Participant or associated person must be bound by the initial and maintenance margin requirements of either the Chicago Board Options Exchange ("CBOE") or the New York Stock Exchange ("NYSE") as the same may be in effect from time to time.

(b) Such election shall be made in writing by a notice filed with Nasdaq Regulation.

(c) Upon the filing of such election, a Participant or associated person shall be bound to comply with the margin rules of the CBOE or the NYSE, as applicable, as though said rules were part of these Rules.

#### **Sec. 4 Margin Required is Minimum**

(a) The amount of margin prescribed by these Rules is the minimum which must be required initially and subsequently maintained with respect to each account affected thereby: but nothing in these Rules shall be construed to prevent a Participant or associated person from requiring margin in an amount greater than that specified.

(b) NOM may at any time impose higher margin requirements with respect to such positions when it deems such higher margin requirements to be advisable.

#### **Sec. 5 Joint Back Office Participants**

(a) *Requirements for Joint Back Office Participants.* Every Participant or associated person that maintains a joint back office ("JBO") arrangement with a clearing broker-dealer subject to the requirements of Regulation T Section 220.7 of the Federal Reserve

System that is not an NYSE member and that has elected instead to be bound by CBOE margin requirements shall comply with the requirements prescribed below:

- i. Each JBO participant must be registered as a broker-dealer pursuant to Section 15 of the Securities Exchange Act of 1934 and subject to the capital requirements prescribed by Rule 15c3-1 therein; and shall not be eligible to operate under the provisions of SEC Rule 15c3-1(b)(i).
- ii. Each JBO participant must meet and maintain a minimum account equity requirement of \$1,000,000 with each clearing broker-dealer where a JBO account is carried. If equity is below \$1,000,000 the carrying organization must issue a call for additional funds or securities which shall be obtained within five business days. If funds or securities sufficient to eliminate the deficiency are not received within 5 business days, the carrying organization must margin the account in accordance with the requirements prescribed for a customer in Regulation T and Chapter XIII of these Rules.
- iii. Each JBO participant must meet and maintain the ownership standards established by the clearing broker-dealer; and
- iv. Each JBO participant must employ (or have access to) a qualified Series 27 principal.

*(b) Requirements for Clearing Participants Carrying the Accounts of JBO Participants.* Every Clearing Participant carrying JBO accounts in accordance with Regulation T, Section 220.7 of the Federal Reserve Board is subject to the requirements outlined below:

- i. Each Participant which carries JBO accounts shall not allow its (a) tentative net capital to fall below \$25 million; or in the alternative its (b) net capital to fall below \$7 million for a period in excess of three (3) consecutive business days, provided that the broker-dealer has as its primary business the clearance of options market maker accounts and provided that at least 60% of the sum of gross haircuts calculated for all options market maker and JBO participant accounts, without regard to related account equity or clearing firm net capital charges, is attributable to options market maker transactions. In addition, the firm operating pursuant to (b) must include the gross deductions calculated for all JBO participant accounts in the clearing firm's ratio of gross options market maker deductions to adjusted net capital in accordance with the provisions of SEC Rule 15c3-1.
- ii. Each Participant which maintains JBO accounts shall require and maintain equity of \$1,000,000 for each participant, over all related accounts. If equity is below \$1,000,000 the carrying organization must issue a call for additional funds or securities which shall be obtained within five business days. If funds or securities sufficient to eliminate the deficiency are not received within 5 business days, the carrying organization must margin the account in accordance with the requirements prescribed for a customer in Regulation T and Chapter XIII of these Rules.
- iii. Each Participant which maintains JBO accounts shall adjust its net worth daily by deducting any deficiency between a JBO Participant's account equity and the proprietary

haircut calculated pursuant to SEC Rule 15c3- 1 for the positions maintained in such account.

- iv. Each Participant which maintains JBO accounts shall establish and maintain written ownership standards for JBO accounts.
- v. The Participant must develop risk analysis standards which are acceptable to the Nasdaq Regulation. At minimum these standards must comply with the requirements of Chapter IX, Section 6 of these Rules.
- vi. Each Participant which maintains JBO accounts must notify its Designated Examining Authority ("DEA"), in writing, of its intention to carry such accounts.
- vii. If at any time a Clearing Participant operating pursuant to paragraphs i(a) or (b) above determines that its tentative net capital or that its net capital, respectively, has fallen below the applicable requirements, such clearing member shall immediately notify Nasdaq Regulation of such deficiency by telegraphic or facsimile notice; and be subject to the prohibitions against withdrawal of equity capital set forth in SEC Rule 15c3-1(e) and to the prohibitions against reduction, prepayment, and repayment of subordination agreements set forth in paragraph (b)(1) of SEC Rule 15c3-1d, as if such broker or dealer's net capital were below the minimum standards specified by each of these paragraphs.

***Supplementary Material: . . .***

.01 JBO participants shall not be considered self-clearing for any purpose other than the extension of credit under Chapter XIII of these Rules.

**Chapter XIV Index Rules**

**Sec. 1 Application of Index Rules**

The Sections in this Chapter are applicable only to index options (options on indices of securities as defined below). The Sections in Chapters I through XIII are also applicable to the options provided for in this Chapter, unless such Sections are specifically replaced or are supplemented by Sections in this Chapter. Where the Sections in this Chapter indicate that particular indices or requirements with respect to particular indices will be "Specified," NOM shall file a proposed rule change with the Commission to specify such indices or requirements.

**Sec. 2 Definitions**

- (a) The term "aggregate exercise price" means the exercise price of the options contract times the index multiplier.
- (b) The term "American-style index option" means an option on an industry or market index that can be exercised on any business day prior to expiration.

- (c) The term "A.M.-settled index option" means an index options contract for which the current index value at expiration shall be determined as provided in Section 11(a)(5) of this Chapter
- (d) The term "call" means an options contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase from the Clearing Corporation the current index value times the index multiplier.
- (e) The term "current index value" with respect to a particular index options contract means the level of the underlying index reported by the reporting authority for the index, or any multiple or fraction of such reported level specified by NOM. The current index value with respect to a reduced-value long term options contract is one-tenth of the current index value of the related index option. The "closing index value" shall be the last index value reported on a business day.
- (f) The term "exercise price" means the specified price per unit at which the current index value may be purchased or sold upon the exercise of the option.
- (g) Unless separately defined elsewhere in these Rules, the term "expiration date" means (i) in the case of such an option expiring prior to February 1, 2015, the Saturday immediately following the third Friday of the expiration month of such option contract; and (ii) in the case of such an option expiring on or after February 1, 2015, the third Friday of the expiration month of such option contract, or if such Friday is a day on which the Exchange on which such option is listed is not open for business, the preceding day on which such Exchange is open for business. Notwithstanding the foregoing, in the case of certain options expiring on or after February 1, 2015 that the Clearing Corporation has designated as grandfathered, the term "expiration date" shall mean the Saturday immediately following the third Friday of the expiration month.
- (h) The term "European-style index option" means an option on an industry or market index that can be exercised only on the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the last business day prior to the day it expires.
- (i) The term "index multiplier" means the amount specified in the contract by which the current index value is to be multiplied to arrive at the value required to be delivered to the holder of a call or by the holder of a put upon valid exercise of the contract.
- (j) The term "industry index" and "narrow-based index" mean an index designed to be representative of a particular industry or a group of related industries.
- (k) The term "market index" and "broad-based index" mean an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries.

(l) The term "P.M.-settled index option" means an index options contract for which the current index value at expiration shall be determined as provided in Section 11(a)(6) of this Chapter.

(m) The term "put" means an options contract under which the holder of the option has the right, in accordance with the terms and provisions of the option, to sell to the Clearing Corporation the current index value times the index multiplier.

(n) The term "Quarterly Option Series" means a series in an options class that is approved for listing and trading on the Exchange in which the series is opened for trading on any business day and expires at the close of business on the last business day of a calendar quarter.

(o) The term "reporting authority" with respect to a particular index means the institution or reporting service designated by Nasdaq as the official source for (1) calculating the level of the index from the reported prices of the underlying securities that are the basis of the index and (2) reporting such level. The reporting authority for each index approved for options trading on NOM shall be Specified (as provided in Section 1 of this Chapter) in the Supplementary Material to this Section 2.

(p) The term "Short Term Option Series" means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Thursday or Friday that is a business day and that expires on the Friday of the next business week. If a Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Thursday or Friday, respectively.

(q) The term "underlying security" or "underlying securities" with respect to an index options contract means any of the securities that are the basis for the calculation of the index.

### **Supplementary Material to Section 2**

01. The reporting authorities designated by the Exchange in respect of each index underlying an index options contract traded on the Exchange are as provided below.

#### ***Index Reporting Authority***

*Nasdaq 100 Index - The Nasdaq Stock Market*

*Mini Nasdaq 100 Index - The Nasdaq Stock Market*

*PHLX Oil Service Sector<sup>SM</sup> - The Nasdaq Stock Market*

*PHLX Semiconductor Sector<sup>SM</sup> - The Nasdaq Stock Market*

*PHLX Housing Sector<sup>TM</sup> - The Nasdaq Stock Market*

*MSCI EM Index - MSCI Inc.*

*MSCI EAFE Index - MSCI Inc.*

### **Sec. 3 Designation of a Broad-Based Index**

(a) The component securities of an index underlying a broad-based index option contract need not meet the requirements of Section 3 of Options 4 of these Rules (Criteria for Underlying Securities). Except as set forth in subparagraph (b) below, the listing of a class of index options on a broad-based index requires the filing of a proposed rule change to be approved by the SEC under Section 19(b) of the Exchange Act.

(b) NOM may trade options on a broad-based index pursuant to Rule 19b-4(e) of the Securities Exchange Act of 1934, if each of the following conditions is satisfied:

- (1) The index is broad-based, as defined in Section 2(j) of this Chapter;
- (2) Options on the index are designated as A.M.-settled;
- (3) The index is capitalization-weighted, modified capitalization weighted, price-weighted, or equal dollar-weighted;
- (4) The index consists of 50 or more component securities;
- (5) Component securities that account for at least ninety-five percent (95%) of the weight of the index have a market capitalization of at least \$75 million, except that component securities that account for at least sixty-five percent (65%) of the weight of the index have a market capitalization of at least \$100 million;
- (6) Component securities that account for at least eighty percent (80%) of the weight of the index satisfy the requirements of Section 3 of Options 4 applicable to individual underlying securities;
- (7) Each component security that accounts for at least one percent (1%) of the weight of the index has an average daily trading volume of at least 90,000 shares during the last six month period;
- (8) No single component security accounts for more than ten percent (10%) 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 thirty-three percent (33%) of the weight of the index;
- (9) Each component security must be an "NMS stock" as defined in Rule 600 of Regulation NMS under the Exchange Act;

- (10) Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than twenty percent (20%) of the weight of the index;
- (11) The current index value is widely disseminated at least once every fifteen (15) seconds by OPRA, CTA/CQ, NIDS or one or more major market data vendors during the time options on the index are traded on NOM;
- (12) NOM reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of NOM's current Independent System Capacity Advisor allocation and the number of new messages per second expected to be generated by options on such index;
- (13) An equal dollar-weighted index is rebalanced at least once every calendar quarter;
- (14) If an index is maintained by a broker-dealer, the index is calculated by a third-party who is not a broker-dealer, and the broker-dealer has erected an informational barrier around its personnel who have access to information concerning changes in, and adjustments to, the index;
- (15) NOM has written surveillance procedures in place with respect to surveillance of trading of options on the index.

(c) The following maintenance listing standards shall apply to each class of index options originally listed pursuant to paragraph (b) above:

- (1) The requirements set forth in subparagraphs (b)(1) - (b)(3) and (b)(9) - (b)(15) must continue to be satisfied. The requirements set forth in subparagraphs (b)(5) - (b)(8) must be satisfied only as of the first day of January and July in each year;
- (2) The total number of component securities in the index may not increase or decrease by more than ten percent (10%) from the number of component securities in the index at the time of its initial listing. In the event a class of index options listed on NOM fails to satisfy the maintenance listing standards set forth herein, NOM shall not open for trading any additional series of options of that class unless the continued listing of that class of index options has been approved by the SEC under Section 19(b) (2) of the Exchange Act.

(d) MSCI EM Index

(i) NOM may trade options on the MSCI EM Index if each of the following conditions is satisfied:

- (1) The index is broad-based, as defined in Chapter XIV, Section 2(j);
- (2) Options on the index are designated as P.M.-settled index options;



- (3) The index is capitalization-weighted, price-weighted, modified capitalization-weighted or equal dollar-weighted;
  - (4) The index consists of 500 or more component securities;
  - (5) All of the component securities of the index will have a market capitalization of greater than \$100 million;
  - (6) No single component security accounts for more than fifteen percent (15%) 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 fifty percent (50%) of the weight of the MSCI EM Index;
  - (7) Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than twenty-two and a half percent (22.5%) of the weight of the index;
  - (8) The current index value is widely disseminated at least once every fifteen (15) seconds by one or more major market data vendors during the time options on the index are traded on NOM;
  - (9) NOM reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of NOM's current Independent System Capacity Advisor (ISCA) allocation and the number of new messages per second expected to be generated by options on such index; and
  - (10) NOM has written surveillance procedures in place with respect to surveillance of trading of options on the index.
- (ii) The following maintenance listing standards shall apply to each class of index options originally listed pursuant to paragraph (d).
- (1) The conditions set forth in subparagraphs (d)(i) (1), (2), (3), (4), (7) (8), (9) and (10) must continue to be satisfied. The conditions set forth in subparagraphs (d)(i) (5) and (6) must be satisfied only as of the first day of January and July in each year;
  - (2) The total number of component securities in the index may not increase or decrease by more than thirty-five percent (35%) from the number of component securities in the index at the time of its initial listing.

In the event a class of index options listed on NOM fails to satisfy the maintenance listing standards set forth herein, NOM shall not open for trading any additional series of options of that class unless the continued listing of that class of index

options has been approved by the Commission under Section 19(b)(2) of the Exchange Act.

(e) MSCI EAFE Index

- (i) NOM may trade options on the MSCI EAFE Index if each of the following conditions is satisfied:
- (1) The index is broad-based, as defined in Chapter XIV, Section 2(j);
  - (2) Options on the index are designated as P.M.-settled index options;
  - (3) The index is capitalization-weighted, price-weighted, modified capitalization-weighted or equal dollar-weighted;
  - (4) The index consists of 500 or more component securities;
  - (5) All of the component securities of the index will have a market capitalization of greater than \$100 million;
  - (6) No single component security accounts for more than fifteen percent (15%) 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 fifty percent (50%) of the weight of the MSCI EAFE Index;
  - (7) Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than twenty percent (20%) of the weight of the index;
  - (8) The current index value is widely disseminated at least once every fifteen (15) seconds by one or more major market data vendors during the time options on the index are traded on NOM;
  - (9) NOM reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of the NOM's current Independent System Capacity Advisor (ISCA) allocation and the number of new messages per second expected to be generated by options on such index; and
  - (10) NOM has written surveillance procedures in place with respect to surveillance of trading of options on the index.
- (ii) The following maintenance listing standards shall apply to each class of index options originally listed pursuant to paragraph (e).

- (1) The conditions set forth in subparagraphs (e)(i) (1), (2), (3), (4), (7) (8), (9) and (10) must continue to be satisfied. The conditions set forth in subparagraphs (e)(i) (5) and (6) must be satisfied only as of the first day of January and July in each year;
- (2) The total number of component securities in the index may not increase or decrease by more than thirty-five percent (35%) from the number of component securities in the index at the time of its initial listing.

In the event a class of index options listed on NOM fails to satisfy the maintenance listing standards set forth herein, NOM shall not open for trading any additional series of options of that class unless the continued listing of that class of index options has been approved by the Commission under Section 19(b)(2) of the Exchange Act.

#### **Sec. 4 Dissemination of Information**

- (a) NOM shall disseminate, or shall assure that the current index value is disseminated, after the close of business and from time-to-time on days on which transactions in index options are made on NOM.
- (b) NOM shall maintain, or shall assure that the current index value is maintained in files available to the public, information identifying the stocks whose prices are the basis for calculation of the index and the method used to determine the current index value.

#### **Sec. 5 Position Limits for Broad-Based Index Options**

- (a) Options Participants shall comply with the following applicable rules:
  - (1) rules of the Chicago Board Options Exchange Incorporated ("CBOE") with respect to position limits for broad-based index options if the broad-based index options are traded on CBOE and NOM;
  - (2) rules of Nasdaq PHLX LLC ("PHLX") with respect to position limits for the following broad-based index options: MSCI EM and MSCI EAFE or any PHLX proprietary product;
  - (3) rules of NOM for broad-based index options with respect to position limits for broad-based index options if the broad-based index options are traded only on NOM and not traded on CBOE and are not listed in (2) above.
- (b) Index options contracts shall not be aggregated with options contracts on any stocks whose prices are the basis for calculation of the index.
- (c) Positions in reduced-value index options shall be aggregated with positions in full-value indices. For such purposes, ten reduced-value contracts shall equal one contract.

**Sec. 6 Designation of Narrow-Base and Micro-Narrow-Based Index Options**

(a) The component securities of an index underlying a narrow-based index option contract need not meet the requirements of Section 3 of Options 4 of these Rules (Criteria for Underlying Securities). Except as set forth in subparagraph (b) below, the listing of a class of index options on a narrow-based index requires the filing of a proposed rule change to be approved by the SEC under Section 19(b) of the Exchange Act.

(b) *Narrow-Based Index*. NOM may trade options on a narrow-based index pursuant to Rule 19b-4(e) of the 1934 Act, if each of the following conditions is satisfied:

- (1) The options are designated as A.M.-settled index options;
- (2) The index is capitalization-weighted, price-weighted, equal dollar-weighted, or modified capitalization-weighted, and consists of ten or more component securities;
- (3) Each component security has a market capitalization 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 capitalization is at least \$50 million;
- (4) Trading volume of each component security has been at least one million shares for each of the last six months, 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, trading volume has been at least 500,000 shares for each of the last six months;
- (5) In a capitalization-weighted index or a modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index each have had an average monthly trading volume of at least 2,000,000 shares over the past six months;
- (6) No single component security represents 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% (65% for an index consisting of fewer than 25 component securities) of the weight of the index;
- (7) Component securities that account for at least 90% of the weight of the index and at least 80% of the total number of component securities in the index satisfy the requirements of Options 4, Section 3 applicable to individual underlying securities;
- (8) Each component security must be an "NMS stock" as defined in Rule 600 of Regulation NMS of the Securities Exchange Act of 1934.

(9) Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the index;

(10) The current underlying index value will be reported at least once every fifteen seconds during the time the index options are traded on the Exchange;

(11) An equal dollar-weighted index will be rebalanced at least once every calendar quarter; and

(12) If an underlying index is maintained by a broker-dealer, the index is calculated by a third party who is not a broker-dealer, and the broker-dealer has erected a "Chinese Wall" around its personnel who have access to information concerning changes in and adjustments to the index.

(c) *Maintenance Criteria.* The following maintenance listing standards shall apply to each class of index options originally listed pursuant to subsection (b) above:

(1) The requirements stated in subsections (b)(1), (3), (6), (7), (8), (9), (10), (11) and (12) must continue to be satisfied, provided that the requirements stated in subparagraph (b)(6) must be satisfied only as of the first day of January and July in each year;

(2) The total number of component securities in the index may not increase or decrease by more than 33 1/3% from the number of component securities in the index at the time of its initial listing, and in no event may be less than nine component securities;

(3) Trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months;

(4) In a capitalization-weighted index or a modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index each have had an average monthly trading volume of at least 1,000,000 shares over the past six months.

In the event a class of index options listed on NOM fails to satisfy the maintenance listing standards set forth herein, NOM shall not open for trading any additional series of options of that class unless such failure is determined by NOM not to be significant and the Commission concurs in that determination, or unless the continued listing of that class of index options has been approved by the Commission under Section 19(b)(2) of the Exchange Act.

(d) Notwithstanding paragraph (a) above, NOM may trade options on a Micro Narrow-Based security index pursuant to Rule 19b-4(e) of the 1934 Act, if each of the following condition is satisfied:

(1) The Index is a security index:

(i) that has 9 or fewer component securities; or

(ii) in which a component security comprises more than 30 percent of the index's weighting; or

(iii) in which the 5 highest weighted component securities in the aggregate comprise more than 60 percent of the index's weighting; or

(iv) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than \$50,000,000 (or in the case of an index with 15 or more component securities, \$30,000,000) except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security;

(2) The index is capitalization-weighted, modified capitalization-weighted, price-weighted, share weighted, equal dollarweighted, approximate equal-dollar weighted, or modified equal-dollar weighted;

(i) For the purposes of this paragraph (d), an approximate equal-dollar weighted index is composed of one or more securities in which each component security will be weighted equally based on its market price on the index's selection date and the index must be reconstituted and rebalanced if the notional value of the largest component is at least twice the notional volume of the smallest component for fifty percent or more of the trading days in the three months prior to December 31 of each year. For purposes of this provision the "notional value" is the market price of the component times the number of shares of the underlying component in the index. Reconstitution and rebalancing are also mandatory if the number of components in the index is greater than five at the time of rebalancing. NOM reserves the right to rebalance quarterly at its discretion.

(ii) For the purposes of this paragraph (d), a modified equal-dollar weighted index is an index in which each underlying component represents a pre-determined weighting percentage of the entire index. Each component is assigned a weight that takes into account the relative market capitalization of the securities comprising the index. A modified equal-dollar weighted index will be balanced quarterly.

(iii) For the purposes of this paragraph (d), a share-weighted index is calculated by multiplying the price of the component security by an adjustment factor. Adjustment factors are chosen to reflect the investment objective deemed appropriate by the designer of the index and will be published by the Exchange as part of the contract specifications. The value of the index is calculated by adding the weight of each component security and dividing the total by an index divisor, calculated to yield a benchmark index level as of a particular date. A share-weighted index is not adjusted to reflect changes in the number of outstanding shares of its components. A share-weighted Micro Narrow-Based index will not be rebalanced. If a share-weighted Micro Narrow-Based Index fails to meet the maintenance listing standards under Subsection (e) of this rule, NOM will restrict trading in existing option series to closing transactions and will not issue additional series for that index.

(iv) NOM may rebalance any Micro Narrow-Based index on an interim basis if warranted as a result of extraordinary changes in the relative values of the component securities. To the extent investors with open positions must rely upon the continuity of the options contract on the index, outstanding contracts are unaffected by rebalancings.

(3) Each component security in the index has a minimum market capitalization of at least \$75 million, except that each of the lowest weighted securities in the index that in the aggregate account for no more than 10% of the weight of the index may have a minimum market capitalization of only \$50 million;

(4) The average daily trading volume in each of the preceding six months for each component security in the index is at least 45,500 shares, except that 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 may have an average daily trading volume of only 22,750 shares for each of the last six months;

(5) In a capitalization-weighted index, the lesser of: (1) the five highest weighted component securities in the index each have had an average daily trading volume of at least 90,000 shares over the past six months; or (2) 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 had an average daily trading volume of at least 90,000 shares over the past six months;

(6) Subject to subparagraphs (4) and (5) above, the component securities that account for at least 90% of the total index weight and at least 80% of the total number of component securities in the index must meet the requirements applicable to individual underlying securities;

(7)

(i) Each component security in the index is a "reported security" as defined in Rule 600 of Regulation NMS under the Exchange Act; and

(ii) Foreign securities or ADRs that are not subject to comprehensive surveillance sharing agreements do not represent more than 20% of the weight of the index;

(8) The current underlying index value will be reported at least once every fifteen seconds during the time the index options are traded on NOM;

(9) An equal dollar-weighted index will be rebalanced at least once every quarter;

(10) If the underlying index is maintained by a broker-dealer, the index is calculated by a third party who is not a brokerdealer, and the broker-dealer has in place an information barrier around its personnel who have access to information concerning changes in and adjustments to the index;

(11) Each component security in the index is registered pursuant to Section 12 of the Exchange Act; and

(12) Cash settled index options are designated as A.M.-settled options.

(e) The following maintenance listing standards shall apply to each class of index options originally listed pursuant to paragraph (d) above:

(1) The index meets the criteria of paragraph (d)(1) of this Rule;

(2) Subject to subparagraphs (9) and (10) below, the component securities that account for at least 90% of the total index weight and at least 80% of the total number of component securities in the index must meet the requirements of Section 3 of Options 4.

(3) Each component security in the index has a market capitalization of at least \$75 million, except that each of the lowest weighted component securities that in the aggregate account for no more than 10% of the weight of the index may have a market capitalization of only \$50 million;

(4) Each component security must be an "NMS stock" as defined in Rule 600 of Regulation NMS under the Exchange Act; and

(5) Foreign securities or ADRs thereon that are not subject to comprehensive surveillance sharing agreements do not represent more than 20% of the weight of the index;

(6) The current underlying index value will be reported at least once every fifteen seconds during the time the index options are traded on NOM;

(7) If the underlying index is maintained by a broker-dealer, the index is calculated by a third party who is not a brokerdealer, and the broker-dealer has in place an information barrier around its personnel who have access to information concerning changes in and adjustments to the index;



- (8) The total number of component securities in the index may not increase or decrease by more than 33 1/3% from the number of component securities in the index at the time of its initial listing;
- (9) Trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months;
- (10) In a capitalization-weighted index and a modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index each have had an average monthly trading volume of at least 1,000,000 shares over the past six months;
- (11) Each component security in the index is registered pursuant to Section 12 of the Exchange Act;
- (12) In an approximate equal-dollar weighted index, the index must be reconstituted and rebalanced if the notional value of the largest component is at least twice the notional volume of the smallest component for fifty percent or more of the trading days in the three months prior to December 31 of each year. For purposes of this provision the "notional value" is the market price of the component times the number of shares of the underlying component in the index. Reconstitution and rebalancing are also mandatory if the number of components in the index is greater than five at the time of rebalancing. NOM reserves the right to rebalance quarterly at its discretion;
- (13) In a modified equal-dollar weighted index NOM will rebalance the index quarterly;
- (14) In a share-weighted index, if a share-weighted Micro Narrow-Based Index fails to meet the maintenance listing standards under paragraph (e) of this Section NOM will not re-balance the index, will restrict trading in existing option series to closing transactions, and will not issue additional series for that index; and
- (15) In the event a class of index options listed on NOM fails to satisfy the maintenance listing standards set forth herein, NOM shall not open for trading any additional series of options of that class unless such failure is determined by NOM not to be significant and the Commission concurs in that determination, or unless the continued listing of that class of index options has been approved by the Commission under Section 19(b)(2) of the 1934 Act.

## **Sec. 7 Position Limits for Industry and Micro-Narrow Based Index Options**

(a) Options Participants shall comply with the following applicable rules:

- (1) rules of the Chicago Board Options Exchange Incorporated ("CBOE") with respect to position limits for Industry and Micro-Narrow Based Index Options if the Industry and Micro-Narrow Based Index Options are traded on CBOE and NOM;
  - (2) rules of Nasdaq PHLX LLC ("PHLX") with respect to position limits for Phlx proprietary products shall be the Phlx position limits;
  - (3) rules of NOM with respect to position limits for Industry and Micro-Narrow Based Index Options if the Industry and Micro-Narrow Based Index Options are traded only on NOM and not traded on CBOE and are not listed in (2) above.
- (b) Index options contracts shall not be aggregated with options contracts on any stocks whose prices are the basis for calculation of the index.
- (c) Positions in reduced-value index options shall be aggregated with positions in full-value index options. For such purposes, ten (10) reduced-value options shall equal one (1) full-value contract.

### **Sec. 8 Exemptions from Position Limits**

An options Participant may rely upon any available exemptions from applicable position limits granted from time to time by an Options Exchange for any options contract traded on NOM provided that such Options Participant (1) provides Nasdaq Regulation with a copy of any written exemption issued by another Options Exchange or a written, description of any exemption issued by another Options Exchange other than in writing containing sufficient detail for Nasdaq Regulation to verify the validity of that exemption with the issuing Exchange, and (2) fulfills all conditions precedent for such exemption and complies at all times with the requirements of such exemptions with respect to their trading on NOM.

### **Sec. 9 Exercise Limits**

- (a) In determining compliance with Section 9 of Chapter III of these Rules (Exercise Limits), exercise limits for index options contracts shall be equivalent to the position limits prescribed for options contracts with the nearest expiration date in Section 5 or Section 7 of this Chapter.
- (b) For a market-maker granted an exemption to position limits pursuant to Section 8(c) of Chapter III of these Rules (Exemptions from Position Limits), the number of contracts that can be exercised over a five business day period shall equal the market-maker's exempted position.
- (c) In determining compliance with exercise limits applicable to stock index options, options contracts on a stock index group shall not be aggregated with options contracts on an underlying stock or stocks included in such group, options contracts on one stock index group shall not be aggregated with options contracts on any other stock index group.

(d) With respect to index options contracts for which an exemption has been granted in accordance with the provisions of Section 8(a) of this Chapter, the exercise limit shall be equal to the amount of the exemption.

### **Sec. 10 Trading Sessions**

(a) Days and Hours of Business. Except as otherwise provided in this Rule or under unusual conditions as may be determined by Nasdaq Regulation, transactions in index options may be effected on NOM between the hours of 9:30 a.m. and 4:15 p.m. Eastern time. With respect to options on foreign indexes, Nasdaq Regulation shall determine the days and hours of business, except that transactions in options on the MSCI EAFE Index and MSCI EM Index may be effected on NOM between the hours of 9:30 a.m. and 4:15 p.m. Eastern time. With respect to the MSCI EAFE Index, transactions may be effected on NOM until 11:00 a.m. Eastern Time on the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the last business day before its expiration date.

(b) To begin trading at 9:30 am, an opening shall be held in each class of index options as provided in Section 8 of Chapter VI of these Rules (Opening the Market).

(c) Instituting Halts and Suspensions. Trading on NOM in any index option shall be halted or suspended whenever trading in underlying securities whose weighted value represents more than twenty percent (20%), in the case of a broad based index, and ten percent (10%) for all other indices, of the index value is halted or suspended. Nasdaq Regulation also may halt trading in an index option when, in his or her judgment, such action is appropriate in the interests of a fair and orderly market and to protect investors. Among the facts that may be considered are the following:

- (1) whether all trading has been halted or suspended in the market that is the primary market for a plurality of the underlying stocks;
- (2) whether the current calculation of the index derived from the current market prices of the stocks is not available;
- (3) the extent to which the opening has been completed or other factors regarding the status of the opening; and
- (4) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present, including, but not limited to, the activation of price limits on futures exchanges.

(d) Resumption of Trading Following a Halt or Suspension. Trading in options of a class or series that has been the subject of a halt or suspension by Nasdaq Regulation may resume if Nasdaq Regulation determines that the interests of a fair and orderly market are served by a resumption of trading. Among the factors to be considered in making this determination are whether the conditions that led to the halt or suspension are no longer present, and the extent to which trading is occurring in stocks underlying the index. At

the end of a halt, trading in each class of index options shall resume as provided in Section 4 of Chapter V of these Rules (Resumption of Trading After A Halt).

(e) Circuit Breakers. Section 5 of Chapter V of these Rules (Trading Halts Due to Extraordinary Market Volatility) applies to index options trading with respect to the initiation of a marketwide trading halt commonly known as a "circuit breaker."

(f) Special Provisions for Foreign Indices. When the hours of trading of the underlying primary securities market for an index option do not overlap or coincide with those of NOM, all of the provisions as described in paragraphs (c), (d) and (e) above shall not apply except for (c)(4).

(g) Pricing When Primary Market Does Not Open. When the primary market for a security underlying the current index value of an index option does not open for trading on a given day, which is an expiration day, for purposes of calculating the settlement price at expiration, the last reported sale price of the security from the previous trading day shall be used. This procedure shall not be used if the current index value at expiration is fixed in accordance with the Rules and By-Laws of the Clearing Corporation.

## **Sec. 11 Terms of Index Options Contracts**

(a) General.

(1) Meaning of Premium Bids and Offers. Bids and offers shall be expressed in terms of dollars and cents per unit of the index.

(2) Exercise Prices. NOM shall determine fixed-point intervals of exercise prices for call and put options.

(3) Expiration Months. Index options contracts may expire at three (3) month intervals or in consecutive months. NOM may list up to six (6) expiration months at any one time, but will not list index options that expire more than twelve (12) months out.

(4) "European-Style Exercise." The following European-style index options, some of which may be A.M.-settled as provided in paragraph (a)(5) or P.M.-settled as provided in paragraph (a)(6), are approved for trading on NOM:

(i) Nasdaq 100 Index.

(ii) Mini Nasdaq 100 Index.

(iii) PHLX Oil Service Sector <sup>SM</sup>.

(iv) PHLX Housing Sector <sup>TM</sup>.

(v) MSCI EM Index.

(vi) MSCI EAFE Index.

(5) A.M.-Settled Index Options. The last day of trading for A.M.-settled index options shall be the business day prior to the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, the second business day preceding the expiration date. The current index value at the expiration of an A.M.-settled index option shall be determined, for all purposes under these Rules and the Rules of the Clearing Corporation, on the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the last business day before its expiration date, by reference to the reported level of such index as derived from first reported sale (opening) prices of the underlying securities on such day, except that:

(i) In the event that the primary market for an underlying security does not open for trading on that day, the price of that security shall be determined, for the purposes of calculating the current index value at expiration, as set forth in Section 10(g) of this Chapter, unless the current index value at expiration is fixed in accordance with the Rules and By-Laws of the Clearing Corporation; and

(ii) In the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading on that day, the price of that security, for the purposes of calculating the current index value at expiration, shall be the last reported sale price of the security. The following A.M.-settled index options are approved for trading on NOM:

(A) Nasdaq 100 Index.

(B) Mini Nasdaq 100 Index.

(C) PHLX Oil Service Sector <sup>SM</sup>.

(D) PHLX Semiconductor Sector <sup>SM</sup>.

(E) PHLX Housing Sector <sup>TM</sup>.

(6) P.M. - Settled Index Options. The last day of trading for P.M.-settled index options shall be the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the last business day before its expiration date. The current index value at expiration of the index is determined by the last reported sale price of each component security. In the event that the primary market for an underlying security does not open for trading on the expiration date, the price of that security shall be the last reported sale price prior to the expiration date. The following P.M.-settled index options are approved for trading on NOM:

(A) MSCI EM Index.

(B) MSCI EAFE Index.

(b) Long-Term Index Options Series.

(1) Notwithstanding the provisions of Paragraph (a)(3), above, NOM may list long-term index options series that expire from nine (9) to sixty (60) months from the date of issuance.

(i) Index long term options series may be based on either the full or reduced value of the underlying index. There may be up to ten (10) expiration months, none further out than sixty (60) months. Strike price interval, bid/ask differential and continuity Rules shall not apply to such options series until the time to expiration is less than nine (9) months.

(ii) When a new Index long term options series is listed, such series will be opened for trading either when there is buying or selling interest, or forty (40) minutes prior to the close, whichever occurs first. No quotations will be posted for such options series until they are opened for trading.

(2) Reduced-Value Long Term Options Series.

(i) Reduced-value long term options series may be approved for trading on Specified (as provided in Section 1 of this Chapter) indices.

(ii) Expiration Months. Reduced-value long term options series may expire at six-month intervals. When a new expiration month is listed, series may be near or bracketing the current index value. Additional series may be added when the value of the underlying index increases or decreases by ten (10) to fifteen (15) percent.

(c) Procedures for Adding and Deleting Strike Prices. The procedures for adding and deleting strike prices for index options are provided in Section 6 of Options 4 of these Rules (Series of Options Contracts Open for Trading), as amended by the following:

(1) The interval between strike prices will be no less than \$5.00; provided, that in the case of the following classes of index options, the interval between strike prices will be no less than \$2.50:

(i) Nasdaq 100 Index, if the strike price is less than \$200.

(ii) Mini Nasdaq 100 Index, if the strike price is less than \$200.

(iii) PHLX Oil Service Sector <sup>SM</sup>, if the strike price is less than \$200.

(iv) PHLX Semiconductor Sector <sup>SM</sup>, if the strike price is less than \$200.

(v) PHLX Housing Sector <sup>TM</sup>, if the strike price is less than \$200.

(vi) MSCI EM Index, if the strike price is less than \$200.

(vii) MSCI EAFE Index, if the strike price is less than \$200.

(2) New series of index options contracts may be added up to the fourth business day prior to the business day of expiration, or, in the case of an index option contract expiring on a day that is not a business day, up to the fifth business day prior to expiration.

(3) When new series of index options with a new expiration date are opened for trading, or when additional series of index options in an existing expiration date are opened for trading as the current value of the underlying index to which such series relate moves substantially from the exercise prices of series already opened, the exercise prices of such new or additional series shall be reasonably related to the current value of the underlying index at the time such series are first opened for trading. In the case of all classes of index options, the term "reasonably related to the current value of the underlying index" shall have the meaning set forth in Paragraph (c)(4) below.

(4) Notwithstanding any other provision of this paragraph (c), NOM may open for trading additional series of the same class of index options as the current index value of the underlying index moves substantially from the exercise price of those index options that already have been opened for trading on NOM. The exercise price of each series of index options opened for trading on NOM shall be reasonably related to the current index value of the underlying index to which such series relates at or about the time such series of options is first opened for trading on NOM. The term "reasonably related to the current index value of the underlying index" means that the exercise price is within thirty percent (30%) of the current index value. NOM may also open for trading additional series of index options that are more than thirty percent (30%) away from the current index value, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market-makers trading for their own account shall not be considered when determining customer interest under this provision.

(d) Index Level. The reported level of the underlying index that is calculated by the reporting authority for purposes of determining the current index value at the expiration of an A.M.-settled index option may differ from the level of the index that is separately calculated and reported by the reporting authority and that reflects trading activity subsequent to the opening of trading in any of the underlying securities.

(e) Index Values for Settlement. The Rules of the Clearing Corporation specify that, unless the NOM Rules provide otherwise, the current index value used to settle the exercise of an index options contract shall be the closing index for the day on which the index options contract is exercised in accordance with the Rules of the Clearing Corporation or, if such day is not a business day, for the most recent business day.

(f) Index Level at Expiration . With respect to any securities index on which options are traded on NOM, the source of the prices of component securities used to calculate the current index level at expiration is determined by the reporting authority for that index.

(g)

(1) Quarterly Options Series Program

The Exchange may list and trade options series that expire at the close of business on the last business day of a calendar quarter ("Quarterly Options Series"). The Exchange may list Quarterly Options Series for up to five (5) currently listed options classes that are either index options or options on exchange traded funds ("ETF"). In addition, the Exchange may also list Quarterly Options Series on any options classes that are selected by other securities exchanges that employ a similar program under their respective rules. The Exchange may list series that expire at the end of the next consecutive four (4) calendar quarters, as well as the fourth quarter of the next calendar year.

- (i) The Exchange will not list a Short Term Option Series on an options class the expiration of which coincides with that of a Quarterly Options Series on that same options class.
- (ii) Quarterly Options Series shall be P.M. settled.
- (iii) The strike price of each Quarterly Options Series will be fixed at a price per share, with at least two, but not more than five, strike prices above and two, but not more than five, strike prices below the value of the underlying security at about the time that a Quarterly Options Series is opened for trading on the Exchange. The Exchange may open for trading additional Quarterly Options Series of the same class if the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the current index value of the underlying index moves substantially from the exercise price of those Quarterly Options Series that already have been opened for trading on the Exchange. The exercise price of each Quarterly Options Series opened for trading on the Exchange shall be reasonably related to the current index value of the underlying index to which such series relates at or about the time such series of options is first opened for trading on the Exchange. The term "reasonably related to the current index value of the underlying index" means that the exercise price is within thirty percent (30%) of the current index value. The Exchange may also open for trading additional Quarterly Options Series that are more than thirty percent (30%) away from the current index value, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market-makers trading for their own account shall not be considered when determining customer interest under this provision. The Exchange may open additional strike prices of a Quarterly Options Series that are above the value of the underlying index provided that the total number of strike prices above the value of the underlying index is no greater than five. The Exchange may open additional strike prices of a Quarterly Options Series that are below the value of the underlying index provided that the total number of strike prices below the value of the underlying index is no greater than five. The opening of any new Quarterly Options Series shall not affect the series of options of the same class previously opened.



- (iv) The interval between strike prices on Quarterly Options Series shall be the same as the interval for strike prices for series in that same options class that expire in accordance with the normal monthly expiration cycle.

Except as otherwise provided, all Exchange rules applicable to stock index options will also be applicable to quarterly expiring index options listed pursuant to this section.

(h)

(1) Short Term Option Series Program

After an index option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day ("Short Term Option Opening Date") series of options on that class that expire on the Friday of the following business week that is a business day ("Short Term Option Expiration Date"). If the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on the Friday of the following business week, the Short Term Option Expiration Date will be the first business day immediately prior to that Friday. Regarding Short Term Option Series:

(i) The Exchange may select up to thirty (30) currently listed option classes on which Short Term Option Series may be opened on any Short Term Option Opening Date. In addition to the thirty-option class restriction, the Exchange also may list Short Term Option Series on any option classes that are selected by other securities exchanges that employ a similar program under their respective rules. For each index option class eligible for participation in the Short Term Option Series Program, the Exchange may open up to twenty (20) Short Term Option Series on index options for each expiration date in that class. The Exchange may also open Short Term Option Series that are opened by other securities exchanges in option classes selected by such exchanges under their respective short term option rules.

(ii) No Short Term Option Series on an index option class may expire in the same week during which any monthly option series on the same index class expire or, in the case of Quarterly Options Series, on an expiration that coincides with an expiration of Quarterly Option Series on the same index class.

(iii) The strike price of each Short Term Option Series will be fixed at a price per share, with approximately the same number of strike prices being opened above and below the calculated value of the underlying index at about the time that the Short Term Option Series are initially opened for trading on the Exchange (e.g., if seven (7) series are initially opened, there will be at least three (3) strike prices above and three (3) strike prices below the value of the underlying security or calculated index value). Any strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current value of the underlying index.

(iv) If the Exchange has opened less than twenty (20) Short Term Option Series for a Short Term Option Expiration Date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the current value of the underlying index moves substantially from the exercise price or prices of the series already opened. Any additional strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current value of the underlying index. The Exchange may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current value of the underlying index provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account shall not be considered when determining customer interest under this provision. The opening of the new Short Term Option Series shall not affect the series of options of the same class previously opened.

(v) The interval between strike prices on Short Term Option Series shall be the same as the strike prices for series in that same index option class that expire in accordance with the normal monthly expiration cycle.

(i) Notwithstanding any provisions in this Section 11, the interval between strike prices of series of options on the PHLX Oil Service Sector<sup>SM</sup>, PHLX Semiconductor Sector<sup>SM</sup>, and PHLX Housing Sector<sup>TM</sup> (individually the "\$1 Index" and together the "\$1 Indexes"), which may also be known as industry indexes, will be \$1 or greater, subject to following conditions:

(1) Initial Series. The Exchange may list series at \$1 or greater strike price intervals for each \$1 Index, and will list at least two strike prices above and two strike prices below the current value of each \$1 Index at about the time a series is opened for trading on the Exchange. The Exchange shall list strike prices for each \$1 Index that are within 5 points from the closing value of each \$1 Index on the preceding day.

(2) Additional Series. Additional series of the same class of each \$1 Index may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when each underlying \$1 Index moves substantially from the initial exercise price or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices shall be within thirty percent (30%) above or below the closing value of each \$1 Index. The Exchange may also open additional strike prices that are more than 30% above or below each current \$1 Index value provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account shall not be considered when determining customer interest under this provision. In addition to the initial listed series, the Exchange may list up to sixty (60) additional series per expiration month for each series in \$1 Indexes.

(3) The Exchange shall not list LEAPS on \$1 Indexes at intervals less than \$2.50.

- (4) (i) Delisting Policy. With respect to each \$1 Index added pursuant to the above paragraphs, the Exchange will regularly review series that are outside a range of five (5) strikes above and five (5) strikes below the current value of each \$1 Index, and in each \$1 Index may delist series with no open interest in both the put and the call series having a: (A) strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (B) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.
- (ii) Notwithstanding the above referenced delisting policy, customer requests to add strikes and/or maintain strikes in \$1 Index options eligible for delisting may be granted.

### **Sec. 12 Debit Put Spread Cash Account Transactions**

Debit put spread positions in European-style, broad-based index options traded on NOM (hereinafter "debit put spreads") may be maintained in a cash account as defined by Federal Reserve Board Regulation T Section 220.8 by a Public Customer, provided that the following procedures and criteria are met:

- (a) The customer has received Nasdaq Regulation approval to maintain debit put spreads in a cash account carried by an Options Participant. A customer so approved is hereinafter referred to as a "spread exemption customer."
- (b) The spread exemption customer has provided all information required on NOM approved forms and has kept such information current.
- (c) The customer holds a net long position in each of the stocks of a portfolio that has been previously established or in securities readily convertible, and additionally in the case of convertible bonds economically convertible, into common stocks which would comprise a portfolio. The debit put spread position must be carried in an account with a member of a self regulatory organization participating in the Intermarket Surveillance Group.
- (d) The stock portfolio or its equivalent is composed of net long positions in common stocks in at least four industry groups and contains at least twenty (20) stocks, none of which accounts for more than fifteen percent (15%) of the value of the portfolio (hereinafter "qualified portfolio"). To remain qualified, a portfolio must at all times meet these standards notwithstanding trading activity in the stocks.
- (e) The exemption applies to European-style broad-based index options dealt in on NOM to the extent the underlying value of such options position does not exceed the unhedged value of the qualified portfolio. The unhedged value would be determined as follows: (1) the values of the net long or short positions of all qualifying products in the portfolio are totaled; (2) for positions in excess of the standard limit, the underlying market value (A) of any economically equivalent opposite side of the market calls and puts in broad-based index options, and (B) of any opposite side of the market positions in stock index futures,

options on stock index futures, and any economically equivalent opposite side of the market positions, assuming no other hedges for these contracts exist, is subtracted from the qualified portfolio; and (3) the market value of the resulting unhedged portfolio is equated to the appropriate number of exempt contracts as follows- the unhedged qualified portfolio is divided by the correspondent closing index value and the quotient is then divided by the index multiplier or 100.

(f) A debit put spread in NOM-traded broad-based index options with European-style exercises is defined as a long put position coupled with a short put position overlying the same broad-based index and having an equivalent underlying aggregate index value, where the short put(s) expires with the long put(s), and the strike price of the long put(s) exceeds the strike price of the short put(s). A debit put spread will be permitted in the cash account as long as it is continuously associated with a qualified portfolio of securities with a current market value at least equal to the underlying aggregate index value of the long side of the debit put spread.

(g) The qualified portfolio must be maintained with either an Options Participant, another broker-dealer, a bank, or securities depository.

(h) The spread exemption customer shall agree promptly to provide Nasdaq Regulation any information requested concerning the dollar value and composition of the customer's stock portfolio, and the current debit put spread positions.

(1) The spread exemption customer shall agree to and any Options Participant carrying an account for the customer shall:

(i) comply with all NOM Rules and regulations;

(ii) liquidate any debit put spreads prior to or contemporaneously with a decrease in the market value of the qualified portfolio, which debit put spreads would thereby be rendered excessive; and

(iii) promptly notify Nasdaq Regulation of any change in the qualified portfolio or the debit put spread position which causes the debit put spreads maintained in the cash account to be rendered excessive.

(i) If any Options Participant carrying a cash account for a spread exemption customer with a debit put spread position dealt in on NOM has a reason to believe that as a result of an opening options transaction the customer would violate this spread exemption, and such opening transaction occurs, then the Options Participant has violated this Section 11.

(j) Violation of any of these provisions, absent reasonable justification or excuse, shall result in withdrawal of the spread exemption and may form the basis for subsequent denial of an application for a spread exemption hereunder.

### **Sec. 13 Disclaimers**

(a) Applicability of Disclaimers. The disclaimers in paragraph (b) below shall apply to the reporting authorities identified in the Supplemental Material to Section 2 of this Chapter.

(b) Disclaimer. No reporting authority, and no affiliate of a reporting authority (each such reporting authority, its affiliates, and any other entity identified in this Rule are referred to collectively as a "Reporting Authority"), makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of an index it publishes, any opening, intraday or closing value therefore, or any data included therein or relating thereto, in connection with the trading of any options contract based thereon or for any other purpose. The Reporting Authority shall obtain information for inclusion in, or for use in the calculation of, such index from sources it believes to be reliable, but the Reporting Authority does not guarantee the accuracy or completeness of such index, any opening, intra-day or closing value therefore, or any data included therein or related thereto. The Reporting Authority hereby disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to such index, any opening, intra-day, or closing value therefore, any data included therein or relating thereto, or any options contract based thereon. The Reporting Authority shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of such index, any opening, intra-day or closing value therefore, any data included therein or relating thereto, or any options contract based thereon, or arising out of any errors or delays in calculating or disseminating such index.

(c) MSCI Disclaimers

(i) With respect to the MSCI EM Index, the contracts are not sponsored, endorsed, sold or promoted by MSCI Inc., any affiliate of MSCI or any other party involved in, or related to, making or compiling any Indexes. The contracts have not been passed on by MSCI, any of its affiliates or any other party involved in, or related to, making or compiling any Indexes as to their legality or suitability with respect to any person or entity. MSCI, its affiliates and any other party involved in, or related to, making or compiling the MSCI EM Index do not guarantee the originality, accuracy and/or completeness of the MSCI EM Index or any data included therein. Neither MSCI, any of its affiliates nor any other party involved in, or related to, making or compiling the MSCI EM Index makes any express or implied warranties, and expressly disclaims all warranties of merchantability and fitness for a particular purpose or use with respect to the contract, the MSCI EM Index or any data included therein. Without limiting any of the foregoing, in no event shall MSCI, any of its affiliates or any other party involved in, or related to, making or compiling the MSCI EM Index have any liability for any direct, special, punitive, indirect, or consequential damages (including lost profits), even if notified of the possibility of such damages, claims, losses or expenses relating to any futures or options contracts or caused by any errors or delays in calculating or disseminating the MSCI EM Index. Neither MSCI, any of its affiliates nor any other party involved in, or related to, making or compiling the MSCI EM Index has any obligation to take the needs of the

issuers of the contracts, the owners of the contracts or NOM into consideration in determining, composing or calculating the Indexes. Neither MSCI, its affiliates nor any other party involved in, or related to, making or compiling the MSCI EM Index is responsible for or have participated in the determination of the timing of, prices at, or quantities of the contracts to be issued or in the determination or calculation of the equation by which the contracts are redeemable.

(ii) With respect to the MSCI EAFE Index, the contracts are not sponsored, endorsed, sold or promoted by MSCI Inc. ("MSCI"), any affiliate of MSCI or any other party involved in, or related to, making or compiling any Indexes. The contracts have not been passed on by MSCI, any of its affiliates or any other party involved in, or related to, making or compiling any Indexes as to their legality or suitability with respect to any person or entity. MSCI, its affiliates and any other party involved in, or related to, making or compiling the MSCI EAFE Index do not guarantee the originality, accuracy and/or completeness of the MSCI EAFE Index or any data included therein. Neither MSCI, any of its affiliates nor any other party involved in, or related to, making or compiling the MSCI EAFE Index makes any express or implied warranties, and expressly disclaims all warranties of merchantability and fitness for a particular purpose or use with respect to the contract, the MSCI EAFE Index or any data included therein. Without limiting any of the foregoing, in no event shall MSCI, any of its affiliates or any other party involved in, or related to, making or compiling the MSCI EAFE Index have any liability for any direct, special, punitive, indirect, or consequential damages (including lost profits), even if notified of the possibility of such damages, claims, losses or expenses relating to any futures or options contracts or caused by any errors or delays in calculating or disseminating the MSCI EAFE Index. Neither MSCI, any of its affiliates nor any other party involved in, or related to, making or compiling the MSCI EAFE Index has any obligation to take the needs of the issuers of the contracts, the owners of the contracts or NOM into consideration in determining, composing or calculating the Indexes. Neither MSCI, its affiliates nor any other party involved in, or related to, making or compiling the MSCI EAFE Index is responsible for or have participated in the determination of the timing of, prices at, or quantities of the contracts to be issued or in the determination or calculation of the equation by which the contracts are redeemable.

#### **Sec. 14 Exercise of American-style Index Options**

No Options Participant may prepare, time stamp or submit an exercise instruction for an American-style index options series if the Options Participant knows or has reason to know that the exercise instruction calls for the exercise of more contracts than the then "net long position" of the account for which the exercise instruction is to be tendered. For purposes of this Rule: (i) the term "net long position" shall mean the net position of the account in such option at the opening of business of the day of such exercise instruction, plus the total number of such options purchased that day in opening purchase transactions up to the time of exercise, less the total number of such options sold that day in closing sale transactions up to the time of exercise; (ii) the "account" shall be the individual account of the particular customer, market-maker or "non-customer" (as that term is defined in the By-Laws of the Clearing Corporation) who wishes to exercise; and (iii) every transaction in an options series effected by a market-maker in a market-maker's

account shall be deemed to be a closing transaction in respect of the market-maker's then positions in such options series. No Options Participant may adjust the designation of an "opening transaction" in any such option to a "closing transaction" except to remedy mistakes or errors made in good faith.]

\* \* \* \* \*

**[The Nasdaq Stock Market Rules LLC]**

**GENERAL EQUITY AND OPTIONS RULES**

**General 1 General Provisions**

(a) The following provisions are adopted pursuant to the By-Laws of Nasdaq. The Rules shall become effective as provided in the By-Laws. The Rules shall be interpreted in such manner as will aid in effectuating the purposes and business of Nasdaq, and so as to require that all practices in connection with the investment banking and securities business shall be just, reasonable and not unfairly discriminatory. Unless the context otherwise requires, the terms below, if defined in the Nasdaq By-Laws, shall have the meaning as defined in the Nasdaq By-Laws.

b) Unless the context otherwise requires:

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

(2) The term "associated person" or "person associated with a Participant" mean any partner, officer, director, or branch manager of an Options Participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Participant or any employee of a Participant.

(3) The terms "Association" and "NASD" mean, collectively, the Financial Industry Regulatory Authority and its subsidiaries.

(4) The term "Board" means the Board of Directors of The Nasdaq Stock Market LLC.

(5) The term "By-Laws" means the By-Laws of Nasdaq.

(6) The term "Code of Procedure" means the procedural rules contained in the Rule 9000 Series.

(7) The terms "Commission" or "SEC" mean the Securities and Exchange Commission (SEC), established pursuant to the Act.

(8) The term "Exchange" means The Nasdaq Stock Market LLC.

(9) The terms "he," "him" or "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.

(10) The term "MarketWatch" means a unit within Nasdaq Regulation that is responsible for the real-time surveillance and regulation of the trading of options on NOM. Personnel from MarketWatch, shall monitor and surveil options trading on NOM in order to ensure the maintenance of a fair and orderly market.

(11) The terms "member" or "Nasdaq Member" mean any registered broker or dealer that has been admitted to membership in Nasdaq. A Nasdaq Member is not a member of Nasdaq within the meaning of the Delaware Limited Liability Company Act by reason of being admitted to membership in Nasdaq.

(12) The term "NASD Regulation" means NASD Regulation, Inc.

(13) The term "Nasdaq" means The Nasdaq Stock Market LLC.

(14) The term "Nasdaq Regulation" means the Department of Nasdaq that supervises and administers the regulatory functions of Nasdaq, including the administration of any regulatory services agreements with another self-regulatory organization to which Nasdaq is a party.

(15) The term "Nasdaq Review Council" means the committee authorized and directed to act for the Board of Directors of Nasdaq in a manner consistent with the Rules and By-Laws of Nasdaq with respect to (1) an appeal or review of a disciplinary proceeding; (2) a statutory disqualification decision; (3) a review of a membership proceeding; (4) a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; (5) the exercise of exemptive authority; (6) an appeal of proceedings involving Exchange Rules 4612, 4619, 4620, and 11890, and Exchange Options 3, Section 4; and (7) such other proceedings or actions authorized by the Rules of Nasdaq.

(16) The term "person" shall include any natural person, partnership, corporation, association, or other legal entity.

(17) The term "primary market" means, in the case of securities listed on Nasdaq, the market that is identified as the listing market pursuant to Section X(d) of the approved national market system plan governing the trading of Nasdaq-listed securities, and, in the case of securities listed on another national securities exchange, the market that is identified as the listing market pursuant to Section XI of the Consolidated Tape association Plan.

(18) The term "Regulatory Contract" means the regulatory services agreement between Nasdaq and FINRA pursuant to which FINRA has agreed to perform certain regulatory functions on behalf of Nasdaq.



(19) The term "Rules" or "Rules of Nasdaq" mean the General Equity and Options Rules, the numbered rules set forth in the Nasdaq Manual beginning with the Rule 0100 Series, as adopted by the Nasdaq Board of Directors pursuant to the By-Laws of the Nasdaq, as hereafter amended or supplemented, and also includes the By-Laws and the Limited Liability Company Agreement of The Nasdaq Stock Market LLC.

## **General 2 Organization and Administration**

### **Section 1. Reserved**

#### **Section 2. Fees, Dues and Other Charges**

(a) The Board of Directors shall have the power (i) to establish, assess and levy such fees, dues and other charges (including, without limitation, any extraordinary assessments) upon Participants and any other persons using the facilities or services of the Exchange, and upon applicants for and persons being admitted, registered, qualified and/or initiated to any such status, in each case as the Board of Directors may from time to time establish by resolution or in the Rules of the Exchange (which shall be deemed to include any schedule of fees, dues, other charges and penalties as may be in effect from time to time), (ii) to establish rebates, credits and discounts with respect to any of the foregoing, (iii) to establish programs whereby the Exchange shares or permits any person to participate in any identified source of revenues (less any expenses or other charges as the Exchange shall determine) of the Exchange, (iv) to provide for the direct reimbursement to the Exchange of any cost, expense or category thereof, and (v) except insofar as otherwise specified or provided for in the By-Laws, to establish and assess penalties for failure to pay any fees, dues or charges owed to the Exchange, including, without limitation, termination of membership (which membership may be reissued) and forfeiture of all rights as a member. The Board of Directors may authorize any committee thereof or the Chair of the Board of Directors to exercise any powers of the Board of Directors with respect to the assessment of fees, dues, other charges and penalties authorized in accordance with this Rule.

(b) Without limiting the generality of the provisions of the By-Laws, the Board of Directors may, from time to time, fix and impose charges upon Participants, measured by their respective net commissions on transactions effected on the Exchange. Such charges shall be payable at such times and shall be collected in such manner as may be determined by the Board of Directors.

(c) The obligation of Participants to abide by the provisions of these By-Laws and the Rules of the Exchange shall include, without limitation, the obligation to pay all applicable fees, dues and other charges imposed thereon by these By-Laws or the Rules of the Exchange.

(d) The Board of Directors or their designee may suspend or terminate, after due notice, any permit or rights of any Participant or employee thereof using facilities or services of

the Exchange, or enjoying any of the privileges therein, who shall not pay dues, fees, other charges, other monies due and owed the Exchange, fines and/or other monetary sanctions in accordance with the Rules of the Exchange.

### **Section 3. Reserved**

### **Section 4. Limitation on Affiliation between the Exchange and Members**

(a) No member or person associated with a member shall be the beneficial owner of greater than twenty percent (20%) of the then-outstanding voting securities of The Nasdaq Stock Market, Inc.

(b) For purposes of this rule, any calculation of the number of shares of common stock outstanding at any particular time shall be made in accordance with the last sentence of SEC Rule 13d-3(d)(1)(i)(D). The term "beneficial owner" shall have the meaning set forth in the Restated Certificate of Incorporation of The Nasdaq Stock Market, Inc.

### **Section 5. Regulation of the Exchange and Its Members**

(a) Nasdaq and FINRA are parties to the Regulatory Contract pursuant to which FINRA has agreed to perform certain functions described in these Rules on behalf of Nasdaq. Nasdaq Rules that refer to Nasdaq Regulation, Nasdaq Regulation staff, Nasdaq staff, and Nasdaq departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of Nasdaq pursuant to the Regulatory Contract.

(b) Notwithstanding the fact that Nasdaq has entered into the Regulatory Contract with FINRA to perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions.

(c) In addition, Nasdaq has incorporated by reference certain NASD rules. Nasdaq members shall comply with these rules and interpretations as if such rules and interpretations were part of Nasdaq's rules.

### **Section 6. Applicability**

(a) The General Equity and Options Rules and Equity Rules shall apply to all members and persons associated with a member. Persons associated with a member shall have the same duties and obligations as a member under these Rules.

(b) A member or person associated with a member, who has been expelled, canceled or revoked from membership or from registration or who has been barred from being associated with all members, shall cease to have any privileges of membership or registration. A member or person associated with a member who has been suspended from membership or registration shall also cease to have any privileges of membership or registration other than those under the Code of Procedure as set forth in the Rule 9000 Series. In neither case shall such a member or person associated with a member be entitled to recover any admission fees, dues, assessments or other charges paid to Nasdaq.

(c) A member or person associated with a member who has been suspended from membership or from registration shall be considered as a non-member during the period

of suspension for purposes of applying the provisions of these Rules which govern dealings between members and non-members. However, such member or person associated with a member shall have all of the obligations imposed by the rules of Nasdaq.

### **Section 7. Regulatory Independence**

In furtherance of the independence of Nasdaq's regulatory functions from its commercial operations, Nasdaq shall ensure that, unless it obtains prior Commission approval, the regulatory functions subject to the Regulatory Contract as in effect at the time when Nasdaq begins to operate as a national securities exchange shall at all times continue to be performed by NASD or an affiliate thereof or by another independent self-regulatory organization.

### **Section 8. Reserved**

### **Section 9. Reliance on Current Membership List**

The Nasdaq Secretary shall keep a currently accurate and complete membership roll, containing the name and address of each Nasdaq member, and the name and address of the executive representative of each Nasdaq member. In any case where a membership has been terminated, such fact shall be recorded together with the date on which the membership ceased. The membership roll of Nasdaq shall at all times be available to all members of Nasdaq, to all governmental authorities, and to the general public; provided, however, that the names and addresses of executive representatives shall not be available to members or the general public. For the purpose of complying with pertinent Rules, a member shall be entitled to rely on such membership roll.

### **Section 10. Executive Representative**

Each Nasdaq member shall appoint and certify to the Secretary of Nasdaq one "executive representative" who shall represent, vote, and act for the Nasdaq member in all the affairs of Nasdaq; provided, however, that other representatives of a Nasdaq member may also serve on the Nasdaq Board or committees of Nasdaq or otherwise take part in the affairs of Nasdaq. If a Nasdaq member is also a member of FINRA, the Nasdaq executive representative shall be the same person appointed to serve as the FINRA executive representative. A Nasdaq member may change its executive representative or appoint a substitute for its executive representative upon giving notice thereof to the Nasdaq Secretary via electronic process or such other process as Nasdaq may prescribe. An executive representative of a Nasdaq member or a substitute shall be a member of senior management and registered principal of the Nasdaq member. Each executive representative shall maintain an Internet electronic mail account for communication with Nasdaq and shall update firm contact information as prescribed by Nasdaq. Each member shall review and, if necessary, update its executive representative designation and contact information in the manner prescribed by General 2, Section 11.

### **Section 11. Contact Information Requirements**

(a) Each member shall report to Nasdaq all contact information required by Nasdaq via the FINRA Contact System.

(b) Each member shall update its required contact information promptly, but in any event not later than 30 days following any change in such information. In addition, each member shall review and, if necessary, update its required contact information, via such means as Nasdaq may specify, within 17 business days after the end of each calendar year.

(c) Each member shall comply with any Nasdaq request for such information promptly, but in any event not later than 15 days following the request, or such longer period that may be agreed to by Nasdaq staff.

### **Section 12. Business Continuity and Disaster Recovery**

With respect to Nasdaq's business continuity and disaster recovery plans, including its backup systems, Nasdaq shall:

(a) Establish standards for the designation of those Members and Options Participants that Nasdaq reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans. Such standards may include volume-based and/or market share-based criteria, and may be adjusted from time to time by Nasdaq. Nasdaq will provide public notice of the standards;

(b) Designate Members and Options Participants pursuant to the standards established in paragraph (a) of this Rule and require participation by such designated Members and Options Participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by Nasdaq, provided that such frequency shall not be less than once every 12 months. Nasdaq will provide at least six months prior notice to Members and Options Participants that are designated for mandatory testing, and participation of such Members and Options Participants is a condition of membership.

### **Section 13. Fingerprint-Based Background Checks of Employees and Independent Contractors**

(a) In order to enhance the physical security of the facilities, systems, data, and information of Nasdaq and its affiliates (collectively, the "Nasdaq Entities"), it shall be the policy of the Nasdaq Entities to conduct a fingerprint-based criminal records check of (i) all prospective and current employees of the Nasdaq Entities, (ii) all prospective and current independent contractors who have or are anticipated to have access to facilities of the Nasdaq Entities for ten business days or longer, and (iii) all prospective and current temporary employees who have or are anticipated to have access to facilities of the Nasdaq Entities for ten business days or longer. The Nasdaq Entities shall apply this policy in all circumstances where permitted by applicable law.

(b) The Nasdaq Entities shall submit fingerprint cards obtained pursuant to the foregoing policy to the Attorney General of the United States or his or her designee for identification and processing. The Nasdaq Entities shall at all times maintain the security of fingerprint cards and information received from the Attorney General or his or her designee.

(c) The Nasdaq Entities shall evaluate information received from the Attorney General or his or her designee in accordance with the terms of a written fingerprint policy and provisions of applicable law. A felony or serious misdemeanor conviction will be a factor in considering whether to hire a prospective employee, take adverse employment action with respect to a current employee, or deny prospective or current independent contractors or temporary employees access to facilities of the Nasdaq Entities.

(d) A prospective employee who refuses to submit to fingerprinting shall be denied employment by the Nasdaq Entities, and a prospective independent contractor or temporary employee who refuses to submit to fingerprinting shall be denied access to facilities of the Nasdaq Entities. A current employee, independent contractor, or temporary employee who refuses to submit to fingerprinting will be terminated following notice and being given three opportunities to submit.

#### **Section 14. Restrictions on Affiliation**

(a) Except as provided in paragraph (b):

(1) Nasdaq or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in, or engage in a business venture with, a Nasdaq member or an affiliate of a Nasdaq member in the absence of an effective filing under Section 19(b) of the Act; and

(2) a Nasdaq member shall not be or become an affiliate of Nasdaq, or an affiliate of an entity affiliated with Nasdaq, in the absence of an effective filing under Section 19(b) of the Act.

The term "affiliate" shall have the meaning specified in Rule 12b-2 under the Act; provided, however, that for purposes of this Rule, one entity shall not be deemed to be an affiliate of another entity solely by reason of having a common director. The term "business venture" means an arrangement under which (A) Nasdaq or an entity with which it is affiliated, and (B) a Nasdaq member or an affiliate of a Nasdaq member, engage in joint activities with an expectation of shared profit and a risk of shared loss from common entrepreneurial efforts.

(b) Nothing in this Rule shall prohibit, or require a filing under Section 19(b) of the Act, for:

(1) a Nasdaq member or an affiliate of a Nasdaq member acquiring or holding an equity interest in The Nasdaq Stock Market, Inc. that is permitted by the ownership limitations contained in General 2, Section 4, or

(2) Nasdaq or an entity affiliated with Nasdaq acquiring or maintaining an ownership interest in, or engaging in a business venture with, an affiliate of a Nasdaq member if:

(A) there are information barriers between the member and Nasdaq and its facilities, such that the member

(i) will not be provided an informational advantage concerning the operation of Nasdaq and its facilities, and will not be provided changes or improvements to the trading system that are not available to the industry generally or other Nasdaq members;

(ii) will not have any knowledge in advance of other Nasdaq members of proposed changes, modifications, or improvements to the operations or trading systems of Nasdaq and its facilities, including advance knowledge of Nasdaq filings pursuant to Section 19(b) of the Act;

(iii) will be notified of any proposed changes, modifications, or improvements to the operations or trading systems of Nasdaq and its facilities in the same manner as other Nasdaq members are notified; and

(iv) will not share employees, office space, or databases with Nasdaq or its facilities, The Nasdaq Stock Market, Inc., or any entity that is controlled by The Nasdaq Stock Market, Inc.; and

(B) Nasdaq's Regulatory Oversight Committee certifies, on an annual basis, to the Director of the Division of Trading & Markets that Nasdaq has taken all reasonable steps to implement the requirements of this rule and is in compliance therewith.

(c) Nasdaq, Inc., which is the holding company owning the Exchange and Nasdaq Execution Services, LLC, shall establish and maintain procedures and internal controls reasonably designed to ensure that Nasdaq Execution Services, LLC 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 routing to the Exchange.

#### **Section 15. Business Continuity Plans**

(a) Nasdaq Members shall comply with NASD Rule 3510 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 this Rule by complying with NASD Rule 3510 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under this Rule are being performed by FINRA on behalf of Nasdaq.

#### **Section 16. Emergency Contact Information**

(a) Each member shall report to Nasdaq, via such electronic or other means as Nasdaq may specify, prescribed emergency contact information for the member. The emergency contact information for the member includes designation of two emergency contact

persons. Each emergency contact person shall be a member of senior management and a registered principal of the member.

(b) Each member must promptly update its emergency contact information, via such electronic or other means as Nasdaq may specify, in the event of any material change. With respect to designated emergency contact persons, each member must identify, review, and, if necessary, update such designations in the manner prescribed by General 2, Section 11.

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#### **General 4 [Regulation]Registration Requirements**

\* \* \* \* \*

#### **General 5 Discipline**

##### **8000. Investigations and Sanctions**

##### **8001. Regulation of Nasdaq and its Members**

Nasdaq and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions described in these rules on behalf of Nasdaq. Nasdaq rules that refer to Nasdaq Regulation Department, Nasdaq Regulation staff, Nasdaq staff, and Nasdaq departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of Nasdaq pursuant to the FINRA Regulatory Contract.

Notwithstanding the fact that Nasdaq has entered into the Regulatory Contract with FINRA to perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions.

##### **8100. General Provisions**

##### **8110. Availability of Manual to Customers**

Members shall keep and maintain current paper or electronic copies of the FINRA and Nasdaq Manuals in a readily accessible place and shall make them available for examination by customers upon request.

##### **8120. Definitions**

(a) Unless otherwise provided, terms used in the Rule 8000 Series shall have the meaning as defined in Rule 0120.

(b) The term "Adjudicator" shall have the meaning as defined in Rule 9120.

##### **8200. Investigations**

##### **8210. Provision of Information and Testimony and Inspection and Copying of Books**

(a) Authority of the Nasdaq Regulation Department, Including FINRA Staff

For the purpose of an investigation, complaint, examination, or proceeding authorized by the Nasdaq By-Laws or Rules, Nasdaq Regulation Department, including FINRA staff shall have the right to:

(1) require a member, person associated with a member, or person subject to Nasdaq's jurisdiction to provide information orally, in writing, or electronically (if the requested information is, or is required to be, maintained in electronic form) and to testify at a location specified by Nasdaq Regulation Department, including FINRA staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation, complaint, examination, or proceeding; and

(2) inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding.

(b) Other SROs and Regulators

Nasdaq Regulation Department, including FINRA staff, also may exercise the authority set forth in paragraph (a) for the purpose of an investigation, complaint, examination, or proceeding conducted by another domestic or foreign self-regulatory organization, association, securities or contract market, or regulator of such markets with which Nasdaq has entered into an agreement providing for the exchange of information and other forms of material assistance solely for market surveillance, investigative, enforcement, or other regulatory purposes.

(c) Requirement to Comply

No member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule.

(d) Notice

A notice under this Rule shall be deemed received by the member or person to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the member or the last known residential address of the person as reflected in the Central Registration Depository. If Nasdaq Regulation Department staff, including FINRA staff, responsible for mailing or otherwise transmitting the notice to the member or person has actual knowledge that the address in the Central Registration Depository is out of date or inaccurate, then a copy of the notice shall be mailed or otherwise transmitted to:

(1) the last known business address of the member or the last known residential address of the person as reflected in the Central Registration Depository, and



(2) any other more current address of the member or the person known to the Adjudicator or Nasdaq Regulation Department, including FINRA staff who is responsible for mailing or otherwise transmitting the notice.

(e) Electronic Interface

In carrying out its responsibilities under this Rule, Nasdaq may, as appropriate, establish programs for the submission of information to FINRA on a regular basis through a direct or indirect electronic interface between FINRA and Nasdaq members.

(f) Inspection and Copying

A witness, upon proper identification, may inspect the official transcript of the witness' own testimony. Upon written request, a person who has submitted documentary evidence or testimony in an investigation may procure a copy of the person's documentary evidence or the transcript of the person's testimony upon payment of the appropriate fees, except that prior to the issuance of a complaint arising from the investigation, Nasdaq Regulation Department, including FINRA staff, may for good cause deny such request.

**8211. Automated Submission of Trading Data**

(a) A member shall submit the trade data specified below in automated format as may be prescribed by the Nasdaq Regulation Department, including FINRA staff, from time to time. This information shall be supplied with respect to any transaction or transactions that are the subject of a request for information made by Nasdaq Regulation Department, including FINRA staff.

(b) If the transaction was a proprietary transaction effected or caused to be effected by the member for any account in which such member, or person associated with a member, is directly or indirectly interested, such member shall submit or cause to be submitted the following information:

(1) Clearing house number, or alpha symbol as used by the member submitting the data;

(2) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the members(s) on the opposite side of the transaction;

(3) Identifying symbol assigned to the security;

(4) Date transaction was executed;

(5) Number of shares, or quantity of bonds or options contracts for each specific transaction and whether each transaction was a purchase, sale, short sale, or, if an options contract, whether open long or short or close long or short;

(6) Transaction price;

- (7) Account number; and
- (8) Market center where transaction was executed.
- (c) If the transaction was effected or caused to be effected by the member for any customer account, such member shall submit or cause to be submitted the following information:
- (1) The data described in subparagraphs (b)(1) through (8) above;
- (2) The customer name, address(es), branch office number, registered representative number, whether order was solicited or unsolicited, date account opened, employer name, and the tax identification number(s); and
- (3) If the transaction was effected for another member, whether the other member was acting as principal or agent.
- (d) In addition to the above trade data, a member shall submit such other information in such automated format as may from time to time be required by Nasdaq Regulation Department.
- (e) Pursuant to General 5, Section 2 Nasdaq may exempt a member from the requirement that the data prescribed in paragraphs (b) through (d) above be submitted to Nasdaq Regulation Department, including FINRA staff, in an automated format for good cause shown.

### **8310. Sanctions for Violation of the Rules**

#### **(a) Imposition of Sanction**

After compliance with the Rule 9000 Series, Nasdaq may impose one or more of the following sanctions on a member or person associated with a member for each violation of the federal securities laws, rules or regulations thereunder, or Rules of Nasdaq, or may impose one or more of the following sanctions on a member or person associated with a member for any neglect or refusal to comply with an order, direction, or decision issued under the Rules of Nasdaq:

- (1) censure a member or person associated with a member;
- (2) impose a fine upon a member or person associated with a member;
- (3) suspend the membership of a member or suspend the registration of a person associated with a member for a definite period or a period contingent on the performance of a particular act;
- (4) expel a member, cancel the membership of a member, or revoke or cancel the registration of a person associated with a member;

(5) suspend or bar a member or person associated with a member from association with all members;

(6) impose a temporary or permanent cease and desist order against a member or a person associated with a member; or

(7) impose any other fitting sanction.

(b) Assent to Sanction

Each party to a proceeding resulting in a sanction shall be deemed to have assented to the imposition of the sanction unless such party files a written application for appeal, review, or relief pursuant to the Rule 9000 Series.

**IM-8310-1. Effect of a Suspension, Revocation, Cancellation, or Bar**

If Nasdaq or the Commission issues an order that imposes a suspension, revocation, or cancellation of the registration of a person associated with a member or bars a person from further association with any member, a member shall not allow such person to remain associated with it in any capacity, including a clerical or ministerial capacity. If Nasdaq or the Commission suspends a person associated with a member, the member also shall not pay or credit any salary, or any commission, profit, or other remuneration that results directly or indirectly from any securities transaction, that the person associated with a member might have earned during the period of suspension.

**IM-8310-3. Release of Disciplinary Complaints, Decisions and Other Information**

(a) Nasdaq Regulation Department shall, in response to a request, release to the requesting party a copy of any identified disciplinary complaint or disciplinary decision issued by Nasdaq or any committee thereof; provided, however, that each copy of:

(1) a disciplinary complaint shall be accompanied by the following statement: "The issuance of a disciplinary complaint represents the initiation of a formal proceeding by Nasdaq in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, you may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint."

(2) a disciplinary decision that is released prior to the expiration of the time period provided under the Rule 9000 Series for appeal or call for review within Nasdaq or while such an appeal or call for review is pending, shall be accompanied by a statement that the findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by Nasdaq;

(3) a final decision of Nasdaq that is released prior to the time period provided under the Act for appeal to the Commission or while such an appeal is pending,

shall be accompanied by a statement that the findings and sanctions of Nasdaq are subject to review and modification by the Commission; and

(4) a final decision of Nasdaq that is released after the decision is appealed to the Commission shall be accompanied by a statement as to whether the effectiveness of the sanctions has been stayed pending the outcome of proceedings before the Commission.

(b)

(1) Nasdaq Regulation Department shall release to the public information with respect to any disciplinary complaint initiated by the Department of Enforcement, as defined in Rule 9120(f), containing an allegation of a violation of a designated statute, rule or regulation of the Commission or Nasdaq, as determined by the Chief Regulatory Officer of Nasdaq (a "Designated Rule"); and may also release such information with respect to any disciplinary complaint or group of disciplinary complaints that involve a significant policy or enforcement determination where the release of information is deemed by the Chief Regulatory Officer to be in the public interest.

(2) Information released to the public pursuant to paragraph (b)(1) shall be accompanied by the statement required under paragraph (a)(1).

(c)

(1) Nasdaq Regulation Department shall release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of \$10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the Chief Regulatory Officer to be in the public interest. Nasdaq Regulation Department also may release to the public information with respect to any decision issued pursuant to the Rule 9550 Series imposing a suspension or cancellation of the member or a suspension or bar of the association of a person with a member, unless Nasdaq Regulation Department determines otherwise. Nasdaq Regulation Department may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary or other decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice. Nasdaq Regulation Department also shall release to the public information with respect to any temporary cease and desist order issued pursuant to the Rule 9800 Series.

Nasdaq Regulation Department may release to the public information on any disciplinary or other decision issued pursuant to the Rule 9000 Series, not specifically enumerated in this paragraph, regardless of sanctions imposed, so long as the names of the parties and other identifying information is redacted.

(A) Nasdaq Regulation Department shall release to the public, in unredacted form, information with respect to any disciplinary decision issued pursuant to the Rule 9300 Series that does not meet one or more of the criteria in IM-8310-3(c)(1) for the release of information to the public, provided that the underlying decision issued pursuant to the Rule 9200 Series meets one or more of the criteria in IM-8310-3(c)(1) for the release of information to the public, and information regarding such decision has been released to the public in unredacted form.

(B) In the event there is more than one respondent in a disciplinary decision issued pursuant to the Rule 9000 Series, and sanctions imposed on one or more, but not all, of the respondents meet one or more of the criteria in IM-8310-3(c)(1) for the release of information to the public, Nasdaq Regulation Department shall release to the public, in unredacted form, information with respect to the respondent(s) who meet such criteria, and may release to the public, in redacted form, information with respect to the respondent(s) who do not meet such criteria. Notwithstanding the foregoing, Nasdaq Regulation Department shall release to the public, in unredacted form, information with respect to any respondent in a disciplinary decision issued pursuant to the Rule 9300 Series if the sanctions imposed on such respondent in the underlying decision issued pursuant to the Rule 9200 Series meet one or more of the criteria for release of information to the public, and information with respect to that respondent has been released in unredacted form.

(2) Information released to the public pursuant to paragraph (c)(1) shall be accompanied by a statement to the extent required for that type of information under paragraphs (a)(2)-(4).

(d) If a decision issued pursuant to the Rule 9000 Series other than by the Nasdaq Review Council is not appealed to or called for review by the Nasdaq Review Council, the decision shall become effective on a date set by Nasdaq Regulation Department but not before the expiration of 45 days after the date of decision.

(e) Notwithstanding paragraph (d), expulsions and bars imposed pursuant to the provisions of Rules 9216 and 9270 shall become effective upon approval or acceptance by the Nasdaq Review Council, and information regarding any sanctions imposed pursuant to those Rules may be released to the public pursuant to paragraph (c) immediately upon such approval or acceptance.

(f) If a decision issued pursuant to the Rule 9000 Series is called for review by the Nasdaq Board, the decision shall be stayed pending a final determination and decision by the Board.

(g) If a decision of Nasdaq imposing monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, or suspension of a member and/or barring of a person from being associated with all members is appealed to the Commission, notice thereof shall be given to the membership and to the press as soon as possible after receipt by Nasdaq of notice from the Commission of such appeal and Nasdaq's notice shall state whether the effectiveness of the Board's decision has been stayed pending the outcome of proceedings before the Commission.

(h) In the event an appeal to the courts is filed from a decision by the Commission in a case previously appealed to it from a decision of Nasdaq, involving the imposition of monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, or suspension of a member and/or barring of a person from being associated with all members, notice thereof shall be given to the membership as soon as possible after receipt by Nasdaq of a formal notice of appeal. Such notice shall include a statement whether the order of the Commission has been stayed.

(i) Any order issued by the Commission of revocation or suspension of a member's broker/dealer registration with the Commission; or the suspension or expulsion of a member from Nasdaq; or the barring of a person associated with a member from association with all broker/dealers or membership; or the imposition of monetary sanctions of \$10,000 or more shall be released to the public through a notice containing the effective date thereof sent as soon as possible after receipt by Nasdaq of the order of the Commission.

(j) Cancellations of membership or registration pursuant to the Nasdaq Rules shall be released to the public as soon after the effective date of the cancellation as possible.

(k) Releases to the public referred to in paragraphs (b) and (c) above shall identify the Nasdaq Rules or SEC Rules violated, and shall describe the conduct constituting such violation. Releases may also identify the member with which an individual was associated at the time the violations occurred if such identification is determined by Nasdaq Regulation Department to be in the public interest.

(l) Nasdaq Regulation Department shall release to the public, in the form issued by the Nasdaq Review Council, information with respect to any decision issued by the Nasdaq Review Council pursuant to Rule 1015. In its discretion, the Nasdaq Review Council may have redacted certain information from such decisions prior to their issuance.

### **8320. Payment of Fines, Other Monetary Sanctions, or Costs; Summary Action for Failure to Pay**

(a) Payment to Treasurer

All fines and other monetary sanctions shall be paid to the Treasurer of Nasdaq.

(1) Certain fines may be collected from Nasdaq Options Market members as specified in Options 7, Section 1 of the Options Rules.

(2) Subject to the following conditions and procedures, a member may pay a regulatory fine via an installment plan:

(A) The member must check the installment plan option on the election of payment form included with the letter of acceptance, waiver, and consent ("AWC").

(B) The fine under the AWC must be fifty thousand dollars (\$50,000) or more. A fine of less than fifty thousand dollars (\$50,000) is not eligible for the installment plan.

(C) A down payment of twenty-five percent (25%) or more of the total fine must be submitted with the signed AWC.

(D) An installment package, including a promissory note and payment schedule, will be mailed to the member upon receipt of the down payment, as required in subparagraph (C) above.

(E) An executed (signed and notarized) promissory note for the unpaid balance of the fine must be returned with the first installment payment.

(F) The term of the installment plan shall not exceed four (4) years after the execution of the AWC. The member may elect monthly or quarterly payments.

(b) Summary Suspension or Expulsion

After seven days notice in writing, Nasdaq may summarily suspend or expel from membership a member that fails to:

(1) pay promptly a fine or other monetary sanction imposed pursuant to Rule 8310 or cost imposed pursuant to Rule 8330 when such fine, monetary sanction, or cost becomes finally due and payable; or

(2) terminate immediately the association of a person who fails to pay promptly a fine or other monetary sanction imposed pursuant to Rule 8310 or a cost imposed pursuant to Rule 8330 when such fine, monetary sanction, or cost becomes finally due and payable.

(c) Summary Revocation of Registration

After seven days notice in writing, Nasdaq may summarily revoke the registration of a person associated with a member if such person fails to pay promptly a fine or other monetary sanction imposed pursuant to Rule 8310 or a cost imposed pursuant to Rule 8330 when such fine, monetary sanction, or cost becomes finally due and payable.

### **8330. Costs of Proceedings**

A member or person associated with a member disciplined pursuant to Rule 8310 shall bear such costs of the proceeding, as the Adjudicator deems fair and appropriate under the circumstances.

### **9000. Code of Procedure**

#### **9001. Nasdaq Regulatory Contract with FINRA**

Nasdaq and FINRA are parties to the FINRA Regulatory Contract, pursuant to which FINRA has agreed to perform certain functions described in the Rule 9000 Series on behalf of Nasdaq. Nasdaq Rules that refer to the Nasdaq Regulation Department, Nasdaq Regulation Department staff, Nasdaq staff, and Nasdaq departments should be understood as also referring to FINRA, FINRA staff and FINRA departments acting on behalf of Nasdaq pursuant to the FINRA Regulatory Contract.

Notwithstanding the fact that Nasdaq has entered into the FINRA Regulatory Contract with FINRA to perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions.

### **9100. Application and Purpose**

#### **9110. Application**

##### **(a) Proceedings**

The Rule 9000 Series is the Code of Procedure and includes proceedings for disciplining a member or person associated with a member; proceedings for regulating the activities of a member experiencing financial or operational difficulties; proceedings for summary or non-summary suspensions, cancellations, bars, prohibitions, or limitations; and proceedings for obtaining relief from the eligibility requirements of the Nasdaq By-Laws and the Rules of Nasdaq. The Rule 9100 Series is of general applicability to all proceedings set forth in the Rule 9000 Series, unless a Rule specifically provides otherwise.

##### **(b) Rights, Duties, and Obligations of Members and Associated Persons**

Unless otherwise specified, a person associated with a member shall have the same rights as a member and shall be subject to the same duties and obligations under the Code of Procedure.

Except as otherwise permitted under the By-Laws or the Act and as set forth in more detail in the Rule 9000 Series, in any disciplinary proceeding under the Rules, any Nasdaq member or person associated with a Nasdaq member shall be given the



opportunity to have a hearing at which such Nasdaq member or person associated with a Nasdaq member shall be entitled to be heard in person or by counsel or by a representative as provided in the Rules. Such persons may present any relevant material in accordance with the Rules. In any such proceeding against a Nasdaq member or against a person associated with a Nasdaq member to determine whether the Nasdaq member or the person associated with a Nasdaq member shall be disciplined:

- (1) specific charges shall be brought;
- (2) such Nasdaq member or person associated with a Nasdaq member shall be notified of and be given an opportunity to defend against such charges;
- (3) a record shall be kept; and
- (4) any determination shall include a statement setting forth:
  - (i) any act or practice, in which such Nasdaq member or person associated with a Nasdaq member may be found to have engaged, or which such Nasdaq member or person associated with a Nasdaq member may be found to have omitted;
  - (ii) the rule, regulation, or statutory provision of which any such act or practice, or omission to act, is deemed to be in violation;
  - (iii) the basis upon which any findings are made; and
  - (iv) the sanction imposed.

(c) Incorporation of Defined Terms and Cross References

Unless otherwise provided, terms used in the Rule 9000 Series shall have the meaning as defined in Rule 0120 and Rule 9120.

(d) Jurisdiction

Any member or associated person (the Respondent) who is alleged to have violated or aided and abetted a violation of the Securities Exchange Act of 1934 (Exchange Act), the rules and regulations thereunder, the By-Laws and Rules of Nasdaq or any interpretation thereof, and the Rules, Regulations, resolutions and stated policies of the Board of Directors or any Committee of Nasdaq, shall be subject to the disciplinary jurisdiction of Nasdaq, and after notice and opportunity for a hearing may be appropriately disciplined by expulsion, suspension, fine, censure, limitation or termination as to activities, functions, operations, or association with a member, or any other fitting sanction in accordance with the provisions of these disciplinary Rules.

An associated person may be charged with any violation within the disciplinary jurisdiction of Nasdaq committed by employees under his supervision or by the member with which he is associated, as though such violations were his own. A member may be charged with any violation within the disciplinary jurisdiction of Nasdaq committed by its officers, directors, or employees or by a person who is associated with such member, as though such violation were its own.

Any member or associated person shall continue to be subject to the disciplinary jurisdiction of Nasdaq following the termination of such member's membership from Nasdaq, or the termination of the employment by or the association with a member of such person; provided, that Nasdaq serves written notice to such former member or former associated person within one year of receipt by Nasdaq of notice of such termination that Nasdaq is making inquiry into a matter or matters which occurred prior to the termination of such person's employment by or association with a member, or prior to the termination of such member's membership.

### **9120. Definitions**

#### **(a) "Adjudicator"**

The term "Adjudicator" means:

(1) a body, board, committee, group, or natural person that presides over a proceeding and renders a decision;

(2) a body, board, committee, group, or natural person that presides over a proceeding and renders a recommended or proposed decision which is acted upon by an Adjudicator described in (1); or

(3) a natural person who serves on a body, board, committee, or group described in (1) or (2).

The term includes a Review Subcommittee as defined in paragraph (cc), a Subcommittee as defined in paragraph (ee), an Extended Proceeding Committee as defined in paragraph (n), and a Statutory Disqualification Committee as defined in paragraph (dd).

#### **(b) "Chief Hearing Officer"**

The term "Chief Hearing Officer" means the Hearing Officer that manages the Office of Hearing Officers, or his or her delegatee. The Chief Hearing Officer may be FINRA's Chief Hearing Officer pursuant to the Regulatory Contract, if approved by the Nasdaq Board of Directors at least annually.

#### **(c) "Chief Regulatory Officer"**

The term "Chief Regulatory Officer" means the Chief Regulatory Officer of Nasdaq, or his or her delegatee, who shall be a person who reports to the Chief Regulatory Officer of Nasdaq.

**(d) "Code"**

The term "Code" refers to the Code of Procedure.

**(e) "Counsel to the Nasdaq Review Council"**

The term "Counsel to the Nasdaq Review Council" means an attorney that reports to the Chief Regulatory Officer of Nasdaq who is responsible for advising the Nasdaq Review Council, the Review Subcommittee, a Subcommittee, or an Extended Proceeding Committee regarding a disciplinary proceeding on appeal or review before the Nasdaq Review Council.

**(f) "Department of Enforcement"**

The term "Department of Enforcement" means the Department of Enforcement of FINRA Regulation, acting on behalf of Nasdaq pursuant to the FINRA Regulatory Contract.

**(g) "Department of Member Regulation"**

The term "Department of Member Regulation" means the Department of Member Regulation of FINRA, acting on behalf of Nasdaq pursuant to the FINRA Regulatory Contract.

**(h) "Director"**

The term "Director" means a member of the Board of Directors of Nasdaq.

**(i) "Document"**

The term "Document" means writing, drawing, graph, chart, photograph, recording, or any other data compilation, including data stored by computer, from which information can be obtained.

**(j) "Extended Hearing"**

The term "Extended Hearing" means a disciplinary proceeding described in Rule 9231(c).

**(k) "Extended Hearing Panel"**

The term "Extended Hearing Panel" means an Adjudicator that is constituted under Rule 9231(c) to conduct a disciplinary proceeding that is classified as an "Extended Hearing" and is governed by the Rule 9200 Series.

**(l) "Extended Proceeding"**

The term "Extended Proceeding" means a disciplinary proceeding described in Rule 9331(a)(2).

**(m) "Extended Proceeding Committee"**

The term "Extended Proceeding Committee" means an appellate Adjudicator that is constituted under Rule 9331 to participate in the Nasdaq Review Council's consideration of a disciplinary proceeding that is classified as an "Extended Proceeding" and governed by the Rule 9300 Series.

**(n) "Head of Enforcement"**

The term "Head of Enforcement" means the individual that manages the Department of Enforcement of FINRA, or his or her delegatee in the Department of Enforcement.

**(o) "Head of Member Regulation"**

The term "Head of Member Regulation" means the individual that manages the Department of Member Regulation of FINRA, or his or her delegatee in the Department of Member Regulation.

**(p) "Hearing Officer"**

The term "Hearing Officer" means an attorney who is appointed by the Chief Hearing Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in the Rule 9200 Series regarding disciplinary proceedings, the Rule 9550 Series regarding expedited proceedings, and the Rule 9800 Series regarding temporary cease and desist proceedings brought against members and associated persons. Hearing Officers may be drawn from FINRA's pool of Hearing Officers pursuant to the Regulatory Contract, if approved by the Nasdaq Board of Directors at least annually.

**(q) "Hearing Panel"**

The term "Hearing Panel" means an Adjudicator that is constituted under Rule 9231 to conduct a disciplinary proceeding governed by the Rule 9200 Series, that is constituted under the Rule 9520 Series or the Rule 9550 Series to conduct a proceeding, or that is constituted under the Rule 9800 Series to conduct a temporary cease and desist proceeding.

**(r) "Interested Staff"**

The term "Interested Staff" means, in the context of:

(1) a disciplinary proceeding under the Rule 9200 Series and the Rule 9300 Series:

(A) the Head of the Nasdaq Regulation Department;

(B) an Exchange employee of the Nasdaq Regulation Department who reports, directly or indirectly, to the Head of the Nasdaq Regulation Department;

(C) an Exchange employee who directly participated in the authorization of the complaint;

(D) an Exchange employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific disciplinary proceeding, and a department head to whom such employee reports;

(E) the Head of the Department of Enforcement;

(F) a FINRA employee of the Department of Enforcement who reports, directly or indirectly, to the Head of Enforcement;

(G) a FINRA employee who directly participated in the authorization of the complaint; or

(H) a FINRA employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific disciplinary proceeding, and a district director or department head to whom such employee reports;

(2) a proceeding under the Rule 9520 Series or Rule 9550 Series:

(A) the head of the Nasdaq or FINRA department or office that issues the notice or petition or is designated as a Party;

(B) Nasdaq employee or FINRA employee who reports, directly or indirectly, to such person;

(C) a Nasdaq employee or FINRA employee who directly participated in the authorization or initiation of the proceeding;

(D) a Nasdaq employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific proceeding, and a department head to whom such employee reports; or

(E) a FINRA employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific proceeding, and a district director or department head to whom such employee reports;

(3) a proceeding under General 5, Section 2:

(A) the head of the Nasdaq or FINRA department or office that issues the decision granting or denying an exemption or is designated as a Party;

(B) a Nasdaq employee or FINRA employee who reports, directly or indirectly, to such person;

(C) a Nasdaq employee or FINRA employee who directly participated in the exemption proceeding;

(D) a Nasdaq employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific exemption proceeding, and a department head to whom such employee reports; or

(E) a FINRA employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific exemption proceeding, and a district director or department head to whom such employee reports;

(4) a proceeding under the Rule 9800 Series:

(A) the Head of the Nasdaq Regulation Department;

(B) an employee of the Nasdaq Regulation Department who reports, directly or indirectly, to the Head of the Nasdaq Regulation Department;

(C) the Head of Enforcement;

(D) a FINRA employee who reports, directly or indirectly, to the Head of Enforcement;

(E) a Nasdaq employee or FINRA employee who directly participated in the authorization of the notice that initiates a temporary cease and desist proceeding; or

(F) a Nasdaq employee or FINRA employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific temporary cease and desist proceeding, and a district director or department head to whom such employee reports.

(s) "Nasdaq Board"

The term "Nasdaq Board" means the Board of Directors of the Nasdaq.

**(t) "Nasdaq Regulation" or "Nasdaq Regulation Department"**

The term "Nasdaq Regulation" or "Nasdaq Regulation Department" means the department of Nasdaq that administers the Code, and includes the Nasdaq Enforcement Department.

**(u) "Office of Disciplinary Affairs"**

The term "Office of Disciplinary Affairs" means the Office of Disciplinary Affairs for FINRA, acting on behalf of Nasdaq pursuant to the FINRA Regulatory Contract.

**(v) "Office of Hearing Officers"**

The term "Office of Hearing Officers" means the Office of Hearing Officers of FINRA, acting on behalf of Nasdaq pursuant to the FINRA Regulatory Contract.

**(w) "Panelist"**

The term "Panelist," as used in the Rule 9200 Series, the Rule 9550 Series, and the Rule 9800 Series, means a member of a Hearing Panel or Extended Hearing Panel who is not a Hearing Officer. As used in the Rule 9300 Series, the term means a current or former member of the Nasdaq Review Council or a former Director who is appointed to serve on a Subcommittee or an Extended Proceeding Committee.

**(x) "Party"**

With respect to a particular proceeding, the term "Party" means:

(1) in the Rule 9200 Series, the Rule 9300 Series, and the Rule 9800 Series, the Nasdaq Regulation Department or the Department of Enforcement or a Respondent;

(2) in the Rule 9400 Series, the Nasdaq Regulation Department or the Department of Enforcement, or a Member or associated person of a Member that is the subject of a notice under Rule 9400(a)(2);

(3) in the Rule 9520 Series, the Department of Enforcement or a member that is the subject of a notice or files an application under Rule 9522;

(4) in the Rule 9550 Series, the Nasdaq or FINRA department or office that issued the notice or, if another Nasdaq or FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, the Nasdaq or FINRA department or office that is so designated or a member or person that is the subject of a notice under the Rule 9550 Series; or

(5) in General 5, the department or office designated under Rule 9620 to issue the decision granting or denying an exemption or a member that seeks the exemption under Rule 9610.

(y) "Respondent"

The term "Respondent" means, in a disciplinary proceeding governed by the Rule 9200 Series and in an appeal or review governed by the Rule 9300 Series, a Nasdaq member or associated person against whom a complaint is issued. In a proceeding governed by the Rule 9800 Series, the term "Respondent" means a Nasdaq member or associated person that has been served a notice initiating a cease and desist proceeding.

(z) "Review Subcommittee"

The term "Review Subcommittee" means a body appointed by the Nasdaq Review Council pursuant to the Nasdaq By-Laws.

(aa) "Statutory Disqualification Committee"

The term "Statutory Disqualification Committee" means a Subcommittee of the Nasdaq Review Council that makes a recommended decision to grant or deny an application for relief from the eligibility requirements of Nasdaq to the Nasdaq Review Council pursuant to the Rule 9520 Series.

(bb) "Subcommittee"

The term "Subcommittee" means an Adjudicator that is:

(1) constituted under Rule 9331(a) to participate in the Nasdaq Review Council's consideration of an appeal or a review of a disciplinary proceeding pursuant to the Rule 9300 Series;

(2) constituted under Rule 9559(q) or General 5, Rule 9630 to conduct a review proceeding.

**9130. Service; Filing of Papers**

**9131. Service of Complaint and Document Initiating a Proceeding**

(a) Service on Each Party

A complaint shall be served on each Party by the Department of Enforcement. A document initiating a proceeding shall be served on each Party by the Party or person initiating such proceeding or his or her counsel or representative.

(b) How Served



A complaint or document initiating a proceeding shall be served pursuant to Rule 9134.

(c) Filing Requirement

A complaint that is served upon a Respondent and each document initiating a proceeding that is served upon a Party, along with the certificate of service executed in connection with the service upon such Respondent or Party, shall be filed with the Nasdaq Regulation Department pursuant to Rule 9135.

**9132. Service of Orders, Notices, and Decisions by Adjudicator**

(a) Service on Each Party

An order, notice, or decision issued by a Hearing Officer, Hearing Panel or Extended Hearing Panel under the Rule 9200 Series shall be served on each Party, or each Party's counsel, or other person the Party designates to represent him or her in a proceeding by the Office of Hearing Officers. An order, notice, or decision issued by any other Adjudicator shall be served by that Adjudicator.

(b) How Served

An order, notice, or decision shall be served pursuant to Rule 9134.

(c) Service Upon Counsel or Other Person Acting In Representative Capacity

Whenever service is required to be made upon a person represented by counsel or a representative who has filed a notice of appearance pursuant to Rule 9141, service shall be made upon counsel or the representative. The Adjudicator, at its discretion, may also order that service be made upon the person.

**9133. Service of Papers Other Than Complaints, Orders, Notices, or Decisions**

(a) Service on Each Party

Other than a complaint, order, notice, or decision, any paper, including an answer and a motion, shall be served on each Party by the Party on whose behalf such paper was prepared or by his or her counsel or representative.

(b) How Served

The paper shall be served pursuant to Rule 9134.

(c) Filing Requirement

The paper that is served upon a Party, along with the certificate of service executed in connection with the service upon such Party, shall be filed with the Nasdaq Regulation Department pursuant to Rule 9135.

(d) Service upon Counsel or Other Person Acting in Representative Capacity

Whenever service is required to be made upon a person represented by counsel or a representative who has filed a notice of appearance pursuant to Rule 9141, service shall be made upon counsel or the representative. The Adjudicator, at its discretion, may also order that service be made upon the person.

**9134. Methods of, Procedures for Service**

(a) Methods

The following methods of service are permitted:

(1) Personal Service

Personal service may be accomplished by handing a copy of the papers to the person required to be served; leaving a copy at the person's office with an employee or other person in charge thereof; or leaving a copy at the person's dwelling or usual place of abode with a person of suitable age and discretion then residing therein;

(2) Service by Mail by U.S. Postal Service

Service by mail may be accomplished by mailing the papers through the U.S. Postal Service by using first class mail, first class certified mail, first class registered mail, or Express Mail, except that a complaint shall be served upon a Respondent by U.S. Postal Service first class certified mail or Express Mail; or

(3) Service by Courier

Service by courier may be accomplished by sending the papers through a courier service that generates a written confirmation of receipt or of attempts at delivery.

(b) Procedures

(1) Service on Natural Persons

Papers served on a natural person may be served at the natural person's residential address, as reflected in the Central Registration Depository, if applicable. When a Party or other person responsible for serving such person has actual knowledge that the natural person's Central Registration Depository address is out of date, duplicate copies shall be served on the natural person at the natural person's last known residential address and the business address in the Central Registration Depository of the entity with which the natural person is employed or affiliated. Papers may also be served at the business address of the entity with which the

natural person is employed or affiliated, as reflected in the Central Registration Depository, or at a business address, such as a branch office, at which the natural person is employed, or at which the natural person is physically present during a normal business day. The Hearing Officer may waive the requirement of serving documents (other than complaints) at the addresses listed in the Central Registration Depository if there is evidence that these addresses are no longer valid, and there is a more current address available. If a natural person is represented by counsel or a representative, papers served on the natural person, excluding a complaint or a document initiating a proceeding, shall be served on the counsel or representative.

#### (2) Service on Entities

Papers served on an entity shall be made by service on an officer, partner of a partnership, managing or general agent, a contact employee as set forth on Form BD, or any other agent authorized by appointment or by law to accept service. Such papers shall be served at the entity's business address as reflected in the Central Registration Depository, if applicable; provided, however, that when the Party or other person responsible for serving such entity has actual knowledge that an entity's Central Registration Depository address is out of date, duplicate copies shall be served at the entity's last known address. If an entity is represented by counsel or a representative, papers served on such entity, excluding a complaint or document initiating a proceeding, shall be served on such counsel or representative.

#### (3) When Service Is Complete

Personal service and service by courier or express delivery are complete upon delivery. Service by mail is complete upon mailing.

### **9135. Filing of Papers with Adjudicator: Procedure**

#### (a) When to File

Papers that are required to be filed with an Adjudicator within a time limit specified by the Adjudicator or within a time limit set forth in the Rules shall be deemed timely if received within the time limit, unless otherwise ordered by an Adjudicator, except complaints, which shall be deemed timely filed upon mailing or delivery to the Office of Hearing Officers. Other papers that are required to be filed shall be deemed timely if, on the same day such papers are served, they are also hand-delivered, mailed via U.S. Postal service first class mail, or sent by courier to the Office of Hearing Officers.

#### (b) Where to File

All papers required to be filed pursuant to the Rule 9200 Series and any notice of appeal or review required to be filed pursuant to the Rule 9300 Series shall be filed with the Office of Hearing Officers. All other papers required to be filed pursuant to the Rule

9000 Series shall be filed where specified in the Rule, or if not specified in the Rule, with the Adjudicator, unless the Adjudicator orders otherwise.

(c) Certificate of Service

Papers filed with an Adjudicator or the Office of Hearing Officers shall be accompanied by a certificate of service stating the name of the person or persons served, the date on which service is made, the method of service and, if service is not made in person, the address to which service is made. Such certificate shall be executed by the person who made the service. If the method of service on a Party is different from the method of service on any other Party, the certificate shall state why such different method was used.

**9136. Filing of Papers: Form**

(a) Specifications

Papers filed in connection with any proceeding under the Rule 9200 Series and the Rule 9300 Series shall:

(1) be on unglazed white paper measuring 8 1/2 × 11 inches, but to the extent that the reduction of a larger document would render it illegible, such document may be filed on larger paper;

(2) be typewritten or printed in either 10 or 12 point typeface or otherwise reproduced by a process that produces a permanent and plainly legible copy;

(3) include at the head of the paper, or on a title page, the title of the proceeding, the names of the Parties, the subject of the particular paper or pleading, and the number assigned to the proceeding;

(4) be paginated at the bottom of the page and with all margins at least one inch wide;

(5) be double-spaced, with double-spaced footnotes and single-spaced indented quotations; and

(6) be stapled, clipped, or otherwise fastened in the upper left corner, but not bound.

(b) Signature Required

All papers shall be signed and dated pursuant to Rule 9137.

(c) Number of Copies

A signed original and three copies of all papers shall be filed with the Adjudicator.

(d) Form of Briefs

A brief containing more than ten pages shall include a table of contents, and an alphabetized table of cases, statutes, and other authorities cited, with references to the pages of the brief wherein they are cited.

(e) Scandalous or Impertinent Matter

Any scandalous or impertinent matter contained in any brief, pleading, or other filing, or in connection with any oral presentation in a proceeding may be stricken on order of an Adjudicator. Any matter stricken by an Adjudicator by this Rule shall be marked "Stricken" and preserved. Matters stricken in a proceeding governed by the Rule 9200 Series shall be preserved under Rule 9267(b).

**9137. Filing of Papers: Signature Requirement and Effect**

(a) General Requirements

Following the issuance of a complaint in a disciplinary proceeding, or the initiation of another proceeding, every filing of a Party represented by counsel or a representative shall be signed by at least one counsel or representative of record in his or her name and shall state the business address and telephone number of such counsel or representative. A Party who appears on his or her own behalf shall sign his or her individual name and state his or her address and telephone number on every filing.

(b) Effect of Signature

(1) The signature of a counsel, representative, or Party shall constitute a certification that:

(A) the person signing the filing has read the filing;

(B) to the best of his or her knowledge, information, and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(C) the filing is not made for any improper purpose, such as to harass, cause unnecessary delay, or needlessly to increase the cost of adjudication.

(2) If a filing is not signed, an Adjudicator may strike the filing, unless it is signed promptly after the omission is called to the attention of the person making the filing.

**9138. Computation of Time**

(a) Calendar Day

In the Rule 9000 Series, "day" means calendar day.

(b) Formula

In computing any period of time, the day of the act, event, or default from which the period of time designated in the Code 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, not including any additional time for service by mail allowed by paragraph (c).

(c) Additional Time For Service by Mail

If service is made by U.S. Postal Service first class, certified, or registered mail, three days shall be added to the prescribed period for response.

**9140. Proceedings**

**9141. Appearance and Practice; Notice of Appearance**

(a) Representing Oneself

In any proceeding, a person may appear on his or her own behalf. When a person first makes any filing or otherwise appears on his or her own behalf before an Adjudicator in a proceeding, he or she shall file with the Adjudicator, or otherwise state on the record, and keep current, an address at which any notice or other written communication required to be served upon or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours.

(b) Representing Others

A person shall not be represented before an Adjudicator, except as provided in this paragraph. Subject to the prohibitions of Rules 9150 and 9280, a person may be represented in any proceeding by an attorney at law admitted to practice before the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States. A member of a partnership may represent the partnership; and a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association. When a person first makes any filing or otherwise appears in a representative capacity before an Adjudicator in a proceeding, that person shall file with the Adjudicator, and keep current a Notice of Appearance. The Notice of Appearance is a written notice stating the name of the proceeding; the representative's name, business address, and telephone number; and the name and address of the person or persons represented. Any individual appearing or practicing in a representative capacity before an Adjudicator may be required to file a power of attorney with the Adjudicator showing his or her authority to act in such capacity.

**9142. Withdrawal by Attorney or Representative**

An attorney for a Party or other person authorized to represent others by Rule 9141 may withdraw by giving notice to the Adjudicator. The notice shall be in writing, set forth the good cause for withdrawal, and, unless circumstances do not permit, be given at least 30 days prior to withdrawal.

**9143. Ex Parte Communications****(a) Prohibited Communications**

Unless on notice and opportunity for all Parties to participate, or to the extent required for the disposition of ex parte matters as authorized by the Rule 9000 Series:

(1) No Party, or counsel to or representative of a Party, or Interested Staff shall make or knowingly cause to be made an ex parte communication relevant to the merits of a proceeding to an Adjudicator who is participating in a decision with respect to that proceeding, or to Nasdaq Staff who is participating or advising in the decision of an Adjudicator with respect to that proceeding; and

(2) No Adjudicator who is participating in a decision with respect to a proceeding, or no Nasdaq Staff who is participating or advising in the decision of an Adjudicator with respect to a proceeding shall make or knowingly cause to be made to a Party, a counsel or representative to a Party, or Nasdaq Staff an ex parte communication relevant to the merits of that proceeding.

**(b) Disclosure of Prohibited Communication**

An Adjudicator who is participating in a decision with respect to a proceeding, or Nasdaq Staff who is participating or advising in the decision of an Adjudicator, who receives, makes, or knowingly causes to be made a communication prohibited by this Rule shall place in the record of the proceeding:

(1) all such written communications;

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

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

**(c) Remedies**

Upon receipt of a communication made or knowingly caused to be made by any Party, any counsel or representative to a Party, or any Interested Staff in violation of subparagraph (a)(1), the Nasdaq Regulation Department or an Adjudicator may, to the extent consistent with the interests of justice, the policies underlying the Act, and Nasdaq's Rules, order the Party responsible for the communication, or the Party who may benefit from the ex parte communication made, to show cause why the Party's claim or

interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected by reason of such ex parte communication. All participants to a proceeding may respond to any allegations or contentions contained in a prohibited ex parte communication placed in the record. Such responses shall be placed in the record.

(d) Timing

In a disciplinary proceeding governed by the Rule 9200 Series and the Rule 9300 Series, the prohibitions of this Rule shall apply beginning with the authorization of a complaint as provided in Rule 9211, unless the person responsible for the communication has knowledge that the complaint shall be authorized, in which case the prohibitions shall apply beginning at the time of his or her acquisition of such knowledge.

(e) Waiver of Ex Parte Prohibition

(1) Offer of Settlement

If a Respondent submits an offer of settlement under Rule 9270, the submission constitutes a waiver by such Respondent of any claim that the prohibitions against ex parte communications were violated by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance or rejection of such offer of settlement and order of acceptance.

(2) Letter of Acceptance, Waiver, and Consent

If a member or a person associated with a member submits an executed letter of acceptance, waiver, and consent under Rule 9216(a), the submission constitutes a waiver by such member or person associated with a member of any claim that the prohibitions against ex parte communications were violated by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

(3) Minor Rule Violation Plan Letter

If a member or a person associated with a member submits an executed minor rule violation plan letter under Rule 9216(b), the submission constitutes a waiver by such member or person associated with a member of any claim that the prohibitions against ex parte communications by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter, or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule plan violation letter.



**9144. Separation of Functions****(a) Interested Staff**

Except as counsel or a witness in a proceeding or as provided in the Rule 9550 Series, Interested Staff is prohibited from advising an Adjudicator regarding a decision or otherwise participating in a decision of an Adjudicator. An Adjudicator is prohibited from advising Interested Staff regarding a decision or otherwise participating in a decision of Interested Staff, including the decision to issue a complaint and a decision whether to appeal or cross-appeal a disciplinary proceeding to the Nasdaq Review Council.

**(b) Separation of Adjudicators**

A Hearing Officer, including the Chief Hearing Officer, or a Panelist of a Hearing Panel or an Extended Hearing Panel, is prohibited from participating in: a decision whether to issue a complaint pursuant to Rule 9211; a decision whether to appeal or cross-appeal a disciplinary proceeding to the Nasdaq Review Council pursuant to Rule 9311; and a discussion or decision relating to a call for review, a review, or an appeal pursuant to the Rule 9300 Series. A Director is prohibited from participating in a discussion or a decision relating to the above referenced acts with the Review Subcommittee or the Adjudicators referenced above.

**(c) Waiver of Prohibitions of Separation of Functions****(1) Offer of Settlement**

If a Respondent submits an offer of settlement under Rule 9270, the submission constitutes a waiver by such Respondent of any claim of violation of paragraph (a) or (b) by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance or rejection of such offer of settlement and order of acceptance.

**(2) Letter of Acceptance, Waiver, and Consent**

If a member or a person associated with a member submits an executed letter of acceptance, waiver, and consent under Rule 9216(a), the submission constitutes a waiver by such member or person associated with a member of any claim of violation of paragraph (a) or (b) by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the proposed letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

**(3) Minor Rule Violation Plan Letter**

If a member or a person associated with a member submits an executed minor rule violation plan letter under Rule 9216(b), the submission constitutes a waiver by such member or person associated with a member of any claim of violation of paragraph (a) or (b) by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter.

#### **9145. Rules of Evidence; Official Notice**

##### **(a) Rules of Evidence**

The formal rules of evidence shall not apply in a proceeding brought under the Rule 9000 Series.

##### **(b) Official Notice**

In a proceeding governed by the Rule 9000 Series, an Adjudicator may take official notice of such matters as might be judicially noticed by a court, or of other matters within the specialized knowledge of Nasdaq as an expert body. Before an Adjudicator proposes to take official notice of a matter, it shall permit a Party the opportunity to oppose or otherwise comment upon the proposal to take official notice.

#### **9146. Motions**

##### **(a) General Requirement for Motions**

A Party may make a written or oral motion, subject to limitations set forth below. A Party or other person may make a motion under Rule 9146(k), subject to limitations set forth below.

##### **(b) Adjudicator May Require a Written Motion**

If a Party makes an oral motion, an Adjudicator may order that such motion be set forth in writing, after considering the facts and circumstances, including whether:

(1) the hearing or conference in which the Party makes such motion is being recorded; and

(2) the opposing Parties shall be fully informed and shall have adequate notice and opportunity to respond to such motion.

##### **(c) Specificity**

All motions shall state the specific relief requested and the basis therefor.

##### **(d) Time For Filing Opposition or Other Response to Motion**

Unless otherwise ordered by an Adjudicator, any Party may file an opposition or other response to a written motion and the opposition or response shall be filed within 14 days after service of the motion. If no response is filed within the response period, the Party failing to respond shall be deemed to have waived any objection to the granting of the motion. A Party shall be afforded an opportunity to respond to an oral motion at the time the oral motion is made, unless the Adjudicator orders that the Party shall be granted additional time to respond.

(e) Oral Argument

An Adjudicator may allow oral argument on motions. Oral argument may take place in person or by telephone.

(f) Frivolous Motions

An Adjudicator may deny dilatory, repetitive, or frivolous motions without awaiting a response.

(g) No Stay

Unless otherwise ordered by an Adjudicator, the filing of a motion does not stay a proceeding.

(h) Reply

The moving Party shall have no right to reply to the opposition or other response of the other Parties unless an Adjudicator permits a reply to be filed. Unless otherwise ordered by an Adjudicator, a movant's reply submission shall be filed within five days after the Adjudicator serves the order granting the motion to file a reply or a Party serves the opposition or other response to which the Adjudicator previously ordered that a reply could be filed.

(i) Page Limit, Format Requirements

Unless otherwise ordered by an Adjudicator, submissions in support of or in opposition to motions shall not exceed ten double-spaced pages, including double-spaced footnotes, exclusive of pages containing any table of contents, table of authorities, or addenda.

(j) Disposition of Procedural Motions; Disposition of Motions for Summary Disposition

(1) In the Rule 9200 Series, a motion on a procedural matter may be decided by a Hearing Officer. A motion for summary disposition of a cause of action set forth in a complaint shall be decided by a majority vote of the Hearing Panel or, if applicable, the Extended Hearing Panel.

(2) In the Rule 9300 Series, a motion on a procedural matter may be decided by Counsel to the Nasdaq Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or the Nasdaq Review Council. A motion for disposition of a cause of action shall be decided by the Nasdaq Review Council, except that a motion to dismiss a case for abandonment made under Rule 9344 may be decided by the Review Subcommittee.

(3) In the Rule 9500 Series, a motion shall be decided by an Adjudicator.

(k) Motion For Protective Order

(1) A Party, a person who is the owner, subject, or creator of a Document subject to production under Rule 8210 or any other Rule which may be introduced as evidence in a disciplinary proceeding, or a witness who testifies at a hearing in a disciplinary proceeding may file a motion requesting a protective order to limit disclosure or prohibit from disclosure to other Parties, witnesses or other persons, except the Department of Enforcement and Nasdaq Regulation Department staff, Documents or testimony that contain confidential information. The motion shall include a general summary or extract of the Documents or testimony without revealing confidential details. If the movant seeks a protective order against disclosure to other Parties, copies of the Documents shall not be served on the other Parties. Unless the Documents are unavailable, the movant shall file for in camera inspection a sealed copy of the Documents for which the order is sought. If the movant is not a Party, the motion shall be served on each Party by the movant using a method in Rule 9134(a) and filed with the Adjudicator. A motion for a protective order shall be granted only upon a finding that disclosure of the Document or testimony would have a demonstrated adverse business effect on the movant or would involve an unreasonable breach of the movant's personal privacy.

(2) If a protective order is granted, the order shall set forth the restrictions on use and disclosure of such Document or testimony. An Adjudicator does not have the authority to issue a protective order that would limit in any manner the use by the staff of Nasdaq Regulation Department of such Documents or testimony in the Nasdaq Regulation Department staff's performance of their regulatory and self-regulatory responsibilities and functions, including the transmittal, without restriction to the recipient, of such Documents or testimony to state, federal, or foreign regulatory authorities or other self-regulatory organizations. An Adjudicator does not have the authority to issue a protective order that purports to protect from production such Documents or testimony in the event that Nasdaq is subject to a subpoena requiring that the Documents or testimony be produced.

(l) General

All motions, oppositions or responses, replies, and any other filings made in a proceeding shall comply with Rules 9133, 9134, 9135, 9136 and 9137.

#### **9147. Rulings On Procedural Matters**

The Nasdaq Board, the Nasdaq Review Council, a Hearing Officer, or any other Adjudicator shall have full authority, except as otherwise provided by the Code, to rule on a procedural motion and any other procedural or administrative matter arising during the course of a proceeding conducted pursuant to the Code, subject to the rights of review or appeal provided by the Code.

#### **9148. Interlocutory Review**

Except as provided in Rule 9280, there shall be no interlocutory review of a ruling or order issued by any Adjudicator in a proceeding governed by the Code. If an Adjudicator grants interlocutory review of a ruling or order, such review shall not stay a proceeding, except under Rule 9280 or as otherwise ordered by the Adjudicator.

#### **9150. Exclusion from Rule 9000 Series Proceeding**

##### **(a) Exclusion**

An Adjudicator may exclude an attorney for a Party or other person authorized to represent others by Rule 9141 from acting as counsel, acting in any representative capacity, or otherwise appearing in a particular Rule 9000 Series proceeding for contemptuous conduct under Rule 9280 or unethical or improper professional conduct in that proceeding. If an attorney for a Party, or other person authorized to represent others by Rule 9141, is excluded from a disciplinary hearing or conference, or any portion thereof, such attorney or person may seek review by the Nasdaq Review Council of such exclusion under Rule 9280(c).

##### **(b) Other Proceedings Not Precluded**

Prohibiting an attorney or other person authorized to represent others by Rule 9141 from practicing or appearing in a Nasdaq proceeding shall not preclude Nasdaq from initiating other proceedings against such person.

#### **9160. Recusal or Disqualification**

No person shall participate as an Adjudicator in a matter governed by the Code as to which he or she has a conflict of interest or bias, or circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case the person shall recuse himself or herself, or shall be disqualified as follows:

##### **(a) Nasdaq Board**

The Chair of the Nasdaq Board shall have authority to order the disqualification of a Director, and a majority of the Nasdaq Board excluding the Chair of the Nasdaq Board, shall have authority to order the disqualification of the Chair;

(b) Nasdaq Review Council, Review Subcommittee, or Certain Subcommittees

The Chair of the Nasdaq Review Council shall have authority to order the disqualification of a member of the Nasdaq Review Council or the Review Subcommittee, a member of a Subcommittee appointed pursuant to Rule 9559(q) or General 5, a Hearing Panel appointed pursuant to the Rule 9520 Series, and the Statutory Disqualification Committee; and a majority of the Nasdaq Review Council excluding the Chair of the Nasdaq Review Council shall have authority to order the disqualification of the Chair of the Nasdaq Review Council;

(c) Rule 9331 Subcommittee or Extended Proceeding Committee

Disqualification of a Panelist of a Subcommittee or Extended Proceeding Committee appointed under the Rule 9300 Series shall be governed by Rule 9332;

(d) Reserved

(e) Panelist of Hearing Panel or Extended Hearing Panel

Disqualification of a Panelist of a Hearing Panel or Extended Hearing Panel appointed under the Rule 9200 Series shall be governed by Rule 9234; and

(f) Hearing Officer

Disqualification of a Hearing Officer of a Hearing Panel or an Extended Hearing Panel shall be governed by Rule 9233.

**9200. Disciplinary Proceedings**

**9210. Complaint and Answer**

**9211. Authorization of Complaint**

(a) Complaint

(1) If the Nasdaq Regulation Department or the Department of Enforcement believes that any Nasdaq member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which Nasdaq has jurisdiction to enforce, the Nasdaq Regulation Department or the Department of Enforcement may request authorization from the FINRA Office of Disciplinary Affairs to issue a complaint.

(2) The Nasdaq Board shall have the authority to direct the Nasdaq Regulation Department, including the FINRA Office of Disciplinary Affairs, to authorize and the Department of Enforcement to issue a complaint when, on the basis of information and belief, the Nasdaq Board is of the opinion that any Nasdaq member or associated person is violating or has violated any rule, regulation, or

statutory provision, including the federal securities laws and the regulations thereunder, which Nasdaq has jurisdiction to enforce.

(b) Commencement of Disciplinary Proceeding

A disciplinary proceeding shall begin when the complaint is served and filed.

**9212. Complaint Issuance — Requirements, Service, Amendment, Withdrawal, and Docketing**

(a) Form, Content, Notice, Docketing, and Service

(1) If a complaint is authorized, the Nasdaq Regulation Department or the Department of Enforcement shall issue the complaint. Each complaint shall be in writing and signed by the Nasdaq Regulation Department or the Department of Enforcement. The complaint shall specify in reasonable detail the conduct alleged to constitute the violative activity and the rule, regulation, or statutory provision the Respondent is alleged to be violating or to have violated. If the complaint consists of several causes of action, each cause shall be stated separately. Complaints shall be served by the Nasdaq Regulation Department or the Department of Enforcement on each Party pursuant to Rules 9131 and 9134, and filed at the time of service with the Office of Hearing Officers pursuant to Rules 9135, 9136, and 9137.

(2) At the time of issuance of a complaint, the Nasdaq Regulation Department or the Department of Enforcement may propose an appropriate location for the hearing.

(b) Amendments to Complaint

The Nasdaq Regulation Department or the Department of Enforcement may file and serve an amended complaint once as a matter of course at any time before the Respondent answers the complaint. Otherwise, upon motion by the Nasdaq Regulation Department or the Department of Enforcement, the Hearing Officer may permit the Nasdaq Regulation Department or the Department of Enforcement to amend the complaint, including amendments so as to make the complaint conform to the evidence presented, after considering whether the Nasdaq Regulation Department or the Department of Enforcement has shown good cause for the amendment and whether any Respondent will suffer any unfair prejudice if the amendment is allowed. Amendments to complaints will be freely granted when justice so requires.

(c) Withdrawal of Complaint

With prior leave of the Hearing Officer, the Nasdaq Regulation Department or the Department of Enforcement may withdraw a complaint. If the Nasdaq Regulation Department or the Department of Enforcement withdraws the complaint before the earlier of (1) the Hearing Panel's or, if applicable, the Extended Hearing Panel's, issuance of a

ruling on a motion for summary disposition, or (2) the start of the hearing on the merits, the withdrawal of the complaint by the Nasdaq Regulation Department or the Department of Enforcement shall be without prejudice and the Nasdaq Regulation Department or the Department of Enforcement shall be permitted to refile a case based on allegations concerning the same facts and circumstances that are set forth in the withdrawn complaint. If the Nasdaq Regulation Department or the Department of Enforcement requests to withdraw such complaint after the occurrence of either of the two events set forth in (1) and (2) in this paragraph, the Hearing Panel or, if applicable, the Extended Hearing Panel, after considering the facts and circumstances of the request, shall determine whether the withdrawal shall be granted with prejudice.

(d) Disciplinary Proceeding Docket

The Office of Hearing Officers shall promptly record each complaint filed with it in Nasdaq's disciplinary proceeding docket, and record in the disciplinary proceeding docket each event, filing, and change in the status of a disciplinary proceeding.

**9213. Assignment of Hearing Officer and Appointment of Panelists to Hearing Panel or Extended Hearing Panel**

(a) Assignment of Hearing Officer

As soon as practicable after the Nasdaq Regulation Department or the Department of Enforcement has filed a complaint with the Office of Hearing Officers, the Chief Hearing Officer shall assign a Hearing Officer to preside over the disciplinary proceeding and shall serve the Parties with notice of the Hearing Officer's assignment pursuant to Rule 9132.

(b) Appointment of Panelists

As soon as practicable after assigning a Hearing Officer to preside over a disciplinary proceeding, the Chief Hearing Officer shall appoint Panelists pursuant to Rules 9231 and 9232 to a Hearing Panel or, if the Chief Hearing Officer determines that an Extended Hearing Panel should be appointed, to an Extended Hearing Panel.

**9214. Consolidation or Severance of Disciplinary Proceedings**

(a) Consolidation Initiated by Chief Hearing Officer

The Chief Hearing Officer may order the consolidation of two or more disciplinary proceedings, upon his or her own motion, under circumstances where such consolidation would further the efficiency of the disciplinary process, and where the subject complaints involve common questions of law or fact, or one or more of the same Respondents. In determining whether to order the consolidation of such disciplinary proceedings, the Chief Hearing Officer shall consider:

- (1) whether the same or similar evidence reasonably would be expected to be offered at each of the hearings;



(2) whether the proposed consolidation would conserve the time and resources of the Parties; and

(3) whether any unfair prejudice would be suffered by one or more Parties as a result of the consolidation.

If the Chief Hearing Officer proposes to consolidate two or more disciplinary proceedings, the Chief Hearing Officer shall serve upon the Parties notice of the proposed consolidation of disciplinary proceedings, together with a copy of each relevant complaint and any answer that has been filed thereto, pursuant to Rule 9132. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to consolidation.

(b) Consolidation Initiated by a Party

A Party may file a motion to consolidate two or more disciplinary proceedings if such consolidation would further the efficiency of the disciplinary process, if the subject complaints involve common questions of law or fact or one or more of the same Respondents, or if one or more of the factors favoring consolidation set forth in paragraph (a) appear to be present. If a Party moves to consolidate two or more disciplinary proceedings, the Party shall file such motion, together with a copy of each relevant complaint and any answer thereto that has been filed, with the Office of Hearing Officers, and, pursuant to Rule 9133, shall serve the same upon the Parties in each of the cases proposed to be consolidated. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to consolidation, and shall serve the response upon the Parties in each of the cases proposed to be consolidated. The Chief Hearing Officer shall issue an order approving or denying the request for consolidation.

(c) Impact on Hearing Panel or Extended Hearing Panel

If the Chief Hearing Officer issues an order to consolidate two or more disciplinary proceedings for which Hearing Panels or, if applicable, Extended Hearing Panels, have been appointed, the Chief Hearing Officer's order shall specify which Hearing Panel or, if applicable, Extended Hearing Panel, shall preside over the consolidated disciplinary proceeding, or shall appoint a new Hearing Panel or, if applicable, Extended Hearing Panel, to preside, based on the criteria set forth in Rules 9231 and 9232.

(d) Severance Initiated by Chief Hearing Officer

The Chief Hearing Officer may order the severance of a disciplinary proceeding into two or more disciplinary proceedings, upon his or her own motion. In determining whether to order the severance of such disciplinary proceedings, the Chief Hearing Officer shall consider:

(1) whether the same or similar evidence reasonably would be expected to be offered at each of the possible hearings;

(2) whether the severance would conserve the time and resources of the Parties; and

(3) whether any unfair prejudice would be suffered by one or more Parties if the severance is (not) ordered.

If the Chief Hearing Officer proposes to sever a disciplinary proceeding, the Chief Hearing Officer shall serve upon the Parties notice of the proposed severance of disciplinary proceedings pursuant to Rule 9132. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to severance.

(e) Severance Initiated by a Party

A Party may file a motion to sever a disciplinary proceeding if one or more of the factors favoring severance set forth in paragraph (d) appear to be present. If a Party moves to sever a disciplinary proceeding, the Party shall file such motion with the Office of Hearing Officers, and, pursuant to Rule 9133, shall serve the same upon each of the parties to the action proposed to be severed. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to severance, and shall serve the response upon the Parties in the case proposed to be severed. The Chief Hearing Officer shall issue an order approving or denying the request for severance.

(f) Impact on Hearing Panel or Extended Hearing Panel of Severance

If the Chief Hearing Officer issues an order to sever a disciplinary proceeding for which a Hearing Panel or, if applicable, Extended Hearing Panel, has been appointed, the Chief Hearing Officer's order shall specify whether the same Hearing Panel or, if applicable, Extended Hearing Panel, shall preside over the severed disciplinary proceedings, or shall appoint a new Hearing Panel(s) or, if applicable, Extended Hearing Panel(s), to preside over any or all of the severed proceedings, based on the criteria set forth in Rules 9231 and 9232.

**9215. Answer to Complaint**

(a) Form, Service, Notice

Pursuant to Rule 9133, each Respondent named in a complaint shall serve an answer to the complaint on all other Parties within 25 days after service of the complaint on such Respondent, and at the time of service shall file such answer with the Office of Hearing Officers pursuant to Rules 9135, 9136 and 9137. The Hearing Officer assigned to a disciplinary proceeding pursuant to Rule 9213 may extend such period for good cause. Upon the receipt of a Respondent's answer, the Office of Hearing Officers shall promptly send written notice of the receipt of such answer to all Parties.

(b) Content, Affirmative Defenses

Unless otherwise ordered by the Hearing Officer, an answer shall specifically admit, deny, or state that the Respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation in the complaint. When a Respondent intends to deny only part of an allegation, the Respondent shall specify so much of it as is admitted and deny only the remainder. A statement of lack of information shall be deemed a denial. Any allegation not denied in whole or in part shall be deemed admitted. Any affirmative defense shall be asserted in the answer.

(c) Motion for More Definite Statement

A Respondent may file with an answer a motion for a more definite statement of specified matters of fact or law to be considered or determined. Such motion shall state why each such matter of fact or law should be required to be made more definite. If the motion is granted, the order granting such motion shall set the periods for filing such a statement and any answer thereto.

(d) Amendments to Answer

Upon motion by a Respondent, the Hearing Officer may, after considering good cause shown by the Respondent and any unfair prejudice which may result to any other Party, permit an answer to be amended.

(e) Extension of Time to Answer Amended Complaint

If a complaint is amended pursuant to Rule 9212(b), the time for filing an answer or amended answer shall be the greater of the original time period within which the Respondent is required to respond, or 14 days after service of the amended complaint. If any Respondent has already filed an answer, such Respondent shall have 14 days after service of the amended complaint, unless otherwise ordered by the Hearing Officer, within which to file an amended answer.

(f) Failure to Answer, Default

If a Respondent does not file an answer or make any other filing or request related to the complaint with the Office of Hearing Officers within the time required, the Nasdaq Regulation Department or the Department of Enforcement shall send a second notice to such Respondent requiring an answer within 14 days after service of the second notice. The second notice shall state that failure of the Respondent to reply within the period specified shall allow the Hearing Officer, in the exercise of his or her discretion, pursuant to Rule 9269 to: (1) treat as admitted by the Respondent the allegations in the complaint; and (2) issue a default decision against the Respondent. If the Respondent fails to file an answer with the Office of Hearing Officers within the time required, the Hearing Officer may issue a default decision against the Respondent pursuant to Rule 9269.

**9216. Acceptance, Waiver, and Consent; Plan Pursuant to SEC Rule 19d-1(c)(2)**

(a) Acceptance, Waiver, and Consent Procedures

(1) Notwithstanding Rule 9211, if the Nasdaq Regulation Department or the Department of Enforcement has reason to believe a violation has occurred and the member or associated person does not dispute the violation, the Nasdaq Regulation Department or the Department of Enforcement may prepare and request that the member or associated person execute a letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the Nasdaq Review Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by Nasdaq Regulation Department staff.

(2)

(A) If a member or person associated with a member submits an executed letter of acceptance, waiver, and consent, by the submission such member or person associated with a member also waives:

(i) any right of such member or person associated with a member to claim bias or prejudice of the Chief Regulatory Officer, the Nasdaq Review Council, or any member of the Nasdaq Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent; and

(ii) any right of such member or person associated with a member to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

(B) If a letter of acceptance, waiver, and consent is rejected, the member or associated person shall be bound by the waivers made under subparagraphs (a)(1) and (a)(2)(A) for conduct by persons or bodies occurring during the period beginning on the date the letter of acceptance, waiver, and consent was executed and submitted and ending upon the rejection of the letter of acceptance, waiver, and consent.

(3) If the member or associated person executes the letter of acceptance, waiver, and consent, it shall be submitted to the Nasdaq Review Council. The Review Subcommittee or the Office of Disciplinary Affairs may accept such letter or refer it to the Nasdaq Review Council for acceptance or rejection by the Nasdaq Review Council. The Review Subcommittee may reject such letter or refer it to the Nasdaq Review Council for acceptance or rejection by the Nasdaq Review Council.

(4) If the letter is accepted by the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs, it shall be deemed final and shall constitute the complaint, answer, and decision in the matter. If the letter is rejected by the Review Subcommittee or the Nasdaq Review Council, the Nasdaq Regulation Department may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member or associated person shall not be prejudiced by the execution of the letter of acceptance, waiver, and consent under subparagraph (a)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

(b) Procedure for Violation Under Plan Pursuant to SEC Rule 19d-1(c)(2)

(1) Notwithstanding Rule 9211, the Nasdaq Review Council may, subject to the requirements set forth in subparagraphs (b)(2) through (b)(4) and in SEC Rule 19d-1(c)(2), impose a fine (not to exceed \$2,500) and/or a censure on any member or associated person with respect to any rule listed in IM-9216. If the Nasdaq Regulation Department or the Department of Enforcement has reason to believe a violation has occurred and if the member or associated person does not dispute the violation, the Nasdaq Regulation Department or the Department of Enforcement may prepare and request that the member or associated person execute a minor rule violation plan letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the Nasdaq Review Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by Nasdaq Regulation Department staff.

(2)

(A) If a member or person associated with a member submits an executed minor rule violation plan letter, by the submission such member or person associated with a member also waives:

(i) any right of such member or person associated with a member to claim bias or prejudgment of the Chief Regulatory Officer, the Nasdaq Review Council, or any member of the Nasdaq Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter; and

(ii) any right of such member or person associated with a member to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter.

(B) If a minor rule violation plan letter is rejected, the member or person associated with a member shall be bound by the waivers made under subparagraphs (b)(1) and (b)(2)(A) for conduct by persons or bodies occurring during the period beginning on the date the minor rule violation plan letter was executed and submitted and ending upon the rejection of the minor rule violation plan letter.

(3) If the member or associated person executes the minor rule violation plan letter, it shall be submitted to the Nasdaq Review Council. The Review Subcommittee or the Office of Disciplinary Affairs may accept such letter or refer it to the Nasdaq Review Council for acceptance or rejection by the Nasdaq Review Council. The Review Subcommittee may reject such letter or refer it to the Nasdaq Review Council for acceptance or rejection by the Nasdaq Review Council.

(4) If the letter is accepted by the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs, it shall be deemed final and Nasdaq shall report the violation to the Commission as required by the Commission pursuant to a plan approved under SEC Rule 19d-1(c)(2). If the letter is rejected by the Review Subcommittee or the Nasdaq Review Council, the Nasdaq Regulation Department may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member or associated person shall not be prejudiced by the execution of the minor rule violation plan letter under subparagraph (b)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

**IM-9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)**

- General 9, Sections 3 and 4 — Communications with the public.
- Rule 3360 — Failure to timely file reports of short positions on Form NS-1.
- General 9, Section 30 — Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with the Rules of Nasdaq.
- Rule 8211 — Failure to submit trading data as requested.
- Rule 1013 — Failure to timely submit amendments to Form BD.
- General 4, Section 1.1210.12 — Failure to timely submit amendments to Form U4.
- Rule 1013 — Failure to timely submit amendments to Form U5.
- General 4, Section 1.1240 — Failure to comply with the Firm Element of the continuing education requirements.
- General 9, Section 20(b) — Failure to timely file reports pursuant to the Taping Rule.
- General 9, Section 27 — Failure to timely file reports.
- Rule 4619(e) — Failure to timely file notifications pursuant to SEC Regulation M.
- Equity 5, Sections 4 and 5 — Failure to submit data in accordance with the Order Audit Trail System ("OATS").
- Rule 11870 — Failure to abide by Customer Account Transfer Contracts.
- Failure to provide or update contact information as required by Nasdaq Rules.
- Nasdaq Options Market Rules, Options 11, Section 1 - Penalty for Minor Rule Violations for Options Trading
- SEC Exchange Act Rule 604 — Failure to properly display limit orders.
- SEC Exchange Act Rule 605(b)(5) — Failure to properly update published quotations in certain Electronic Communication Networks ("ECNs").
- SEC Exchange Act Rule 17a-5 — Failure to timely file FOCUS reports and annual audit reports.

- SEC Exchange Act Rule 17a-10 — Failure to timely file Schedule I.

## **9220. Request for Hearing; Extensions of Time, Postponements, Adjournments**

### **9221. Request for Hearing**

#### **(a) Respondent Request for Hearing**

With the filing of any Respondent's answer, such Respondent may:

- (1) request a hearing; and
- (2) propose an appropriate location for the hearing.

If a Respondent requests a hearing, a hearing shall be granted. A Respondent who fails to request a hearing with the filing of his or her answer waives the right to a hearing unless a Hearing Officer, Hearing Panel, or, if applicable, an Extended Hearing Panel, grants, for good cause shown, a later filed motion by such Respondent requesting a hearing.

#### **(b) Hearing Officer Order Requiring Hearing**

In the absence of a request for a hearing from any Respondent, the Hearing Officer may order any complaint set down for hearing.

#### **(c) Authority of Hearing Panel, Extended Hearing Panel to Order Hearing**

If all Respondents waive a hearing, and the Hearing Officer does not order a hearing on his or her own motion, the Hearing Panel or, if applicable, the Extended Hearing Panel, may order a hearing or may consider the matter on the record, as defined in Rule 9267. If fewer than all Respondents waive a hearing, the Hearing Officer, the Hearing Panel, or, if applicable, the Extended Hearing Panel, may, in the exercise of its discretion, order that a hearing be held as to all Respondents. Alternatively, the Hearing Officer, the Hearing Panel, or, if applicable, the Extended Hearing Panel, may conduct a hearing as to only those Respondents who requested a hearing and consider the matter on the record as to those Respondents who waived a hearing.

#### **(d) Notice of Hearing**

The Hearing Officer shall issue a notice stating the date, time, and place of the hearing, and whether the hearing shall be held before a Hearing Panel or an Extended Hearing Panel, and shall serve such notice on the Parties at least 28 days before the hearing, unless:

- (1) in the discretion of the Hearing Officer, he or she determines that extraordinary circumstances require a shorter notice period; or



(2) the Parties waive the notice period.

## **9222. Extensions of Time, Postponements, and Adjournments**

### **(a) Availability**

At any time prior to the issuance of the decision of the Hearing Panel or, if applicable, the Extended Hearing Panel, the Hearing Officer may, for good cause shown, extend or shorten any time limits prescribed by the Code for the filing of any papers and may, consistent with paragraph (b), postpone or adjourn any hearing.

### **(b) Limitations on Postponements, Adjournments, and Extensions**

A hearing shall begin at the time and place ordered, unless the Hearing Officer, for good cause shown, changes the place of the hearing, postpones the commencement of the hearing, or adjourns a convened hearing for a reasonable period of time, subject to the limitations in subparagraph (b)(2).

#### **(1) Additional Considerations**

In considering a motion for the postponement of the start of a hearing or, adjournment once a hearing has begun, the Hearing Officer shall consider:

(A) the length of the proceeding to date;

(B) the number of postponements, adjournments, or extensions already granted;

(C) the stage of the proceedings at the time of the request;

(D) potential harm to the investing public if an extension of time, adjournment, or postponement is granted; and

(E) such other matters as justice may require.

#### **(2) Time Limit**

Postponements, adjournments, or extensions of time for filing papers shall not exceed 28 days unless the Hearing Officer states on the record or provides by written order the reasons a longer period is necessary.

## **9230. Appointment of Hearing Panel, Extended Hearing Panel**

### **9231. Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel or Replacement Hearing Officer**

#### **(a) Appointment**

The Chief Hearing Officer shall appoint a Hearing Panel or an Extended Hearing Panel to conduct the disciplinary proceeding and issue a decision.

**(b) Hearing Panel**

The Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in paragraph (e) and in Rule 9234(a), (c), (d), or (e). The Hearing Officer shall serve as the chair of the Hearing Panel. Each Panelist shall be associated with a member of Nasdaq or retired therefrom.

(1) The Chief Hearing Officer shall select as a Panelist a person who:

(A) previously served on the Nasdaq Review Council;

(B) previously served on a disciplinary subcommittee of the Nasdaq Review Council, including a Subcommittee, an Extended Proceeding Committee, or their predecessor subcommittees;

(C) previously served as a Director, but does not serve currently in that position;

(D) is a FINRA Panelist approved by the Nasdaq Board at least annually, including a person who previously served on the Market Regulation Committee not earlier than four years before the date the complaint was served upon the Respondent who was the first served Respondent in the disciplinary proceeding for which the Hearing Panel or the Extended Hearing Panel is being appointed, or from other sources the Board deems appropriate given the responsibilities of Panelists.

**(c) Extended Hearing Panel**

Upon consideration of the complexity of the issues involved, the probable length of the hearing, or other factors that the Chief Hearing Officer deems material, the Chief Hearing Officer may determine that a matter shall be designated an Extended Hearing, and that such matter shall be considered by an Extended Hearing Panel. The Extended Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in Rule 9234(a), (c), (d), or (e). The Hearing Officer will serve as the chair of the Extended Hearing Panel. The Panelists shall be associated with a member of Nasdaq, or retired therefrom. The Chief Hearing Officer shall have discretion to compensate any or all Panelists of an Extended Hearing Panel at the rate then in effect for arbitrators appointed under FINRA Rule 12000 and 13000 Series. The Chief Hearing Officer shall select as a Panelist a person who meets the criteria set forth in paragraph (b)(1).

**(d) Observer**

A person who is qualified to serve as a Panelist may be designated by the Chief Hearing Officer to serve as an observer to a Hearing Panel or an Extended Hearing Panel. If the Chief Hearing Officer designates more than two people to serve as observers to a Hearing Panel or an Extended Hearing Panel, the Chief Hearing Officer shall obtain the consent of the Parties. An observer may attend any hearing of a disciplinary proceeding and observe the proceeding, but may not vote or participate in any other manner in the hearing or the deliberations of the Hearing Panel or the Extended Hearing Panel, or participate in the administration of the disciplinary proceeding.

**(e) Appointment of Replacement Hearing Officer**

In the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer shall appoint a replacement Hearing Officer. To ensure fairness to the parties and expedite completion of the proceeding when a replacement Hearing Officer is appointed after the hearing has commenced, the replacement Hearing Officer has discretion to exercise the following powers:

(1) Allow the Hearing Panelists to resolve the issues in the proceeding and issue a decision without the participation of the replacement Hearing Officer in the decision. The replacement Hearing Officer may advise the Hearing Panelists regarding legal issues, and shall exercise the powers of the Hearing Officer under Rule 9235(a), including preparing and signing the decision on behalf of the Hearing Panel, in accordance with Rule 9268; or

(2) Certify familiarity with the record and participate in the resolution of the issues in the case and in the issuance of the decision. In exercising this power, the replacement Hearing Officer may recall any witness before the Hearing Panel.

**9232. Criteria for Selection of Panelists and Replacement Panelists**

(a) The Chief Hearing Officer shall select Panelists from the categories of persons eligible to serve as Panelists as set forth in Rule 9231(b)(1)(A) through (D) based upon the following criteria:

(1) expertise;

(2) the absence of any conflict of interest or bias, and any appearance thereof;

(3) availability; and,

(4) the frequency with which a person has served as a Panelist on a Hearing Panel or an Extended Hearing Panel during the past two years, favoring the selection of a person as a Panelist who has never served or served infrequently as a Panelist during the period.

**9233. Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Hearing Officers****(a) Recusal, Withdrawal of Hearing Officer**

If at any time a Hearing Officer determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Hearing Officer shall notify the Chief Hearing Officer and the Chief Hearing Officer shall issue and serve on the Parties a notice stating that the Hearing Officer has withdrawn from the matter. In the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer shall appoint a replacement Hearing Officer. In such a case, the replacement Hearing Officer shall proceed according to Rule 9231(e).

**(b) Motion for Disqualification**

A Party may move for the disqualification of a Hearing Officer. A motion shall be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Hearing Officer's fairness might reasonably be questioned, and shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the Party learned of those facts. Such motions shall be filed not later than 15 days after the later of:

- (1) when the Party learned of the facts believed to constitute the disqualification;
- or
- (2) when the Party was notified of the assignment of the Hearing Officer.

**(c) Disposition of Disqualification Motion**

A motion for disqualification of a Hearing Officer shall be decided by the Chief Hearing Officer who shall promptly investigate whether disqualification is required and issue a written ruling on the motion. In the event of a disqualification of the Hearing Officer, the Chief Hearing Officer shall appoint a replacement Hearing Officer.

**9234. Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Panelists****(a) Recusal, Withdrawal of Panelist**

If at any time a Panelist of a Hearing Panel or an Extended Hearing Panel determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Panelist shall notify the Hearing Officer and the Hearing Officer shall issue and serve on the Parties a notice stating that the Panelist has withdrawn from the matter. In the event that a Panelist withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer may, in the exercise of discretion, determine whether to appoint a replacement Panelist. In the event that both Panelists withdraw, are incapacitated, or

otherwise are unable to continue service after being appointed, the Chief Hearing Officer shall appoint two replacement Panelists.

**(b) Disqualification: Motion of Party; Order of Chief Hearing Officer**

(1) A Party may file a motion to disqualify a Panelist of a Hearing Panel or an Extended Hearing Panel. A motion shall be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Panelist's fairness might reasonably be questioned, and shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the Party learned of those facts.

(2) Such motions shall be filed not later than 15 days after the later of:

(A) when the Party learned of the facts believed to constitute the disqualification; or

(B) when the Party was notified of the appointment of the Panelist.

(3) The Chief Hearing Officer may order the disqualification of a Panelist of a Hearing Panel or an Extended Hearing Panel if the Chief Hearing Officer determines that a conflict of interest or bias exists or circumstances otherwise exist where the Panelist's fairness might reasonably be questioned, and shall state the facts constituting the grounds for disqualification.

**(c) Disposition of Disqualification Motion: Challenge to Single Member of Hearing Panel**

If a Party files a motion to disqualify a Panelist of a Hearing Panel or an Extended Hearing Panel, the Hearing Officer shall promptly investigate whether disqualification is required and shall issue a written ruling on the motion. In the event a Panelist is disqualified, the Chief Hearing Officer may, in the exercise of discretion, appoint a replacement Panelist.

**(d) Disposition of Disqualification Motion: Challenge to Both Panelists of Hearing Panel or Extended Hearing Panel**

If a Party files a motion to disqualify both Panelists of a Hearing Panel or an Extended Hearing Panel, the Hearing Officer shall promptly investigate whether disqualification is required and shall issue a written ruling on the motion. In the event one Panelist is disqualified, the Chief Hearing Officer may, in the exercise of discretion, appoint a replacement Panelist. In the event both Panelists are disqualified, the Chief Hearing Officer shall promptly appoint two persons as replacement Panelists.

**(e) Disposition of Disqualification Motion: Challenge to Both Panelists of Hearing Panel or Extended Hearing Panel and Hearing Officer**

If a Party files a motion to disqualify both Panelists of a Hearing Panel or an Extended Hearing Panel, and the Hearing Officer, the Chief Hearing Officer shall promptly investigate whether disqualification is required and shall issue a written ruling on the motion. In the event a Panelist is disqualified, the Chief Hearing Officer may, in the exercise of discretion, appoint a replacement Panelist. In the event both Panelists are disqualified, the Chief Hearing Officer shall promptly appoint two persons as replacement Panelists. In the event a Hearing Officer and a Panelist are disqualified, the Chief Hearing Officer shall promptly appoint a replacement Hearing Officer. In the event both Panelists and the Hearing Officer are disqualified, the Chief Hearing Officer shall promptly appoint a replacement Hearing Officer and two persons as replacement Panelists.

**(f) Criteria for Replacement Panelist**

If the Chief Hearing Officer appoints a replacement Panelist by operation of this Rule, the Chief Hearing Officer shall do so using the criteria set forth in Rule 9232.

**9235. Hearing Officer Authority**

**(a) Hearing Officer Authority**

The Hearing Officer shall be selected by the Chief Hearing Officer and shall have authority to do all things necessary and appropriate to discharge his or her duties. In addition to the powers exercised by all members of the Hearing Panel or, if applicable, the Extended Hearing Panel, the powers of the Hearing Officer include, but are not limited to:

- (1) holding pre-hearing and other conferences and requiring the attendance at any such conference of at least one representative of each Party who has authority to negotiate the resolution of issues in controversy;
- (2) regulating the course of the hearing;
- (3) ordering the Parties to present oral arguments at any stage of the disciplinary proceeding;
- (4) resolving any and all procedural and evidentiary matters, discovery requests, and other non-dispositive motions, subject to any limitations set forth elsewhere in the Code;
- (5) reopening any hearing, upon notice to all Parties, prior to the issuance of the decision of the Hearing Panel or, if applicable, the Extended Hearing Panel;
- (6) creating and maintaining the official record of the disciplinary proceeding; and

(7) drafting a decision that represents the views of the majority of the Hearing Panel or, if applicable, the Extended Hearing Panel.

**(b) Authority in the Absence of Hearing Officer**

If the Hearing Officer appointed to a case is temporarily unavailable or unable for any reason to discharge his or her duties in a particular proceeding under conditions not requiring the appointment of a replacement Hearing Officer, the Chief Hearing Officer or the Deputy Chief Hearing Officer in his or her discretion may exercise the necessary authority in the same manner as if he or she had been appointed Hearing Officer in the particular proceeding.

**9240. Pre-Hearing Conference and Submission**

**9241. Pre-Hearing Conference**

**(a) Purposes**

The purposes of a pre-hearing conference include, but are not limited to:

- (1) expediting the disposition of the proceeding;
- (2) establishing procedures to manage the proceeding efficiently; and
- (3) improving the quality of the hearing through more thorough preparation.

**(b) Procedure**

On his or her own motion or at the request of a Party, the Hearing Officer may, in his or her discretion, order counsel or any Party to meet for a pre-hearing conference. Such conferences also may be held with one or more persons participating by telephone or other remote means.

**(c) Subjects to be Discussed**

At a pre-hearing conference, the Hearing Officer shall schedule an expedited proceeding as required by Rule 9290, and may consider and take action with respect to any or all of the following:

- (1) simplification and clarification of the issues;
- (2) exchange of witness and exhibit lists and copies of exhibits;
- (3) stipulations, admissions of fact, and stipulations concerning the contents, authenticity, or admissibility into evidence of documents;
- (4) matters of which official notice may be taken;

- (5) the schedule for exchanging pre-hearing motions or briefs, if any;
- (6) the method of service and filing of papers by the Parties;
- (7) determination of hearing dates;
- (8) amendments to the complaint or answers thereto;
- (9) production of documents as set forth in Rule 9251; and
- (10) such other matters as may aid in the orderly and expeditious disposition of the proceeding.

**(d) Scheduling**

An initial pre-hearing conference, unless determined by the Hearing Officer to be unnecessary or premature, shall be held within 21 days after filing of an answer, or after the expiration of the second period provided for filing an answer as set forth in Rule 9215(f). When a complaint names multiple Respondents, the 21-day period shall commence from the later of (i) the date on which the last timely answer was filed, or (ii) if one or more Respondents have failed to answer, from the expiration of the second period provided for filing an answer under Rule 9215(f).

**(e) Pre-hearing Order**

At or following the conclusion of any conference held pursuant to this Rule, the Hearing Officer shall enter a written ruling or order that recites any agreements reached and any procedural determinations made by the Hearing Officer.

**(f) Failure to Appear: Default**

The Hearing Officer may issue a default decision, pursuant to Rule 9269, against a Party that fails to appear, in person or through counsel or a representative, at a pre-hearing conference of which the Party has been due notice.

**9242. Pre-Hearing Submission**

**(a) Requirement to Furnish Information**

Prior to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, the Hearing Officer, in the exercise of his or her discretion, may order a Party to furnish to all other Parties and the Hearing Panel or, if applicable, the Extended Hearing Panel, such information as deemed appropriate, including any or all of the following:

- (1) an outline or narrative summary of a Party's case or defense;
- (2) the legal theories upon which a Party shall rely;



(3) a list and copies of documents that a Party intends to introduce at the hearing;

(4) a list of witnesses who shall testify on a Party's behalf, including the witnesses' names, occupations, addresses, and a brief summary of their expected testimony; and,

(5) if a witness shall be called to testify as an expert, a statement of the expert's qualifications, a listing of other proceedings in which the expert has given expert testimony, a list of the expert's publications, and copies of those publications that are not readily available to the other Parties and the Hearing Panel or, if applicable, the Extended Hearing Panel.

## **9250. Discovery**

### **9251. Inspection and Copying of Documents in Possession of Staff**

#### **(a) Documents to be Available for Inspection and Copying**

(1) Unless otherwise provided by this Rule, or by order of the Hearing Officer, the Nasdaq Regulation Department or the Department of Enforcement shall make available for inspection and copying by any Respondent, Documents prepared or obtained by Interested Staff in connection with the investigation that led to the institution of proceedings. Such Documents include but are not limited to:

(A) requests for information issued pursuant to Rule 8210;

(B) every other written request directed to persons not employed by Nasdaq to provide Documents or to be interviewed;

(C) the Documents provided in response to any such requests described in (A) and (B) above;

(D) all transcripts and transcript exhibits; and

(E) all other Documents obtained from persons not employed by Nasdaq.

(2) The Nasdaq Regulation Department or the Department of Enforcement shall promptly inform the Hearing Officer and each other Party if, after the issuance of a complaint, requests for information under Rule 8210 are issued under the same investigative file number under which the investigation leading to the institution of disciplinary proceedings was conducted. If Interested Staff receives Documents pursuant to a request for information under Rule 8210 after Documents have been made available to a Respondent for inspection and copying as set forth in paragraph (a), and if such Documents are material and relevant to the disciplinary proceeding in which such Respondent is a Party, the additional Documents shall be made available to the Respondent not later than 14 days after the Interested Staff receives such Documents. If a hearing on the merits is scheduled to begin, Interested Staff shall make the additional Documents available to the Respondent

not less than ten days before the hearing. If Interested Staff receives such Documents ten or fewer days before a hearing on the merits is scheduled to begin or after such hearing begins, Interested Staff shall make the additional Documents available immediately to the Respondent.

(3) Nothing in subparagraph (a)(1) shall limit the discretion of the Nasdaq Regulation Department or the Department of Enforcement to make available any other Document or the authority of the Hearing Officer to order the production of any other Document.

**(b) Documents That May Be Withheld**

(1) The Nasdaq Regulation Department or the Department of Enforcement may withhold a Document if:

(A) the Document is privileged or constitutes attorney work product;

(B) the Document is an examination or inspection report, an internal memorandum, or other note or writing prepared by a Nasdaq employee that shall not be offered in evidence;

(C) the Document would disclose (i) an examination, investigatory or enforcement technique or guideline of Nasdaq, a federal, state, or foreign regulatory authority, or any self-regulatory organization; (ii) the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization that furnished information or was furnished information on a confidential basis regarding an investigation, an examination, an enforcement proceeding, or any other type of civil or criminal enforcement action; or (iii) an examination, an investigation, an enforcement proceeding, or any other type of civil or criminal enforcement action under consideration by, or initiated by Nasdaq, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or

(D) the Hearing Officer grants leave to withhold a Document or category of Documents as not relevant to the subject matter of the proceeding, or for other good cause shown.

(2) Nothing in subparagraph (b)(1) authorizes the Nasdaq Regulation Department or the Department of Enforcement to withhold a Document, or a part thereof, that contains material exculpatory evidence.

**(c) Withheld Document List**

The Hearing Officer may require the Nasdaq Regulation Department or the Department of Enforcement to submit to the Hearing Officer a list of Documents withheld pursuant to

subparagraphs (b)(1)(A) through (D) or to submit to the Hearing Officer any Document withheld. Upon review, the Hearing Officer may order the Nasdaq Regulation Department or the Department of Enforcement to make the list or any Document withheld available to the other Parties for inspection and copying. A motion to require the Nasdaq Regulation Department or the Department of Enforcement to produce a list of Documents withheld pursuant to paragraph (b) shall be based upon some reason to believe that a Document is being withheld in violation of the Code.

**(d) Timing of Inspection and Copying**

The Hearing Officer shall determine the schedule of production of documents pursuant to this Rule. Unless otherwise ordered by the Hearing Officer, the Nasdaq Regulation Department or the Department of Enforcement shall commence making Documents available to a Respondent for inspection and copying pursuant to this Rule not later than 21 days after service of the Respondent's answer or, if there are multiple Respondents, not later than 21 days after the last timely answer is filed. If a Respondent in a multi-Respondent case fails to answer, the Nasdaq Regulation Department or the Department of Enforcement shall make Documents available to all other Respondents not later than the later of:

(1) 21 days after the filing date of the last timely answer, or

(2) the expiration of the second period provided for filing an answer as set forth in Rule 9215(f).

**(e) Place and Time of Inspection and Copying**

Documents subject to inspection and copying pursuant to this Rule shall be made available to the Respondent for inspection and copying at the Nasdaq office where they are ordinarily maintained, or at such other location as the Hearing Officer, in his or her discretion, shall designate, or as the Parties otherwise agree. A Respondent shall be given access to the Documents during normal business hours. A Respondent shall not be given custody of or be permitted to remove the Documents.

**(f) Copying Costs**

A Respondent may obtain a photocopy of all Documents made available for inspection. A Respondent shall be responsible for the cost of photocopying. Unless otherwise ordered, charges for copies made at the request of a Respondent shall be at a rate to be established by the Nasdaq.

**(g) Failure to Make Documents Available — Harmless Error**

In the event that a Document required to be made available to a Respondent pursuant to this Rule is not made available by the Nasdaq Regulation Department or the Department of Enforcement, no rehearing or amended decision of a proceeding already heard or

decided shall be required unless the Respondent establishes that the failure to make the Document available was not harmless error. The Hearing Officer, or, upon appeal or review, a Subcommittee, an Extended Proceeding Committee, or the Nasdaq Review Council, shall determine whether the failure to make the document available was not harmless error.

## **9252. Requests for Information**

### **(a) Content and Timing of Requests**

A Respondent who requests that Nasdaq invoke Rule 8210 to compel the production of Documents or testimony at the hearing shall do so in writing and serve copies on all Parties. Such request shall: be submitted to the Hearing Officer no later than 21 days before the scheduled hearing date; describe with specificity the Documents, the category or type of Documents, or the testimony sought; state why the Documents, the category or type of Documents, or the testimony are material; describe the requesting Party's previous efforts to obtain the Documents, the category or type of Documents, or the testimony through other means; and state whether the custodian of each Document, or the custodian of the category or type of Documents, or each proposed witness is subject to Nasdaq's jurisdiction.

### **(b) Standards for Issuance**

A request that the Nasdaq Regulation Department compel the production of Documents or testimony shall be granted only upon a showing that: the information sought is relevant, material, and non-cumulative; the requesting Party has previously attempted in good faith to obtain the desired Documents and testimony through other means but has been unsuccessful in such efforts; and each of the persons from whom the Documents and testimony are sought is subject to Nasdaq's jurisdiction. In addition, the Hearing Officer shall consider whether the request is unreasonable, oppressive, excessive in scope, or unduly burdensome, and whether the request should be denied, limited, or modified.

### **(c) Limitations on Requests**

If, after consideration of all the circumstances, the Hearing Officer determines that a request submitted pursuant to this Rule is unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she shall deny the request, or grant it only upon such conditions as fairness requires. In making the foregoing determination, the Hearing Officer may inquire of the other Parties whether they shall stipulate to the facts sought to be proved by the Documents or testimony sought. If the Hearing Officer grants the request, the Hearing Officer shall order that requested Documents be produced to all Parties not less than ten days before the hearing, and order that witnesses whose testimony was requested appear and testify at the hearing. If the Hearing Officer grants the request ten or fewer days before a hearing on the merits is scheduled to begin or after such hearing begins, the Documents or testimony shall be produced immediately to all Parties.

**9253. Production of Witness Statements****(a) Availability**

Notwithstanding the provisions of Rule 9251(b),

(1) A Respondent in a disciplinary proceeding may file a motion requesting that the Nasdaq Regulation Department or the Department of Enforcement produce for inspection and copying any statement of any person called or to be called as a witness by the Nasdaq Regulation Department or the Department of Enforcement that pertains, or is expected to pertain, to his or her direct testimony and which is "a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement," as that phrase is used in 18 U.S.C. § 3500(e)(2).

(2) A Respondent in a disciplinary proceeding may also file a motion requesting that the Nasdaq Regulation Department or the Department of Enforcement produce for inspection and copying any contemporaneously written statement made by an Interested Staff member during a routine examination or inspection about the substance of oral statements made by a non-Nasdaq person when (a) either the Interested Staff member or non-Nasdaq person is called as a witness by the Nasdaq Regulation Department or the Department of Enforcement, and (b) that portion of the statement for which production is sought directly relates to the Interested Staff member's testimony or the testimony of the non-Nasdaq witness.

**(b) Failure to Produce — Harmless Error**

In the event that a statement required to be made available for inspection and copying by a Respondent is not provided by the Nasdaq Regulation Department or the Department of Enforcement, there shall be no rehearing of a proceeding already heard, or issuance of an amended decision in a proceeding already decided, unless the Respondent establishes that the failure to provide the statement was not harmless error. The Hearing Officer, or upon appeal or review, a Subcommittee, an Extended Proceeding Committee, or the Nasdaq Review Council, shall determine whether the failure to provide any statement was not harmless error.

**9260. Hearing and Decision****9261. Evidence and Procedure in Hearing****(a) Submission of Documentary Evidence and List of Witnesses Before Hearing**

No later than ten days before the hearing, or at such earlier date as may be specified by the Hearing Officer, each Party shall submit to all other Parties and to the Hearing Officer copies of documentary evidence and the names of the witnesses each Party intends to present at the hearing.

**(b) Party's Right to Be Heard**

If a hearing is held, a Party shall be entitled to be heard in person, by counsel, or by the Party's representative.

**(c) Request to Submit Additional Evidence**

Notwithstanding paragraph (a), a Party, for good cause shown, may seek to submit any additional evidence at the hearing as the Hearing Officer, in his or her discretion, determines may be relevant and necessary for a complete record.

**9262. Testimony**

A person who is subject to the jurisdiction of Nasdaq shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

**9263. Evidence: Admissibility**

**(a) Criteria for Receiving and Excluding Evidence**

The Hearing Officer shall receive relevant evidence, and may exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unduly prejudicial.

**(b) Objections**

Objections to the admission or exclusion of evidence shall be made on the record and shall succinctly state the grounds relied upon. Excluded material shall be deemed a supplemental document, which shall be attached to the record and retained under Rule 9267.

**9264. Motion for Summary Disposition**

**(a) Pre-hearing**

After a Respondent's answer has been filed and Documents have been made available to that Respondent for inspection and copying pursuant to Rule 9251, the Respondent or the Nasdaq Regulation Department or the Department of Enforcement, without leave of the Hearing Officer, may make a motion for summary disposition of any or all the causes of action in the complaint with respect to that Respondent, as well as any defense raised in a Respondent's answer. All pre-hearing motions for summary disposition and supporting papers shall be filed at least 21 days before the time set for the hearing, or at such earlier time as ordered by the Hearing Officer. Notwithstanding the provisions of Rule 9146(d), any opposition or response to a pre-hearing motion for summary disposition shall be filed at least seven days before the time set for the hearing.

**(b) After Commencement of Hearing on Merits**

After a hearing on the merits has commenced, a Respondent or the Nasdaq Regulation Department or the Department of Enforcement may make a motion for summary disposition of any or all of the causes of action in the complaint with respect to that

Respondent or defenses raised in that Respondent's answer only with leave of the Hearing Officer.

**(c) Case Not Fully Adjudicated on Motion**

If on motion under this Rule a decision is not rendered upon the whole case or for all the relief asked and a hearing is necessary, the Hearing Panel or, if applicable, the Extended Hearing Panel, at the hearing of the motion, by examining the pleadings and the evidence before it and by questioning counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, and directing such further proceedings in the action as are just. Upon the hearing of the action the facts so specified shall be deemed established, and the hearing shall be conducted accordingly.

**(d) Form of Papers**

A motion for summary disposition pursuant to paragraph (a) shall be accompanied by the following: a statement of undisputed facts; a supporting memorandum of points and authorities; and affidavits or declarations that set forth such facts as would be admissible at the hearing and show affirmatively that the affiant is competent to testify to the matters stated therein. A memorandum of points and authorities in support or opposition shall not exceed 35 pages.

**(e) Rulings on Motion**

The Hearing Officer may promptly deny or defer decisions on any motion for summary disposition, however, only the Hearing Panel or, if applicable, the Extended Hearing Panel, may grant a motion for summary disposition, except the Hearing Officer may grant motions for summary disposition with respect to questions of jurisdiction. The Hearing Panel or, if applicable, the Extended Hearing Panel, may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the Party that files the motion is entitled to summary disposition as a matter of law. If a Party files a motion under paragraph (a), the facts alleged in the pleadings of the Party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by the non-moving Party, by uncontested affidavits or declarations, or by facts officially noticed pursuant to Rule 9145. If a Party opposing a motion for summary disposition made under paragraph (a) cannot present, by affidavit prior to the hearing, facts essential to justify the Party's opposition to the motion, the Hearing Panel or, if applicable, the Extended Hearing Panel, may deny the motion for summary disposition or defer the decision on the motion.

**9265. Record of Hearing**

**(a) Recordation**

A hearing shall be recorded by a court reporter and a transcript shall be prepared. Unless otherwise ordered by a Hearing Officer, a pre-hearing conference shall be recorded by a court reporter and a transcript shall be prepared.

**(b) Availability of a Transcript**

A transcript of a pre-hearing conference and a transcript of a hearing shall be available to a Party for purchase from the court reporter at prescribed rates. A witness may purchase from the court reporter a transcript of his or her own testimony.

**(c) Transcript Correction**

Prior to the filing of post-hearing briefs or proposed findings and conclusions, or within such earlier time as ordered by the Hearing Officer, a Party or witness may seek to correct his or her transcript. A proposed correction of the transcript shall be submitted to the Hearing Officer by affidavit. Upon notice to all Parties to the disciplinary proceeding, the Hearing Officer may order the correction to the transcript as requested or sua sponte.

**9266. Proposed Findings of Fact, Conclusions of Law, and Post-Hearing Briefs**

**(a) Discretion of Hearing Officer to Require Proposed Findings of Fact, Conclusions of Law, and Post-Hearing Briefs**

At the discretion of the Hearing Officer, the Parties may be ordered to file proposed findings of facts and conclusions of law, or post-hearing briefs, or both. The Hearing Officer may order that such proposed findings and conclusions be filed together with, or as part of, post-hearing briefs.

**(b) Reference to Record Required**

Proposed findings of fact or other statements of fact in briefs shall be supported by specific references to the record.

**(c) Period for Filing**

In any case in which the Hearing Officer ordered the filing of proposed findings or conclusions of law, or post-hearing briefs, the Hearing Officer shall, after consultation with the Parties, prescribe the period within which proposed findings and conclusions of law and post-hearing briefs are to be filed. Such period shall be reasonable under all the circumstances but the total period allowed for the filing of post-hearing submissions shall not exceed 60 days after the conclusion of the hearing unless the Hearing Officer, for good cause shown, permits a different period and sets forth in an order the reasons why a longer period is necessary.

**(d) Form, Length of Papers**



Unless the Hearing Officer orders otherwise, each post-hearing submission shall not exceed 25 pages, exclusive of cover sheets, tables of contents, and tables of authorities.

**9267. Record; Supplemental Documents Attached to Record; Retention**

**(a) Contents of the Record, Retention**

The record shall consist of:

- (1) the complaint, answers, each notice of hearing, pre-hearing order, and any amendments thereto;
- (2) each application, motion, submission, and other paper, and any amendments, motions, objections, and exceptions to or regarding them;
- (3) each transcript of a pre-hearing conference and of a hearing, and each stipulation, transcript of testimony, Document, and other item admitted into evidence;
- (4) each written communication accepted at the discretion of the Hearing Officer;
- (5) with respect to a motion to disqualify a Hearing Officer under Rule 9233 or a Panelist under Rule 9234, each affidavit or transcript of testimony taken and the ruling made in connection with the request;
- (6) all proposed findings and conclusions;
- (7) each written ruling, order, and decision issued by the Chief Hearing Officer, Hearing Officer, Hearing Panel or, if applicable, Extended Hearing Panel; and,
- (8) any other Document or item accepted into the record by the Hearing Officer, the Hearing Panel or, if applicable, the Extended Hearing Panel.

**(b) Supplemental Documents Attached To Record; Retention**

- (1) A supplemental Document attached to the record is any Document submitted to the Hearing Officer that did not become part of the record, including:
  - (A) a Document not admitted by the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel;
  - (B) any matter stricken from any filing or stricken during an oral presentation, including any matter stricken from any filing or stricken during any oral presentation because the Adjudicator determined it was scandalous or impertinent as provided in Rule 9136(e); and

(C) a list of Documents, if any, that a Respondent unsuccessfully sought by motion to inspect and copy under Rule 9251(c).

(2) A supplemental Document attached to the record shall not constitute part of the record, but shall be retained until the date upon which Nasdaq's decision becomes final disciplinary action or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

**(c) Substitution of Copies**

Parties may submit to the Hearing Officer for substitution a true copy of a Document in the record.

**9268. Decision of Hearing Panel or Extended Hearing Panel**

**(a) Majority Decision**

Within 60 days after the final date allowed for filing proposed findings of fact, conclusions of law, and post-hearing briefs, or by a date established at the discretion of the Chief Hearing Officer, the Hearing Officer shall prepare a written decision that reflects the views of the Hearing Panel or, if applicable, the Extended Hearing Panel, as determined by majority vote.

**(b) Contents of Decision**

The decision shall include:

- (1) a statement describing the investigative or other origin of the disciplinary proceeding;
- (2) the specific statutory or rule provisions that were alleged to have been violated;
- (3) a statement setting forth the findings of fact with respect to any act or practice the Respondent was alleged to have committed or omitted;
- (4) the conclusions of the Hearing Panel, or Extended Hearing Panel, as to whether the Respondent violated any provision alleged in the complaint;
- (5) a statement of the Hearing Panel, or the Extended Hearing Panel, in support of the disposition of the principal issues raised in the proceeding;
- (6) a statement describing any sanction imposed, the reasons therefor, and the date upon which such sanction shall become effective. Unless otherwise provided in the decision, the sanction(s) shall become effective on a date to be determined by Nasdaq Regulation staff; and

(7) a statement, when the sanctions include a permanent cease and desist order, that is consistent with the requirements of Rule 9291(a) concerning the content, scope, and form of a permanent cease and desist order.

**(c) Dissenting Opinion**

Within 65 days after the final date allowed for filing proposed findings of fact and conclusions of law, and post-hearings briefs, or by a date established at the discretion of the Chief Hearing Officer, the Hearing Officer or any Panelist may prepare a written dissenting opinion.

**(d) Service, Notice, And Dissemination Requirements**

The Office of Hearing Officers shall promptly serve the decision of the Hearing Panel, or the Extended Hearing Panel, and any dissenting opinion on the Parties; publish notice of the decision and any dissenting opinion in the Central Registration Depository; and provide a copy of the decision and any dissenting opinion to each member of Nasdaq with which a Respondent is associated.

**(e) Appeal or Review**

(1) If not timely appealed pursuant to Rule 9311 or timely called for review pursuant to Rule 9312, the majority decision shall constitute final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1).

(2) The majority decision with respect to a Nasdaq member that is an affiliate of Nasdaq within the meaning of Rule 2160 shall constitute final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1) and may not be appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312.

**9269. Default Decisions**

**(a) Issuance of Default Decisions**

(1) The Hearing Officer may issue a default decision against a Respondent that fails to answer the complaint within the time afforded under Rule 9215, or a Party that fails to appear at any hearing that a Party is required to attend under the Rule 9200 Series of which the Party has due notice.

(2) If the defaulting Party is the Respondent, the Hearing Officer may deem the allegations against that Respondent admitted. If the Defaulting Party is the Nasdaq Regulation Department or the Department of Enforcement, the Hearing Officer may issue a default decision ordering that the complaint be dismissed with prejudice.

(3) The Hearing Officer may order a Party that fails to appear at the pre-hearing conference or the hearing to pay the costs incurred by other Parties in connection with their appearance.

(4) The Office of Hearing Officers shall provide a copy of the default decision to each Nasdaq member with which a Respondent is associated.

**(b) Contents of Decision**

The contents of a default decision shall conform to the requirements of Rule 9268(b).

**(c) Review of Default Decision**

A Party may, for good cause shown, file a motion to set aside a default, dismissal, and the imposition of costs. Upon a showing of good cause, the Hearing Officer that entered the original order shall decide the motion. If the Hearing Officer that issued the original order is not available, the Chief Hearing Officer shall appoint another Hearing Officer to decide the motion.

**(d) Final Disciplinary Action of Nasdaq; Effectiveness of Sanctions**

(1) If a default decision is not appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312 within 25 days after the date the Office of Hearing Officers serves it on the Parties, the default decision shall become the final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1). Unless otherwise provided in the default decision, the sanctions shall become effective on a date to be determined by Nasdaq Regulation Department staff, except that a bar or expulsion shall become effective immediately upon the default decision becoming the final disciplinary action of Nasdaq. The decision shall be served on a Respondent by courier, facsimile or other means reasonably likely to obtain prompt service when the sanction is a bar or an expulsion.

(2) A default decision with respect to a Nasdaq member that is an affiliate of Nasdaq within the meaning of Rule 2160 shall constitute final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1) and may not be appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312.

**9270. Settlement Procedure**

**(a) When Offer Allowed; No Stay of Proceeding**

A Respondent who is notified that a proceeding has been instituted against him or her may propose in writing an offer of settlement at any time. If a Respondent proposes an offer of settlement before the hearing on the merits has begun, the making of an offer of settlement shall not stay the proceeding, unless otherwise decided by the Hearing Officer. If a Respondent proposes an offer of settlement after the hearing on the merits has begun,

the making of an offer of settlement shall not stay the proceeding, unless otherwise decided by the Hearing Panel or, if applicable, the Extended Hearing Panel.

**(b) Settlement Offer Shall Conform to Rule**

A Respondent who makes an offer of settlement shall do so in conformity with the provisions of this Rule and shall not make such an offer of settlement frivolously or propose a sanction inconsistent with the seriousness of the violations to be found.

**(c) Content and Signature Requirements**

An offer of settlement shall be in writing and signed by the person making the offer, and, if the person is represented by counsel or a representative, signed also by the counsel or representative. The offer of settlement shall contain in reasonable detail:

(1) a statement describing the investigative or other origin of the disciplinary action;

(2) the specific statutory or rule provisions that the member or associated person is alleged to have violated;

(3) a statement containing the acts or practices which the member or associated person is alleged to have engaged in or omitted;

(4) a statement consenting to findings of fact and violations consistent with the statements contained in the offer of settlement required by subparagraphs (c)(2) and (c)(3);

(5) a proposed sanction to be imposed that is consistent with the current sanction guidelines or, if inconsistent with the sanction guidelines, a detailed statement supporting the proposed sanction;

(6) if applicable, a proposed permanent cease and desist order to be imposed that is consistent with the requirements of Rule 9291(a) concerning the content, scope, and form of a permanent cease and desist order; and

(7) the effective date of any sanction(s) imposed, or a statement that the effective date of the sanction(s) will be a date to be determined by Nasdaq Regulation Department staff.

**(d) Waiver**

(1) If a Respondent submits an offer of settlement, by the submission such Respondent waives:

(A) any right of such Respondent to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the Nasdaq Review Council, the Commission, and the courts, or any right otherwise to challenge or contest the validity of the order issued, if the offer of settlement and order of acceptance are accepted;

(B) any right of such Respondent to claim bias or prejudgment of the Chief Hearing Officer, Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, a Panelist on a Hearing Panel, or, if applicable, an Extended Hearing Panel, the Chief Regulatory Officer, the Nasdaq Review Council, or any member of the Nasdaq Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance, or rejection of such offer of settlement and order of acceptance; and

(C) any right of such Respondent to claim that a person or body violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of settlement, including acceptance or rejection of such offer of settlement and order of acceptance.

(2) If an offer of settlement and an order of acceptance are rejected, the Respondent shall be bound by the waivers made in this paragraph (d) for conduct by persons or bodies occurring during the period beginning from the date the offer of settlement was submitted and ending upon the rejection of the offer of settlement and order of acceptance.

#### **(e) Uncontested Offers of Settlement**

If a Respondent makes an offer of settlement and the Nasdaq Regulation Department or the Department of Enforcement does not oppose it, the offer of settlement is uncontested. If an offer of settlement is determined to be uncontested by the Nasdaq Regulation Department or the Department of Enforcement before a hearing on the merits has begun, the Nasdaq Regulation Department or the Department of Enforcement shall transmit the uncontested offer of settlement and a proposed order of acceptance to the Nasdaq Review Council (or to the Office of Disciplinary Affairs, in the case of a Respondent that is an affiliate of Nasdaq within the meaning of Rule 2160) with its recommendation. If an offer of settlement is determined to be uncontested by the Nasdaq Regulation Department or the Department of Enforcement after a hearing on the merits has begun, the Nasdaq Regulation Department or the Department of Enforcement shall transmit the offer of settlement and a proposed order of acceptance to the Hearing Panel or, if applicable, the Extended Hearing Panel for acceptance or rejection. If accepted by the Hearing Panel or,

if applicable, Extended Hearing Panel, the offer of settlement and the order of acceptance shall be forwarded to the Nasdaq Review Council (or to the Office of Disciplinary Affairs, in the case of a Respondent that is an affiliate of Nasdaq within the meaning of Rule 2160) to accept or reject.

(1) A proposed order of acceptance shall make findings of fact, including a statement of the rule, regulation, or statutory provision violated, and impose sanctions (including, if applicable, a permanent cease and desist order) consistent with the terms of the offer of settlement.

(2) Before an offer of settlement and an order of acceptance shall become effective, they shall be submitted to and accepted by the Nasdaq Review Council or the Office of Disciplinary Affairs. The Office of Disciplinary Affairs may accept such offer of settlement and order of acceptance or refer them to the Nasdaq Review Council. The Review Subcommittee may accept or reject such offer of settlement and order of acceptance or refer them to the Nasdaq Review Council for acceptance or rejection by the Nasdaq Review Council. In the case of a Respondent that is an affiliate of Nasdaq within the meaning of Rule 2160, the offer of settlement and order of acceptance shall be accepted or rejected by the Office of Disciplinary Affairs and shall not be referred to the Nasdaq Review Council.

(3) If the offer of settlement and order of acceptance are accepted by the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs, they shall become final and the Director of the Office of Disciplinary Affairs shall issue the order and notify the Office of Hearing Officers. The Nasdaq Regulation Department or the Department of Enforcement shall provide a copy of an issued order of acceptance to each Nasdaq member with which a Respondent is associated.

#### **(f) Contested Offers of Settlement**

If a Respondent makes an offer of settlement and the Nasdaq Regulation Department or the Department of Enforcement opposes it, the offer of settlement is contested. When the Nasdaq Regulation Department or the Department of Enforcement opposes an offer of settlement, the Respondent's written offer and the Nasdaq Regulation Department or the Department of Enforcement's written opposition shall be submitted to a Hearing Panel or, if applicable, an Extended Hearing Panel. The Hearing Panel or, if applicable, the Extended Hearing Panel, may order the Nasdaq Regulation Department or the Department of Enforcement and the Respondent to attend a settlement conference.

(1) If a contested offer of settlement is approved by the Hearing Panel or, if applicable, Extended Hearing Panel, the Hearing Officer shall draft an order of acceptance of the offer of settlement. The order of acceptance shall make findings of fact, including a statement of the rule, regulation, or statutory provision violated, and impose sanctions (including, if applicable, a permanent cease and

desist order) consistent with the terms of the offer of settlement. The offer of settlement, any written opposition thereto, and the order of acceptance shall be forwarded to the Nasdaq Review Council (or to the Office of Disciplinary Affairs, in the case of a Respondent that is an affiliate of Nasdaq within the meaning of Rule 2160) to accept or reject.

(2) Before an offer of settlement and order of acceptance shall become effective, they shall be submitted to, and accepted by, the Nasdaq Review Council or the Office of Disciplinary Affairs. The Review Subcommittee may accept or reject such offer of settlement and order of acceptance or refer them to the Nasdaq Review Council for acceptance or rejection by the Nasdaq Review Council. In the case of a Respondent that is an affiliate of Nasdaq within the meaning of Rule 2160, the offer of settlement and order of acceptance shall be accepted or rejected by the Office of Disciplinary Affairs and shall not be referred to the Nasdaq Review Council.

(3) If the offer of settlement and order of acceptance are accepted by the Office of Disciplinary Affairs, the Nasdaq Review Council or the Review Subcommittee, the Chief Regulatory Officer shall issue the order and notify the Office of Hearing Officers, and provide a copy of an issued order of acceptance to each Nasdaq member with which a Respondent is associated.

**(g) Final Disciplinary Action**

The proceeding shall conclude as of the date the order of acceptance is issued. The order of acceptance shall constitute final disciplinary action of Nasdaq. The sanction shall take effect as set forth in the order.

**(h) Rejection of Offer of Settlement**

If an uncontested offer of settlement or an order of acceptance is rejected by the Hearing Panel or, if applicable, the Extended Hearing Panel, the Review Subcommittee, the Office of Disciplinary Affairs, or the Nasdaq Review Council, the Respondent shall be notified in writing and the offer of settlement and proposed order of acceptance shall be deemed withdrawn. If a contested offer of settlement or an order of acceptance is rejected by the Hearing Panel or, if applicable, the Extended Hearing Panel, the Review Subcommittee, the Office of Disciplinary Affairs, or the Nasdaq Review Council, the Respondent shall be notified in writing and the offer of settlement and proposed order of acceptance shall be deemed withdrawn. The rejected offer and proposed order of acceptance shall not constitute a part of the record in any proceeding against the Respondent making the offer.

**(i) Disciplinary Proceeding With Multiple Respondents**

When a disciplinary proceeding names multiple Respondents, settlement offers may be accepted or rejected as to any one or all of the Respondents submitting offers. The



proceedings shall thereafter be terminated as to those Respondents whose offers of settlement are accepted, but such Respondents may be required to participate in any hearing conducted as to those Respondents that did not submit offers of settlement or whose offers of settlement were rejected.

**(j) No Prejudice from Rejected Offer of Settlement**

If an offer of settlement is rejected by a Hearing Panel or, if applicable, an Extended Hearing Panel, the Review Subcommittee, the Office of Disciplinary Affairs, or the Nasdaq Review Council, the Respondent shall not be prejudiced by the offer, which may not be introduced into evidence in connection with the determination of the issues involved in the pending complaint or in any other proceeding.

**9280. Contemptuous Conduct**

**(a) Persons Subject to Sanctions**

If a Party, attorney for a Party, or other person authorized to represent others by Rule 9141, engages in conduct in violation of an order of a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, or other contemptuous conduct during a proceeding, a Hearing Officer, Hearing Panel or, if applicable, an Extended Hearing Panel, may:

- (1) subject the Party, attorney for a Party, or other person authorized to represent others by Rule 9141, to the sanctions set forth in paragraph (b); and
- (2) exclude an attorney for a Party, or other person authorized to represent others by Rule 9141, under Rule 9150.

**(b) Sanctions Other Than Exclusion**

A Hearing Officer, Hearing Panel or, if applicable, an Extended Hearing Panel, may make such orders as are just in regard to a Party, an attorney for a Party, or other person authorized to represent others by Rule 9141.

(1) Such orders may include:

- (A) an order providing that the matters on which the order is made or any other designated facts shall be taken to be established for the purposes of the disciplinary proceeding in accordance with the claim of the Party obtaining the order;
- (B) an order providing that the disobedient Party may not support or oppose designated claims or defenses, or may not introduce designated matters in evidence;

(C) an order providing that pleadings or a specified part of the pleading shall be stricken, or an order providing that the proceeding shall be stayed until the Party subject to the order obeys it;

(D) in lieu of any of the foregoing orders or in addition thereto, an order providing that contemptuous conduct includes the failure to obey any order; and

(E) an order as provided in subparagraphs (A), (B), and (C) where a Party has failed to comply with an order to produce a person for examination, unless the Party failing to comply shows that such Party is unable to produce such person for examination.

(2) A Party that without substantial justification fails to disclose information required by the Rule 9240 Series and the Rule 9250 Series or otherwise required by order of the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel, shall not, unless such failure is harmless, be permitted to use as evidence at a hearing, in a motion or in any other filing of papers, or in oral argument, any witness or information not so disclosed. In addition to, or in lieu of this sanction, the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. These sanctions may include any of the sanctions provided for in subparagraphs (b)(1)(A) through (C).

#### **(c) Nasdaq Review Council Review of Exclusions**

If an attorney for a Party, or other person authorized to represent others by Rule 9141, is excluded from a disciplinary hearing or conference, or any portion thereof, such attorney or other person may seek review of the exclusion by filing a motion to vacate with the Nasdaq Review Council. Such motion to vacate shall be filed and served on all Parties within five days after service of the exclusion order. Any response shall be filed with the Nasdaq Review Council and served on all Parties within five days after the service of the motion to vacate. The Nasdaq Review Council or the Review Subcommittee shall consider such motion on an expedited basis and promptly issue a written order. The filing of a motion to vacate shall stay all aspects of the disciplinary proceeding until at least seven days after service of the order of the Nasdaq Review Council or the Review Subcommittee. The review proceedings shall be conducted on the basis of the written record without oral argument.

#### **(d) Adjournment**

The hearing, conferences, or other activities relating to the disciplinary proceeding shall be stayed pending the review by the Nasdaq Review Council or the Review Subcommittee of an exclusion order in paragraph (c). In the event that the Nasdaq Review Council or the Review Subcommittee upholds an exclusion of an attorney or other person authorized to represent others by Rule 9141, the Hearing Officer may, upon

motion by a Party represented by an attorney or other person subject to an order of exclusion, grant an adjournment to allow the retention of new counsel or selection of a new representative. In determining whether to grant an adjournment or the length of an adjournment, the Hearing Officer shall consider whether there are other counsel or representatives of record on behalf of the Party, the availability of other counsel or other members of an excluded attorney's firm, or the availability of other representatives for the Party, and any other relevant factors.

### **9290. Expedited Disciplinary Proceedings**

For any disciplinary proceeding, the subject matter of which also is subject to a temporary cease and desist proceeding initiated pursuant to Rule 9810 or a temporary cease and desist order, hearings shall be held and decisions shall be rendered at the earliest possible time. An expedited hearing schedule shall be determined at a pre-hearing conference held in accordance with Rule 9241.

### **9291. Permanent Cease and Desist Orders**

#### **(a) Content, Scope and Form Requirements**

When a decision issued under Rule 9268 or Rule 9269 or an order of acceptance issued under Rule 9270 imposes a permanent cease and desist order, it shall:

- (1) order a Respondent (and any successor of a Respondent, where the Respondent is a member firm) to cease and desist permanently from violating a specific rule or statutory provision;
- (2) set forth the violation; and
- (3) describe in reasonable detail the act or acts the Respondent (and any successor of a Respondent, where the Respondent is a member firm) shall take or refrain from taking.

#### **(b) Delivery Requirement**

Where a Respondent is a member firm, Respondent shall deliver a copy of a permanent cease and desist order, within one business day of receiving it, to its associated persons.

### **9300. Review of Disciplinary Proceeding by Nasdaq Review Council and Nasdaq Board; Application for Commission Review**

#### **9310. Appeal to or Review by Nasdaq Review Council**

#### **9311. Appeal by Any Party; Cross-Appeal**

##### **(a) Time to File Notice of Appeal**

A Respondent or the Nasdaq Regulation Department or the Department of Enforcement may file a written notice of appeal within 25 days after service of a decision issued pursuant to Rule 9268 or Rule 9269; provided, however, that a decision with respect to a

Respondent that is an affiliate of Nasdaq within the meaning of Rule 2160 may not be appealed to the Nasdaq Review Council..

**(b) Effect**

An appeal to the Nasdaq Review Council from a decision issued pursuant to Rule 9268 or Rule 9269 shall operate as a stay of that decision until the Nasdaq Review Council issues a decision pursuant to Rule 9349 or, in cases called for discretionary review by the Nasdaq Board, until a decision is issued pursuant to Rule 9351. Any such appeal, however, will not stay a decision, or that part of a decision, that imposes a permanent cease and desist order.

**(c) Notice of Appeal Content and Signature Requirements**

A Party appealing pursuant to this Rule shall file a written notice of appeal with the Office of Hearing Officers and serve the notice on the Parties. The notice of appeal shall be signed by the appealing Party, or his or her counsel or representative, and shall contain:

- (1) the name of the disciplinary proceeding;
- (2) the disciplinary proceeding docket number;
- (3) the name of the Party on whose behalf the appeal is made;
- (4) a statement on whether oral argument before the Nasdaq Review Council is requested; and
- (5) a brief statement of the findings, conclusions, or sanctions as to which exceptions are taken.

**(d) Notice of Cross-Appeal**

A Party who is served with a notice of appeal may file a written notice of cross-appeal and serve the notice of cross-appeal on the Parties. The notice of cross-appeal shall be filed within five days after service of the notice of appeal. The notice of cross-appeal shall be signed by the Party cross-appealing, or his or her counsel, and shall contain the information set forth in subparagraphs (c)(1), (c)(2), (c)(4), and (c)(5), and the name of the Party on whose behalf the cross-appeal is made.

**(e) Waiver of Issues Not Raised**

The Nasdaq Review Council may, in its discretion, deem waived any issue not raised in the notice of appeal or cross-appeal. The Nasdaq Review Council, the Review Subcommittee, a Subcommittee, the Chief Regulatory Officer or, if applicable, an Extended Proceeding Committee, shall provide the Parties with notice of, and an

opportunity to submit briefs on, any issue that shall be considered by the Nasdaq Review Council if such issue was not previously set forth in the notice of appeal. Parties may submit motions to either the Review Subcommittee or the Nasdaq Review Council challenging requests for briefing made by the Chief Regulatory Officer under this Rule of issues that were not previously set forth in the notice of appeal.

**(f) Withdrawal of Notice of Appeal or Cross-Appeal**

A Party may withdraw a notice of appeal or a notice of cross-appeal filed by him or her at any time by filing a written notice of withdrawal of appeal or cross-appeal with the Office of Hearing Officers and serving notice thereof on the Parties. The notice of withdrawal of appeal or cross-appeal shall contain: the name of the disciplinary proceeding; the disciplinary proceeding docket number; and the name of the Party on whose behalf the notice of appeal or cross-appeal was filed previously. The notice of withdrawal of appeal or cross-appeal shall be signed by the Party, or his or her counsel or representative. Upon the withdrawal of a notice of appeal, any outstanding cross-appeal shall be treated as an appeal unless it is withdrawn.

**9312. Review Proceeding Initiated By the Nasdaq Review Council**

**(a) Call for Review**

(1) Rule 9268 Decision

A decision issued pursuant to Rule 9268 may be subject to a call for review by any member of the Nasdaq Review Council or, pursuant to authority delegated from the Nasdaq Review Council, by any member of the Review Subcommittee. A decision issued pursuant to Rule 9268 shall be subject to a call for review within 45 days after the date of service of the decision. If called for review, such decision shall be reviewed by the Nasdaq Review Council.

(2) Rule 9269 Decision

A default decision issued pursuant to Rule 9269 shall be subject to a call for review by the Chief Regulatory Officer, on his or her own motion within 25 days after the date of service of the decision. If called for review, such decision shall be reviewed by the Nasdaq Review Council.

(3) Decision Regarding Affiliate of Nasdaq

Notwithstanding anything herein to the contrary, a decision with respect to a member that is an affiliate of Nasdaq within the meaning of Rule 2160 may not be called for review by the Nasdaq Review Council.

**(b) Effect**

Institution of review by a member of the Nasdaq Review Council on his or her own motion, a member of the Review Subcommittee on his or her own motion, or the Chief Regulatory Officer, on his or her own motion, shall operate as a stay of a final decision issued pursuant to Rule 9268 or Rule 9269 as to all Parties subject to the notice of review, until the Nasdaq Review Council issues a decision pursuant to Rule 9349, or, in cases called for discretionary review by the Nasdaq Board, until a decision is issued pursuant to Rule 9351. Institution of any such review, however, will not stay a decision, or that part of a decision, that imposes a permanent cease and desist order.

**(c) Requirements**

(1) If a member of the Nasdaq Review Council, a member of the Review Subcommittee, or, for a disciplinary proceeding decided under Rule 9269, the Chief Regulatory Officer determines to call a case for review, a written notice of review shall be served promptly on each Party to the proceeding and filed with the Office of Hearing Officers. Such notice of review shall contain:

(A) the name of the disciplinary proceeding;

(B) the disciplinary proceeding docket number; and

(C) a brief statement of the findings, conclusions, or sanctions with respect to which the Nasdaq Review Council, the Review Subcommittee, or the Chief Regulatory Officer determined that a call for review was necessary.

(2) The statement contained in the notice of review shall not limit the scope of the Nasdaq Review Council's authority under Rule 9346 to review any issues raised in the record. The Nasdaq Review Council, the Review Subcommittee, a Subcommittee, the Chief Regulatory Officer or, if applicable, an Extended Proceeding Committee, shall provide the Parties with notice of, and an opportunity to submit briefs on, any issue that shall be considered by the Nasdaq Review Council if such issue was not previously set forth in the notice of review. Parties may submit motions to either the Review Subcommittee or the Nasdaq Review Council challenging requests for briefing made by the Chief Regulatory Officer under this Rule of issues that were not previously set forth in the notice of appeal.

**(d) Effect of Withdrawal of Notice of Appeal, Cross-Appeal**

If the review of a disciplinary proceeding by the Nasdaq Review Council is terminated before the Nasdaq Review Council issues a decision on the merits because all appealing Parties file a notice of withdrawal of appeal and no Party previously filed a notice of cross-appeal, or all Parties who previously filed a notice of cross-appeal file a notice of withdrawal of cross-appeal:

(1) a member of the Nasdaq Review Council or the Review Subcommittee shall have the right to call for review a decision issued pursuant to Rule 9268 in accordance with Rule 9312(a)(1), except that the 45 day period during which a call for review may be made shall begin on the day Nasdaq receives the last filed notice of withdrawal of appeal or, if applicable, the last filed notice of withdrawal of cross-appeal; and,

(2) the Chief Regulatory Officer shall have the right to call for review a decision issued pursuant to Rule 9269 in accordance with Rule 9312(a)(2), except that the 25 day period during which a call for review may be made shall begin on the day Nasdaq receives the last filed notice of withdrawal of appeal or, if applicable, the last filed notice of withdrawal of cross-appeal.

### **9313. Counsel to Nasdaq Review Council**

#### **(a) Authority**

A Counsel to the Nasdaq Review Council shall have authority to take ministerial and administrative actions to further the efficient administration of a proceeding, including the authority to:

(1) direct the Office of Hearing Officers to complete and transmit a record of a disciplinary proceeding to the Nasdaq Review Council in accordance with Rule 9267;

(2) establish or amend a briefing schedule under Rule 9347(b) but not shorten a briefing schedule except with the consent of the Parties;

(3) permit a brief or any other document required to be filed to vary from the requirements of the Rule 9130 Series as provided in Rule 9347(a);

(4) establish the date, time, and location of an oral argument and provide for notice of the hearing under Rule 9341;

(5) for other than a Party and counsel or a person acting in a representative capacity, determine who may attend a hearing;

(6) rule on a motion by a Party to request to lengthen or shorten a period of time prescribed by the Code for the filing of any papers, or request that a hearing be postponed or adjourned under Rule 9322, except that a period may not be shortened and a hearing may not be postponed or adjourned without the consent of the Parties; and

(7) create and maintain the official record of the disciplinary proceeding on appeal or review.

#### **(b) Review**

A Party seeking the review of a decision of a Counsel to the Nasdaq Review Council may make a motion to the Nasdaq Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee.

### **9320. Transmission of Record; Extensions of Time, Postponements, Adjournments**

#### **9321. Transmission of Record**

Within 21 days after the filing of a notice of appeal or notice of review, or at such later time as the Nasdaq Review Council may designate, the Office of Hearing Officers shall assemble and prepare an index to the record, transmit the record and the index to the Nasdaq Review Council, and serve copies of the index upon all Parties. The Hearing Officer who participated in the disciplinary proceeding, or the Chief Hearing Officer, shall certify that the record transmitted to the Nasdaq Review Council is complete.

#### **9322. Extensions of Time, Postponements, Adjournments**

##### **(a) Availability**

At any time prior to the issuance of a decision pursuant to Rule 9349, the Nasdaq Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or Counsel to the Nasdaq Review Council, for good cause shown, may extend or shorten a period prescribed by the Code for the filing of any papers, except that Counsel to the Nasdaq Review Council may shorten a period so prescribed only with the consent of the Parties. The Nasdaq Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or Counsel to the Nasdaq Review Council, for good cause shown, may postpone or adjourn a hearing consistent with paragraph (b), except that Counsel to the Nasdaq Review Council may postpone or adjourn a hearing only with the consent of the Parties.

##### **(b) Limitations on Postponements, Adjournments, and Changes in Location**

Oral argument shall begin at the time and place ordered, unless the Nasdaq Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or Counsel to the Nasdaq Review Council, for good cause shown, postpones, adjourns, or changes the location of the oral argument, except that Counsel to the Nasdaq Review Council may postpone or adjourn the oral argument only with the consent of the Parties. In considering a motion for the postponement or adjournment of an oral argument, the Nasdaq Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or Counsel to the Nasdaq Review Council shall consider, in addition to any other relevant factors:

- (1) the length of time the disciplinary proceeding has been pending to date, and the timeliness of the request for a postponement, an adjournment, or an extension;
- (2) the number of postponements, adjournments, or extensions already granted;
- (3) the stage of the proceedings at the time of the request;



(4) the prejudice to the other Parties;

(5) the potential harm to the investing public if an extension of time, an adjournment, or a postponement is granted; and

(6) any other matter that justice may require.

**9330. Appointment of Subcommittee or Extended Proceeding Committee; Disqualification and Recusal**

**9331. Appointment of Subcommittee or Extended Proceeding Committee**  
**(a) Appointment by Nasdaq Review Council**

Following the filing of a notice of appeal pursuant to Rule 9311 or a notice of review pursuant to Rule 9312, the Nasdaq Review Council or the Review Subcommittee shall appoint a Subcommittee or an Extended Proceeding Committee to participate, subject to Rule 9345, in a disciplinary proceeding appealed or called for review.

(1) Subcommittee

Except as provided in subparagraph (2), for each disciplinary proceeding appealed or called for review, the Nasdaq Review Council or the Review Subcommittee shall appoint a Subcommittee to participate, subject to Rule 9345, in the appeal or review. A Subcommittee shall be composed of two or more persons who shall be current or former members of the Nasdaq Review Council or former Directors.

(2) Extended Proceeding Committee

Upon consideration of the volume and complexity of the certified record, or other factors the Nasdaq Review Council or the Review Subcommittee deems material, the Nasdaq Review Council or the Review Subcommittee may determine that a disciplinary proceeding appealed or called for review shall be designated an Extended Proceeding and shall appoint an Extended Proceeding Committee to participate, subject to Rule 9345, in the appeal or review. The Extended Proceeding Committee shall be composed of two or more persons who shall be current or former members of the Nasdaq Review Council or former Directors. The Review Subcommittee shall have discretion to compensate any or all Panelists of an Extended Proceeding Committee at the rate then in effect for arbitrators appointed under the FINRA Rule 12000 and 13000 Series.

**(b) Function**

If a hearing is held, the Subcommittee or, if applicable, the Extended Proceeding Committee, shall hear oral arguments and consider, if allowed under Rule 9346(b), any new evidence. Based on the hearing and the record on appeal or review, the Subcommittee or, if applicable, the Extended Hearing Committee, shall make a recommendation to the Nasdaq Review Council regarding the disposition of all matters

on appeal, cross-appeal, or review. The recommendation shall be in the form of a written recommended decision.

### **9332. Disqualification and Recusal**

#### **(a) Recusal, Withdrawal of Member or Panelist**

If at any time a member of the Nasdaq Review Council, including a member of the Review Subcommittee, a Panelist of a Subcommittee or an Extended Proceeding Committee, or a Counsel to the Nasdaq Review Council determines that the member, the Panelist, or the Counsel to the Nasdaq Review Council has a conflict of interest or bias or circumstances otherwise exist where the fairness of the member, the Panelist, or the Counsel to the Nasdaq Review Council might reasonably be questioned, the member, the Panelist, or the Counsel to Nasdaq Review Council shall notify the Chair of the Nasdaq Review Council, and the Chair of the Nasdaq Review Council shall issue and serve on the Parties a notice stating that the member, the Panelist, or the Counsel to the Nasdaq Review Council has withdrawn from the matter. In the event that a Panelist withdraws, is incapacitated, or is otherwise unable to continue service after a hearing has been convened, the Chair of the Nasdaq Review Council shall appoint a replacement Panelist. In the event that a member of the Review Subcommittee withdraws, is incapacitated, or is otherwise unable to continue service after assignment, the Chair of the Nasdaq Review Council shall appoint another member of the Nasdaq Review Council to serve on the Review Subcommittee for the limited purpose of considering the issues raised in the disciplinary proceeding in which the withdrawal action was taken. The replacement member of the Review Subcommittee must have the same classification (Industry or Non-Industry) as the member who withdrew. In the event that a Counsel to the Nasdaq Review Council withdraws, is incapacitated, or is otherwise unable to continue service after assignment, the Chief Regulatory Officer shall assign a replacement Counsel to the Nasdaq Review Council.

#### **(b) Motion for Disqualification**

A Party may move for the disqualification of a member of the Nasdaq Review Council, the Review Subcommittee, a Panelist of a Subcommittee or an Extended Proceeding Committee, or a Counsel to the Nasdaq Review Council. All such motions shall be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the fairness of the member, the Panelist, or the Counsel to the Nasdaq Review Council might reasonably be questioned, and shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the Party learned of those facts. Such motions shall be filed not later than 15 days after the later of:

- (1) when the Party learned of the facts believed to constitute the disqualification;
- or

(2) when the Party was notified of the composition of the Subcommittee or, if applicable, the Extended Proceeding Committee or the assignment to the disciplinary proceeding of the Counsel to the Nasdaq Review Council.

**(c) Disposition of Disqualification Motions: Challenges to Single Member of Nasdaq Review Council or Review Subcommittee, Single Panelist of Subcommittee or Extended Hearing Committee, or Counsel to the Nasdaq Review Council**

Motions for disqualification of a member of the Nasdaq Review Council, including a member of the Review Subcommittee, a Panelist of a Subcommittee or an Extended Proceeding Committee, or a Counsel to the Nasdaq Review Council shall be decided by the Chair of the Nasdaq Review Council, who shall promptly determine whether disqualification is required and issue a written ruling on the motion. If a member of the Review Subcommittee is disqualified, the Chair of the Nasdaq Review Council shall appoint another member of the Nasdaq Review Council to serve on the Review Subcommittee for the limited purpose of considering the issues raised in the disciplinary proceeding in which the motion was made. The replacement member of the Review Subcommittee must have the same classification (Member, Industry or Non-Industry) as the member being replaced. If a Panelist is disqualified, the Chair of the Nasdaq Review Council shall appoint a replacement Panelist. If a Counsel is disqualified, the Chief Regulatory Officer shall assign a replacement Counsel to the Nasdaq Review Council.

**(d) Disposition of Disqualification Motions: Challenges to Multiple Members or Panelists**

(1) Nasdaq Review Council

If a Party files a motion to disqualify more than one member of the Nasdaq Review Council, the Chair of the Nasdaq Review Council shall promptly determine whether disqualification is required, and shall issue a written ruling on the matter. In the event of such disqualification, the remaining members of the Nasdaq Review Council shall consider the review or appeal of the disciplinary matter.

(2) Review Subcommittee

If a Party files a motion to disqualify more than one member of the Review Subcommittee, the Chair of the Nasdaq Review Council shall promptly determine whether disqualification is required, and shall issue a written ruling on the matter. If members of the Review Subcommittee are disqualified, the Chair of the Nasdaq Review Council shall appoint other members of the Nasdaq Review Council to serve on the Review Subcommittee for the limited purpose of considering the issues raised in the disciplinary proceeding in which the motion was made. The replacement members of the Review Subcommittee must have the same classification (Member, Industry or Non-Industry) as the members being replaced.

(3) Subcommittee; Extended Proceeding Committee

If a Party files a motion to disqualify more than one Panelist of a Subcommittee or an Extended Proceeding Committee, the Chair of the Nasdaq Review Council shall promptly determine whether disqualification is required, and shall issue a written ruling on the motion. If multiple Panelists are disqualified, the Chair of the Nasdaq Review Council shall appoint replacement Panelists.

**9340. Proceedings**

**9341. Oral Argument**

**(a) Request for Oral Argument**

A Party may request oral argument before the Subcommittee or, if applicable, the Extended Proceeding Committee. Oral argument shall be requested in writing either in the Party's notice of appeal or cross-appeal or within 15 days after service of the Nasdaq Review Council's notice of review. Subject to the limitations of Rules 9342 and 9344, oral argument shall be granted if timely requested. The right to oral argument set forth in this Rule is unaffected by a Party's waiver of, or failure to request, a hearing pursuant to the Rule 9200 Series.

**(b) Discretion to Proceed With or Without Oral Argument**

In the absence of a request for oral argument, the Subcommittee or, if applicable, the Extended Proceeding Committee, in its discretion, may order that a matter be set down for oral argument or may consider the matter on the basis of the record.

**(c) Notice Regarding Oral Argument**

If oral argument is held, a notice stating the date, time, and location of the oral argument shall be served on the Parties at least 21 days before the hearing. The Parties may agree in writing to waive the notice period or, in extraordinary circumstances, the Subcommittee or, if applicable, the Extended Proceeding Committee, or Counsel to the Nasdaq Review Council may provide for a shorter notice period, except that Counsel to the Nasdaq Review Council may provide for a shorter notice period only with the consent of the Parties.

**(d) Attendance Required**

The Parties shall make oral arguments before the Subcommittee or, if applicable, the Extended Proceeding Committee. Unless otherwise agreed to by all of the Parties, all Panelists comprising the Subcommittee or, if applicable, the Extended Proceeding Committee shall be present for the oral argument.

**(e) Time Limits**

Unless the Subcommittee or, if applicable, the Extended Proceeding Committee, orders otherwise for good cause shown, each Party's oral argument before the Subcommittee or, if applicable, the Extended Proceeding Committee, shall be limited to a total of 30 minutes.

(f) Recordation; Transcript Correction

(1) Oral arguments shall be recorded by a court reporter and a transcript shall be prepared.

(2) A transcript of a hearing shall be available to a Party for purchase from the court reporter at prescribed rates. A witness may purchase a transcript of his or her own testimony from the court reporter.

(3) Prior to the filing of post-hearing briefs or within such earlier time as reasonably ordered by the Subcommittee or, if applicable, the Extended Proceeding Committee, a Party or witness may seek to correct his or her transcript. A proposed correction of the transcript shall be submitted by affidavit to the Subcommittee or, if applicable, the Extended Proceeding Committee. Upon notice to all Parties to the disciplinary proceeding, the Subcommittee or, if applicable, the Extended Proceeding Committee may order the correction to the transcript as requested or sua sponte.

**9342. Failure to Appear at Oral Argument**

A Party who requests oral argument but fails to appear after being duly notified shall be deemed to have waived any opportunity for oral argument provided under the Rule 9300 Series. The Subcommittee or, if applicable, the Extended Proceeding Committee, shall permit argument to go forward as to those Parties who appear. The Subcommittee or, if applicable, the Extended Proceeding Committee, in the exercise of its discretion, may consider the matter on the basis of the record without oral argument as to those Parties who failed to appear.

**9343. Disposition Without Oral Argument**

If an oral argument is not held, the matter shall be considered by a Subcommittee or, if applicable, an Extended Proceeding Committee, on the basis of the record, as defined in Rule 9267, and supplemented by any written materials submitted to or issued by the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Nasdaq Review Council in connection with the appeal, cross-appeal, or call for review.

**9344. Failure to Participate Below; Abandonment of Appeal**

(a) Failure to Participate Below

When an appealing Party did not participate in the disciplinary proceeding before a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, but shows good cause for the failure to participate, the Nasdaq Review Council or the Review Subcommittee may dismiss the appeal and remand the matter for further proceedings, or

may order that the appeal proceed. If the appealing Party did not participate in the disciplinary proceeding before a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, and fails to show good cause for the failure to participate, the matter shall be considered by the Subcommittee or, if applicable, the Extended Proceeding Committee, and the Nasdaq Review Council on the basis of the record and other documents, as provided in Rules 9346 and 9347. Alternatively, the Nasdaq Review Council or Review Subcommittee may remand the disciplinary proceeding with instructions. For purposes of this paragraph, failure to participate shall include failure to file an answer or otherwise respond to a complaint, or failure to appear at a scheduled hearing, but shall not include failure to request a hearing pursuant to Rule 9221.

(b) Abandonment of Appeal

If an appealing Party fails to advise the Nasdaq Review Council or the Review Subcommittee of the basis for seeking review or otherwise fails to provide information or submit a written brief in response to a request pursuant to Rules 9346 and 9347, the Nasdaq Review Council or the Review Subcommittee may dismiss the appeal as abandoned, and the decision of the Hearing Officer, the Hearing Panel or, if applicable, the Extended Hearing Panel, shall become the final disciplinary action of Nasdaq. If a cross-appealing Party fails to advise the Nasdaq Review Council or the Review Subcommittee of the basis for seeking review or otherwise fails to provide information or submit a written brief in response to a request pursuant to Rules 9346 and 9347, the Nasdaq Review Council or the Review Subcommittee may dismiss the cross-appeal as abandoned. Upon a showing of good cause, the Nasdaq Review Council may withdraw any dismissal entered pursuant to this Rule.

**9345. Subcommittee or Extended Proceeding Committee Recommended Decision to Nasdaq Review Council**

A Subcommittee or, if applicable, an Extended Proceeding Committee, shall present a recommended decision in writing to the Nasdaq Review Council before the meeting of the Nasdaq Review Council at which the disciplinary proceeding shall be considered.

**9346. Evidence in Nasdaq Review Council Proceedings**

(a) Scope of Review

Except as otherwise set forth in this paragraph, the Nasdaq Review Council's review shall be limited to consideration of:

(1) the record, as defined in Rule 9267, supplemented by briefs and other papers submitted to the Subcommittee or, if applicable, the Extended Proceeding Committee, and the Nasdaq Review Council; and

(2) any oral argument permitted under this Code.

A Party may introduce additional evidence only with prior approval of the Subcommittee or, if applicable, the Extended Proceeding Committee, or the

Nasdaq Review Council, upon a showing that extraordinary circumstances exist under paragraph (b). If an appealing Party shows good cause for failure to participate in the disciplinary proceeding below, the Nasdaq Review Council may hear evidence and consider the disciplinary proceeding pursuant to Rule 9344(a).

(b) Leave to Introduce Additional Evidence

A Party may apply to the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Nasdaq Review Council for leave to introduce additional evidence by motion filed not later than 30 days after the Office of Hearing Officers transmits to the Nasdaq Review Council and serves upon all Parties the index to the record, pursuant to Rule 9321. The motion shall describe each item of proposed new evidence, demonstrate that there was good cause for failing to introduce it below, demonstrate why the evidence is material to the proceeding, and be filed and served. The Party may attach the documentary evidence as an exhibit to the motion. By a motion filed in accordance with Rule 9146, a Party may request an extension of the period during which a Party may file a motion for leave to introduce additional evidence. A Party shall demonstrate that there was good cause for failing to file the motion for leave to introduce additional evidence during the period prescribed.

(c) Motion In Opposition; Motion to Introduce Rebuttal Evidence

A Party may file an opposition to a motion, as provided in Rule 9146(d), for leave to introduce new evidence, and may move for leave to introduce rebuttal evidence in response to the proposed new evidence. A Party who moves to introduce rebuttal evidence in response to the proposed new evidence of another Party shall describe each item of proposed rebuttal evidence and explain why the evidence is material to the proceeding, and shall file and serve such motion.

(d) Discretion Regarding Review of Additional Evidence

Upon consideration of any motion to introduce additional evidence and any opposition thereto, the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Nasdaq Review Council may permit the evidence to be introduced into the record on review, or the Nasdaq Review Council may remand the disciplinary proceeding for further proceedings consistent with its ruling or for further fact finding.

(e) Requirements for Submitting Additional Documentary Evidence

A Party that is permitted to introduce additional documentary evidence before the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Nasdaq Review Council pursuant to paragraph (d) shall make copies of the evidence available to the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Nasdaq Review Council, and to all Parties at such time as the Subcommittee or, if applicable, the Extended Proceeding Committee, the Nasdaq Review Council, or Counsel to the Nasdaq Review Council may specify.

(f) Subcommittee or Extended Proceeding Committee Order Requiring Additional Evidence

On its own motion, the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Nasdaq Review Council may order that the record be supplemented with such additional evidence as it may deem relevant. Among other things, the Subcommittee, or if applicable, the Extended Proceeding Committee, or the Nasdaq Review Council may order a Respondent who asserts his or her inability to pay a monetary sanction to file a sworn financial statement and to keep such statement current as ordered by the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Nasdaq Review Council.

(g) Rules of Evidence Not Applicable

The formal rules of evidence shall not apply.

(h) Testimony

A person who is subject to the jurisdiction of Nasdaq shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

**9347. Filing of Papers in Nasdaq Review Council Proceedings**

(a) Briefs; Reply Briefs; Requirements

Parties may file briefs in connection with proceedings governed by the Rule 9300 Series. Briefs shall be confined to the particular matters at issue. An exception to findings, conclusions, or sanctions shall be supported by citation to the relevant portions of the record, including references to specific pages relied upon, and by concise argument, including citation of such statutes, decisions, and other authorities as may be relevant. If an exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief, an appendix thereto, or by citation to the record. Parties may file reply briefs. If a Party files a reply brief, such brief shall be limited to matters in reply. All briefs shall conform to the requirements of the Rule 9130 Series, and, except with advance leave of the Subcommittee or, if applicable, the Extended Proceeding Committee, the Nasdaq Review Council, the Review Subcommittee, or Counsel to the Nasdaq Review Council, exclusive of pages containing tables of contents or tables of authorities, a brief other than a reply brief shall not exceed 25 double-spaced pages, and a reply brief shall not exceed 12 double-spaced pages.

(b) Timely Filing of Briefs

Briefs shall be due upon dates established by the Subcommittee or, if applicable, the Extended Proceeding Committee, the Nasdaq Review Council, the Review Subcommittee, or Counsel to the Nasdaq Review Council in a scheduling order. Unless the Subcommittee or, if applicable, the Extended Proceeding Committee, the Nasdaq



Review Council, the Review Subcommittee, or Counsel to the Nasdaq Review Council specifies otherwise, opening briefs shall be submitted not less than 21 days from the date of the scheduling order, and answering briefs shall be submitted 21 days thereafter. When reply briefs are submitted, such briefs shall be filed not later than ten days after service of the answering brief. Counsel to the Nasdaq Review Council may not shorten a period previously established for the filing of briefs except with the consent of the Parties. The time periods listed in this provision are only applicable to the filing of opening briefs, answering briefs, and reply briefs.

#### **9348. Powers of the Nasdaq Review Council on Review**

In any appeal or review proceeding pursuant to the Rule 9300 Series, the Nasdaq Review Council may affirm, dismiss, modify, or reverse with respect to each finding, or remand the disciplinary proceeding with instructions. The Nasdaq Review Council may affirm, modify, reverse, increase, or reduce any sanction, (including the terms of any permanent cease and desist order) or impose any other fitting sanction.

#### **9349. Nasdaq Review Council Formal Consideration; Decision**

##### **(a) Decision of Nasdaq Review Council, Including Remand**

In an appeal or review of a disciplinary proceeding governed by the Rule 9300 Series that is not withdrawn or dismissed prior to a decision on the merits, the Nasdaq Review Council, after considering all matters presented in the appeal or review and the written recommended decision of the Subcommittee or, if applicable, the Extended Proceeding Committee, may affirm, dismiss, modify or reverse the decision of the Hearing Panel or, if applicable, Extended Hearing Panel, with respect to each Respondent who has appealed or cross-appealed or is subject to a call for review. The Nasdaq Review Council may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction. Alternatively, the Nasdaq Review Council or the Review Subcommittee may remand the disciplinary proceeding with instructions. The Nasdaq Review Council shall prepare a proposed written decision pursuant to paragraph (b).

##### **(b) Contents of Decision**

The decision shall include:

(1) a statement describing the investigative or other origin of the disciplinary proceeding;

(2) the specific statutory or rule provisions that were alleged to have been violated;

(3) a statement setting forth the findings of fact with respect to any act or practice the Respondent was alleged to have committed or omitted;

(4) the conclusions as to whether the Respondent violated any provision alleged in the complaint;

(5) a statement in support of the disposition of the principal issues raised in the proceeding; and

(6) a statement describing any sanction imposed, the reasons therefor, and, pursuant to Rule 9360, the date upon which such sanction shall become effective.

(c) Issuance of Decision After Expiration of Call for Review Period

The Nasdaq Review Council shall provide its proposed written decision to the Nasdaq Board. The Nasdaq Board may call the disciplinary proceeding for review pursuant to Rule 9351. If the Nasdaq Board does not call the disciplinary proceeding for review, the proposed written decision of the Nasdaq Review Council shall become final, and the Nasdaq Review Council shall serve its written decision on the Parties and provide a copy to each member of Nasdaq with which a Respondent is associated. The decision shall constitute the final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1), unless the Nasdaq Review Council remands the proceeding.

**9350. Discretionary Review by Board**

**9351. Discretionary Review by Nasdaq Board**

(a) Call for Review by Director

A Director may call a disciplinary proceeding for review by the Nasdaq Board if the call for review is made within the period prescribed in paragraph (b); provided, however, that a decision with respect to a member that is an affiliate of Nasdaq within the meaning of Rule 2160 may not be called for review.

(b) 15 Day Period; Waiver

(1) A Director shall make his or her call for review not later than the next meeting of the Nasdaq Board that is at least 15 days after the date on which the Nasdaq Board receives the proposed written decision of the Nasdaq Review Council.

(2) Waiver

By a unanimous vote of the Nasdaq Board, the Nasdaq Board may shorten the period in subparagraph (1) to less than 15 days. By an affirmative vote of the majority of the Nasdaq Board then in office, the Nasdaq Board may, during the 15 day period in subparagraph (1), vote to extend the period in subparagraph (1) to more than 15 days.

(c) Review at Next Meeting

If a Director calls a disciplinary proceeding for review within the period prescribed in paragraph (b), the Nasdaq Board shall review the disciplinary proceeding not later than the next meeting of the Nasdaq Board. The Nasdaq Board may order the Parties (excluding any Respondent who did not appeal or cross-appeal, or as to whom the issues

appealed or called for review do not apply) to file briefs in connection with the review proceedings pursuant to this Rule.

(d) Decision of Nasdaq Board, Including Remand

After review, the Nasdaq Board may affirm, modify, or reverse the proposed written decision of the Nasdaq Review Council. The Nasdaq Board may affirm, modify, reverse, increase, or reduce any sanction (including the terms of any permanent cease and desist order), or impose any other fitting sanction. Alternatively, the Nasdaq Board may remand the disciplinary proceeding with instructions. The Nasdaq Board shall prepare a written decision that includes all of the elements described in Rule 9349(b)(1) through (6).

(e) Issuance of Decision After Expiration of Call for Review Period

The Nasdaq Board shall issue and serve its written decision on the Parties and provide a copy to each member of Nasdaq with which a Respondent is associated. The decision shall constitute the final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1), unless the Nasdaq Board remands the proceeding.

**9360. Effectiveness of Sanctions**

Unless otherwise provided in the decision issued under Rule 9349 or Rule 9351, a sanction (other than a bar, an expulsion, or a permanent cease and desist order) specified in a decision constituting final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1) shall become effective on a date to be determined by Nasdaq staff (or the Hearing Panel, Extended Hearing Panel, or Office of Disciplinary Affairs in the case of a decision with respect to an affiliate of Nasdaq within the meaning of Rule 2160). A bar, an expulsion, or a permanent cease and desist order shall become effective upon service of the decision constituting final disciplinary action of Nasdaq, unless otherwise specified therein. Nasdaq shall serve the decision on a Respondent by courier, facsimile or other means reasonably likely to obtain prompt service when the sanction is a bar, an expulsion, or a permanent cease and desist order.

**9370. Application to Commission for Review**

(a) Appeal to Commission; Effect

A Respondent aggrieved by final disciplinary action pursuant to the Rule 9200 Series or the Rule 9300 Series may apply for review by the Commission pursuant to Section 19(d)(2) of the Act. The filing with the Commission of an application for review by the Commission shall stay the effectiveness of any sanction, other than a bar or an expulsion, imposed in a decision constituting final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1).

(b) Notification to Member

Nasdaq shall promptly notify any member with which a Respondent is associated if the Respondent files an application for review to the Commission.

**9400. Expedited Client Suspension Proceeding****(a) Initiation of Proceeding**

(1) Scope of Authority. With the prior written authorization of the Chief Regulatory Officer ("CRO") or such other senior officers as the CRO may designate, the Nasdaq Regulation Department or the Department of Enforcement may initiate an expedited suspension proceeding with respect to alleged violations of Rule 2170 or Options 9, Section 4 (Disruptive Quoting and Trading Activity Prohibited).

(2) Service of Notice. The Exchange or FINRA shall initiate the proceeding by serving a notice on a Member or associated person of a Member (hereinafter "Respondent"). The Exchange or FINRA shall serve the notice by personal service or overnight commercial courier. The notice shall be effective upon service.

(3) Content of Notice. The notice shall state whether the Exchange is requesting the Respondent to be required to take action or to refrain from taking action. The notice shall be accompanied by:

(A) a declaration of facts, signed by a person with knowledge of the facts contained therein, that specifies the acts that constitute the alleged violation; and

(B) a proposed order that contains the required elements of a suspension order (except the date and hour of the order's issuance), which are set forth in subparagraph (d)(2) of this Rule.

**(b) Appointment of Hearing Officers and Hearing Panel**

(1) As soon as practicable after the Exchange or FINRA initiates a suspension proceeding, a Hearing Panel shall be assigned in accordance with paragraph (a) of Rule 9231(b).

(2) If at any time a Hearing Officer determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, or if a Party files a motion to disqualify a Hearing Officer, the recusal and disqualification proceeding shall be conducted in accordance with Rules 9233(a), except that:

(A) a motion seeking disqualification of a Hearing Officer must be filed no later than 5 days after the announcement of the Hearing Panel; and

(B) the Exchange may file a brief in opposition to the Respondent's motion no later than 5 days after service thereof.

**(c) Hearing**

(1) *When Held.* The hearing shall be held not later than 15 days after service of the notice initiating the suspension proceeding, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. If a Hearing Officer is recused or disqualified, the hearing shall be held not later than five days after a replacement Hearing Officer is appointed.

(2) *Service of Notice of Hearing.* A notice of date, time, and place of the hearing shall be served on the Parties not later than seven days before the hearing, unless otherwise ordered by the Chairman of the Hearing Panel. Service shall be made by personal service or overnight commercial courier. The notice shall be effective upon service.

(3) *Authority of Hearing Officers.* A Hearing Officer shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth in Rule 9235.

(4) *Witnesses.* A person who is subject to the jurisdiction of the Exchange shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

(5) *Additional Information.* At any time during its consideration, the Hearing Panel may direct a Party to submit additional information. Any additional information submitted shall be provided to all Parties at least one day before the Hearing Panel renders its decision.

(6) *Transcript.* The hearing shall be recorded by a court reporter and a written transcript thereof shall be prepared. A transcript of the hearing shall be available to the Parties for purchase from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Panel within a reasonable time determined by the Hearing Panel. Upon notice to all the Parties to the proceeding, the Hearing Panel may order corrections to the transcript as requested or sua sponte.

(7) *Record and Evidence Not Admitted.* The record shall consist of the notice initiating the proceeding, the declaration, and the proposed order described in subparagraph (a)(3) above; the transcript of the hearing; all evidence considered by the Hearing Panel; and any other document or item accepted into the record by the Hearing Panel. The Nasdaq Regulation Department shall be the custodian of the record. Proffered evidence that is not accepted into the record by the Hearing Panel shall be retained by the custodian of the record until the date when the Exchange's decision becomes final or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

(8) *Failure to Appear at a Hearing.* If a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may

be deemed admitted, and the Hearing Panel may issue a suspension order without further proceedings. If the Exchange or FINRA fails to appear at a hearing for which it has notice, the Hearing Panel may order that the suspension proceeding be dismissed.

(d) Issuance of Suspension Order by Hearing Panel

(1) *Basis for Issuance.* The Hearing Panel shall issue a written decision stating whether a suspension order shall be imposed. The Hearing Panel shall issue the decision not later than ten days after receipt of the hearing transcript, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. A suspension order shall be imposed if the Hearing Panel finds:

(A) by a preponderance of the evidence that the alleged violation specified in the notice has occurred; and

(B) that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

(2) *Content, Scope, and Form of Order.* A suspension order shall:

(A) be limited to: (i) ordering a Respondent to cease and desist from violating Rule 2170 or Options 9, Section 4, and/or (ii) ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of Rule 2170 or Options 9, Section 4;

(B) set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order;

(C) describe in reasonable detail the act or acts the Respondent is to take or refrain from taking and to suspend the Respondent unless and until such action is taken or refrained from; and

(D) include the date and hour of its issuance.

(3) *Duration of Order.* A suspension order shall remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to paragraph (e), below.

(4) *Service.* The Hearing Panel's decision and any suspension order shall be served by personal service or overnight commercial courier. The suspension order shall be effective upon service.

(e) Review by Hearing Panel. At any time after the Respondent is served with a suspension order, a Party may apply to the Hearing Panel to have the order modified, set aside, limited, or revoked. The application shall set forth with specificity the facts that support the request. The Hearing Panel shall respond to the request in writing within ten days after receipt of the request, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. The Hearing Panel's response shall be served on the Respondent via personal service or overnight commercial courier. The filing of an application under this Rule shall not stay the effectiveness of the suspension order.

(f) Application to SEC for Review. Sanctions imposed pursuant to this Rule constitute final and immediately effective disciplinary sanctions imposed by the Exchange. The right to have any action under this Rule reviewed by the SEC is governed by Section 19 of the Exchange Act. The filing of an application for review shall not stay the effectiveness of a suspension order unless the SEC otherwise orders.

### **9500. Other Proceedings**

#### **9520. Eligibility Proceedings**

##### **9521. Purpose and Definitions**

###### **(a) Purpose**

The Rule 9520 Series sets forth procedures for a person to become or remain associated with a member, notwithstanding the existence of a statutory disqualification as defined in the Nasdaq By-Laws and for a current member or person associated with a member to obtain relief from the eligibility or qualification requirements of the Nasdaq By-Laws and the Rules of Nasdaq. Such actions hereinafter are referred to as "eligibility proceedings."

###### **(b) Definitions**

(1) The term "Application" means FINRA's Form MC-400 for individuals or Form MC-400A for members, filed with the Central Registration Depository/Public Disclosure.

(2) The term "disqualified member" means a broker, dealer, municipal securities broker or dealer, government securities broker or dealer, or member that is or becomes subject to a disqualification or is otherwise ineligible for membership under the Nasdaq By-Laws.

(3) The term "disqualified person" means an associated person or person seeking to become an associated person who is or becomes subject to a disqualification or is otherwise ineligible for association under the Nasdaq By-Laws.

(4) The term "sponsoring member" means the member or applicant for membership pursuant to Rule 1013 that is sponsoring the association or continued

association of a disqualified person to be admitted, readmitted, or permitted to continue in association.

## **9522. Initiation of Eligibility Proceeding; Member Regulation Consideration**

### **(a) Initiation**

#### **(1) Issuance of Notice of Disqualification or Ineligibility**

If staff of the Department of Member Regulation has reason to believe that a disqualification exists or that a member or person associated with a member otherwise fails to meet the eligibility requirements of Nasdaq, staff of the Department of Member Regulation shall issue a written notice to the member or applicant for membership under Rule 1013. The notice shall specify the grounds for such disqualification or ineligibility. Staff of the Department of Member Regulation shall not issue such written notice to members or applicants for membership under Rule 1013 with respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, unless the member or applicant for membership under Nasdaq Rule 1013 is required to file an application pursuant to a Regulatory Alert entitled "Eligibility Proceedings: Amendments to Nasdaq Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications" (the "SD Regulatory Alert").

#### **(2) Notice Regarding a Member**

A notice issued to a disqualified member shall state that the disqualified member may apply for relief by filing an application or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, within ten business days after service of the notice. If the member fails to file the application or, where appropriate, the written request for relief, within the 10-day period, the membership of the member shall be canceled, unless the Department of Member Regulation grants an extension for good cause shown.

#### **(3) Notice Regarding an Associated Person**

A notice issued regarding a disqualified person to a member or applicant for membership under Rule 1013 shall state that such member or applicant for membership may file an application on behalf of itself and such person or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, within ten business days after service of the notice. If the member fails to file the application or, where appropriate, the written request for relief, within the 10-day period, the registration of the disqualified person shall be revoked, unless the Department of Member Regulation grants an extension for good cause shown.

#### **(4) Service**



A notice issued under this section shall be served by facsimile or pursuant to Rules 9131 and 9134.

(b) Obligation of Member to Initiate Proceeding

(1) A member shall file an application or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, with the Central Registration Depository/Public Disclosure, if the member determines prior to receiving a notice under paragraph (a) that:

(A) it has become a disqualified member;

(B) a person associated with such member or whose association is proposed by an applicant for membership under Rule 1013 has become a disqualified person; or

(C) the member or applicant for membership under Rule 1013 wishes to sponsor the association of a person who is a disqualified person.

(2) For any disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, a member shall not file an application unless instructed to do so by the SD Regulatory Alert.

(c) Withdrawal of Application

A member may withdraw its application or written request for relief prior to a hearing by filing a written notice with the Central Registration Depository/Public Disclosure pursuant to Rules 9135, 9136, and 9137. A member may withdraw its application after the start of a hearing but prior to the issuance of a decision by the Nasdaq Review Council by filing a written notice with Nasdaq Review Council and the Office of General Counsel pursuant to Rules 9135, 9136, and 9137.

(d) Ex Parte Communications

The prohibitions against ex parte communications set forth in Rule 9143 shall become effective under the Rule 9520 Series when Nasdaq Regulation Department staff has initiated the eligibility proceeding and Nasdaq Regulation Department staff has knowledge that a member intends to file an application or written request for relief pursuant to the Rule 9520 Series.

(e) Member Regulation Consideration

(1) Matters that may be Approved by the Department of Member Regulation without the Filing of an Application

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, is authorized to approve a written request for relief from the eligibility requirements by a disqualified member or a sponsoring member without the filing of an application by such disqualified member or sponsoring member if a disqualified member or disqualified person is subject to one or more of the following conditions but is not otherwise subject to disqualification:

(A) a disqualified member or disqualified person is subject to a disqualification based on an injunction that was entered ten or more years prior to the proposed admission or continuance by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, foreign person performing a function substantially equivalent to any of the above, entity or person required to be registered under the Commodity Exchange Act, or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

(B) a sponsoring member makes a request to change the supervisor of a disqualified person; or

(C) a disqualified member or sponsoring member is a member of both Nasdaq and another self-regulatory organization; and:

(i) the other self-regulatory organization intends to file a Notice under SEC Rule 19h-1 approving the membership continuance of the disqualified member or, in the case of a sponsoring member, the proposed association or continued association of the disqualified person; and

(ii) the Department of Member Regulation concurs with that determination.

(2) Matters that may be Approved by the Department of Member Regulation after the Filing of an Application

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, is authorized to approve an application filed by a disqualified member or sponsoring member if the disqualified member

or disqualified person is subject to one or more of the following conditions but is not otherwise subject to disqualification (other than a matter set forth in subparagraph(e)(1)):

(A) The disqualified person is already a participant in, a member of, or a person associated with a member of, a self-regulatory organization (other than Nasdaq), and the terms and conditions of the proposed admission to Nasdaq are the same in all material respects as those imposed or not disapproved in connection with such person's prior admission or continuance pursuant to an order of the Commission under SEC Rule 19h-1 or other substantially equivalent written communication;

(B) The Department of Member Regulation finds, after reasonable inquiry, that except for the identity of the employer concerned, the terms and conditions of the proposed admission or continuance are the same in all material respects as those imposed or not disapproved in connection with a prior admission or continuance of the disqualified person pursuant to an order of the Commission under SEC Rule 19h-1 or other substantially equivalent written communication, and that there is no intervening conduct or other circumstance that would cause the employment to be inconsistent with the public interest or the protection of investors;

(C) The disqualification previously was a basis for the institution of an administrative proceeding pursuant to a provision of the federal securities laws, and was considered by the Commission in determining a sanction against such disqualified person in the proceeding; and the Commission concluded in such proceeding that it would not restrict or limit the future securities activities of such disqualified person in the capacity now proposed, or, if it imposed any such restrictions or limitations for a specified time period, such time period has elapsed; or

(D) The disqualification consists of a court order or judgment of injunction or conviction, and such order or judgment:

(i) expressly includes a provision that, on the basis of such order or judgment, the Commission will not institute a proceeding against such person pursuant to Section 15(b) or 15B of the Act or that the future securities activities of such persons in the capacity now proposed will not be restricted or limited; or

(ii) includes such restrictions or limitations for a specified time period and such time period has elapsed;

(E) The disqualified person's functions are purely clerical and/or ministerial in nature; or

(F) The disqualification arises from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arises under Section 3(a)(39)(E) of the Exchange Act.

(3) Rights of Disqualified Member, Sponsoring Member, Disqualified Person, and Department of Member Regulation

(A) In the event the Department of Member Regulation does not approve a written request for relief from the eligibility requirements pursuant to subparagraph (e)(1), the disqualified member or sponsoring member may file an application, and such member shall have the right to proceed under Rule 9523 or 9524, as applicable. The Department of Member Regulation may require a disqualified member or sponsoring member to file an application with the Central Registration Depository/Public Disclosure, notwithstanding the provisions of subparagraph (e)(1).

(B) In the event the Department of Member Regulation does not approve an application pursuant to subparagraph (e)(2), the disqualified member or sponsoring member shall have the right to proceed under Rule 9523 or 9524, as applicable.

**9523. Acceptance of Member Regulation Recommendations and Supervisory Plans by Consent Pursuant to SEC Rule 19h-1**

(a) With respect to all disqualifications, except those arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, after an application is filed, the Department of Member Regulation may recommend the membership or continued membership of a disqualified member or sponsoring member or the association or continuing association of a disqualified person pursuant to a supervisory plan where the disqualified member, sponsoring member, and/or disqualified person, as the case may be, consent to the recommendation and the imposition of the supervisory plan. The disqualified member, sponsoring member, and/or disqualified person, as the case may be, shall execute a letter consenting to the imposition of the supervisory plan.

(1) If a disqualified member, sponsoring member, and/or disqualified person submitted an executed letter consenting to a supervisory plan, by the submission of such letter, the disqualified member, sponsoring member and/or disqualified person waive:

(A) the right to a hearing before a Hearing Panel and any right of appeal to the Nasdaq Review Council, the Commission, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted.

(B) any right of the disqualified member, sponsoring member, and/or disqualified person to claim bias or prejudice by the Department of

Member Regulation, the Chief Regulatory Officer, the Nasdaq Review Council, or any member of the Nasdaq Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the Department of Member Regulation's recommendation or the supervisory plan, or other consideration of the recommendation or supervisory plan, including acceptance or rejection of such recommendation or supervisory plan; and

(C) any right of the disqualified member, sponsoring member, and/or disqualified person to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the recommendation or supervisory plan, or other consideration of the recommendation or supervisory plan, including acceptance or rejection of such recommendation or supervisory plan.

(2) If a recommendation or supervisory plan is rejected, the disqualified member, sponsoring member, and/or disqualified person shall be bound by the waivers made under subparagraph (a)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and shall have the right to proceed under this Rule and Rule 9524, as applicable.

(3) If the disqualified member, sponsoring member, and/or disqualified person execute the letter consenting to the supervisory plan, it shall be submitted to the Nasdaq Regulation Department by the Department of Member Regulation with a proposed Notice under SEC Rule 19h-1, where required. The Nasdaq Regulation Department shall forward the supervisory plan and proposed Notice under SEC Rule 19h-1, if any, to the Chairman of the Statutory Disqualification Committee, acting on behalf of the Nasdaq Review Council. The Chairman of the Statutory Disqualification Committee may accept or reject the recommendation of the Department of Member Regulation and the supervisory plan or refer them to the Nasdaq Review Council for acceptance or rejection by the Nasdaq Review Council.

(4) If the recommendation and supervisory plan are accepted by the Nasdaq Review Council or the Chairman of the Statutory Disqualification Committee it shall be deemed final and, where required, the proposed Notice under SEC Rule 19h-1 will be filed by Nasdaq. If the recommendation and supervisory plan are rejected by the Chairman of the Statutory Disqualification Committee or the Nasdaq Review Council, the Nasdaq Regulation Department may take any other appropriate action with respect to the disqualified member, sponsoring member, and/or disqualified person. If the recommendation and supervisory plan are rejected, the disqualified member, sponsoring member, and/or disqualified person shall not be prejudiced by the execution of the letter consenting to the supervisory

plan under subparagraph (a) and the letter may not be introduced into evidence in any proceeding.

(b) With respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, after an application is filed, in approving an application under Rule 9522(e)(2)(F), the Department of Member Regulation is authorized to accept the membership or continued membership of a disqualified member or sponsoring member or the association or continuing association of a disqualified person pursuant to a supervisory plan where the disqualified member, sponsoring member, and/or disqualified persons, as the case may be, consent to the imposition of the supervisory plan. The disqualified member, sponsoring member, and/or disqualified person, as the case may be, shall execute a letter consenting to the imposition of the supervisory plan. The Department of Member Regulation shall prepare a proposed Notice under SEC Rule 19h-1, where required, and Nasdaq shall file such Notice.

(1) If a disqualified member, sponsoring member, and/or disqualified person submitted an executed letter consenting to a supervisory plan, by the submission of such letter, the disqualified member, sponsoring member and/or disqualified person waives:

(A) the right to a hearing before a Hearing Panel and any right of appeal to the Nasdaq Review Council, the SEC, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted;

(B) any right of the disqualified member, sponsoring member, and/or disqualified person to claim bias or prejudice by the Department of Member Regulation or the General Counsel in connection with such person's or body's participation in discussions regarding the terms and conditions of the Department of Member Regulation's recommended supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such recommendation or supervisory plan; and

(C) any right of the disqualified member, sponsoring member, and/or disqualified person to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such supervisory plan.

(2) If the supervisory plan is rejected, the disqualified member, sponsoring member, and/or disqualified person shall be bound by the waivers made under paragraph (b)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and shall have the right to proceed under Rule 9524.

**9524. Nasdaq Review Council Consideration****(a) Hearing Panel Consideration****(1) Appointment of Hearing Panel**

When the disqualified member, sponsoring firm, or applicant requests a hearing, the Nasdaq Review Council or the Review Subcommittee shall appoint a Hearing Panel composed of two or more members, who shall be current or former members of the Nasdaq Review Council or the Statutory Disqualification Committee or former Directors (provided, however, that current members of the Nasdaq Review Council shall not serve on a Hearing Panel with respect to an affiliate of Nasdaq within the meaning of Rule 2160). The Hearing Panel shall conduct a hearing and recommend a decision on the request for relief.

**(2) Notice of Hearing**

The disqualified member or sponsoring member, as the case may be, and the Department of Member Regulation shall be notified via mail, facsimile, or overnight courier of the location, time, and date of the hearing not less than fourteen business days before the hearing, unless the parties agree to shorten the time period.

**(3) Transmission of Documents**

(A) Upon receipt of an application, the Central Registration Depository shall gather all of the information necessary to process the application, including (i) the Central Registration Depository records for the disqualified member, sponsoring member, and/or disqualified person, as the case may be, and the proposed supervisor; and (ii) all of the information submitted by the disqualified member or sponsoring member in support of the application. The Central Registration Depository will prepare an index of these documents, and simultaneously provide this index and copies of the documents to the disqualified member or sponsoring member, as the case may be, the Nasdaq Regulation Department, and the Department of Member Regulation. Such documents shall be served on the disqualified member or sponsoring member, as the case may be, by mail, facsimile, or overnight courier as soon as practicable. The Department of Member Regulation shall serve its recommendation and its supporting documents on the Nasdaq Regulation Department and the disqualified member or sponsoring member, as the case may be, within ten business days of the hearing, unless the Parties agree otherwise. The disqualified member or sponsoring member, as the case may be, shall serve its documents on the Nasdaq Regulation Department and the Department of Member Regulation within ten business days of the hearing, unless the Parties agree otherwise. Nasdaq

Regulation shall forward all documents transmitted to it pursuant to this subparagraph (a)(3) to the Hearing Panel.

(B) Not less than ten business days before the hearing, the Department of Member Regulation, which shall act as a Party in the eligibility proceeding, and the disqualified member or sponsoring member, as the case may be, shall serve proposed exhibit and witness lists on each other and the Nasdaq Regulation Department. The exhibit and witness lists shall be served by facsimile or overnight courier.

(C) At any time prior to the issuance of its recommendation, the Hearing Panel may order the Parties to supplement the record with any additional information that the Hearing Panel deems necessary.

#### (4) Rights of Disqualified Member, Sponsoring Member, Disqualified Person, and Department of Member Regulation

The disqualified member, sponsoring member, and/or disqualified person, as the case may be, and, the Department of Member Regulation, shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence.

#### (5) Extensions of Time, Postponements, and Adjournments

At any time prior to the issuance of the decision of the Hearing Panel, after obtaining consent of all the Parties, the Hearing Panel may extend or shorten any time limits prescribed by the Code for the filing of any papers and may postpone or adjourn any hearing.

#### (6) Recordation of Hearing

The hearing shall be recorded and a transcript prepared by a court reporter. The disqualified member, sponsoring member, and/or disqualified person, as the case may be, may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Panel within a reasonable time determined by the Hearing Panel. Upon notice to the participants in the hearing, the Hearing Panel may order corrections to the transcript as requested or sua sponte.

#### (7) Record

The record shall consist of:

(A) the notice issued pursuant to Rule 9522(a), if applicable;



(B) all documents relied upon in issuing the notice under Rule 9522(a), if applicable;

(C) the application for relief filed pursuant to Rule 9522(b);

(D) any other submissions by the disqualified member, sponsoring member, and/or disqualified person, as the case may be, and the Department of Member Regulation;

(E) any evidence considered at the hearing; and

(F) the transcript of the hearing and any corrections thereto.

(8) Custodian of the Record

The custodian of the record shall be the Nasdaq Regulation Department.

(9) Evidence Not Admitted

Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the custodian of the record until the date when Nasdaq's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

(10) Recommendation

On the basis of the record, the Hearing Panel shall present a recommended decision in writing on the request for relief to the Statutory Disqualification Committee. After considering the record and recommendation of the Hearing Panel, the Statutory Disqualification Committee shall present its recommended decision in writing to the Nasdaq Review Council. Notwithstanding the foregoing, with respect to a Nasdaq member that is an affiliate of Nasdaq within the meaning of Rule 2140, the Hearing Panel shall prepare a final decision meeting the requirements of Rule 9524(b)(2), which shall not be reviewed by the Statutory Disqualification Committee or the Nasdaq Review Council, and may not be called for review by the Nasdaq Board pursuant to Rule 9525.

(b) Decision

(1) Decision of the Nasdaq Review Council

After considering all matters presented in the request for relief, the Statutory Disqualification Committee's recommended decision, the public interest, and the protection of investors, the Nasdaq Review Council may grant or deny the request for relief, and, if relief is granted, impose conditions on the disqualified member, sponsoring member, and/or disqualified person, as the case may be. At any time

prior to the issuance of its recommendation, the Nasdaq Review Council may order the Parties to supplement the record with any additional information that the Nasdaq Review Council deems necessary. Alternatively, the Nasdaq Review Council may remand the eligibility proceeding. The Nasdaq Review Council shall prepare a proposed written decision pursuant to subparagraph (b)(2).

(2) Contents of Decision

The decision shall include:

(A) a description of the origin of the eligibility proceeding and the nature of the disqualification;

(B) a description of the prospective business or employment requested to be engaged in; and

(C) a statement in support of the disposition of the request for relief, which, if granted, includes any of the applicable elements under SEC Rule 19h-1(e) and a description of any conditions that are imposed on the disqualified member, sponsoring member, or disqualified person, as the case may be.

(3) Issuance of Decision After Expiration of Call for Review Period

The Nasdaq Review Council shall provide its proposed written decision to the Nasdaq Board. The Nasdaq Board may call the eligibility proceeding for review pursuant to Rule 9525. If the Nasdaq Board does not call the eligibility proceeding for review, the proposed written decision of the Nasdaq Review Council shall become final, and the Nasdaq Review Council shall serve its written decision on the disqualified member, sponsoring member, and/or disqualified person, as the case may be, and the Department of Member Regulation pursuant to Rules 9132 and 9134. In the case of a decision with respect to a Nasdaq member that is an affiliate of Nasdaq within the meaning of Rule 2160, the decision of the Hearing Panel shall become final without being provided to the Nasdaq Board, and the Hearing Panel shall serve its written decision.

The decision shall constitute final action of Nasdaq, unless the Nasdaq Review Council remands the eligibility proceeding. A decision to deny re-entry or continued association shall be effective immediately. A decision to approve shall be effective after the Commission issues an acknowledgment letter or, in cases involving Commission ordered sanctions, an order.

**9525. Discretionary Review by the Nasdaq Board**

**(a) Call for Review by Director**

A Director may call an eligibility proceeding for review by the Nasdaq 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 not later than the next meeting of the Nasdaq Board that is at least 15 days after the date on which the Nasdaq Board receives the proposed written decision of the Nasdaq Review Council. By a unanimous vote of the Nasdaq Board, the Nasdaq Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the Nasdaq Board then in office, the Nasdaq 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 an eligibility proceeding for review within the period prescribed in paragraph (b), the Nasdaq Board shall review the eligibility proceeding not later than the next meeting of the Nasdaq Board. The Nasdaq Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

(d) Decision of Nasdaq Board, Including Remand

After review, the Nasdaq Board may affirm, modify, or reverse the proposed written decision of the Nasdaq Review Council. Alternatively, the Nasdaq Board may remand the eligibility proceeding with instructions. The Nasdaq Board shall prepare a written decision that includes all of the elements described in Rule 9524(b)(2).

(e) Issuance of Decision

The Nasdaq Board shall issue and serve its written decision on the disqualified member, sponsoring member, and/or disqualified person, as the case may be, and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall constitute the final action of Nasdaq, unless the Nasdaq Board remands the proceeding. A decision to deny re-entry or continued association shall be effective immediately. A decision to approve shall be effective after the Commission issues an acknowledgment letter or, in cases involving Commission-ordered sanctions, an order.

**9526. Expedited Review**

(a) Direction by Executive Committee

Notwithstanding Rules 9524 and 9525, the Nasdaq Board Executive Committee, upon request of the Statutory Disqualification Committee, may direct an expedited review of a recommended written decision of the Statutory Disqualification Committee if the Nasdaq Board Executive Committee determines that expedited review is necessary for the protection of investors.

(b) Call for Review Period

If a recommended decision is subject to expedited review, a Director may call the eligibility proceeding for review within seven days after receipt of the recommended written decision.

(c) No Call for Review

If no Director calls the proceeding for review within the time prescribed, the decision shall become final, and the Statutory Disqualification Committee shall serve the decision on the disqualified member, sponsoring member, and/or disqualified person, as the case may be, and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall constitute final action of Nasdaq. The decision shall be effective upon approval by the Commission.

(d) Call for Review

If a Director calls the eligibility proceeding for review within the prescribed time, a review panel shall meet and conduct a review not later than 14 days after the call for review. The review panel shall be composed of the Nasdaq Board Executive Committee, except that the Director who calls the proceeding for review shall serve on the review panel in lieu of a member of the Executive Committee who has the same classification (Member, Industry, Non-Industry, or Public) as such Director. The review panel may affirm, modify, or reverse the recommended written decision of the Statutory Disqualification Committee or remand the eligibility proceeding with instructions. The review panel shall prepare, issue, and serve its decision pursuant to Rule 9525(d) and (e).

**9527. Application to Commission for Review**

The right to have any action taken pursuant to this Rule Series reviewed by the Commission is governed by Section 19 of the Act. The filing of an application for review shall not stay the effectiveness of final action by Nasdaq, unless the Commission otherwise orders.

**9550. Expedited Proceedings**

**9552. Failure to Provide Information or Keep Information Current**

**(a) Notice of Suspension of Member, Person Associated with a Member or Person Subject to Nasdaq's Jurisdiction if Corrective Action is Not Taken**

If a member, person associated with a member or person subject to Nasdaq's jurisdiction fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the Nasdaq By-Laws or the Nasdaq Rules, or fails to keep its membership application or supporting documents current, Nasdaq Regulation staff may provide written notice to such member or person specifying the nature of the failure and stating that the failure to take corrective action within 21 days after service of the notice will result in suspension of membership or of association of the person with any member.

**(b) Service of Notice of Suspension**

Except as provided below, Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) shall serve the member or person with such notice (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

#### (c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Nasdaq action. The notice shall state when the Nasdaq action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Nasdaq action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

#### (d) Effective Date of Suspension

The suspension referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) Request for Hearing

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the Nasdaq action.

(f) Request for Termination of the Suspension

A member or person subject to a suspension pursuant to this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the FINRA department or office that issued the notice or, if another FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the FINRA department or office that is so designated. The head of the appropriate department or office may grant relief for good cause shown.

(g) Settlement Procedure

Uncontested offers of settlement shall be permitted under this Rule and shall conform to the requirements of Rule 9270, except that, if an uncontested offer of settlement, made under Rule 9270(e) after a hearing on the merits has begun, is accepted by the Hearing Officer, the Hearing Officer shall issue the order of acceptance, which shall constitute final Nasdaq action. Contested offers of settlement shall not be considered in proceedings initiated under this Rule.

(h) Defaults

A member or person who is suspended under this Rule and fails to request termination of the suspension within three months of issuance of the original notice of suspension will automatically be expelled or barred.

**9553. Failure to Pay Nasdaq Dues, Fees and Other Charges**

(a) Notice of Suspension, Cancellation or Bar

If a member, person associated with a member or person subject to Nasdaq's jurisdiction fails to pay any fees, dues, assessment or other charge required to be paid under the Nasdaq By-Laws or Rules, or to submit a required report or information related to such payment, Nasdaq Regulation Department staff may issue a written notice to such member or person stating that the failure to comply within 21 days of service of the notice will

result in a suspension or cancellation of membership or a suspension or bar from associating with any member.

(b) Service of Notice of Suspension, Cancellation or Bar

Except as provided below, Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) shall serve the member or person with such notice (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Nasdaq action. The notice shall state when the Nasdaq action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Nasdaq action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

(d) Effective Date of Suspension, Cancellation or Bar

The suspension, cancellation or bar referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) Request for Hearing

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the Nasdaq action.

(f) Failure to Request Hearing

If a member or person does not timely request a hearing, the suspension, cancellation or bar specified in the notice shall become effective 21 days after service of the notice and the notice shall constitute final Nasdaq action.

(g) Request for Termination of the Suspension

A member or person subject to a suspension under this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the FINRA department or office that issued the notice or, if another FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**9554. Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution**

(a) Notice of Suspension or Cancellation

If a member, person associated with a member or person subject to Nasdaq's jurisdiction fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under the Nasdaq By-Laws, or a FINRA order of restitution or FINRA settlement agreement providing for restitution, Nasdaq Regulation Department staff may provide written notice to such member or person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension from associating with any member.

(b) Service of Notice of Suspension or Cancellation

Except as provided below, Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) shall serve the member or person with such notice (or upon counsel



representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Nasdaq action. The notice shall state when the Nasdaq action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Nasdaq action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

(d) Effective Date of Suspension or Cancellation

The suspension or cancellation referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) Request for Hearing

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the Nasdaq action.

(f) Failure to Request Hearing

If a member or person does not timely request a hearing, the suspension or cancellation specified in the notice shall become effective 21 days after the service of the notice and the notice shall constitute final Nasdaq action.

(g) Request for Termination of the Suspension

A member or person subject to a suspension under this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the FINRA department or office that issued the notice or, if another FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**9555. Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services**

(a) Notice to Member or Person of Suspension, Cancellation, Bar, or Limitation or Prohibition on Access to Services

(1) If a member or an associated person does not meet the eligibility or qualification standards set forth in the Nasdaq By-Laws or Rules, Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) may provide written notice to such member or person stating that the failure to become eligible or qualified will result in a suspension or cancellation of membership or a suspension or bar from associating with any member.

(2) If a member, associated person, or other person does not meet the prerequisites for access to services offered by Nasdaq or a member thereof or cannot be permitted to continue to have access to services offered by Nasdaq or a member thereof with safety to investors, creditors, members, or Nasdaq, Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) may provide written notice to such member or person limiting or prohibiting access to services offered by Nasdaq or a member thereof.

(b) Service of Notice

Except as provided below, Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) shall serve the member or person with such notice (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Nasdaq action. The notice shall state when the Nasdaq action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Nasdaq action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

(d) Effective Date of Limitation, Prohibition, Suspension, Cancellation or Bar

The limitation, prohibition, suspension, cancellation or bar referenced in a notice issued under this Rule shall become effective 14 days after service of the notice, except that the

effective date for a notice of a limitation or prohibition on access to services offered by Nasdaq or a member thereof with respect to services to which the member or person does not have access shall be upon service of the notice. A request for a hearing, pursuant to Rule 9559, shall stay the effectiveness of the notice, except that the effectiveness of a notice of a limitation or prohibition on access to services offered by Nasdaq or a member thereof with respect to services to which the member or person does not have access shall not be stayed by a request for a hearing.

(e) Request for Hearing

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made within 14 days after service of the notice. A request for a hearing must set forth with specificity any and all defenses to the Nasdaq action.

(f) Failure to Request Hearing

If a member or person does not timely request a hearing, the limitation, prohibition, suspension, cancellation or bar specified in the notice shall become effective 14 days after service of the notice, except that the effective date for a notice of a limitation or prohibition on access to services offered by Nasdaq or a member thereof with respect to services to which the member or person does not have access shall be upon service of the notice. The notice shall constitute final Nasdaq action if the member or person does not request a hearing within 14 days after service of the notice.

(g) Request for Termination of the Limitation, Prohibition or Suspension

A member or person subject to a limitation, prohibition or suspension under this Rule may file a written request for termination of the limitation, prohibition or suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the Nasdaq or FINRA department or office that issued the notice or, if another Nasdaq or FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the Nasdaq or FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**9556. Failure to Comply with Temporary and Permanent Cease and Desist Orders**

**(a) Notice of Suspension, Cancellation or Bar**

If a member, person associated with a member or person subject to Nasdaq's jurisdiction fails to comply with a temporary or permanent cease and desist order issued under the Rule 9200, 9300 or 9800 Series, Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq), after receiving written authorization from the Chief Regulatory Officer, may issue a notice to such member or person stating that the failure to comply with the temporary or permanent cease and desist order within seven days of service of

the notice will result in a suspension or cancellation of membership or a suspension or bar from associating with any member.

**(b) Service of Notice**

Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) shall serve the member or person subject to a notice issued under this Rule (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) by facsimile, email, overnight courier or personal delivery. Papers served on a member, person or counsel for such member or person, or other person authorized to represent others under Rule 9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a member or person, (b)(1) and (2) of Rule 9134. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141 by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

**(c) Contents of Notice**

The notice shall explicitly identify the provision of the permanent or temporary cease and desist order that is alleged to have been violated and shall contain a statement of facts specifying the alleged violation. The notice shall state when the Nasdaq action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Nasdaq action. In

addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**(d) Effective Date of Suspension, Cancellation or Bar**

The suspension, cancellation or bar referenced in a notice issued and served under this Rule shall become effective seven days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

**(e) Request for a Hearing**

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the Nasdaq action.

**(f) Failure to Request Hearing**

If a member or person does not timely request a hearing, the suspension, cancellation or bar specified in the notice shall become effective seven days after the service of the notice and the notice shall constitute final Nasdaq action.

**(g) Request for Termination of the Suspension**

A member or person subject to a suspension imposed after the process described in paragraphs (a) through (f) of this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the Nasdaq or FINRA department or office that issued the notice or, if another Nasdaq or FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the Nasdaq or FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**(h) Subsequent Proceedings**

If a member, person associated with a member or person subject to Nasdaq's jurisdiction fails to comply with a temporary or permanent cease and desist order issued under the Rule 9200, 9300, or 9800 Series, and has previously been served under paragraph (a) of this Rule with a notice for a failure to comply with any provision of the same temporary or permanent cease and desist order, Nasdaq Regulation Department staff, after receiving written authorization from the Chief Regulatory Officer, may file a petition with the Office of Hearing Officers seeking a hearing pursuant to Rule 9559 and the imposition of any fitting sanctions for such member's or person's failure to comply with the temporary or permanent cease and desist order.

- (1) The petition shall be served in accordance with paragraph (b) of this Rule, and it shall be filed with the Office of Hearing Officers.
- (2) The petition shall explicitly identify the provision of the permanent or temporary cease and desist order that is alleged to have been violated, contain a statement of facts specifying the alleged violation, describe with particularity the sanctions that Nasdaq Regulation Department staff seeks to have imposed, and note that a hearing under Rule 9559 is requested. Nasdaq Regulation Department staff may seek the imposition of any fitting sanction.
- (3) Upon the filing of the petition, Rule 9559 shall govern the proceeding. Respondent's full compliance with the temporary or permanent cease and desist order is not a ground for dismissing a proceeding brought pursuant to this paragraph (h).
- (4) The Nasdaq Department that filed the petition can withdraw it without prejudice and shall be permitted to refile a petition based on allegations concerning the same facts and circumstances that are set forth in the withdrawn petition.

**9557. Procedures for Regulating Activities Under Rules 4110A and 4120A Regarding a Member Experiencing Financial or Operational Difficulties**

**(a) Notice of Requirements and/or Restrictions; Nasdaq Action**

Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) may issue a notice directing a member to comply with the provisions of Rule 4110A or 4120A or restrict its business activities, either by limiting or ceasing to conduct those activities consistent with Rule 4110A or 4120A, if Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) has reason to believe that a condition specified in Rule 4110A or 4120A exists. A notice served under this Rule shall constitute Nasdaq action.

**(b) Service of Notice**

Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) shall serve the member subject to a notice issued under this Rule (or upon counsel representing the member, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member) by facsimile, email, overnight courier or personal delivery. Papers served on a member, counsel for such member, or other person authorized to represent others under Rule 9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a member, (b)(2) of Rule 9134. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule

9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on counsel for a member, or other person authorized to represent others under Rule 9141 by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

(c) Contents of Notice

A notice issued under this Rule shall:

(1) state the specific grounds and include the factual basis for the Nasdaq action;

(2) specify the date of the notice and the requirements and/or restrictions being imposed by the notice;

(3) state that the requirements and/or restrictions imposed by the notice are immediately effective;

(4) specify the conditions for complying with and, where applicable, avoiding or terminating the requirements and/or restrictions imposed by the notice;

(5) inform the member that, pursuant to paragraph (f) of this Rule, the failure to comply with the requirements and/or restrictions imposed by an effective notice under this Rule shall be deemed, without further notice from Nasdaq Regulation Department staff, to result in automatic and immediate suspension unless Nasdaq Regulation Department staff issues a letter of withdrawal of all requirements and/or restrictions imposed by the notice pursuant to paragraph (g)(2) of this Rule;

(6) explain that the member may make a request for a letter of withdrawal of the notice pursuant to paragraph (e) of this Rule;

(7) state that, in addition to making a request for a letter of withdrawal of the notice, the member may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559;

(8) inform the member of the applicable deadline for filing a request for a hearing and state that a request for a hearing must set forth with specificity any and all defenses to the Nasdaq action; and



(9) explain that, pursuant to Rule 9559(n), a Hearing Panel may approve or withdraw the requirements and/or restrictions imposed by the notice, and that if the Hearing Panel approves the requirements and/or restrictions imposed by the notice and finds that the member has not complied with all of them, the Hearing Panel shall impose an immediate suspension on the member.

(d) Effectiveness of the Requirements and/or Restrictions

The requirements and/or restrictions imposed by a notice issued and served under this Rule are immediately effective, except that a timely request for a hearing shall stay the effective date for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less), unless Nasdaq's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate) determines that such a stay cannot be permitted with safety to investors, creditors or other members. Such a determination by Nasdaq's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate) cannot be appealed. An extension of the stay period is not permitted. Where a timely request for a hearing stays the action for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less), the notice shall not be deemed to have taken effect during that entire period.

Any requirements and/or restrictions imposed by an effective notice shall remain in effect unless Nasdaq Regulation Department staff shall remove or reduce the requirements and/or restrictions pursuant to a letter of withdrawal of the notice issued as set forth in paragraph (g)(2) of this Rule.

(e) Request for a Letter of Withdrawal of the Notice; Request for a Hearing

A member served with a notice under this Rule may request from Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) a letter of withdrawal of the notice pursuant to paragraph (g)(2) of this Rule and/or file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559.

(1) A request for a letter of withdrawal of the notice may be made at any time after service of a notice under this Rule. The member making the request must demonstrate to the satisfaction of Nasdaq Regulation Department staff that the requirements and/or restrictions imposed by the notice should be removed or reduced. If such a request is denied by Nasdaq Regulation Department staff, the member shall not be precluded from making a subsequent request or requests.

(2) A request for a hearing shall be made within two business days after service of a notice under this Rule. A request for a hearing must set forth with specificity any and all defenses to the Nasdaq action. A request for a hearing may seek to contest:

(A) the validity of the requirements and/or restrictions imposed by the notice (as the same may have been reduced by a letter of withdrawal pursuant to paragraph (g)(2) of this Rule, where applicable); and/or

(B) Nasdaq Regulation Department staff's determination not to issue a letter of withdrawal of all requirements and/or restrictions imposed by the notice, if such was requested by the member.

(f) Enforcement of Notice

A member that has failed to comply with the requirements and/or restrictions imposed by an effective notice under this Rule shall be deemed, without further notice from Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq), automatically and immediately suspended. Such suspension shall remain in effect unless Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) shall issue a letter, pursuant to paragraph (g)(2) of this Rule, stating that the suspension is lifted.

(g) Additional Requirements and/or Restrictions or the Removal or Reduction of Requirements and/or Restrictions; Letter of Withdrawal of the Notice

(1) Additional Requirements and/or Restrictions

If a member continues to experience financial or operational difficulty specified in Rule 4110A or 4120A, notwithstanding an effective notice, Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) may impose additional requirements and/or restrictions by serving an additional notice under paragraph (b) of this Rule. The additional notice shall inform the member that it may apply for relief from the additional requirements and/or restrictions by filing a written request for a letter of withdrawal of the notice and/or a written request for a hearing before the Office of Hearing Officers under Rule 9559. The procedures delineated in this Rule shall be applicable to such additional notice.

(2) Removal or Reduction of Requirements and/or Restrictions and/or Lifting of Suspension; Letter of Withdrawal

(A) Removal or Reduction of Requirements and/or Restrictions

If, upon the member's demonstration to the satisfaction of Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq), Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) determines that any requirements and/or restrictions imposed by a notice under this Rule should be removed or reduced, Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) shall serve the member, pursuant to paragraph (b) of this Rule, a written letter of withdrawal that shall, in the sole discretion of Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq), withdraw the

notice in whole or in part. A notice that is withdrawn in part shall remain in force, unless Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) shall remove the remaining requirements and/or restrictions.

(B) Lifting of Suspension

If, upon the member's demonstration to the satisfaction of Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq), Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) determines that a suspension imposed by a notice under this Rule should be lifted, Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) shall serve the member, pursuant to paragraph (b) of this Rule, a letter that shall, in the sole discretion of Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq), lift the suspension. Where all or some of the requirements and/or restrictions imposed by a notice issued under this Rule remain in force, the letter shall state that the member's failure to continue to comply with those requirements and/or restrictions that remain effective shall result in the member being immediately suspended.

(h) For purposes of this Rule, "Nasdaq Regulation Department staff" shall mean:

(1) the head of the Nasdaq department or office (or FINRA acting on behalf of the Nasdaq) that issued the notice, or his or her written officer delegate; or

(2) if another Nasdaq (or FINRA acting on behalf of Nasdaq) department or office is named as the party handling the matter on behalf of the issuing department or office, the head of the Nasdaq (or FINRA acting on behalf of Nasdaq) department or office that is so designated, or his or her written officer delegate.

**9558. Summary Proceedings for Actions Authorized by Section 6(d)(3) of the Act**

**(a) Notice of Initiation of Summary Proceedings**

The Chief Regulatory Officer of Nasdaq may provide written authorization to FINRA staff to issue on a case-by-case basis a written notice that summarily:

(1) suspends a member, person associated with a member or person subject to Nasdaq's jurisdiction who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization;

(2) suspends a member who is in such financial or operating difficulty that Association staff determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or Nasdaq; or

(3) limits or prohibits any person with respect to access to services offered by Nasdaq if paragraphs (1) or (2) of this Rule or the provisions of Section 6(d)(3) of the Act applies to such person or, in the case of a person who is not a member, if the Chief Regulatory Officer of Nasdaq 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 Nasdaq, and so notifies the Commission.

(b) Service of Notice

Nasdaq Regulation Department staff (or FINRA, acting on behalf of Nasdaq) shall serve the member or person subject to a notice issued under this Rule (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) by facsimile, email, overnight courier, or personal delivery. Papers served on a member, person or counsel for such member or person, or other person authorized to represent others under Rule 9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a member or person, (b)(1) and (2) of Rule 9134. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141 by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Nasdaq action. The notice shall state when the Nasdaq action will take effect and explain what the respondent must do to avoid such action. The notice shall state that

the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Nasdaq action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

(d) Effective Date of Limitation, Prohibition or Suspension

The limitation, prohibition or suspension referenced in a notice issued and served under this Rule is immediately effective. The limitation, prohibition or suspension specified in the notice shall remain in effect unless, after a timely written request for a hearing and written request for a stay, the Chief Hearing Officer or Hearing Officer assigned to the matter finds good cause exists to stay the limitation, prohibition or suspension.

(e) Request for a Hearing and Stay

A member or person subject to a notice issued under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made within seven days after service of the notice issued under this Rule. A request for a hearing must set forth with specificity any and all defenses to the Nasdaq action.

A member or person subject to a notice issued under this Rule may, concurrent with or after filing a request for a hearing, file with the Office of Hearing Officers a written request for a stay of the limitation, prohibition or suspension specified in the notice. A request for a stay must set forth with specificity any and all relevant facts and arguments supporting the request for a stay.

(f) Failure to Request Hearing

If a member or person subject to a notice issued under this Rule does not timely request a hearing within the time period specified in paragraph (e) of this Rule, the notice shall constitute final Nasdaq action.

(g) Request for Termination of the Limitation, Prohibition or Suspension

A member or person subject to a limitation, prohibition or suspension under this Rule may file a written request for termination of the limitation, prohibition or suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the FINRA department or office that issued the notice or, if another FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series****(a) Applicability**

The hearing procedures under this Rule shall apply to a member, person associated with a member, person subject to Nasdaq's jurisdiction or other person who is served with a notice issued under the Rule 9550 Series and who timely requests a hearing or who is served with a petition instituting an expedited proceeding under Rule 9556(h). For purposes of this Rule, such members or persons shall be referred to as respondents.

**(b) Computation of Time**

Rule 9138 shall govern the computation of time in proceedings brought under the Rule 9550 Series, except that intermediate Saturdays, Sundays and Federal holidays shall be included in the computation in proceedings brought under Rules 9556 through 9558, unless otherwise specified.

**(c) Stays**

(1) Unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown, a timely request for a hearing shall stay the effectiveness of a notice issued under Rules 9552 through 9556, except that (A) the effectiveness of a notice of a limitation or prohibition on access to services offered by Nasdaq or a member thereof under Rule 9555 with respect to services to which the member or person does not have access shall not be stayed by a request for a hearing; and (B) this paragraph has no applicability to a petition instituting an expedited proceeding under Rule 9556(h).

(2) A timely request for a hearing shall stay the effectiveness of a notice issued under Rule 9557 for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less), unless Nasdaq's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate) determines that a notice under Rule 9557 shall not be stayed. Where a notice under Rule 9557 is stayed by a request for a hearing, such stay shall remain in effect only for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less) and shall not be extended.

(3) A timely request for a hearing shall not stay the effectiveness of a notice issued under Rule 9558, unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown.

**(d) Appointment and Authority of Hearing Officer and/or Hearing Panel**

(1) For proceedings initiated under Rules 9553, 9554, and 9556(h), the Chief Hearing Officer shall appoint a Hearing Officer to preside over and act as the sole adjudicator for the matter.

(2) For proceedings initiated under Rules 9552, 9555, 9556 (except Rule 9556(h)), 9557 and 9558, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer and two Panelists. The Hearing Officer shall serve as the chair of the Hearing Panel. For proceedings initiated under Rules 9552, 9555, 9556 (except Rule 9556(h)) and 9558, the Chief Hearing Officer shall select as Panelists persons who meet the qualifications delineated in Rules 9231 and 9232. For proceedings initiated under Rule 9557, the Chief Hearing Officer shall select as Panelists current or former members of the Nasdaq Financial Responsibility Committee.

(3) Rules 9231(e), 9233 and 9234 shall govern disqualification, recusal or withdrawal of a Hearing Officer or, if applicable, Hearing Panelist.

(4) A Hearing Officer appointed pursuant to this provision shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rules 9235 and 9280.

(5) Hearings under the Rule 9550 Series shall be held by telephone conference, unless the Hearing Officer orders otherwise for good cause shown.

(6) For good cause shown, or with the consent of all of the parties to a proceeding, the Hearing Officer or, if applicable, the Hearing Panel may extend or shorten any time limits prescribed by this Rule other than those relating to Rule 9557.

#### (e) Consolidation or Severance of Proceedings

Rule 9214 shall govern the consolidation or severance of proceedings, except that, where one of the notices that are the subject of consolidation under this Rule requires that a hearing be held before a Hearing Panel, the hearing of the consolidated matters shall be held before a Hearing Panel. Where two consolidated matters contain different timelines under this Rule, the Chief Hearing Officer or Hearing Officer assigned to the matter has discretion to determine which timeline is appropriate under the facts and circumstances of the case. Where one of the consolidated matters includes an action brought under a Rule that does not permit a stay of the effectiveness of the notice or where Nasdaq's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate), in the case of Rule 9557, or Hearing Officer, in the case of Rule 9558(d), determines that a request for a hearing shall not stay the effectiveness of the notice, the limitation, prohibition, condition, requirement, restriction, or suspension specified in the notice shall not be stayed pending resolution of the case. Where one of the consolidated matters includes an action brought under Rule 9557 that is stayed for up to ten business days, the requirement and/or restriction specified in the notice shall not be further stayed.

(f) Time of Hearing

(1) A hearing shall be held within five business days after a respondent subject to a notice issued under Rule 9557 files a written request for a hearing with the Office of Hearing Officers.

(2) A hearing shall be held within ten days after a respondent is served a petition seeking an expedited proceeding issued under Rule 9556(h).

(3) A hearing shall be held within 14 days after a respondent subject to a notice issued under Rules 9556 (except Rule 9556(h)) and 9558 files a written request for a hearing with the Office of Hearing Officers.

(4) A hearing shall be held within 30 days after a respondent subject to a notice issued under Rules 9552 through 9555 files a written request for a hearing with the Office of Hearing Officers.

(5) The timelines established by paragraphs (f)(1) through (f)(4) confer no substantive rights on the parties.

(g) Notice of Hearing

The Hearing Officer shall issue a notice stating the date, time, and place of the hearing as follows:

(1) At least two business days prior to the hearing in the case of an action brought pursuant to Rule 9557;

(2) At least six days prior to the hearing in the case of an action brought pursuant to Rule 9556(h);

(3) At least seven days prior to the hearing in the case of an action brought pursuant to Rules 9556 (except Rule 9556(h)) and 9558; and

(4) At least 21 days prior to the hearing in the case of an action brought pursuant to Rules 9552 through 9555.

(h) Transmission of Documents

(1) Not less than two business days before the hearing in an action brought under Rule 9557, not less than six days before the hearing in an action brought under Rule 9556(h), not less than seven days before the hearing in an action brought under Rules 9556 (except Rule 9556(h)) and 9558, and not less than 14 days before the hearing in an action brought under Rules 9552 through 9555, Nasdaq Regulation Department staff shall provide to the respondent who requested the hearing or the respondent who has received a petition pursuant to Rule 9556(h),



by facsimile, email, overnight courier or personal delivery, all documents that were considered in issuing the notice unless a document meets the criteria of Rule 9251(b)(1)(A), (B) or (C). Documents served by facsimile or email shall also be served by either overnight courier or personal delivery. A document that meets the criteria in this paragraph shall not constitute part of the record, but shall be retained until the date upon which the Nasdaq's final decision is served or, if applicable, upon the conclusion of any review by the Securities and Exchange Commission or the federal courts.

(2) Not less than two business days before the hearing in an action brought under Rule 9557, not less than three days before the hearing in an action brought under Rules 9556 and 9558, and not less than seven days before the hearing in an action brought under Rules 9552 through 9555, the parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile, email, by overnight courier or personal delivery. Documents served by facsimile or email shall also be served by either overnight courier or personal delivery.

(i) Evidence

Formal rules of evidence shall not apply to a hearing under this Rule Series. Rules 9262 and 9263 shall govern testimony and the admissibility of evidence.

(j) Additional Information

The Hearing Officer or, if applicable, the Hearing Panel may direct the Parties to submit additional information.

(k) Record of Hearing

Rule 9265 shall govern the requirements for the record of the hearing.

(l) Record of Proceeding

Rule 9267 shall govern the record of the proceeding.

(m) Failure to Appear at a Pre-Hearing Conference or Hearing or to Comply with a Hearing Officer Order Requiring the Production of Information

Failure of any respondent to appear before the Hearing Officer or, if applicable, the Hearing Panel at any status conference, pre-hearing conference or hearing, or to comply with any order of the Hearing Officer or, if applicable, Hearing Panel requiring production of information to support any defense to the notice or petition that respondent has raised, shall be considered an abandonment of the respondent's defense and waiver of any opportunity for a hearing provided by the Rule 9550 Series. In such cases:

(1) The notice issued under the Rule 9550 Series shall be deemed to be final Nasdaq action. The Hearing Officer or, if applicable, the Hearing Panel may permit the hearing to go forward as to those parties who appear and otherwise comply with this Rule.

(2) The Hearing Officer may issue a default decision against a respondent who is the subject of a petition filed pursuant to Rule 9556(h) and may deem the allegations against that respondent admitted. The contents of a default decision shall conform to the content requirements of Rule 9559(p). A respondent may, for good cause shown, file a motion to set aside a default. Upon a showing of good cause, the Hearing Officer that entered the original order shall decide the motion. If the Hearing Officer is not available, the Chief Hearing Officer shall appoint another Hearing Officer to decide the motion. If a default decision is not called for review pursuant to Rule 9559(q), the default decision shall become the final Nasdaq action.

(n) Sanctions, Costs and Remands

(1) In any action brought under the Rule 9550 Series, other than an action brought under Rule 9556(h) or Rule 9557, the Hearing Officer or, if applicable, the Hearing Panel may approve, modify or withdraw any and all sanctions, requirements, restrictions or limitations imposed by the notice and, pursuant to Rule 8310(a), may also impose any other fitting sanction.

(2) In an action brought under Rule 9556(h), the Hearing Officer may impose any fitting sanction.

(3) In an action brought under Rule 9557, the Hearing Panel shall approve or withdraw the requirements and/or restrictions imposed by the notice. If the Hearing Panel approves the requirements and/or restrictions and finds that the respondent has not complied with all of them, the Hearing Panel shall impose an immediate suspension on the respondent that shall remain in effect unless Nasdaq Regulation Department staff issues a letter of withdrawal of all requirements and/or restrictions pursuant to Rule 9557(g)(2).

(4) The Hearing Officer or, if applicable, the Hearing Panel may impose costs pursuant to Rule 8330 regarding all actions brought under the Rule 9550 Series.

(5) In any action brought under the Rule 9550 Series, other than an action brought under Rule 9556(h) or Rule 9557, the Hearing Officer or, if applicable, the Hearing Panel may remand the matter to the department or office that issued the notice for further consideration of specified matters.

(o) Timing of Decision

(1) Proceedings initiated under Rules 9553 and 9554

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision and provide it to the Nasdaq Review Council's Review Subcommittee.

(2) Proceedings initiated under Rules 9556 and 9558

Within 21 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision that reflects the views of the Hearing Panel, as determined by majority vote, and provide it to the Nasdaq Review Council's Review Subcommittee.

(3) Proceedings initiated under Rules 9552 and 9555

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision that reflects the views of the Hearing Panel, as determined by majority vote, and provide it to the Nasdaq Review Council's Review Subcommittee.

(4) Proceedings initiated under Rule 9557

(A) Written Order

Within two business days of the date of the close of the hearing, the Office of Hearing Officers shall issue a written order that reflects the Hearing Panel's summary determinations, as decided by majority vote, and shall serve the Hearing Panel's written order on the Parties. The Hearing Panel's written order under Rule 9557 is effective when issued. The Hearing Panel's written order will be followed by a written decision explaining the reasons for the Hearing Panel's summary determinations, as required by paragraphs (o)(4)(B) and (p) of this Rule.

(B) Written Decision

Within seven days of the issuance of the Hearing Panel's written order, the Office of Hearing Officers shall issue a written decision that complies with the requirements of paragraph (p) of this Rule and shall serve the Hearing Panel's written decision on the Parties.

(5) If not timely called for review by the Nasdaq Review Council's Review Subcommittee pursuant to paragraph (q) of this Rule, the Hearing Officer's or, if applicable, the Hearing Panel's written decision shall constitute final Nasdaq action. For decisions issued under Rules 9552 through 9556 and 9558, the Office of Hearing Officers shall promptly serve the decision of the Hearing Officer or, if applicable, the Hearing Panel on the Parties and provide a copy to each Nasdaq member with which the respondent is associated.

(6) The timelines established by paragraphs (o)(1) through (5) confer no substantive rights on the parties.

(p) Contents of Decision

The decision, which for purposes of Rule 9557 means the written decision issued under paragraph (o)(4)(B) of this Rule, shall include:

(1) a statement describing the investigative or other origin of the notice issued under the Rule 9550 Series;

(2) the specific statutory or rule provision alleged to have been violated or providing the authority for the Nasdaq action;

(3) a statement setting forth the findings of fact with respect to any act or practice the respondent was alleged to have committed or omitted or any condition specified in the notice;

(4) the conclusions of the Hearing Officer or, if applicable, Hearing Panel regarding the alleged violation or condition specified in the notice;

(5) a statement of the Hearing Officer or, if applicable, Hearing Panel in support of the disposition of the principal issues raised in the proceeding; and

(6) a statement describing any sanction, requirement, restriction or limitation imposed, the reasons therefore, and the date upon which such sanction, requirement, restriction or limitation shall become effective.

(q) Call for Review by the Nasdaq Review Council

(1) For proceedings initiated under the Rule 9550 Series (other than Rule 9557), the Nasdaq Review Council's Review Subcommittee may call for review a proposed decision prepared by a Hearing Officer or, if applicable, Hearing Panel within 21 days after receipt of the decision from the Office of Hearing Officers; provided, however, that a decision under the Rule 9550 Series with respect to a Nasdaq member that is an affiliate of Nasdaq within the meaning of Rule 2160 shall constitute final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1) and may not be called for review pursuant to Rule 9559. For proceedings initiated under Rule 9557, the Nasdaq Review Council's Review Subcommittee may call for review a written decision issued under paragraph (o)(4)(B) of this Rule by a Hearing Panel within 14 days after receipt of the written decision from the Office of Hearing Officers. Rule 9313(a) is incorporated herein by reference.

(2) If the Review Subcommittee calls the proceeding for review within the prescribed time, a Subcommittee of the Nasdaq Review Council shall meet and conduct a review not later than 40 days after the call for review. The

Subcommittee shall be composed pursuant to Rule 9331(a)(1). The Subcommittee may elect to hold a hearing or decide the matter on the basis of the record made before the Hearing Officer or, if applicable, the Hearing Panel. Not later than 60 days after the call for review, the Subcommittee shall make its recommendation to the Nasdaq Review Council. Not later than 60 days after receipt of the Subcommittee's recommendation, the Nasdaq Review Council shall serve a final written decision on the parties via overnight courier or facsimile. The Nasdaq Review Council may affirm, modify or reverse the decision of the Hearing Officer or, if applicable, the Hearing Panel. The Nasdaq Review Council also may impose any other fitting sanction, pursuant to Rule 8310(a), and may impose costs, pursuant to 8330. In addition, the Nasdaq Review Council may remand the matter to the Office of Hearing Officers for further consideration of specified matters.

(3) For good cause shown, or with the consent of all of the parties to a proceeding, the Review Subcommittee, the Nasdaq Review Council Subcommittee or the Nasdaq Review Council may extend or shorten any time limits prescribed by this Rule other than those relating to Rule 9557.

(4) The Nasdaq Review Council's written decision shall constitute final Nasdaq action.

(5) The Nasdaq Review Council shall promptly serve the decision on the Parties and provide a copy of the decision to each Nasdaq member with which the respondent is associated.

(6) The timelines established by paragraphs (q)(1)-(5) confer no substantive rights on the parties.

(r) Reserved

(s) Application to Commission for Review

The right to have any action pursuant to this Rule reviewed by the Securities and Exchange Commission is governed by Section 19(f) of the Securities Exchange Act. The filing of an application for review by the Securities and Exchange Commission shall not stay the effectiveness of final Nasdaq action, unless the Securities and Exchange Commission otherwise orders.

## **9600. Procedures for Exemptions**

### **9610. Application**

(a) Where to File

A member seeking exemptive relief as specifically permitted under any Nasdaq Rule referencing General 5, Section 2 shall file a written application with the appropriate

FINRA department or staff and provide a copy of the application to the Nasdaq Regulation Department.

(b) Content

An application filed pursuant to this Rule shall contain the member's name and address, the name of a person associated with the member who will serve as the primary contact for the application, the Rule from which the member is seeking an exemption, and a detailed statement of the grounds for granting the exemption. If the member does not want the application or the decision on the application to be publicly available in whole or in part, the member also shall include in its application a detailed statement, including supporting facts, showing good cause for treating the application or decision as confidential in whole or in part.

(c) Applicant

A member that files an application under this Rule is referred to as "Applicant" hereinafter in General 5.

**9620. Decision**

After considering an application, Nasdaq Regulation staff shall issue a written decision setting forth its findings and conclusions. The decision shall be served on the Applicant pursuant to Rules 9132 and 9134. After the decision is served on the Applicant, the application and decision shall be publicly available unless Nasdaq Regulation staff determines that the Applicant has shown good cause for treating the application or decision as confidential in whole or in part.

**9630. Appeal**

(a) Notice

An Applicant may file a written notice of appeal within 15 calendar days after service of a decision issued under Rule 9620. The notice of appeal shall be filed with the Nasdaq Regulation Department, with a copy of the notice also provided to the appropriate Nasdaq Regulation Department staff. The notice of appeal shall contain a brief statement of the findings and conclusions as to which exception is taken. Appeals of decisions issued by Nasdaq Regulation Department staff pursuant to Rule 9620 shall be decided by the Nasdaq Review Council, except with respect to exemptive relief under General 4, Section 1.1210.03, which shall be decided by the Waiver Subcommittee of the Nasdaq Review Council. If the Applicant does not want the decision on the appeal to be publicly available in whole or in part, the Applicant also shall include in its notice of appeal a detailed statement, including supporting facts, showing good cause for treating the decision as confidential in whole or in part. The notice of appeal shall be signed by the Applicant.

(b) Expedited Review

Where the failure to promptly review a decision to deny a request for exemption would unduly or unfairly harm the Applicant, the Nasdaq Review Council or the Waiver Subcommittee of the Nasdaq Review Council, as the case may be, shall provide expedited review.

(c) Withdrawal of Appeal

An Applicant may withdraw its notice of appeal at any time by filing a written notice of withdrawal of appeal with the Nasdaq Review Council.

(d) Oral Argument

(1) Subject to paragraph (2) below, following the filing of a notice of appeal, the Nasdaq Review Council or Review Subcommittee may order oral argument and may designate a Subcommittee to hear such oral argument. The Subcommittee may consider any new evidence if the Applicant can show good cause for not including it in its application, and the Subcommittee will recommend to the Nasdaq Review Council a disposition of all matters on appeal.

(2) With respect to exemptive relief requested under General 4, Section 1.1210.03, the Waiver Subcommittee of the Nasdaq Review Council may order oral argument and consider any new evidence if the Applicant can show good cause for not including it in its application.

(e) Decision

(1) Subject to paragraph (2) below, after considering all matters on appeal, and, as applicable, the Subcommittee's recommendation, the Nasdaq Review Council shall affirm, modify, or reverse the decision issued under Rule 9620. The Nasdaq Review Council shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant. The decision shall be served pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute final action of Nasdaq.

(2) With respect to exemptive relief requested under General 4, Section 1.1210.03, after considering all matters on appeal, the Waiver Subcommittee of the Nasdaq Review Council shall affirm, modify, or reverse the decision issued under Rule 9620. The Waiver Subcommittee shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant. The decision shall be served pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute final action of Nasdaq. The Waiver Subcommittee shall retain the discretion to refer the appeal to the Nasdaq Review Council, in which case the Nasdaq Review Council shall act on such appeal pursuant to its authority under General 5.

**9700. Reserved**

**9800. Temporary Cease and Desist Orders****9810. Initiation of Proceeding****(a) Nasdaq Regulation Department or Department of Enforcement**

With the prior written authorization of FINRA's Chief Executive Officer or such other senior officers as the Chief Executive Officer may designate, and the Nasdaq Chief Regulatory Officer, the Nasdaq Regulation Department or the Department of Enforcement may initiate a temporary cease and desist proceeding with respect to alleged violations of Section 10(b) of the Exchange Act and SEC Rule 10b-5 thereunder; SEC Rules 15g-1 through 15g-9; Nasdaq Rule 2010A (if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or based on violations of Section 17(a) of the Securities Act); General 9, Section 1; or General 9, Section 2 (if the alleged violation is misuse or conversion of customer assets). The Nasdaq Regulation Department or the Department of Enforcement shall initiate the proceeding by serving a notice on a member or associated person (hereinafter "Respondent") (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) and filing a copy thereof with the Office of Hearing Officers. The Nasdaq Regulation Department or the Department of Enforcement shall serve the notice by personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Nasdaq Regulation Department or the Department of Enforcement shall send an additional copy of the notice by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The notice shall be effective when service is complete.

**(b) Contents of Notice**

The notice shall set forth the rule or statutory provision that the Respondent is alleged to have violated and that the Nasdaq Regulation Department or the Department of Enforcement is seeking to have the Respondent ordered to cease violating. The notice also shall state whether the Nasdaq Regulation Department or the Department of Enforcement is requesting the Respondent to be required to take action, refrain from taking action or both. The notice shall be accompanied by:

(1) a declaration of facts, signed by a person with knowledge of the facts contained therein, that specifies the acts or omissions that constitute the alleged violation;

(2) a memorandum of points and authorities setting forth the legal theories upon which the Department of Enforcement relies; and

(3) a proposed order that contains the required elements of a temporary cease and desist order (except the date and hour of the order's issuance), which are set forth in Rule 9840(b).



**(c) Authority to Approve Settlements**

If the Parties agree to the terms of the proposed temporary cease and desist order, the Hearing Officer shall have the authority to approve and issue the order.

**(d) Filing of Underlying Complaint**

If the Nasdaq Regulation Department or the Department of Enforcement has not issued a complaint under Rule 9211 against the Respondent relating to the subject matter of the temporary cease and desist proceeding and alleging violations of the rule or statutory provision specified in the notice described in paragraph (b), the Nasdaq Regulation Department or the Department of Enforcement shall serve and file such a complaint with the notice initiating the temporary cease and desist proceeding. Service of the complaint can be made in accordance with the service provisions in paragraph (a).

**9820. Appointment of Hearing Officer and Hearing Panel**

(a) As soon as practicable after the Nasdaq Regulation Department or the Department of Enforcement files a copy of the notice initiating a temporary cease and desist proceeding with the Office of Hearing Officers, the Chief Hearing Officer shall assign a Hearing Officer to preside over the temporary cease and desist proceeding. The Chief Hearing Officer shall appoint two Panelists to serve on a Hearing Panel with the Hearing Officer. Each Panelist shall be associated with a member of Nasdaq or retired therefrom. The Chief Hearing Officer shall select as a Panelist a person who:

- (1) previously served on the Nasdaq Review Council;
- (2) previously served on a disciplinary subcommittee of the Nasdaq Review Council, including a Subcommittee, an Extended Proceeding Committee, or their predecessor subcommittees;
- (3) previously served as a Director, but does not currently serve in any of these positions;
- (4) served on the FINRA National Adjudicatory Council or on a disciplinary subcommittee of the FINRA National Adjudicatory Council prior to the date that Nasdaq commenced operating as a national securities exchange; or
- (5) is a FINRA Panelist approved by the Nasdaq Board at least annually, or is drawn from other sources the Board deems appropriate given the responsibilities of Panelists.

(b) If at any time a Hearing Officer or Hearing Panelist determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, or if a Party files a motion to disqualify a Hearing Officer or Hearing Panelist, the recusal and disqualification proceeding shall be conducted in accordance with Rules 9233 and 9234, except that:

(1) a motion seeking disqualification of a Hearing Officer or Hearing Panelist must be filed no later than 5 days after the later of the events described in paragraph (b) of Rules 9233 and 9234; and

(2) the Chief Hearing Officer shall appoint a replacement Panelist using the criteria set forth in paragraph (a) of this Rule.

### **9830. Hearing**

#### **(a) When Held**

The hearing shall be held not later than 15 days after service of the notice and filing initiating the temporary cease and desist proceeding, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. If a Hearing Officer or Hearing Panelist is recused or disqualified, the hearing shall be held not later than five days after a replacement Hearing Officer or Hearing Panelist is appointed.

#### **(b) Service of Notice of Hearing**

The Office of Hearing Officers shall serve a notice of date, time, and place of the hearing on the Nasdaq Regulation Department or the Department of Enforcement and the Respondent (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) not later than seven days before the hearing, unless otherwise ordered by the Hearing Officer. Service shall be made by personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Office of Hearing Officers shall send an additional copy of the notice by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The notice shall be effective when service is complete.

#### **(c) Authority of Hearing Officer**

The Hearing Officer shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rule 9235.

#### **(d) Witnesses**

A person who is subject to the jurisdiction of Nasdaq shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

#### **(e) Additional Information**

Prior to the hearing, the Hearing Officer may order a Party to furnish to all other Parties and the Hearing Panel such information as deemed appropriate, including any or all of the pre-hearing submissions described in Rule 9242(a). The documentary evidence submitted by the Parties pursuant to this paragraph shall not become part of the record, unless the Hearing Officer or Hearing Panel orders some or all of such evidence included pursuant to Rule 9830(g). At any time during the Hearing Panel's consideration, the Hearing Panel may direct a Party to submit additional information. Any additional information submitted shall be provided to all Parties at least one day before the Hearing Panel renders its decision.

**(f) Transcript**

The hearing shall be recorded by a court reporter and a written transcript thereof shall be prepared. A transcript of the hearing shall be available to the Parties for purchase from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Panel within a reasonable time determined by the Hearing Panel. Upon notice to all the Parties to the proceeding, the Hearing Panel may order corrections to the transcript as requested or sua sponte.

**(g) Record and Evidence Not Admitted**

The record shall consist of the notice initiating the proceeding, the declaration, and the proposed order described in Rule 9810(b); the transcript of the hearing; all evidence considered by the Hearing Panel; and any other document or item accepted into the record by the Hearing Officer or the Hearing Panel. The Office of Hearing Officers shall be the custodian of the record. Proffered evidence that is not accepted into the record by the Hearing Panel shall be retained by the custodian of the record until the date when Nasdaq's decision becomes final or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

**(h) Failure to Appear at Hearing**

If a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a temporary cease and desist order without further proceedings. If the Nasdaq Regulation Department or the Department of Enforcement fails to appear at a hearing for which it has notice, the Hearing Panel may order that the temporary cease and desist proceeding be dismissed.

**9840. Issuance of Temporary Cease and Desist Order by Hearing Panel**

**(a) Basis for Issuance**

The Hearing Panel shall issue a written decision stating whether a temporary cease and desist order shall be imposed. The Hearing Panel shall issue the decision not later than ten days after receipt of the hearing transcript, unless otherwise extended by the Chief

Hearing Officer or Deputy Chief Hearing Officer for good cause shown. A temporary cease and desist order shall be imposed if the Hearing Panel finds:

(1) that the Nasdaq Regulation Department or the Department of Enforcement has made a showing of a likelihood of success on the merits; and

(2) that the alleged violative conduct or continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors prior to the completion of the underlying disciplinary proceeding under the Rule 9200 and 9300 Series.

**(b) Content, Scope, and Form of Order**

A temporary cease and desist order shall:

(1) be limited to ordering a Respondent (and any successor of a Respondent, where the Respondent is a member firm) to cease and desist from violating a specific rule or statutory provision, and, where applicable, to ordering a Respondent (and any successor of a Respondent, where the Respondent is a member firm) to cease and desist from dissipating or converting assets or causing other harm to investors;

(2) set forth the alleged violation and the significant dissipation or conversion of assets or other significant harm to investors that is likely to result without the issuance of an order;

(3) describe in reasonable detail the act or acts the Respondent (and any successor of a Respondent, where the Respondent is a member firm) shall take, refrain from taking, or both; and

(4) include the date and hour of its issuance.

**(c) Duration of Order**

A temporary cease and desist order shall remain effective and enforceable until the issuance of a decision under Rule 9268 or Rule 9269, or until a settlement offer is accepted pursuant to Rule 9270.

**(d) Service and Dissemination Requirements**

The Office of Hearing Officers shall serve the Hearing Panel's decision and any temporary cease and desist order on the Nasdaq Regulation Department or the Department of Enforcement and the Respondent (or upon counsel representing the Respondent or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) by personal service, overnight commercial courier,

facsimile, or email. If service is made by facsimile or email, the Office of Hearing Officers shall send an additional copy of the Hearing Panel's decision and any temporary cease and desist order by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The temporary cease and desist order shall be effective when service is complete. The Office of Hearing Officers shall provide a copy of the temporary cease and desist order to each Nasdaq member with which a Respondent is associated.

#### **(e) Delivery Requirement**

Where a Respondent is a member firm, Respondent shall deliver a copy of a temporary cease and desist order, within one business day of receiving it, to its associated persons.

#### **9850. Review by Hearing Panel**

At any time after the Office of Hearing Officers serves the Respondent (or counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) with a temporary cease and desist order, a Party may apply to the Hearing Panel to have the order modified, set aside, limited, or suspended. The application shall set forth with specificity the facts that support the request. The Hearing Panel that presided over the temporary cease and desist order proceeding shall retain jurisdiction to modify, set aside, limit, or suspend the temporary cease and desist order, unless at the time the application is filed a Hearing Panel has already been appointed in the underlying disciplinary proceeding commenced under Rule 9211 in which case the Hearing Panel appointed in the disciplinary proceeding has jurisdiction. The Hearing Panel shall respond to the request in writing within ten days after receipt of the request, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. The Hearing Panel's response shall be served on the Respondent (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) via personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Office of Hearing Officers shall send an additional copy of the temporary cease and desist order by personal service or overnight commercial courier. The filing of an application under this Rule shall not stay the effectiveness of the temporary cease and desist order.

#### **9860. Violation of Temporary Cease and Desist Orders**

A Respondent who violates a temporary cease and desist order imposed under this Rule Series may have its association or membership suspended or canceled or be subject to any fitting sanction under Rule 9556. The Chief Regulatory Officer of Nasdaq must authorize the initiation of any such proceeding in writing.

#### **9870. Application to SEC for Review**

Temporary cease and desist orders issued pursuant to this Rule Series constitute final and immediately effective disciplinary sanctions imposed by Nasdaq. The right to have any action under this Rule Series reviewed by the SEC is governed by Section 19 of the Exchange Act. The filing of an application for review shall not stay the effectiveness of the temporary cease and desist order, unless the SEC otherwise orders.

\* \* \* \* \*

## **General 9 Regulation**

### **Section 1. General Standards**

#### **(a) Standards of Commercial Honor and Principles of Trade**

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

#### **(b) Prohibition Against Trading Ahead of Customer Orders**

Nasdaq members and persons associated with a member shall comply with FINRA Rule 5320 as if such Rule were part of Nasdaq's rules.

For purposes of this Rule: (1) references to Rules 4512, 5310, 5320, and 7440 shall be construed as references to Nasdaq Rules 4512A, 5310A, 5320A, and Equity 5, Section 4, respectively; (2) Rule 5320.02(b) and the reference to Rule 6420 therein shall be disregarded, (3) references to "FINRA" shall be construed as references to "Nasdaq". (4) Nasdaq members and persons associated with a member relying upon the exemption set forth in FINRA Rule 5320.03 shall comply with the reporting requirements stated therein. 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 5320A.03 by complying with FINRA Rule 5320.03 as written, including, for example, reporting requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINR2A staff under Nasdaq Rule 5320A.03 are being performed by FINRA on behalf of Nasdaq.

#### **(c) Trading Ahead of Research Reports**

No member shall use any facility of Nasdaq to establish, increase, decrease or liquidate an inventory position in a security or a derivative of such security based on nonpublic advance knowledge of the content or timing of a research report in that security.

(1) A member must establish, maintain and enforce policies and procedures reasonably designed to restrict or limit the information flow between research department personnel, or other persons with knowledge of the content or timing of a research report, and trading department personnel, so as to prevent trading department personnel from utilizing non-public advance knowledge of the issuance or content of a research report for the benefit of the member or any other person.

#### **(b) Anti-Intimidation / Coordination**

Nasdaq is issuing this interpretation to codify a longstanding policy. It is conduct inconsistent with just and equitable principles of trade for any member or person associated with a member to coordinate the prices (including quotations), trades, or trade reports of such member with any other member or person associated with a member; to direct or request another member to alter a price (including a quotation); or to engage, directly or indirectly, in any conduct that threatens, harasses, coerces, intimidates, or otherwise attempts improperly to influence another member or person associated with a member. This includes, but is not limited to, any attempt to influence another member or person associated with a member to adjust or maintain a price or quotation, whether displayed on any facility operated by Nasdaq or otherwise, or refusals to trade or other conduct that retaliates against or discourages the competitive activities of another market maker or market participant. Nothing in this interpretation respecting coordination of quotes, trades, or trade reports shall be deemed to limit, constrain, or otherwise inhibit the freedom of a member or person associated with a member to:

- (1) set unilaterally its own bid or ask in any Nasdaq security or other exchange-listed security traded on Nasdaq pursuant to unlisted trading privileges, the prices at which it is willing to buy or sell any Nasdaq or other exchange-listed security, and the quantity of shares of any Nasdaq or other exchange-listed security that it is willing to buy or sell;
- (2) set unilaterally its own dealer spread, quote increment, or quantity of shares for its quotations (or set any relationship between or among its dealer spread, inside spread, or the size of any quote increment) in any Nasdaq or other exchange-listed security;
- (3) communicate its own bid or ask, or the prices at or the quantity of shares in which it is willing to buy or sell any Nasdaq or other exchange-listed security to any person, for the purpose of exploring the possibility of a purchase or sale of the Nasdaq or other exchange-listed security, and to negotiate for or agree to such purchase or sale;
- (4) communicate its own bid or ask, or the price at or the quantity of shares in which it is willing to buy or sell any Nasdaq or other exchange-listed security, to any person for the purpose of retaining such person as an agent or subagent for the member or for a customer of the member (or for the purpose of seeking to be retained as an agent or subagent), and to negotiate for or agree to such purchase or sale;
- (5) engage in any underwriting (or any syndicate for the underwriting) of securities to the extent permitted by the federal securities laws;
- (6) take any unilateral action or make any unilateral decision regarding the market makers with which it will trade and the terms on which it will trade unless such action is prohibited by the second and third sentences of this Interpretation; and

(7) deliver an order to another member for handling,

provided, however, that the conduct described in (1) through (7) is otherwise in compliance with all applicable law.

**(c) Confirmation of Callable Common Stock.** Exchange members and persons Nasdaq members and persons associated with a member shall comply with NASD Interpretive Material 2110-6 as if such Rule were part of the Nasdaq rules.

**(d) Use of Manipulative, Deceptive or Other Fraudulent Devices**

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

**(e) Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes**

Exchange members and persons associated with a member shall comply with FINRA Rule 2140 as if such Rule were part of the Exchange's rules.

(b) For purposes of this Rule, references to Rule 11870 shall be construed as references to Nasdaq Rule 11870.

## **Section 2. Customers' Securities or Funds**

(a) Nasdaq Members and persons associated with a member shall comply with FINRA Rule 2150 as if such Rule were part of Nasdaq's Rules.

(b) Nothing in FINRA Rule 2150, as applied to Nasdaq members and their associated persons, shall be construed to authorize any Nasdaq member or associated person to act in a manner inconsistent with Section 11(a) of the Act.

(c) Nasdaq Members and persons associated with a member shall comply with FINRA Interpretive Material 2150 as if such Rule were part of Nasdaq's Rules.

(d) For purposes of this Rule, references to Rule 2150 shall be construed as references to General 9, Section 2.

## **Section 3. Communications with the Public**

(a) Nasdaq members and persons associated with a member shall comply with FINRA Rule 2210 (except FINRA Rule 2210(c)) 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 General 9, Section 3 by complying with FINRA Rule 2210 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under General 9, Section 3 are being performed by FINRA on Nasdaq's behalf.



For purposes of this Rule, references to Rule 2211 shall be construed as references to Nasdaq Rule.

(b) Members and persons associated with a member shall comply with NASD Interpretive Material 2210-1 as if such Rule were part of Nasdaq's rules.

(c) Limitations on Use of the Exchange's Name. Members may indicate membership in Nasdaq in any communication with the public, provided that the communication complies with the applicable standards of General 9, Section 3 and neither states nor implies that Nasdaq, or any other corporate name or facility affiliated with Nasdaq, or any other regulatory organization, endorses, indemnifies, or guarantees the member's business practices, selling methods, the class or type of securities offered, or any specific security.

#### **Section 4. Institutional Sales Material and Correspondence**

(a) Nasdaq Members and persons associated with a member shall comply with NASD Rule 2211 (except NASD Rule 2211(c) and (d)(3)) as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule:

(1) references to an "NASD member" shall be construed as references to a "Nasdaq member", and

(2) references to NASD Rules 2210 and Rule 3110 shall be construed as references to General 9, Sections 3 and 30, respectively, and references to Rule 3010(d) shall be construed as references to NASD Rule 3010(d), as incorporated into the Nasdaq Rules by General 9, Section 20.

#### **Section 5. Telemarketing**

Nasdaq members and persons associated with a member shall comply with FINRA Rule 3230 as if such Rule were part of Nasdaq's Rules.

#### **Section 6. Forwarding of Proxy and Other Issuer-Related Materials**

(a) Nasdaq Members shall comply with FINRA Rule 2251 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule, the guidance adopted by FINRA with respect to reasonable rates of reimbursement as provided in FINRA Rule 2251 and the accompanying supplementary material is hereby adopted as the guidance of the Nasdaq Board.

(c) For purposes of this Rule:

(1) references to FINRA shall be construed as references to Nasdaq, and

(2) references to FINRA Rule 2251 shall be construed as references to General 9, Section 6.

(d) Notwithstanding the foregoing, a Nasdaq Member that is not the beneficial owner of a security registered under Section 12 of the Act is prohibited from granting a proxy to vote the security in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule, unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner.

**Section 7. Disclosure of Financial Condition, Control Relationship with Issuer and Participation or Interest in Primary or Secondary Distribution**

(a) Nasdaq Members shall comply with FINRA Rule 2261 as if such Rule were part of Nasdaq's Rules.

(b) Nasdaq Members shall comply with FINRA Rule 2262 as if such Rule were part of Nasdaq's Rules.

(c) Nasdaq Members shall comply with FINRA Rule 2269 as if such Rule were part of Nasdaq's Rules.

**Section 8. SIPC Information**

Nasdaq Members shall comply with FINRA Rule 2266 as if such Rule were part of Nasdaq's Rules.

**Section 9. Fairness Opinions**

Nasdaq Members and persons associated with a member shall comply with NASD Rule 2290 as if such Rule were part of Nasdaq's Rules.

**Section 10. Recommendations to Customers (Suitability)**

(a) Nasdaq members and associated persons of a member shall comply with FINRA Rule 2111 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule:

(1) References to Rules 2111 and 4512 shall be construed as references to Nasdaq Rules 2111A and 4512A, respectively;

(2) References to "FINRA's rules" shall be construed as references to "Nasdaq Rules"; and

(3) References to IM-2210-6 shall be disregarded, and no comparable Nasdaq Rule shall apply to activities of Nasdaq Members in connection with investment analysis tools.

(c) *Know Your Customer*. Nasdaq members shall comply with FINRA Rule 2090 as if such rule were part of Nasdaq's rules

**Section 11. Best Execution and Interpositioning**

(a) Nasdaq Members shall comply with FINRA Rule 5310 as if such Rule were part of Nasdaq's Rules.

For purposes of this Rule: (1) References to NASD Rule 2440 and IM-2440 shall be disregarded; (2) References to FINRA members shall be construed as references to Nasdaq members; and (3) References to FINRA shall be construed as references to Nasdaq.

**Section 12. Customer Account Statements**

(a) Nasdaq Members shall comply with NASD Rule 2340 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule, references to Rule 2810, Rule 3110, and Rule 11860 shall be construed as references to General 9, Section 30 , and Nasdaq Rule 11860.

(c) Pursuant to General 5, Section 2 Nasdaq may exempt any member from the provisions of this Rule for good cause shown.

**Section 13. Margin Disclosure Statement**

(a) Nasdaq Members shall comply with NASD Rule 2341 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule, references to Rule 3110 shall be construed as references to General 9, Section 30.

**Section 14. Approval Procedures for Day-Trading Accounts**

(a) Nasdaq Members shall comply with FINRA Rule 2130 as if such Rule were part of Nasdaq's Rules. For purposes of this Rule, references to Rule 2361 and Rule 3110 shall be construed as references to Nasdaq Rule 2361 and Nasdaq Rule 3110.

(b) Day-Trading Risk Disclosure Statement. Nasdaq Members shall comply with FINRA Rule 2270 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 General 9, Section 14 by complying with FINRA Rule 2270 as written. Accordingly, Nasdaq members may submit an alternative disclosure statement to the FINRA's Advertising Department as provided in the FINRA Rule. Functions performed by FINRA, FINRA departments, and FINRA staff under FINRA Rule 2270 are being performed by FINRA on Nasdaq's behalf.

(c) For purposes of this Rule, references to Rule 2360 and Rule 3110 shall be construed as references to General 9, Sections 14 and 30.

**Section 15. Borrowing From or Lending to Customers**

Nasdaq Members and persons associated with a member shall comply with FINRA Rule 3240 as if such Rule were part of Nasdaq's Rules.

**Section 16. Charges for Services Performed**

Nasdaq Members shall comply with NASD Rule 2430 as if such Rule were part of Nasdaq's Rules.

**Section 17. Net Transactions with Customers**

(a) Nasdaq Members shall comply with NASD Rule 2441 as if such Rule were part of the Nasdaq Rules.

(b) For purposes of this Rule, references to Rule 3110 shall be construed as references to General 9, Section 30.

**Section 18. Payments for Market Making**

(a) No member or person associated with a member shall accept any payment or other consideration, directly or indirectly, from an issuer of a security, or any affiliate or promoter thereof, for publishing a quotation, acting as market maker in a security, or submitting an application in connection therewith.

(b) The provisions of paragraph (a) shall not preclude a member from accepting:

(1) payment for bona fide services, including, but not limited to, investment banking services (including underwriting compensation and fees); and

(2) reimbursement of any payment for registration imposed by the Securities and Exchange Commission or state regulatory authorities and for listing of an issue of securities imposed by a self-regulatory organization.

(c) For purposes of this Rule, the following terms shall have the stated meanings:

(1) "affiliate"

(A) The term "affiliate" shall mean a company which controls, is controlled by, or is under common control with a member;

(B) The term affiliate is presumed to include, but is not limited to, the following for purposes of subparagraph (A), above:

(i) a company will be presumed to control a member if the company beneficially owns 10 percent or more of the outstanding voting securities of a member which is a corporation, or beneficially owns a partnership interest in 10 percent or more of the distributable profits or losses of a member which is a partnership;

(ii) a member will be presumed to control a company if the member and persons associated with the member beneficially own 10 percent or more of the outstanding voting securities of a company which is a corporation, or beneficially own a partnership

interest in 10 percent or more of the distributable profits or losses of a company which is a partnership;

(iii) a company will be presumed to be under common control with a member if:

a. The same natural person or company controls both the member and company by beneficially owning 10 percent or more of the outstanding voting securities of a member or company which is a corporation, or by beneficially owning a partnership interest in 10 percent or more of the distributable profits or losses of a member or company which is a partnership; or

b. A person having the power to direct or cause the direction of the management or policies of the member or the company also has the power to direct or cause the direction of the management or policies of the other entity in question.

(C) The provisions of subparagraphs (A) and (B) hereof notwithstanding, none of the following shall be presumed to be an affiliate of a member for purposes of this Rule:

(i) an investment company registered with the Commission pursuant to the Investment Company Act of 1940, as amended;

(ii) a "separate account" as defined in Section 2(a)(37) of the Investment Company Act of 1940, as amended;

(iii) a "real estate investment trust" as defined in Section 856 of the Internal Revenue Code;

(iv) a "direct participation program" as defined in Rule 2810A; and

(v) a corporation, trust, partnership or other entity issuing financing instrument-backed securities which are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories.

(2) "promoter" means any person who founded or organized the business or enterprise of an issuer, is a director or employee of an issuer, acts or has acted as a consultant, advisor, accountant or attorney to an issuer, is the beneficial owner of any of an issuer's securities that are considered "restricted securities" under Rule 144, or is the beneficial owner of five percent (5%) or more of the public float of

any class of an issuer's securities, and any other person with a similar interest in promoting the entry of quotations or market making in an issuer's securities; and

(3) "quotation" shall mean any bid or offer at a specified price with respect to a security, or any indication of interest by a member in receiving bids or offers from others for a security, or an indication by a member that he wishes to advertise his general interest in buying or selling a particular security.

### **Section 19. Discretionary Accounts**

(a) Nasdaq Members shall comply with NASD Rule 2510 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of applying this Rule, references to Rule 3010 and Rule 3110 shall be construed as references to General 9, Sections 20 and 30, respectively.

### **Section 20. Supervision**

(a) Each member shall establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable Nasdaq rules. Nasdaq members shall comply with FINRA Rule 3110 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 General 9, Section 20 by complying with FINRA Rule 3110 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under General 9, Section 20 are being performed by FINRA on behalf of Nasdaq.

(b) For purposes of this Rule:

(1) references to "FINRA Rules", "rules of FINRA", or "Rules of the Financial Industry Regulatory Authority" shall be construed as references to "Nasdaq Rules",

(2) the term "registered person" in FINRA Rule 3170(a)(1) shall be defined as any person registered with Nasdaq as a representative, principal, or assistant representative pursuant to the General 4, Section 1.1200 Series of the General Equity and Options Rules,

(3) references to Article V, Section 3 of FINRA's By-Laws shall be construed as references to General 4, Section 1.1210,

(4) references to Rule 2210 and Rule 3110 shall be construed as references to General 9, Sections 3 and 30, and

(5) references to registration with FINRA or the Financial Industry Regulatory Authority shall be construed as references to registration with Nasdaq.

(c) Pursuant to General 5, Section 2 Nasdaq may in exceptional circumstances, taking into consideration all relevant factors, exempt any member unconditionally or on specified terms and conditions from the requirements contained in paragraph (b)(2) of FINRA Rule 3170, as applied to Nasdaq members through General 9, Section 20. A member seeking an exemption must file a written application pursuant to General 5, Section 2 within 30 days after receiving notice or obtaining actual knowledge that it meets one of the criteria in FINRA Rule 3170(a)(5)(A). A member that meets one of the criteria in Rule 3170(a)(5)(A) for the first time may elect to reduce its staffing levels pursuant to the provisions of FINRA Rule 3170(c) or, alternatively, to seek an exemption hereunder, as appropriate; such a member may not seek relief from the Rule by both reducing its staffing levels pursuant to Rule 3170(c) and requesting an exemption.

(d) Standards for Reasonable Review. Nasdaq members and persons associated with a member shall comply. Nasdaq members and persons associated with a member shall comply with FINRA Rule 3110, Supplementary Material .12 as if such Supplementary Material were part of Nasdaq's Rules.

For purposes of this Rule:

(1) references to Rule 3110 shall be construed as references to General 9, Section 20; and

(2) references to "FINRA Rules" shall be construed as references to "Nasdaq Rules".

(e) Guidance on Heightened Supervision Requirements. Nasdaq members shall comply with NASD Notice to Members 97-19 as if such Rule were part of Nasdaq's Rules.

### **Section 21. Supervisory Control System**

(a) Members and persons associated with a member shall comply with NASD Rule 3012 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 3012 by complying with NASD Rule 3012 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under General 9, Section 21 are being performed by FINRA on behalf of Nasdaq.

(b) For purposes of this Rule, references to "NASD Rules" shall be construed as references to "Nasdaq Rules".

(c) Annual Certification of Compliance and Supervisory Processes. Nasdaq Members and persons associated with a member shall comply with NASD Rule 3013 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule:

(1) references to "NASD Rules" shall be construed as references to "Nasdaq Rules",

(2) references to NASD Rule 3013 and Rule 2110 shall be construed as references to General 9, Section 22 and General 9, Section 3,

(3) references to "NASD members" shall be construed as references to "Nasdaq Members",

(4) references to "the NASD Board of Governors" shall be construed as references to "the Board of Directors of The Nasdaq Stock Market LLC", and

(5) references to "MSRB rules" shall be deleted.

### **Section 22. Annual Certification of Compliance and Supervisory Processes**

(a) Nasdaq Members and persons associated with a member shall comply with NASD Rule 3013 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule:

(1) references to "NASD Rules" shall be construed as references to "Nasdaq Rules",

(2) references to IM-3013 shall be construed as references to Nasdaq IM-3013, and

(3) references to "MSRB rules" shall be deleted.

(c) **Annual Compliance and Supervision Certification.** Nasdaq Members and persons associated with a member shall comply with NASD Interpretive Material IM-3013 as if such Rule were part of Nasdaq's Rules. For purposes of this Rule:

(1) references to "NASD Rules" shall be construed as references to "Nasdaq Rules",

(2) references to NASD Rule 3013 and Rule 2110 shall be construed as references to General 9, Sections 1 and 22,

(3) references to "NASD members" shall be construed as references to "Nasdaq Members",

(4) references to "the NASD Board of Governors" shall be construed as references to "the Board of Directors of The Nasdaq Stock Market LLC", and

(5) references to "MSRB rules" shall be deleted.

### **Section 23. Outside Business Activities of an Associated Person**



(a) Nasdaq Members and persons associated with a member shall comply with NASD Rule 3030 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule, references to Rule 3040 shall be construed as references to General 9, Section 23.

**Section 24. Private Securities Transactions of an Associated Person**

(a) Nasdaq Members and persons associated with a member shall comply with NASD Rule 3040 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule:

(1) references to Rule 3050 shall be construed as references to General 9, Section 24, and

(2) references to "immediately family members (as defined in Rule 2790)" shall be construed to mean a person's parents, mother-in-law or father-in-law, spouse, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, and children, and any other individual to whom the person provides material support.

**Section 25. Transactions for or by Associated Persons**

Nasdaq Members and persons associated with a member shall comply with NASD Rule 3050 as if such Rule were part of Nasdaq's Rules.

**Section 26. Influencing or Rewarding Employees of Others**

Nasdaq Members and persons associated with a member shall comply with FINRA Rule 3220 as if such Rule were part of Nasdaq's Rules.

**Section 27. Reporting Requirements**

(a) Nasdaq Members and persons associated with a member shall comply with FINRA Rule 4530 (excluding FINRA Rule 4530(h)) 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 this Rule by complying with FINRA Rule 4530 as written (excluding Rule 4530(h), including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under this Rule are being performed by FINRA on behalf of Nasdaq.

(b) For purposes of this Rule, the requirement of FINRA Rule 4530(e) to respond to FINRA with respect to any customer complaint, examination, or inquiry shall be construed as a requirement to respond to FINRA and Nasdaq.

**Section 28. Disclosure to Associated Persons When Signing Form U4**

Nasdaq Members shall comply with FINRA Rule 2263 as if such Rule were part of Nasdaq's Rules. In lieu of incorporating in the written statement the language in paragraph (2) of FINRA Rule 2263, members shall include the following provision:

A claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute is not required to be arbitrated under Nasdaq rules. Such a claim may be arbitrated under Nasdaq rules only if the parties have agreed to arbitrate it, either before or after the dispute arose. The rules of other arbitration forums may be different.

### **Section 29. Transactions Involving Nasdaq Employees**

(a) When a member has actual notice that a Nasdaq employee has a financial interest in, or controls trading in, an account, the member shall promptly obtain and implement an instruction from the employee directing that duplicate account statements be provided by the member to Nasdaq.

(b) No member shall directly or indirectly make any loan of money or securities to any Nasdaq employee. Provided, however, that this prohibition does not apply to loans made in the context of disclosed, routine banking and brokerage agreements, or loans that are clearly motivated by a personal or family relationship.

(c) Notwithstanding the annual dollar limitation set forth in General 9, Section 26, no member shall directly or indirectly give, or permit to be given, anything of more than nominal value to any Nasdaq employee who has responsibility for a regulatory matter that involves the member. For purposes of this subsection, the term "regulatory matter" includes, but is not limited to, examinations, disciplinary proceedings, membership applications, listing applications, delisting proceedings, and dispute-resolution proceedings that involve the member.

### **Section 30. Books and Records**

Nasdaq members shall comply with FINRA Rule 4511 as if such rule were part of Nasdaq's rules.

### **Section 31. Use of Information Obtained in Fiduciary Capacity**

Nasdaq Members shall comply with NASD Rule 3120 as if such Rule were part of Nasdaq's Rules.

### **Section 32. Approval of Change in Exempt Status Under SEC Rule 15c3-3**

(a) Application — For the purposes of this Rule, the term "member" shall be limited to any member of Nasdaq who is subject to SEC Rule 15c3-3 and is not designated to another self-regulatory organization by the Commission for financial responsibility pursuant to Section 17 of the Act and SEC Rule 17d-1 promulgated thereunder. Further, the term shall not be applicable to any member that is subject to Section 402.2(c) of the rules of the Treasury Department.

(b) A member operating pursuant to any exemptive provision as contained in subparagraph (k) of SEC Rule 15c3-3 under the Act (Rule 15c3-3), shall not change its method of doing business in a manner which will change its exemptive status from that governed by subparagraph (k)(1) or (k)(2)(ii) to that governed by subparagraph (k)(2)(i); or from subparagraph (k)(1), (k)(2)(i) or (k)(2)(ii) to a fully computing firm that is subject to all provisions of Rule 15c3-3; or commence operations that will disqualify it

for continued exemption under Rule 15c3-3 without first having obtained the prior written approval of Nasdaq

(c) In making the determination as to whether to approve, deny in whole or in part an application made pursuant to paragraph (b), Nasdaq staff shall consider among other things the type of business in which the member is engaged, the training, experience and qualifications of persons associated with the member, the member's procedures for safeguarding customer funds and securities, the member's overall financial and operational condition and any other information deemed relevant in the particular circumstances and the time these measures would remain in effect.

### **Section 33. Reporting Requirements for Clearing Firms**

(a) Nasdaq Members shall comply with NASD Rule 3150 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 3150 by complying with NASD Rule 3150 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Nasdaq Rule 3150 are being performed by FINRA on behalf of Nasdaq.

(b) Pursuant to the Rule 9600 Series, Nasdaq may in exceptional and unusual circumstances, taking into consideration all relevant factors, exempt a member or class of members unconditionally or on specified terms and conditions from any or all of the provisions of this Rule that it deems appropriate.

(c) Exemptive Relief.

(1) Upon written request for exemptive relief pursuant to General 5, Section 2, Nasdaq generally will grant an exemption from the reporting requirements of Rule 3150 to a self-clearing firm that:

(A) derives, on an annualized basis, at least 85 percent of its revenue from transactions in fixed income securities;

(B) conducts an institutional business that settles transactions on an RVP/DVP basis, provided that such exemption from reporting shall apply only with respect to such institutional business unless Nasdaq determines that any other remaining business otherwise qualifies for an exemption under this subparagraph (c) or is de minimis in nature; or

(C) does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts (e.g., that engages solely in proprietary trading, or that conducts business only with other broker-dealers or any other non-customer counter-parties).

(2) Upon written request for exemptive relief pursuant to General 5, Section 2, Nasdaq also generally will grant an exemption to a clearing firm with respect to one or more of the introducing firms for which it clears if the introducing firm meets one of the above-stated grounds for exemptive relief.

(3) Any self-clearing firm that, due to a change in the facts pertaining to the operation and nature of its business or the operation and nature of the business of a firm for which it clears, as applicable, no longer qualifies for an exemption previously granted by Nasdaq from the reporting requirements of Rule 3150 must promptly report such change in circumstances to Nasdaq and NASD, Department of Member Regulation, and commence compliance with the reporting requirements of Rule 3150.

### **Section 34. Extensions of Time Under Regulation T and SEC Rule 15c3-3**

A member designated to Nasdaq for oversight pursuant to SEC Rule 17d-1 shall comply with NASD Rule 3160 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 3160 by complying with NASD Rule 3160 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Nasdaq Rule 3160 are being performed by FINRA on behalf of Nasdaq.

### **Section 35. Nonregistered Foreign Finders**

(a) Member firms, and persons associated with a member, may pay to nonregistered foreign persons transaction-related compensation based upon the business of customers they direct to member firms if the following conditions are met:

- (1) the member firm has assured itself that the nonregistered foreign person who will receive the compensation (the "finder") is not required to register in the U.S. as a broker/dealer nor is subject to a disqualification as defined in the Exchange Rules, and has further assured itself that the compensation arrangement does not violate applicable foreign law;
- (2) the finders are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad;
- (3) the customers are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad transacting business in either foreign or U.S. securities;
- (4) customers receive a descriptive document, similar to that required by Rule 206(4)- 3(b) of the Investment Advisers Act of 1940, that discloses what compensation is being paid to finders;
- (5) customers provide written acknowledgment to the member firm of the existence of the compensation arrangement and that such acknowledgment is retained and made available for inspection by the Exchange;

(6) records reflecting payments to finders are maintained on the member firm's books and actual agreements between the member firm and persons compensated are available for inspection by the Exchange; and

(7) the confirmation of each transaction indicates that a referral or finders fee is being paid pursuant to an agreement.

### **Section 36. Market Quality Program**

This Rule is not applicable to a member that is accepted into the Market Quality Program pursuant to Rule 5950 or to a person that is associated with such member for their conduct in connection with that program.

### **Section 37. Anti-Money Laundering Compliance Program**

Nasdaq Members and persons associated with a member shall comply with FINRA Rule 3310 as if such Rule were part of Nasdaq's rules.

*Supplementary Material to General 9, Section 37*

#### **.01 Independent Testing Requirements**

Nasdaq members and persons associated with a member shall comply with FINRA Rule 3310.01 as if such Rule were part of Nasdaq's Rules. For purposes of this Rule, references to FINRA Rule 3310 shall be construed as references to General 9, Section 37.

#### **.02 Review of Anti-Money Laundering Compliance Person Information**

Each Nasdaq member must review and, if necessary, update the information regarding its anti-money laundering compliance person designated pursuant to this Rule in the manner prescribed by General 2, Section 11.

### **Section 38. Margin Requirements**

(a) A member that is not designated to Nasdaq for oversight pursuant to SEC Rule 17d-1 shall comply with the initial and maintenance margin requirements of Regulation T and the self-regulatory organization to which the member is designated for oversight pursuant to SEC Rule 17d-1. Members shall comply with Regulation T and such self-regulatory organization rules, and shall submit to such self-regulatory organization any filings required thereunder, in each case as if such rules were part of Nasdaq's rules.

(b) A member designated to Nasdaq for oversight pursuant to SEC Rule 17d-1 shall comply with the initial and maintenance margin requirements of Regulation T and the NASD Rule 2520 as if such Rules were part of Nasdaq's Rules.

(c) 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 this Rule by complying with NASD Rule 2520 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under this Rule are being performed by FINRA on Nasdaq's behalf.

(d) Pursuant to General 5, Section 2 Nasdaq may exempt any member from the requirements contained in paragraph (e)(3) of NASD Rule 2520, as applied to Nasdaq members through this Rule, if the account referenced in paragraph (e)(3) of NASD Rule 2520 is confined exclusively to transactions and positions in exempted securities.

### **Section 39. Fidelity Bonds**

(a) Each member required to join the Securities Investor Protection Corporation who has employees and who is a member in good standing of another self-regulatory organization shall follow the applicable fidelity bond rule of the self-regulatory organization to which it is designated by the Commission for financial responsibility pursuant to Section 17 of the Act and SEC Rule 17d-1 thereunder.

(b) A member designated to Nasdaq for oversight pursuant to SEC Rule 17d-1 shall comply with FINRA Rule 4360 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 General 9, Section 39 by complying with FINRA Rule 4360 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under this Rule are being performed by FINRA on behalf of Nasdaq.

(c) For purposes of this Rule:

(1) references to an "Association member" shall be construed as references to a "Nasdaq member", and

(2) references to Article I, paragraph (q) of the By-Laws shall be construed as references to General 1,

(d) Pursuant to General 5, Section 2 any member subject to paragraph (c) of FINRA Rule 4360, through the application of subparagraph (b), may apply to Nasdaq for an exemption from such requirements. The exemption may be granted upon a showing of good cause, including a substantial change in the circumstances or nature of the member's business that results in a lower net capital requirement. Nasdaq may issue an exemption subject to any condition or limitation upon a member's bonding coverage that is deemed necessary to protect the public and serve the purposes of this Rule.

### **Section 40. Capital Compliance**

(a) A member designated to Nasdaq for oversight pursuant to SEC Rule 17d-1 shall comply with FINRA Rule 4110 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule, references to Rule 9557 shall be construed as references to General 5, Rule 9557.

### **Section 41. Regulatory Notification and Business Curtailment**

(a) A member designated to Nasdaq for oversight pursuant to SEC Rule 17d-1 shall comply with FINRA Rule 4120 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule, references to Rule 9557 shall be construed as references to General 5, Rule 9557.

#### **Section 42. Audit**

(a) A member designated to Nasdaq for oversight pursuant to SEC Rule 17d-1 shall comply with FINRA Rule 4140 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule, references to Rule 9557 shall be construed as references to General 5, Rule 9557.

#### **Section 43. General Requirements**

(a) Nasdaq members and persons associated with a member shall comply with FINRA Rule 4511 as if such Rule were part of the Nasdaq rules.

(b) For purposes of this Rule, references to "FINRA rules" shall be construed as references to "Nasdaq rules" and references to "FINRA books and records" shall be construed as references to "Nasdaq books and records"

#### **Section 44. Records of Written Customer Complaints**

Nasdaq members and persons associated with a member shall comply with FINRA Rule 4513 as if such Rule were part of the Nasdaq rules.

#### **Section 45. Customer Account Information**

(a) Nasdaq members and persons associated with a member shall comply with FINRA Rule 4512 as if such Rule were part of the Nasdaq rules.

(b) For purposes of this Rule:

(1) references to NASD 2510 (or any successor FINRA rule) shall be construed as references to General 9, Section 18;

(2) references to Rules 2070, 2090, and 4512 shall be construed as references to General 9, Sections 10 and 28 and this Rule, respectively;

(3) references to "a prior FINRA rule" shall be construed as references to "a FINRA or Nasdaq rule in effect prior to the effectiveness of FINRA Rule 4512";

(4) 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 this Rule by complying with FINRA Rule 4512 as written, including, for example, providing information required by FINRA staff. In addition, functions performed by FINRA, FINRA departments,

and FINRA staff under this Rule are being performed by FINRA on behalf of Nasdaq.

**Section 46. Authorization Records for Negotiable Instruments Drawn From a Customer's Account**

Nasdaq members and persons associated with a member shall comply with FINRA Rule 4514 as if such Rule were part of the Nasdaq rules.

**Section 47. Approval and Documentation of Changes in Account Name or Designation**

(a) Nasdaq members and persons associated with a member shall comply with FINRA Rule 4515 as if such Rule were part of the Nasdaq rules.

(b) For purposes of this Rule, references to NASD Rule 2510 (or any successor FINRA rule) shall be construed as references to General 9, Section 18.

**Section 48. Notifications, Questionnaires and Reports**

(a) A member designated to Nasdaq for oversight pursuant to SEC Rule 17d-1 shall comply with FINRA Rule 4521 as if such Rule were part of Nasdaq's Rules.

**Section 49. Payments Involving Publications that Influence the Market Price of a Security**

(a) Except as provided in paragraph (b), no member shall, directly or indirectly, give, permit to be given, or offer to give, anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any electronic or other public media, including any investment service or similar publication, Web site, newspaper, magazine or other periodical, radio, or television program of any matter that has, or is intended to have, an effect upon the market price of any security.

(b) The prohibitions in paragraph (a) shall not apply to compensation paid to a person in connection with the publication or circulation of:

- (1) a communication that is clearly distinguishable as paid advertising;
- (2) a communication that discloses the receipt of compensation and the amount thereof in accordance with Section 17(b) of the Securities Act; or
- (3) a research report, as that term is defined in NASD Rule 2711.

FINRA is in the process of consolidating certain NASD rules into a new FINRA rulebook. If the provisions of NASD Rule 2711 are transferred into the FINRA rulebook, then Rule 2711 shall be construed to require Exchange members to comply with the FINRA rule corresponding to NASD Rule 2711 (regardless of whether such rule is renumbered or amended) as if such rule were part of the Rules of the Exchange.

**Section 50. Foreign Members**



A member which does not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the Commission and Nasdaq must:

- (a) prepare all such reports, and maintain a general ledger chart of account and any description thereof, in English and U.S. dollars;
- (b) reimburse Nasdaq for any expenses incurred in connection with examinations of the member to the extent that such expenses exceed the cost of examining a member located within the continental United States in the geographic location most distant from Nasdaq;
- (c) ensure the availability of an individual fluent in English and knowledgeable in securities and financial matters to assist representatives of Nasdaq during examinations; and
- (d) utilize, either directly or indirectly, the services of a broker/dealer registered with the Commission, a bank or a clearing agency registered with the Commission located in the United States in clearing all transactions involving members of Nasdaq, except where both parties to a transaction agree otherwise.

#### **Section 51. Research Analysts**

Nasdaq member that employs a research analyst or publishes or otherwise distributes a research report shall also be a member of FINRA or the New York Stock Exchange and shall comply with FINRA Rules 1120, 1250 and 2241 (and any other FINRA rules that apply to research analysts or research reports), as amended. For purposes of this Rule, (i) "research analyst" shall mean an associated person who is primarily responsible for, and any associated person who reports directly or indirectly to such research analyst in connection with, the preparation of the substance of a research report, whether or not any such person has the job title of "research analyst," and (ii) "research report" shall mean a written or electronic communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision.

\* \* \* \* \*

#### **Equity Rules**

##### **Equity 1 Equity Definitions**

When used in the Equity Rules, unless the context otherwise requires:

- (1) "Customer" The term "customer" shall not include a broker or dealer.
- (2) "Security" Unless the context requires otherwise, the term "security" shall mean a security listed on the Exchange or traded on the Exchange pursuant to unlisted trading privileges.

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**Equity 2 [Equity Trading Rules]Equity Market Participants**

**Equity 3 [Equity Market Participants]Equity Trading Rules**

**Equity 4 [Reserved]Limit Up-Limit Down**

\* \* \* \* \*

**Equity 6 [Limit Up-Limit Down]Reserved**

\* \* \* \* \*

**Equity 10 [Qualification, Listing and Delisting of Companies]Reserved**

**[Equity 11 Reserved]**

**[Options Rules**

**Options 1 [Options Definitions]General Provisions**

**Section 1. Definitions**

(a) With respect to these NOM Rules, the following terms shall have the meanings specified in this Rule. A term defined elsewhere in the Rules of the Exchange shall have the same meaning with respect to this Rule, unless otherwise defined below.

(1) The term "account number" means a number assigned to a Participant. Participants may have more than one account number.

(2) The term "aggregate exercise price" means the exercise price of an options contract multiplied by the number of units of the underlying security covered by the options contract.

(3) The term "American-style option" means an options contract that, subject to the provisions of Options 5, Section 101 of these NOM Rules (relating to the cutoff time for exercise instructions) and to the Rules of the Clearing Corporation, may be exercised at any time from its commencement time until its expiration.

(4) The term a "badge" means an account number, which may contain letters and/or numbers, assigned to NOM Market Makers. A NOM Market Maker account may be associated with multiple badges.

(5) The term "bid" means a limit order to buy one or more options contracts.

(6) The term "call" means an options contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase from the Clearing Corporation the number of shares of the underlying security covered by the options contract.

(7) The term "class" means, when applied to options, all option contracts of the same type and style covering the same underlying interest; provided, however, that OTC options and listed options that would otherwise constitute a single class of options shall constitute separate classes. When applied to futures, the term "class" means all futures covering the same underlying interest.

(8) The term "class of options" means all options contracts of the same type and style covering the same underlying security.

(9) The term "Clearing Corporation" means The Options Clearing Corporation.

(10) The term "Clearing Participant" means a Participant that is self-clearing or a Participant that clears NOM Transactions for other Participants of NOM.

(11) The term "closing index value" in respect of a particular index means the current index value calculated at the close of business on the day of exercise, or, if the day of exercise is not a trading day, on the last trading day before exercise (P.M.-settled), unless the settlement value of the index is based on the opening price of each component issue on the primary market (A.M.- settled).

(12) The term "closing purchase transaction" means a NOM Transaction that reduces or eliminates a short position in an options contract.

(13) The term "closing writing transaction" means a NOM Transaction that reduces or eliminates a long position in an options contract.

(14) The term "covered short position" means (i) an options position where the obligation of the writer of a call option is secured by a "specific deposit" or an "escrow deposit" meeting the conditions of Rules 610(f) or 610(g), respectively, of the Rules of the Clearing Corporation, or the writer holds in the same account as the short position, on a share-for-share basis, a long position either in the underlying security or in an options contract of the same class of options where the exercise price of the options contract in such long position is equal to or less than the exercise price of the options contract in such short position; and (ii) an options position where the writer of a put option holds in the same account as the short position, on a share-for-share basis, a long position in an options contract of the same class of options where the exercise price of the options contract in such long position is equal to or greater than the exercise price of the options contract in such short position.

(15) The term "Customer" means a Public Customer or a broker-dealer.

- (16) The term "Customer Order" means an agency order for the account of a Public Customer, as defined herein or a broker-dealer.
- (17) The term "discretion" means the authority of a broker or dealer to determine for a Customer the type of option, the class or series of options, the number of contracts, or whether options are to be bought or sold.
- (18) The term "European-style option" means an options contract that, subject to the provisions of Options 5, Section 101 of these Rules (relating to the cutoff time for exercise instructions) and to the Rules of the Clearing Corporation, can be exercised only on the business day of expiration, or, in the case of option contracts expiring on a day that is not a business day, the last business day prior to its expiration date.
- (19) The term "exercise price" means the specified price per unit at which the underlying security may be purchased or sold upon the exercise of an options contract.
- (20) The term "foreign currency" means the standard unit of the official medium of exchange of a sovereign government or the Euro including the United States Government (e.g., the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, the Japanese yen, the Mexican peso, the Brazilian real, the Chinese yuan, the Danish krone, the New Zealand dollar, the Norwegian krone, the Russian ruble, the South African rand, the South Korean won, the Swedish krona, or the United States dollar).
- (21) The term "in-the-money" means the following: for call options, all strike prices at or below the offer in the underlying security on the primary listing market; for put options, all strike prices at or above the bid in the underlying security on the primary listing market. This definition shall only apply for purposes of Market Maker quoting obligations in Options 2, Section 5.
- (22) The term "index option" means an options contract that is an option on a broad-based, narrow-based or micro narrow-based index of equity securities prices.
- (23) The term "individual equity option" means an options contract which is an option on an equity security.
- (24) The term "long position" means a person's interest as the holder of one or more options contracts.
- (25) The term "mnemonic" means an acronym comprised of letters and/or numbers assigned to Participants. A Participant account may be associated with multiple mnemonics.

(26) The terms "Nasdaq Options Order Entry Firm" or "Order Entry Firm" or "OEF" mean those Options Participants representing as agent Customer Orders on NOM and those non-Market Maker Participants conducting proprietary trading.

(27) The term "Nasdaq Options Market Maker" or "Options Market Maker" mean an Options Participant registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Options 2 of these Rules.

(28) The term "NOM" means The Nasdaq Options Market or Nasdaq Stock Exchange Options Market, an options trading facility of the Exchange under Section 3(a)(2) of the Exchange Act.

(29) The term "NOM Book" means the electronic book of orders maintained by the NOM Trading System.

(30) The term "NOM Rules" or "Rules of NOM" mean the Rules of The Nasdaq Options Market.

(31) The term "NOM Transaction" means a transaction involving an options contract that is effected on or through NOM or its facilities or systems.

(32) The term "NBBO" means the national best bid or offer as calculated by NOM based on market information received by NOM from OPRA.

(33) The term "offer" means a limit order to sell one or more options contracts.

(34) The term "opening purchase transaction" means a NOM Transaction that creates or increases a long position in an options contract.

(35) The term "opening writing transaction" means a NOM Transaction that creates or increases a short position in an options contract.

(36) The term "options contract" means a put or a call issued, or subject to issuance by the Clearing Corporation pursuant to the Rules of the Clearing Corporation.

(37) The term "options market close" or "market close" mean the time specified by NOM for the cessation of trading in contracts on NOM for options on that market day.

(38) The term "options market open" or "market open" mean the time specified by NOM for the commencement of trading in contracts on NOM for options on that market day.

(39) The term "Options Participant" or "Participant" mean a firm, or organization that is registered with the Exchange pursuant to Options 2A of these Rules for purposes of participating in options trading on NOM as a "Nasdaq Options Order Entry Firm" or "Nasdaq Options Market Maker".

(40) The term "Options Principal" means a person engaged in the management and supervision of the Options Participant's business pertaining to options contracts that has responsibility for the overall oversight of the Options Participant's options related activities on the Exchange.

(41) The term "Options Participation Agreement" means the agreement to be executed by Options Participants to qualify to participate on NOM.

(42) The term "OPRA" means the Options Price Reporting Authority.

(43) The term "order" means a firm commitment to buy or sell options contracts as defined in Section 1(d) of Options 3.

(44) The term "out-of-the-money" means the following: for call options, all strike prices above the offer in the underlying security on the primary listing market; for put options, all strike prices below the bid in the underlying security on the primary listing market. This definition shall only apply for purposes of Market Maker quoting obligations in Options 2, Section 5.

(45) The term "outstanding" means an options contract which has been issued by the Clearing Corporation and has neither been the subject of a closing writing transaction nor has reached its expiration date.

(46) The term "pre-opening" means the period prior to the market open on NOM, beginning at a time specified by NOM, during which Participants may log on to the Trading System and submit, amend and withdraw orders, but no trading can occur.

(47) The term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Participant or a Public Customer may, without limitation, be a Professional. All Professional orders shall be appropriately marked by Participants.

(i) Calculation of Professional Orders. With respect to computing the number of orders in listed options per day on average during a calendar month for its own beneficial account(s), the following shall apply:

(a) Each order is counted toward the number of orders, regardless of the options exchange to which the order was routed in determining Professional orders.

(b) A cancel and replace order which replaces a prior order shall be counted as a second order, or multiple new orders in the case of "single-strike algorithms" which track the NBBO. A cancel message is not an order.

(c) An order that converts into multiple subordinate orders to achieve an execution strategy shall be counted as one order per side and series, even if the order is routed away. An order that cancels and replaces the resulting subordinate order and results in multiple sides/series shall be counted as a new order per side and series. An order that cancels and replaces the subordinate order on the same side and series will count as one order. For purposes of counting Public Customer orders, if one Public Customer order on the same side and series is subsequently broken-up by a broker into multiple orders for purposes of execution or routed away, this order will count as one order.

(48) The term "Public Customer" means a person that is not a broker or dealer in securities.

(49) The term "Public Customer Order" means an order for the account of a Public Customer.

(50) The term "put" means an options contract under which the holder of the option has the right, in accordance with the terms and provisions of the option and the Rules of the OCC, to sell to the Clearing Corporation the number of units of the underlying security covered by the options contract, at a price per unit equal to the exercise price, upon the timely exercise of such option.

(51) The term "Quarterly Option Series" means a series in an options class that is approved for listing and trading on the Exchange in which the series is opened for trading on any business day and expires at the close of business on the last business day of a calendar quarter.

(52) The term "quote" or "quotation" mean a bid or offer entered by a Market Maker as a firm order that updates the Market Maker's previous bid or offer, if any.

(53) The term "Responsible Person" means a United States-based officer, director or management-level employee of an Options Participant, who is registered with the Exchange as an Options Principal, responsible for the direct supervision and control of associated persons of that Options Participant.

(54) The term "Rules of the Clearing Corporation" or "Rules of the OCC" mean the Certificate of Incorporation, the By-Laws and the Rules of the Clearing

Corporation, and all written interpretations thereof, as may be in effect from time to time.

(55) The term "series," when used in respect of options, means all option contracts of the same class and having otherwise identical terms including exercise price (or, in the case of delayed start option contracts that do not yet have a set exercise price, the same exercise price setting formula and exercise price setting date), expiration date, unit of trading and, in the case of futures options or commodity options, series marker if any; and when used in respect of futures, means all futures of the same class having identical terms, including the same maturity date and series marker, if any.

(56) The term "series of options" means all options contracts of the same class of options having the same exercise price and expiration date.

(57) The term "short position" means a person's interest as the writer of one or more options contracts.

(58) The term "Short Term Option Series" means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Wednesday or Friday of the next business week, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday, respectively. For a series listed pursuant to this section for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

(59) The term "SRO" means a self-regulatory organization as defined in Section 3(a)(26) of the Exchange Act.

(60) The term "System" or "Trading System" mean the automated system for order execution and trade reporting owned and operated by The Nasdaq Options Market LLC. The Nasdaq Options Market comprises:

(1) an order execution service that enables Participants to automatically execute transactions in System Securities; and provides Participants with sufficient monitoring and updating capability to participate in an automated execution environment;

(2) a trade reporting service that submits "locked-in" trades for clearing to a registered clearing agency for clearance and settlement; transmits last-sale reports of transactions automatically to the Options Price Reporting



Authority for dissemination to the public and industry; and provides participants with monitoring and risk management capabilities to facilitate participation in a "locked-in" trading environment; and

(3) the data feeds described in Section 19.

(61) The term "System Book Feed" mean a data feed for System securities.

(62) The term "System Securities" mean all options that are currently trading on NOM pursuant to Options 4. All other options shall be "Non System Securities."

(63) The term "type of option" means the classification of an options contract as either a put or a call.

(64) The term "uncovered" means a short position in an options contract that is not covered.

(65) The term "underlying security" when used in respect of any contract other than a cash-settled contract means the security or other asset which the Corporation is obligated to sell or purchase upon exercise or maturity of the contract. When used in respect of a cash-settled contract, the term means the index or other underlying interest on which the exercise settlement amount or final settlement price is based.

## **Section 2. Applicability**

(a) These are the Nasdaq Rules applicable to the trading of options contracts issued by The Options Clearing Corporation through NOM, Nasdaq's options trading facility, the terms and conditions of such contracts, the exercise and settlement thereof, the handling of orders, and the conduct of accounts and other matters relating to options trading on NOM.

(b) Except to the extent that specific NOM Rules govern or unless the context otherwise requires, the provisions of the General Equity and Options Rules shall be applicable to Options Participants and to the trading of option contracts on NOM and, for purposes of their application with respect to Options Participants and options trading, shall be interpreted in light of the nature of options trading and the NOM market, and the fact that options on NOM shall be traded electronically through the Trading System. To the extent that the provisions of the NOM Rules are inconsistent with any other provisions of the Nasdaq Rules, the NOM Rules shall control.

(c) For the purposes of cross-referencing, interpreting and applying General Equity and Options Rules to the NOM Rules: a reference to "members" of Nasdaq shall be functionally equivalent to "Participants" in NOM, whether NOM Market Makers, Order Entry Firms or both.

(d) For marketing and other purposes, the Nasdaq Options Exchange Facility may be referred to as the "Nasdaq Stock Market Options Exchange" or "Nasdaq Options Market" or "NOM".

(e) These Rules generally require Options Participants conducting business with the public to comply with applicable requirements of the United States federal securities laws and regulations promulgated thereunder by the Securities and Exchange Commission. To the extent that certain aspects of the federal securities laws and regulations promulgated thereunder do not apply to non-U.S. firms conducting business with non-U.S. customers, these Rules shall be interpreted accordingly, so long as such interpretation is consistent with the maintenance of a fair and orderly options market. In such case, however, such non-U.S. Options Participants must comply with all reasonably comparable laws and regulations of their home countries or of the home countries of their customers, as applicable.

### **Section 3. Regulation of Nasdaq and its Members**

(a) Nasdaq and the Financial Industry Regulatory Authority ("FINRA") are parties to the Regulatory Services Agreement dated as of June 28, 2000, as amended ("Regulatory Contract"). Pursuant thereto, FINRA has agreed to perform certain functions described in these Rules on behalf of Nasdaq. NOM Rules that refer to Nasdaq Regulation, Nasdaq Regulation staff, NOM staff, and NOM departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of Nasdaq pursuant to the Regulatory Contract.

(b) Notwithstanding the fact that Nasdaq has entered into the Regulatory Contract with FINRA Regulation to perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions.

(c) In addition, Nasdaq has incorporated by reference certain FINRA, Chicago Board Options Exchange ("CBOE"), and New York Stock Exchange ("NYSE") rules. Nasdaq members shall comply with these rules and interpretations as if such rules and interpretations were part of Nasdaq's rules.

## **Options 2 Options [Trading Rules]Market Participants**

### **Section 1. Registration of Market Makers**

Options Participants registered as Market Makers have certain rights and bear certain responsibilities beyond those of other Options Participants. All Market Makers are designated as specialists on NOM for all purposes under the Exchange Act or Rules thereunder.

(a) To register as a Market Maker, a Participant must file an application in writing on such forms as Nasdaq Regulation may prescribe. Nasdaq Regulation reviews applications and considers an applicant's market making ability and such other factors as Nasdaq Regulation deems appropriate in determining whether to approve an applicant's registration as a Market Maker.

(b) The registration of any Participant as a Market Maker may be suspended or terminated by Nasdaq Regulation upon a determination that such Participant has failed to properly perform as a Market Maker.

(c) These Rules place no limit on the number of qualifying entities that may become Market Makers. However, based on system constraints, capacity restrictions or other factors relevant to protecting the integrity of the NOM Trading System the Board or its designee may limit access to the Trading System, for a period to be determined in the Board's discretion, pending any action required to address the issue of concern to the Board. To the extent that the Board places limitations on access to the Trading System on any Participant(s), such limits shall be objectively determined and submitted to the Commission for approval pursuant to a rule change filing under Section 19(b) of the Act.

(d) An Options Participant that has qualified as an Options Market Maker may register to make markets in individual options.

(e) An Options Market Maker may become registered in an option by entering a registration request via a Nasdaq approved electronic interface with Nasdaq's systems. Registration shall become effective on the day the registration request is entered.

(f) An Options Market Maker's registration in an option shall be terminated if the market maker fails to enter quotations in the option within five (5) business days after the market maker's registration in the option becomes effective.

## Section 2. Reserved

## Section 3. Reserved

## Section 4. Obligations of Market Makers

(a) In registering as a Market Maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Ordinarily, Market Makers are expected to:

(1) During trading hours, a Market Maker must maintain a two-sided market, pursuant to Section 5(d)(i) of this Rule, in those options in which the Market Maker is registered to trade, in a manner that enhances the depth, liquidity and competitiveness of the market.

(2) Engage, to a reasonable degree under the existing circumstances, in dealings for their own accounts when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of (or demand for) a particular option contract, or a temporary distortion of the price relationships between option contracts of the same class.

- (3) Compete with other Market Makers in all options in which the Market Maker is registered to trade.
- (4) Make markets that will be honored for the number of contracts entered into NOM' System in all options in which the Market Maker is registered to trade.
- (5) Update quotations in response to changed market conditions in all options in which the Market Maker is registered to trade.
- (6) Maintain active markets in all options in which the Market Maker is registered.
- (7) Honor all orders that the Trading System routes to away markets pursuant to Options 5 of these Rules.
- (b) Options Market Makers should not effect purchases or sales on NOM except in a reasonable and orderly manner.
- (c) If Nasdaq Regulation finds any substantial or continued failure by an Options Market Maker to engage in a course of dealings as specified in paragraph (a) of this Rule, such Options Market Maker will be subject to disciplinary action or suspension or revocation of registration in one or more of the securities in which the Market Maker is registered. Nothing in this Rule will limit any other power of the Board under these Rules, or procedures of NOM with respect to the registration of a Market Maker or in respect of any violation by a Market Maker of the provisions of this Rule.
- (d) **Market Maker Orders.** Market Makers may enter all order types defined in Options 3, Section 7 in the options classes to which they are appointed and non-appointed.

#### **Section 5. Market Maker Quotations**

(a) *Size Associated with Quotes.* A Market Maker's bid and offer for a series of options contracts shall be accompanied by the number of contracts at that price the Market Maker is willing to buy or sell. The best bid and best offer entered by a Market Maker must have a size of at least one (1) contract.

(b) *Two-Sided Quotes.* A Market Maker that enters a bid (offer) in a series of an option in which he is registered on NOM must enter an offer (bid).

(c) *Firm Quotes.*

(1) All quotes and orders entered into the System by Options Participants are firm under this Rule and Rule 602 of Regulation NMS under the Exchange Act ("Rule 602") for the number of contracts specified and according to the requirements of paragraph (a) above.

(2) Market Maker bids and offers are not firm under this Rule and Rule 602:

(i) for the period prior to the Opening Cross; or

(ii) if any of the circumstances provided in paragraph (b)(3) or (c)(4) of Rule 602 exist.

(d) Intra-day Quotes. A Market Maker must enter bids and offers for the options to which it is registered, as follows:

(1) A Market Maker must enter bids and offers for the options to which it is registered, except in an assigned options series listed intra-day on the Exchange. On a daily basis, a Market Maker must make markets consistent with the applicable quoting requirements specified below.

(A) Market Makers, associated with the same Options Participant, are collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as NOM may announce in advance, for which that Options Participant's assigned options series are open for trading. Notwithstanding the foregoing, a Market Maker shall not be required to make two-sided markets pursuant to this subparagraph in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater.

(i) An adjusted option series is defined as an option series wherein one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares ("Adjusted Options Series").

(B) Specifically, the Exchange will calculate subparagraph (A) above by (i) taking the total number of seconds the Options Participant disseminates quotes in each assigned options series, excluding Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater for Market Makers; and (ii) dividing that time by the eligible total number of seconds each assigned option series is open for trading that day. Quoting is not required in every assigned options series. Compliance with this requirement is determined by reviewing the aggregate of quoting in assigned options series for the Options Participant.

(C) Nasdaq Regulation may consider exceptions to the requirement to quote 60% (or higher) of the trading day based on demonstrated legal or regulatory requirements or other mitigating circumstances. For purposes of the Exchange's surveillance of an Options Participant's compliance with this Rule, the Exchange may determine compliance on a monthly basis. The Exchange's monthly compliance evaluation of the quoting requirement does not relieve an Options Participant of the obligation to provide two-sided quotes on a daily basis, nor will it prohibit the

Exchange from taking disciplinary action against an Options Participant for failing to meet the quoting obligation each trading day.

(D) If a technical failure or limitation of a System of NOM prevents a Market Maker from maintaining, or prevents a Market Maker from communicating to NOM timely and accurate quotes, the duration of such failure or limitation shall not be included in any of the calculations under this subparagraph (A) with respect to the affected quotes.

(2) Bid/ask Differentials (Quote Spread Parameters). Options on equities (including Exchange-Traded Fund Shares), and on index options must be quoted with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid, including before and during the opening. However, respecting in-the-money series where the market for the underlying security is wider than \$5, the bid/ask differential may be as wide as the spread between the national best bid and offer in the underlying security. The Exchange may establish differences other than the above for one or more series or classes of options.

(3) A Market Maker may be called upon by Nasdaq Regulation to submit a single bid or offer or maintain continuous bids and offers in one or more of the series in options to which the Market Maker is registered whenever, in the judgment of Nasdaq Regulation, it is necessary to do so in the interest of fair and orderly markets.

(e) Options Classes Other Than Those in Which Registered. A Market Maker shall be considered an OEF under the Rules in all classes of options listed on NOM. The total number of contracts executed by a Market Maker in options in which it is not registered as a Market Maker shall not exceed 25 percent of the total number of all contracts executed by the Market Maker in any calendar quarter.

## **Section 6. Reserved**

### **Section 7. Securities Accounts and Orders of Market Makers**

(a) Identification of Accounts. In a manner prescribed by Nasdaq Regulation, each Market Maker shall file with Nasdaq Regulation and keep current a list identifying all accounts for stock, options and related securities trading in which the Market Maker may, directly or indirectly, engage in trading activities or over which it exercises investment discretion. No Market Maker shall engage in stock, options or related securities trading in an account which has not been reported pursuant to this Rule.

(b) Reports of Orders. Each Market Maker shall, upon request and in the prescribed form, report to Nasdaq Regulation every order entered by the Market Maker for the purchase or sale of (i) a security underlying options traded on NOM, or (ii) a security convertible into or exchangeable for such underlying security, as well as opening and closing positions in all such securities held in each account reported pursuant to paragraph (a) of this Rule. The report pertaining to orders must include the terms of each order, identification of the

brokerage firms through which the orders were entered, the times of entry or cancellation, the times report of execution were received and, if all or part of the order was executed, the quantity and execution price.

(c) *Joint Accounts.* No Market Maker shall, directly or indirectly, hold any interest or participate in any joint account for buying or selling any options contract unless each participant in such joint account is an Options Participant and unless such account is reported to, and not disapproved by, Nasdaq Regulation. Such reports in a form prescribed by Nasdaq Regulation shall be filed with Nasdaq Regulation before any transaction is effected on NOM for such joint account. A participant in a joint account must:

(1) Be either a Market Maker or a Clearing Participant that carries the joint account.

(2) File and keep current a completed application on such form as is prescribed by Nasdaq Regulation.

(3) Be jointly and severally responsible for assuring that the account complies with all the Rules of the Exchange.

(4) Not be a Market Maker registered to the same options classes to which the joint account holder is also registered as a Market Maker.

(d) Reports of accounts and transactions required to be filed with NOM pursuant to this Rule relate only to accounts in which a Market Maker, as an individual, directly or indirectly controls trading activities or has a direct interest in the profits or losses of such account. Such reports would be required for accounts over which a Market Maker exercises investment discretion as well as a Market Maker's proprietary accounts.

### **Section 8. Financial Requirements for Market Makers**

(a) Each Market Maker shall maintain (i) net liquidating equity in its Market Maker account of not less than \$200,000, and in conformity with such guidelines as the Board may establish from time to time, and (ii) net capital sufficient to comply with the requirements of Exchange Act Rule 15c3-1. Each Market Maker which is a Clearing Participant shall also maintain net capital sufficient to comply with the requirements of the Clearing Corporation. This equity requirement, as well as all other provisions of the section (including capital maintenance requirements), applies to each Market Maker account, without regard to the number of Market Maker accounts per firm. The term "net liquidating equity" means the sum of positive cash balances and long securities positions less negative cash balances and short securities positions.

(b) Each Market Maker that makes an arrangement to finance his transactions as a Market Maker must identify in writing to Nasdaq Regulation the source of the financing and its terms. Nasdaq Regulation must be informed immediately of the intention of any party to terminate or change any such arrangement.

**Section 9. Good Standing for Market Makers**

(a) To remain in good standing as a Market Maker, the Market Maker must:

(1) continue to meet the requirements established in SEC Rule 15c3-1(a)(6)(i), and the general membership requirements set forth in the Rule 1010 Series of the NOM Rules and the requirements for Market Makers as set forth in Nasdaq Rule 4611.

(2) continue to satisfy the Market Maker qualification requirements specified by NOM, as amended from time to time by Nasdaq;

(3) comply with the Rules of the Exchange as well as the Rules of the OCC and the Federal Reserve Board; and

(4) pay on a timely basis such Participation, transaction and other fees as the Exchange and NOM shall prescribe.

(b) The good standing of a Market Maker may be suspended, terminated or otherwise withdrawn, as provided in the Rules, if any of said conditions for approval cease to be maintained or the Market Maker violates any of its agreements with the Exchange or any of the provisions of the Rules.

**Section 10. Reserved****Options 2A Options Participation****Section 1. Options Participation**

(a) These Rules establish a new category of Nasdaq member participation called "Options Participant." Only Options Participants may transact business on NOM via the Trading System. Options Participants may trade options for their own proprietary accounts or, if authorized to do so under applicable law, and consistent with these NOM Rules and with applicable law and SEC rules and regulations, may conduct business on behalf of Customers.

(b) A prospective Options Participant must:

(1) complete an Options Participant Application in the form prescribed by the Exchange;

(2) provide such other information as required by the Exchange;

(3) be an existing member or become a member of the Exchange, pursuant to the 1000 rules series, and continue to abide by the requirements of the 1000 Series with respect to participation in NOM.; and



- (4) enter into an Options Participant Agreement in the form specified by the Exchange, agree to abide by the same as it has been or shall be from time to time amended, and pledge to abide by the Rules of the Exchange as amended from time to time, and by all circulars, notices, directives or decisions adopted pursuant to or made in accordance with the Rules of the Exchange; and
- (5) be under the supervision and control of a Responsible Person.
- (c) Upon completion of the application, the Exchange, or person(s) designated by the Exchange ("designee") shall consider whether to approve the application, unless there is just cause for delay. In its consideration process, the Exchange may conduct such investigation as it deems appropriate and may take such steps as it deems necessary to confirm the information provided by the applicant. Within 30 days after the Exchange or its designee has completed its consideration of an application, it shall provide written notice of the action of the Exchange, specifying in the case of disapproval of an application the grounds therefore.
- (d) These NOM Rules place no limit on the number of qualifying entities that may become Options Participants. However, based on system constraints or capacity restrictions, approval of qualifying applications for Options Participants may, in limited circumstances, be temporarily deferred. To the extent that the Board places limitations on otherwise qualified applicants to act as Options Participants, such limits shall be objectively determined and submitted to the Commission for approval pursuant to a rule change filing under Section 19(b) of the Exchange Act.
- (e) Options Participant status cannot be leased or transferred except in the event of a change in control or corporate reorganization involving an Options Participant. In such a case, Options Participant status may be transferred to a qualified affiliate or successor upon written notice to the Exchange or its designee.
- (f) Every Options Participant shall file with NOM and keep current an address where notices may be served, including current addresses of each Responsible Person, as specified in paragraph (b)(5) of this Rule.

## **Section 2. Requirements for Options Participation**

- (a) Options Participants may be corporations, partnerships, limited liability companies or sole proprietorships organized under the laws of a jurisdiction of the United States, or such other jurisdictions as the Exchange may approve.
- (b) Options Participants must be Options Clearing Participants or establish a clearing arrangement with a Clearing Participant.
- (c) Options Participants must have demonstrated ability to adhere to all applicable Exchange, SEC, Clearing Corporation and Federal Reserve Board policies, rules and regulations related to the trading of options, including those concerning record-keeping,

reporting, finance and trading procedures and be able to satisfactorily demonstrate reasonably adequate systems capability and capacity.

(d) All associated persons of Options Participants who are not themselves Responsible Persons must be under the supervision of a U.S.-based Responsible Person.

(e) Every Options Participant shall have as the principal purpose of being a Participant the conduct of a securities business. Such a purpose shall be deemed to exist if and so long as:

(1) the Participant has qualified and acts in respect of its business on NOM as either an OEF or a Options Market Maker, or both; and

(2) all transactions effected by the Participant are in compliance with Section 11(a) of the Exchange Act and the rules and regulations adopted thereunder.

(f) Every Options Participant shall at all times maintain membership in another registered options exchange that is not registered solely under Section 6(g) of the Securities Exchange Act of 1934, or in FINRA. Options Participants that transact business with customers shall at all times be members of FINRA.

### **Section 3. Persons Associated with Options Participants**

(a) Persons associated with Options Participants shall be bound by the Rules of the Exchange and the Rules of the Clearing Corporation.

(b) Each Options Participant shall file with the Exchange and keep current a list and descriptive identification of those persons associated with the Options Participant who are its executive officers, directors, principal shareholders, and general partners. Such persons shall file with the Exchange a Uniform application for Securities Industry Registration or Transfer (Form U- 4).

### **Section 4. Good Standing for Options Participants**

(a) To remain in good standing, all Options Participants must:

(1) continue to satisfy the qualification requirements specified by the Exchange, as amended from time to time by the Exchange;

(2) comply with the Rules of the Exchange; and

(3) pay on a timely basis such participation, transaction and other fees as the Exchange and/or NOM shall prescribe.

(b) The good standing of an Options Participant may be suspended, terminated or otherwise withdrawn, as provided in the Nasdaq 9550 Rules, if any of the conditions of Options 2A, Section 2 or 3 are not met or the Options Participant violates any of its

agreements with the Exchange and/or NOM or any of the provisions of the Exchange Rules.

(c) Unless an Options Participant is in good standing, the Participant shall have no rights or privileges of options participation except as otherwise provided by law or the Rules, shall not hold himself or itself out for any purpose as a Participant, and shall not deal with the Exchange and/or NOM on any basis except as a non-Participant.

### **Section 5. Reserved**

### **Section 6. Reserved**

### **Section 7. Reserved**

## **Options 3 Options [Market Participants]Trading Rules**

### **Section 1. Days and Hours of Business**

(a) The System operates and shall be available to accept bids and offers and orders from the time prior to market open specified by the Exchange on its website to market close on each business day, unless modified by NOM. Orders and bids and offers shall be open and available for execution as of 9:30 a.m. Eastern Time and shall close as of 4:00 p.m. Eastern Time except for option contracts on certain fund shares or broad-based indexes which will close as of 4:15 p.m. Eastern Time.

(b) Except for unusual conditions as may be determined by the Board, hours during which transactions in options on individual stocks may be made on NOM shall correspond to the normal business days and hours for business set forth in the rules of the primary market trading the securities underlying NOM options. Notwithstanding the foregoing, transactions may be effected in options contracts on Exchange-Traded Fund Shares, as defined in Options 4, Section 3(i); and in options contracts on exchange-traded notes including Index-Linked Securities, as defined in Options 4, Section 3(l), on NOM until 4:15 p.m.

(c) NOM shall not be open for business on any holiday observed by The Nasdaq Stock Market, LLC.

### **Section 2. Units of Trading and Meaning of Premium Quotes and Orders**

(a) *Units of Trading.* The unit of trading in each series of options traded on NOM shall be the unit of trading established for that series by the Clearing Corporation pursuant to the Rules of the Clearing Corporation and the agreements of Nasdaq with the Clearing Corporation.

(b) *Meaning of Premium Quotes and Orders.* Except as provided in paragraph (c), orders shall be expressed in terms of dollars per unit of the underlying security. For example, a bid of "5" shall represent a bid of \$500 for an options contract having a unit of trading

consisting of 100 shares of an underlying security, or a bid of \$550 for an options contract having a unit of trading consisting of 110 shares of an underlying security.

(1) *Mini Options*. Bids and offers for an option contract overlying 10 shares shall be expressed in terms of dollars per 1/10th part of the total value of the contract. An offer of ".50" shall represent an offer of \$5.00 on an option contract having a unit of trading consisting of 10 shares.

(c) *Special Cases*. Orders for an options contract for which NOM has established an adjusted unit of trading in accordance with Options 3, Section 2 shall be expressed in terms of dollars per 1/100 part of the total securities and/or other property constituting such adjusted unit of trading. For example, an offer of "3" shall represent an offer of \$300 for an options contract having a unit of trading consisting of 100 shares of an underlying security plus ten (10) rights.

(d) All options on foreign currencies where the underlying foreign currency is not the U.S. dollar shall have a minimum increment of \$.01.

(e) In the case of options on foreign currencies, all bids or offers shall be expressed in terms of U.S. dollars per unit of the underlying foreign currency. E.g., a bid of "3.25" for a premium on a \$170 strike price option on the British pound shall represent a bid to pay \$325 per option contract.

### **Section 3. Minimum Increments**

(a) The Board may establish minimum quoting increments for options contracts traded on NOM. Such minimum increments established by the Board will be designated as a stated policy, practice, or interpretation with respect to the administration of this Rule within the meaning of Section 19 of the Exchange Act and will be filed with the SEC as a rule change for effectiveness upon filing. Until such time as the Board makes a change in the increments, the following principles shall apply:

(1) If the options series is trading at less than \$3.00, five (5) cents;

(2) If the options series is trading at \$3.00 or higher, ten (10) cents; and

(3) For a pilot period scheduled to expire on December 31, 2019 or the date of permanent approval, if earlier, if the options series is trading pursuant to the Penny Pilot program one (1) cent if the options series is trading at less than \$3.00, five (5) cents if the options series is trading at \$3.00 or higher, unless for QQQQs, SPY and IWM where the minimum quoting increment will be one cent for all series regardless of price. A list of such options shall be communicated to membership via an Options Trader Alert ("OTA") posted on the Exchange's web site.

The Exchange may replace any pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the pilot, based on trading activity in the previous six months. The replacement issues may be added to the pilot on the second trading day in the first month of each quarter.

(4) All Mini Options contracts shall have a minimum price variation as set forth in Options 4, Supplementary Material .15 to Section 6.

(b) The minimum trading increment for options contracts traded on NOM will be one (1) cent for all series.

(c) A quote submitted to the System with an invalid trading increment will be re-priced. The quote will be rounded up to the nearest valid minimum price variation for offers and rounded down for bids.

#### **Section 4. Entry and Display of Quotes**

**OTTO functionality implementation shall be delayed until Q2 2020. The Exchange will issue an Options Trader Alert notifying Participants when this functionality will be available.**

(a) All bids or offers made and accepted on NOM in accordance with the NOM Rules shall constitute binding contracts, subject to applicable requirements of the Rules of the Exchange and the Rules of the Clearing Corporation.

(b) Quotes are subject to the following requirements and conditions:

(1) Market Makers may generate and submit option quotations.

(2) The System shall time-stamp a quote which shall determine the time ranking of the quote for purposes of processing the quote.

(3) Market Makers may enter bids and/or offers in the form of a two-sided quote. Only one quote may be submitted at a time for an option series.

(4) The System accepts quotes beginning at a time specified by the Exchange and communicated on the Exchange's web site.

(5) **Firm Quote.** When quotes in options on another market or markets are subject to relief from the firm quote requirement set forth in the SEC Quote Rule, orders and quotes will receive an automatic execution at or better than the NBBO based on the best bid or offer in markets whose quotes are not subject to such relief. Such determination may be made by way of notification from another market that its quotes are not firm or are unreliable; administrative message from the Option Price Reporting

Authority (“OPRA”); quotes received from another market designated as “not firm” using the appropriate indicator; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are not firm. The Exchange shall maintain a record of each instance in which another exchange's quotes are excluded from the Exchange's calculation of NBBO, and shall notify such other exchange that its quotes have been so excluded. Where quotes in options on another market or markets previously subject to relief from the firm quote requirement set forth in the Quote Rule are no longer subject to such relief, such quotations will be included in the calculation of NBBO for such options. Such determination may be made by way of notification from another market that its quotes are firm; administrative message from OPRA; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are firm.

**(6) Trade-Through Compliance and Locked or Crossed Markets.** A quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. If, at the time of entry, a quote would cause a locked or crossed market violation or would cause a trade-through, violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.

(7) Quotes submitted to the System are subject to following: risk protections provided for in Options 3, Section 15. Quotes submitted with minimum increments that are not valid pursuant to Options 3, Section 3 will be rounded up to the nearest minimum price variation for offers and rounded down to the nearest minimum price variation for bids.

(c) Quotes will be displayed in the System as described in Options 3, Section 23.

### **Section 5. Entry and Display of Orders**

(a) Participants can enter orders into the System, subject to the following requirements and conditions:

(1) Participants shall be permitted to transmit to the System multiple orders at [a] single as well as multiple price levels.

(2) The System accepts orders beginning at a time specified by the Exchange and communicated on the Exchange’s web site.

(3) The System shall time-stamp an order which shall determine the time ranking of the order for purposes of processing the order.

- (4) Orders submitted to the System are subject to the following: risk protections within Options 3, Section 15 and the restrictions of order types within Options 3, Section 7. Orders may execute at multiple prices.
- (5) Nullification by Mutual Agreement. Trades may be nullified if all parties participating in the trade agree to the nullification. In such case, one party must notify the Exchange and the Exchange promptly will disseminate the nullification to OPRA. It is considered conduct inconsistent with just and equitable principles of trade for a party to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.
- (b) NBBO Price Protection.** Orders, other than Intermarket Sweep Orders (as defined in Rule Options 5, Section 1(8)) will not be automatically executed by the System at prices inferior to the NBBO (as defined in Options 5, Section 1(10)). There is no NBBO price protection with respect to any other market whose quotations are Non-Firm (as defined in Options 5, Section 1(11)).
- (c) The System automatically executes eligible orders using the Exchange’s displayed best bid and offer (“BBO”) or the Exchange’s non-displayed order book (“internal BBO”). The contract size associated with Displayed Price Improving Orders to buy (sell) are displayed at the MPV below (above) the price of the Price Improving Order. Price Improving Orders will not be permitted to create a locked or crossed market or to cause a trade through violation.
- (d) Trade-Through Compliance and Locked or Crossed Markets.** An order will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. An order that is designated by the member as routable will be routed in compliance with applicable Trade-Through and Locked and Crossed Markets restrictions. An order that is designated by a member as non-routable will be re-priced in order to comply with applicable Trade-Through and Locked and Crossed Markets restrictions. If, at the time of entry, an order that the entering party has elected not to make eligible for routing would cause a locked or crossed market violation or would cause a trade-through violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.
- (e) Orders will be displayed in the System as described in Options 3, Section 23.

### **Section 6. Unusual Market Conditions**

- (a) NOM Options staff may determine that the level of trading activities or the existence of unusual market conditions is such that NOM Options is incapable of collecting, processing, and making available to quotation vendors the data for the option in a manner that accurately reflects the current state of the market on NOM Options. Upon making such a determination, NOM Regulation shall designate the market in such option to be

"fast." When a market for an option is declared fast, NOM Regulation will provide notice that NOM Options quotations are not firm by appending an appropriate indicator to the NOM Options quotations.

(b) If a market is declared fast, Nasdaq Regulation shall have the power to do one or more of the following with respect to the class or classes involved:

(1) Suspend the minimum size requirement as permitted under Options 2, Section 5 (Market Maker Quotations) of these Rules.

(2) Take such other actions as are deemed in the interest of maintaining a fair and orderly market.

(c) Nasdaq Regulation will monitor the activity or conditions that caused a fast market to be declared, and shall review the condition of such market at least every thirty (30) minutes. Regular trading procedures shall be resumed when NOM determines that the conditions supporting a fast market declaration no longer exist. Nasdaq Regulation will provide notice that its quotations are once again firm by removing the indicator from the NOM quotations.

(d) If the conditions supporting a fast market declaration cannot be managed utilizing one or more of the procedures contained in this Rule, then Nasdaq Regulation, shall instruct Nasdaq operations to halt trading in the class or classes so affected.

(e) Nasdaq Regulation shall instruct Nasdaq operations to halt trading in all options whenever a market-wide trading halt is initiated on the New York Stock Exchange (commonly known as a "circuit breaker") in response to extraordinary market conditions.

### **Section 7. Types of Orders and Quote Protocols**

(a) The term "Order" shall mean a single order submitted to the System by a Participant that is eligible to submit such orders. The term "Order Type" shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1) Cancel-Replacement Order shall mean a single message for the immediate cancellation of a previously received order and the replacement of that order with a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety, the replacement order is automatically canceled or reduced by the number of contracts that were executed. The replacement order will not retain the priority of the cancelled order except when the replacement order reduces the size of the order and all other terms and conditions are retained.

(2) "Limit Orders" are orders to buy or sell an option at a specified price or better. A limit order is marketable when, for a limit order to buy, at the time it is entered into the System, the order is priced at the current inside offer or higher, or for a



limit order to sell, at the time it is entered into the System, the order is priced at the inside bid or lower.

(3) "Minimum Quantity Orders" are orders that require that a specified minimum quantity of contracts be obtained, or the order is cancelled. Minimum Quantity Orders are treated as having a time-in-force designation of Immediate or Cancel. Minimum Quantity Orders received prior to the opening cross or after market close will be rejected.

(4) "Market Orders" are orders to buy or sell at the best price available at the time of execution. Participants can designate that their Market Orders not executed after a pre-established period of time, as established by the Exchange, will be cancelled back to the Participant.

(5) "Price Improving Orders" are orders to buy or sell an option at a specified price at an increment smaller than the minimum price variation in the security. Price Improving Orders may be entered in increments as small as one cent. Price Improving Orders that are available for display shall be displayed at the minimum price variation in that security and shall be rounded up for sell orders and rounded down for buy orders.

(6) The term "On the Open Order" shall mean an order with a designated time-in-force of "OPG". An On the Open Order will be executable only during the Opening Cross. If such order is not executed in its entirety during the Opening Cross, the order, or any unexecuted portion of such order, will be cancelled back to the entering participant.

(7) "Intermarket Sweep Order" or "ISO" are limit orders that are designated as ISOs in the manner prescribed by Nasdaq and are executed within the System by Participants at multiple price levels without respect to Protected Quotations of other Eligible Exchanges as defined in Options 5, Section 1. ISOs may have any time-in-force designation except WAIT, are handled within the System pursuant to Options 3, Section 10 and shall not be eligible for routing as set out in Options 3, Section 19. ISOs with a time-in-force designation of GTC are treated as having a time-in-force designation of Day.

(1) Simultaneously with the routing of an ISO to the System, one or more additional limit orders, as necessary, are routed by the entering party to execute against the full displayed size of any protected bid or offer (as defined in Options 5, Section 1) in the case of a limit order to sell or buy with a price that is superior to the limit price of the limit order identified as an intermarket sweep order (as defined in Options 5, Section 1). These additional routed orders must be identified as ISOs.

(7) "One-Cancels-the-Other Order" shall mean an order entered by a Market Maker that consists of a buy order and a sell order treated as a unit; the full execution of one of the orders causes the other to be canceled.

(8) "All-or-None Order" shall mean a market or limit order which is to be executed in its entirety or not at all. All-or-None Orders are treated as having a time-in-force designation of Immediate or Cancel. All-or-None Orders received prior to the opening cross or after market close will be rejected.

(9) "Post-Only Orders" are orders that will not remove liquidity from the System. Post-Only Orders are to be ranked and executed on the Exchange or cancelled, as appropriate, without routing away to another market. Post-Only Orders are evaluated at the time of entry with respect to locking or crossing other orders as follows: (i) if a Post-Only Order would lock or cross an order on the System, the order will be re-priced to \$.01 below the current low offer (for bids) or above the current best bid (for offers) and displayed by the System at one minimum price increment below the current low offer (for bids) or above the current best bid (for offers); and (ii) if a Post-Only Order would not lock or cross an order on the System but would lock or cross the NBBO as reflected in the protected quotation of another market center, the order will be handled pursuant to Options 3, Section 22(b)(3)(C). Participants may choose to have their Post-Only Orders returned whenever the order would lock or cross the NBBO or be placed on the book at a price other than its limit price. Post-Only Orders received prior to the opening will be eligible for execution during the opening cross and will be processed as per Options 3, Section 8. Post-Only Orders received after market close will be rejected. Post-Only Orders may not have a time-in-force designation of Good Til Cancelled or Immediate or Cancel.

(b) The term "Time in Force" shall mean the period of time that the System will hold an order for potential execution, and shall include:

(1) "On the Open Order" or "OPG" shall mean for orders so designated, that if after entry into the System, the order is not fully executed in its entirety during the Opening Cross, the order, or any unexecuted portion of such order, will be cancelled back to the entering participant.

(2) "Immediate Or Cancel" or "IOC" shall mean for orders so designated, that if after entry into the System a marketable order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant. IOC Orders shall be available for entry from the time prior to market open specified by the Exchange on its website until market close and for potential execution from 9:30 a.m. until market close. IOC Orders entered between the time specified by the Exchange on its website and 9:30 a.m. Eastern Time will be held within the System until 9:30 a.m. at which time the System shall determine whether such orders are marketable.

(3) "DAY" shall mean for orders so designated, that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until market close, unless canceled by the entering party, after which it shall be returned to the entering party. DAY Orders shall be available for entry from the time prior to market open specified by the Exchange on its website until market close and for potential execution from 9:30 a.m. until market close.

(4) "Good Til Cancelled" or "GTC" shall mean for orders so designated, that if after entry into System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. GTC Orders shall be available for entry from the time prior to market open specified by the Exchange on its website until market close and for potential execution from 9:30 a.m. until market close.

(5) "WAIT" shall mean for orders so designated, that upon entry into the System, the order is held for one second without processing for potential display and/or execution. After one second, the order is processed for potential display and/or execution in accordance with all order entry instructions as determined by the entering party.

(c) The term "Order Size" shall mean the number of contracts up to 999,999 associated with the Order.

**OTTO functionality implementation shall be delayed until Q2 2020. The Exchange will issue an Options Trader Alert notifying Participants when this functionality will be available.**

(d) Entry and Display of Orders and Quotes. Participants may enter orders and quotes into the System as specified below.

(1) The Exchange offers Participants the following protocols for entering orders and quotes respectively:

(A) "**Financial Information eXchange**" or "**FIX**" is an interface that allows Participants and their Sponsored Customers to connect, send, and receive messages related to orders to and from the Exchange. Features include the following: (1) execution messages; (2) order messages; and (3) risk protection triggers and cancel notifications.

(B) "**Specialized Quote Feed**" or "**SQF**" is an interface that allows Market Makers to connect, send, and receive messages related to quotes and Immediate-or-Cancel Orders into and from the Exchange. Features include the following: (1) options symbol directory messages (e.g. underlying instruments); (2) system event messages (e.g., start of trading hours messages and start of opening); (3) trading

action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; and (8) opening imbalance messages. The SQF Purge Interface only receives and notifies of purge request from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series.

(C) "Ouch to Trade Options" or "OTTO" is an interface that allows Participants and their Sponsored Customers to connect, send, and receive messages related to orders to and from the Exchange. Features include the following: (1) options symbol directory messages (e.g., underlying); (2) system event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) order messages; and (6) risk protection triggers and cancel notifications.

(D) "Quote Using Orders" or "QUO" is an interface that allows NOM Market Makers to connect, send, and receive messages related to single-sided orders to and from the Exchange. Order Features include the following: (1) options symbol directory messages (e.g., underlying); (2) system event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) order messages; and (6) risk protection triggers and cancel notifications. Orders submitted by NOM Market Makers over this interface are treated as quotes. Market Makers may only enter interest into QUO in their assigned options series.

## **Section 8. Opening and Halt Cross**

**OTTO functionality implementation shall be delayed until Q2 2020. The Exchange will issue an Options Trader Alert notifying Participants when this functionality will be available.**

(a) Definitions. For the purposes of this Rule the term:

(1) "Imbalance" shall mean the number of contracts of Eligible Interest that may not be matched with other order contracts at a particular price at any given time.

(2) "Order Imbalance Indicator" shall mean a message disseminated by electronic means containing information about Eligible Interest and the price in penny increments at which such interest would execute at the time of dissemination. The Order Imbalance Indicator shall disseminate the following information:

(A) "Current Reference Price" shall mean an indication of what the opening cross price would be at a particular point in time.

(B) the number of contracts of Eligible Interest that are paired at the Current Reference Price;

(C) the size of any Imbalance; and

(D) the buy/sell direction of any Imbalance.

(3) "Nasdaq Opening Cross" shall mean the process for opening or resuming trading pursuant to this Rule and shall include the process for determining the price at which Eligible Interest shall be executed at the open of trading for the day, or the open of trading for a halted option, and the process for executing that Eligible Interest.

(4) "Eligible Interest" shall mean any quotation or any order that may be entered into the system and designated with a time-in-force of IOC (immediate-or-cancel), DAY (day order), GTC (good-till-cancelled), and OPG (On the Open Order). However, orders received via FIX and OTTO protocol prior to the Nasdaq Opening Cross designated with a time-in-force of IOC will be rejected and shall not be considered eligible interest. Orders received via QUO and quotes received via SQF prior to the Nasdaq Opening Cross designated with a time-in-force of IOC will remain in-force through the opening and shall be cancelled immediately after the opening.

(5) "Market for the Underlying Security" shall mean either the primary listing market, the primary volume market (defined as the market with the most liquidity in that underlying security for the previous two calendar months), or the first market to open the underlying security, as determined by the Exchange on an issue-by-issue basis and announced to the membership on the Exchange's web site.

(6) "Valid Width National Best Bid or Offer" or "Valid Width NBBO" shall mean the combination of all away market quotes and any combination of NOM-registered Market Maker orders and quotes received over the QUO or SQF Protocols within a specified bid/ask differential as established and published by the Exchange. The Valid Width NBBO will be configurable by underlying, and tables with valid width differentials will be posted by Nasdaq on its website. Away markets that are crossed will void all Valid Width NBBO calculations. If any Market Maker orders or quotes on NOM are crossed internally, then all such orders and quotes will be excluded from the Valid Width NBBO calculation.

(7) "Away Best Bid or Offer" or "ABBO" shall mean the displayed National Best Bid or Offer not including the Exchange's Best Bid or Offer.

(b) Processing of NOM Opening Cross. For the opening of trading of System securities, the Opening Cross shall occur at or after 9:30, if the dissemination of a regular market hours quote or trade (as determined by the Exchange) by the Market for the Underlying Security has occurred (or, in the case of index options, the Exchange has received the opening price of the underlying index). Or, in the case of a trading halt, the Opening Cross shall occur when trading resumes pursuant to Options 3, Section 9. Market hours

trading shall commence or, in the case of a halted option, resume when the Nasdaq Opening Cross concludes.

In each case, the opening of trading or resumption of trading after a halt of System securities will be dependent on the following criteria, provided the ABBO is not crossed:

(1) If there is a possible trade on NOM, a Valid Width NBBO must be present.

(2) If no trade is possible on NOM, then NOM will open dependent upon one of the following:

(A) A Valid Width NBBO is present;

(B) A certain number of other options exchanges (as determined by the Exchange) have disseminated a firm quote on OPRA; or

(C) A certain period of time (as determined by the Exchange) has elapsed.

(3) Nasdaq shall disseminate by electronic means an Order Imbalance Indicator every 5 seconds beginning between 9:20 and 9:28, or a shorter dissemination interval as established by the Exchange, with the default being set at 9:25 a.m. The start of dissemination, and a dissemination interval, shall be posted by Nasdaq on its website.

(4)

(A) The Nasdaq Opening Cross shall occur at the price that maximizes the number of contracts of Eligible Interest in NOM to be executed at or within the ABBO and within a defined range, as established and published by the Exchange, of the Valid Width NBBO.

(B) If more than one price exists under subparagraph (A), and there are no contracts that would remain unexecuted in the cross, the Nasdaq Opening Cross shall occur at the midpoint price, rounded to the penny closest to the price of the last execution in that series (and in the absence of a previous execution price, the price will round up, if necessary) of (1) the National Best Bid or the last offer on NOM against which contracts will be traded whichever is higher, and (2) the National Best Offer or the last bid on NOM against which contracts will be traded whichever is lower.

(C) If more than one price exists under subparagraph (A), and contracts would remain unexecuted in the cross, then the opening price will be the highest/lowest price, in the case of a buy/sell imbalance, at which the maximum number of contracts can trade which is equal to or within a defined range, as established and published by the Exchange, of the Valid

Width NBBO on the contra side of the imbalance that would not trade through the ABBO.

Regarding unexecuted contracts:

(i) If unexecuted contracts remain with a limit price that is equal to the opening price, then the remaining unexecuted contracts will be posted at the opening price, displayed one minimum price variation (MPV) away if displaying at the opening price would lock or cross the ABBO, with the contra-side NOM BBO reflected as firm;

(ii) If unexecuted contracts remain with a limit price that is through the opening price, and there is a contra side ABBO at the opening price, then the remaining unexecuted contracts will be posted at the opening price, displayed one minimum price variation (MPV) away, with the contra side NOM BBO reflected as firm and order handling of any remaining interest will be done in accordance with the routing and time-in-force instructions of such interest with the opening price representing the reference price set forth in Options 3, Section 10;

(iii) If unexecuted contracts remain with a limit price that is through the opening price, and there is no contra side ABBO at the opening price, then the remaining contracts will be posted at the opening price, with the contra-side NOM BBO reflected as non-firm; and

(iv) Order handling of any residual unexecuted contracts will be done in accordance with Options 3, Section 8(b)(7), with the opening price representing the reference price.

(5) If the Nasdaq Opening Cross price is selected and fewer than all contracts of Eligible Interest that are available in NOM would be executed, all Eligible Interest shall be executed at the Nasdaq Opening Cross price in accordance with the execution algorithm assigned to the associated underlying option.

(6) All Eligible Interest executed in the Nasdaq Opening Cross shall be executed at the Nasdaq Opening Cross price, trade reported anonymously, and disseminated via a national market system plan. The Nasdaq Opening Cross price shall be the Nasdaq Official Opening Price for options that participate in the Nasdaq Opening Cross.

(7) If the conditions specified in (b) above have occurred, but there is an imbalance containing marketable routable interest, then one additional Order Imbalance Indicator will be disseminated, after which the cross will occur, executing the maximum number of contracts at the price provided for in subsection (b)(4) of this Rule. Any remaining Imbalance will be canceled, posted, or routed as per the directions on the customer's order.

(c) Absence of Opening Cross. If an Opening Cross in a symbol is not initiated before the conclusion of the Opening Order Cancel Timer, a firm may elect to have orders returned by providing written notification to the Exchange. These orders include all non GTC orders received over the FIX protocol. The Opening Order Cancel Timer represents a period of time since the underlying market has opened, and shall be established and disseminated by Nasdaq on its website.

### **Section 9. Trading Halts**

(a) Halts. Nasdaq Regulation may halt trading in any option contract in the interests of a fair and orderly market. The following are among the factors that shall be considered in determining whether the trading in an option contract should be halted:

(1) trading in the underlying security has been halted or suspended in the primary market.

(2) the opening of such underlying security has been delayed because of unusual circumstances.

(3) occurrence of an act of God or other event outside NOM's control;

(4) a Trading System technical failure or failures including, but not limited to, the failure of a part of the central processing system, a number of Options Participant trading applications, or the electrical power supply to the system itself or any related system; or;

(5) other unusual conditions or circumstances are present.

(6) Trading Pauses. Trading on the Exchange in any option contract shall be halted whenever trading in the underlying security has been paused by the primary listing market.

(A) Trading in such options contracts may be resumed upon a determination by the Exchange that the conditions that led to the pause are no longer present and that the interests of a fair and orderly market are best served by a resumption of trading, which in no circumstances will be before the Exchange has received notification that the underlying security has resumed trading on at least one exchange. If, however, trading has not been resumed on the primary listing market for the underlying security after ten minutes have passed since the underlying security was paused by the primary listing market, trading in such options contracts may be resumed by the Exchange if the underlying security has resumed trading on at least one exchange.

(B) During the halt, the Exchange will maintain existing orders on the book, accept orders, and process cancels, except that Market Maker



interest entered pursuant to the obligations contained in Options 2, Section 4 is cancelled.

(b) In the event Nasdaq Regulation determines to halt trading, all trading in the effected class or classes of options shall be halted. NOM shall disseminate through its trading facilities and over OPRA a symbol with respect to classes of options indicating that trading has been halted, and a record of the time and duration of the halt shall be made available to vendors.

(c) No Options Participant or person associated with a Participant shall effect a trade on NOM in any options class in which trading has been halted under the provisions of this Rule during the time in which the halt remains in effect.

(d) Capitalized terms used in this paragraph shall have the same meaning as provided for in the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, as it may be amended from time to time ("LULD Plan"). During a Limit State and Straddle State in the Underlying NMS stock:

(1) The Exchange will not open an affected option.

(2) After the opening, the Exchange shall reject Market Orders, as defined in Options 3, Section 7, and shall notify Participants of the reason for such rejection.

(3) When evaluating whether a Market Maker has met the intra-day quoting obligations of Options 2, Section 5(d) in options overlying NMS stocks, the Exchange will not consider as part of the trading day the time that an NMS stock underlying an option was in a Limit State or Straddle State.

(4) Trades are not subject to an obvious error or catastrophic error review pursuant to Options 3, Sections 20(c) or (d). Nothing in this provision shall prevent trades from review on Exchange motion pursuant to Options 3, Section 20(c)(3), or subject to nullification or adjustment pursuant to Options 3, Section 20(e) - (j).

(e) The Exchange shall halt trading in all options whenever the equities markets initiate a market-wide trading halt commonly known as a circuit breaker in response to extraordinary market conditions.

(f) The Exchange shall nullify any transaction that occurs with respect to equity options (including options overlying ETFs), during a regulatory halt as declared by the primary listing market for the underlying security.

#### **Section 10. Order Book Allocation**

(a) System Orders shall be executed through the Nasdaq Book Process set forth below:

(1) Execution Algorithm - The Exchange will determine to apply, for each option, one of the following execution algorithms described in paragraphs (A) or (B). The

Exchange will issue an Options Alert specifying which execution algorithm will govern which options any time it is modified.

(A) Price/Time - The System shall execute trading interest within the System in price/time priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Within each price level, if there are two or more quotes or orders at the best price, trading interest will be executed in time priority.

(B) Size Pro-Rata - The System shall execute trading interest within the System in price priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Within each price level, if there are two or more quotes or orders at the best price, trading interest will be executed based on the size of each Participant's quote or order as a percentage of the total size of all orders and quotes resting at that price. If the result is not a whole number, it will be rounded down to the nearest whole number. If there are residual contracts remaining after rounding, such contracts will be distributed one contract at a time to the remaining Participants in time priority.

(C) Priority Overlays Applicable to Size Pro-Rata Execution Algorithm: the Exchange will apply the following designated Participant priority overlays, which are always in effect when the Size Pro-Rata execution algorithm is in effect.

(i) Public Customer Priority: the highest bid and lowest offer shall have priority except that Public Customer orders shall have priority over non-Public Customer orders at the same price. If there are two or more Public Customer orders for the same options series at the same price, priority shall be afforded to such Public Customer orders in the sequence in which they are received by the System. For purposes of this Rule, a Public Customer order does not include a Professional Order.

(ii) Market Maker Priority: After all Public Customer orders have been fully executed, Options Market Makers shall have priority over all other Participant orders at the same price. If there are two or more Options Market Maker quotes and orders for the same options series at the same price, those shall be executed based on the Size Pro-Rata execution algorithm. If there are contracts remaining after all Market Maker interest has been fully executed, such contracts shall be executed based on the Size Pro-Rata execution algorithm.

(2) Decrementation - Upon execution, an order shall be reduced by an amount equal to the size of that execution.

(3) Price Improvement - any potential price improvement resulting from an execution in the System shall accrue to the party that is removing liquidity previously posted to the Book.

(4) Nasdaq-listed options that are the subject of a trading halt initiated pursuant to Options 3, Section 9, shall open for trading at the time specified by Nasdaq pursuant to Options 3, Section 9. When the System opens, orders shall be added to the book in time priority and executed as described above in subsection (1).

(5) **Zero-Bid Option Series.** In the case where the bid price for any options contract is \$0.00, a market order accepted into the System to sell that series shall be considered a limit order to sell at a price equal to the minimum trading increment as defined in Options 3, Section 3. Orders will be placed on the limit order book in the order in which they were received by the System. With respect to market orders to sell which are submitted prior to the Opening and persist after the Opening, those orders are posted at a price equal to the minimum trading increment as defined in Options 3, Section 3.

(6) Routing - All System orders entered by Participants directing or permitting routing to other market centers shall be routed for potential display and/or execution as set forth in Options 5, Section 4.

(7) *Market Access.* In addition to the Exchange Rules regarding routing to away trading centers, Nasdaq Execution Services, LLC, as defined in Options 5, Section 4(a)(ii)(A) has, pursuant to Rule 15c3-5 under the Act, implemented certain tests designed to mitigate risks associated with providing the Exchange's Members with access to such away trading centers. Pursuant to the policies and procedures developed by Nasdaq Execution Services to comply with Rule 15c3-5, if an order or series of orders are deemed to be violative of applicable pre-trade requirements under Rule 15c3-5, the order will be rejected prior to routing and/or NES will seek to cancel the order if it has been routed.

### Section 11. Reserved

### Section 12. Reserved

### Section 13. Reserved.

### Section 14. Reserved

### Section 15. Risk Protections

(a) The following are order risk protections on NOM:

(1) **Order Price Protection ("OPP").** OPP is a feature of the System that prevents certain day limit, good til cancelled, and immediate or cancel orders at prices outside of pre-set standard limits from being accepted by the System. OPP applies to all

options but does not apply to market orders or Intermarket Sweep Orders. OPP does not apply to orders entered through QUO.

(A) OPP is operational each trading day after the opening until the close of trading, except during trading halts. OPP may be temporarily deactivated on an intra-day basis at the Exchange's discretion.

(B) OPP will reject incoming orders that exceed certain parameters according to the following algorithm:

(i) If the better of the NBBO or the internal market BBO (the "Reference BBO") on the contra-side of an incoming order is greater than \$1.00, orders with a limit more than the greater of the below will cause the order to be rejected by the System upon receipt.

(A) 50% through such contra-side Reference BBO; or

(B) a configurable dollar amount not to exceed \$1.00 through such contra-side Reference BBO as specified by the Exchange announced via an Options Trader Alert.

(ii) If the Reference BBO on the contra-side of an incoming order is less than or equal to \$1.00, orders with a limit more than the greater of the below will cause the order to be rejected by the System upon receipt.

(A) 100% through such contra-side Reference BBO; or

(B) a configurable dollar amount not to exceed \$1.00 through such contra-side Reference BBO as specified by the Exchange announced via an Options Trader Alert.

(2) **Market Order Spread Protection.** System Orders that are Market Orders will be rejected if the best of the NBBO and the internal market BBO (the "Reference BBO") is wider than a preset threshold at the time the order is received by the System. Market Order Spread Protection shall not apply to the Opening Process or during a trading halt. The Exchange may establish different thresholds for one or more series or classes of options.

(b) The following are order and quote risk protections on NOM:

(1) **Acceptable Trade Range.** The System will calculate an Acceptable Trade Range to limit the range of prices at which an order/quote will be allowed to execute. The Acceptable Trade Range is calculated by taking the reference price, plus or minus a value to be determined by the Exchange. (i.e., the reference price - (x) for sell orders/quotes and the reference price + (x) for buy orders/quotes). Upon

receipt of a new order/quote, the reference price is the NBB for sell orders/quotes and the NBO for buy orders/quotes or the last price at which the order/quote is posted whichever is higher for a buy order/quote or lower for a sell order/quote.

(A) If an order/quote reaches the outer limit of the Acceptable Trade Range (the "Threshold Price") without being fully executed, it will be posted at the Threshold Price for a brief period, not to exceed one second ("Posting Period"), to allow more liquidity to be collected. Upon posting, either the current Threshold Price of the order/quote or an updated NBB for buy orders/quotes or the NBO for sell orders/quotes (whichever is higher for a buy order/quote lower for a sell order/quote) then becomes the reference price for calculating a new Acceptable Trade Range. If the order remains unexecuted, a New Acceptable Trade Range will be calculated and the order/quote will execute, route, or post up to the new Acceptable Trade Range Threshold Price. This process will repeat until either i) the order/quote is executed, cancelled, or posted at its limit price or ii) the order/quote has been subject to a configurable number of instances of the Acceptable Trade Range as determined by the Exchange (in which case it will be returned).

(B) During the Posting Period, the Exchange will disseminate as a quotation: (i) the Threshold Price for the remaining size of the order/quote triggering the Acceptable Trade Range and (ii) on the opposite side of the market, the best price will be displayed using the "non-firm" indicator message in accordance with the specifications of the network processor. Following the Posting Period, the Exchange will return to a normal trading state and disseminate its best bid and offer.

(c) The following are quote risk protections on NOM:

(1) **Anti-Internalization.** Quotes and orders entered by Options Market Makers will not be executed against quotes and orders entered on the opposite side of the market by the same market maker using the same Market Maker identifiers, or alternatively, if selected by the Participant, the same account number or Participant identifier. In such a case, the System will cancel the oldest of the quotes or orders back to the entering party prior to execution.

(2) **Quotation Adjustments.**

(A) A NOM Market Maker may provide a specified time period and a specified percentage (as these terms are defined below) by which the Exchange's System will automatically remove a NOM Market Maker's quotes in all series of an underlying security submitted through designated NOM protocols, as specified by the Exchange, during a specified time period established by the NOM Market Maker not to exceeds 15 seconds ("Percentage-Based Specified Time Period"). For each series in an option, the System will determine: (i) the percentage that the number of contracts executed in that series represents relative to the number of

contracts available at the time of execution plus the number of contracts executed in unexpired prior executions of each side in that series ("Series Percentage"); and (ii) the sum of the Series Percentage in the option issue ("Issue Percentage"). The System tracks and calculates the net impact of positions in the same option issue; long call percentages are offset by short call percentages, and long put percentages are offset by short put percentages in the Issue Percentage. If the Issue Percentage, rounded to the nearest integer, equals or exceeds a percentage established by a NOM Market Maker, not less than 1% ("Specified Percentage"), the System will automatically remove a NOM Market Maker's quotes in all series of the underlying security submitted through designated NOM protocols, as specified by the Exchange, during the Percentage-Based Specified Time Period ("Percentage-Based Threshold"). A Percentage-Based Specified Time Period will commence for an option every time an execution occurs in any series in such option and will continue until the System removes quotes as described in (iv) or (v) or the Percentage-Based Specified Time Period expires. A Percentage -Based Specified Time Period operates on a rolling basis among all series in an option in that there may be multiple Percentage-Based Specified Time Periods occurring simultaneously and such Percentage-Based Specified Time periods may overlap.

(B) A NOM Market Maker may provide a specified time period and a volume threshold by which the Exchange's System will automatically remove a NOM Market Maker's quotes in all series of an underlying security submitted through designated NOM protocols, as specified by the Exchange, during a specified time period established by the NOM Market Maker not to exceed 15 seconds ("Volume-Based Specified Time Period") when the NOM Market Maker executes a number of contracts which equals or exceeds the designated number of contracts in all options series in an underlying security ("Volume-Based Threshold"). The NOM Market Maker's Volume-Based Specified Time Period must be the same length of time as designated for purposes of the Percentage-Based Threshold. A Volume- Based Specified Time Period will commence for an option every time an execution occurs in any series in such option and will continue until the System removes quotes as described in (f)(iv) or (f)(v) or the Volume-Based Specified Time Period expires. The Volume-Based Specified Time Period operates on a rolling basis among all series in an option in that there may be multiple Volume-Based Specified Time Periods occurring simultaneously and such Volume-Based Specified Time periods may overlap.

(C) A NOM Market Maker or NOM Market Maker Group (multiple affiliated NOM Market Makers is a "Group" as defined by a NOM Participant and provided by such Participant to the Exchange) may provide a specified time period and number of allowable triggers by which the Exchange will automatically remove quotes in all options series in all underlying issues submitted through designated NOM protocols as specified by the Exchange ("Multi-Trigger Threshold"). During a specified time period established by the NOM Market Maker not to exceed 15 seconds ("Multi- Trigger Specified Time Period"), the number of times the System automatically removes the NOM Market Maker's or Group's quotes in

all options series will be based on the number of triggers of the Percentage-Based Threshold, described in (f)(i) above, as well as the Volume-Based Threshold described in (f)(ii) above. Once the System determines that the number of triggers equals or exceeds a number established by either the NOM Market Maker or Group, during a Multi-Trigger Specified Time Period, the System will automatically remove all quotes in all options series in all underlying issues for that NOM Market Maker or Group. A trigger is defined as the event which causes the System to automatically remove quotes in all options series in an underlying issue. A Multi-Trigger Specified Time Period will commence after every trigger of either the Percentage-Based Threshold or the Volume-Based Threshold and will continue until the System removes quotes as described in (f)(iv) or the Multi-Trigger Specified Time Period expires. The System counts triggers within the Multi-Trigger Specified Time Period across all triggers for the NOM Market Maker or Group. A Multi-Trigger Specified Time Period operates on a rolling basis in that there may be multiple Multi-Trigger Specified Time Periods occurring simultaneously and such Multi-Trigger Specified Time Periods may overlap.

(D) The System will automatically remove quotes in all options in an underlying security when the Percentage-Based Threshold or Volume-Based Threshold has been reached. The System will automatically remove quotes in all options in all underlying securities when the Multi-Trigger Threshold has been reached. The System will send a Purge Notification Message to the NOM Market Maker for all affected options when the above thresholds have been reached.

(i) The Percentage-Based Threshold or Volume-Based Threshold and Multi-Trigger Threshold, are considered independently of each other.

(ii) Quotes will be automatically executed up to the NOM Market Maker's size regardless of whether the execution exceeds the Percentage-Based Threshold or Volume-Based Threshold.

(E) If a NOM Market Maker requests the System to remove quotes in all options series in an underlying issue, the System will automatically reset the Percentage-Based Threshold or Volume-Based Specified Time Period(s). The Multi-Trigger Specified Time Period(s) will not automatically reset for the Multi-Trigger Threshold.

(F) When the System removes quotes as a result of the Percentage-Based Threshold or Volume-Based Threshold, the NOM Market Maker must send a reentry indicator to re-enter the System. When the System removes quotes as a result of the Multi-Trigger Threshold, the System will not accept quotes through designated protocols until the NOM Market Maker manually requests re-entry. After quotes are removed as a result of the Multi-Trigger Threshold, Exchange staff must set a re-entry indicator in this case to enable re-entry, which will cause the System to send a Reentry Notification Message to the NOM Market Maker for

all options series in all underlying issues. The Market Maker's Clearing Firm will be notified regarding the trigger and re-entry into the System after quotes are removed as a result of the Multi-Trigger Threshold, provided the Market Maker's Clearing Firm has requested to receive such notification.

(G) The Exchange will require NOM Market Makers to utilize either the Percentage-Based Threshold or the Volume-Based Threshold. The Multi-Trigger Threshold is optional.

## **Section 16. Reserved**

## **Section 17. Kill Switch**

(a) Nasdaq Options Kill Switch is an optional tool that enables NOM Participants to initiate a message(s) to the System to: (i) promptly remove quotes; and/or (ii) promptly cancel orders. Participants may submit a request to the System to remove/cancel quotes and/or orders based on certain identifier(s) on either a user or group level ("Identifier"). Permissible groups must reside within a single broker-dealer. The System will send an automated message to the NOM Participant when a Kill Switch request has been processed by the Exchange's System.

(i) If quotes are cancelled by the NOM Participant utilizing the Kill Switch, it will result in the removal of all quotes requested for the Identifier(s). The NOM Participant will be unable to enter any additional quotes for the affected Identifier(s) until re-entry has been enabled pursuant to section (a)(iii).

(ii) If orders are cancelled by the NOM Participant utilizing the Kill Switch, it will result in the cancellation of all orders requested for the Identifier(s). The NOM Participant will be unable to enter additional orders for the affected Identifier(s) until re-entry has been enabled pursuant to section (a)(iii).

(iii) After quotes and/or orders are removed/cancelled by the NOM Participant utilizing the Kill Switch, the NOM Participant will be unable to enter additional quotes and/or orders for the affected Identifier(s) until the NOM Participant has made a verbal request to the Exchange and Exchange staff has set a re-entry indicator to enable re-entry. Once enabled for re-entry, the System will send a Re-entry Notification Message to the NOM Participant. The applicable Clearing Participant also will be notified of the re-entry into the System after quotes and/or orders are removed/cancelled as a result of the Kill Switch, provided the Clearing Participant has requested to receive such notification.

## **Section 18. Detection of Loss of Communication**

(a) When the SQF Port detects the loss of communication with a NOM Participant's Client Application because the Exchange's server does not receive a Heartbeat message for a certain time period ("nn" seconds), the Exchange will automatically logoff the NOM Participant's affected Client Application and automatically cancel all of the NOM



Participant's open quotes. Quotes will be cancelled across all Client Applications that are associated with the same NOM Options Market Maker ID and underlying issues.

(1) A "Heartbeat" message is a communication which acts as a virtual pulse between the SQF or FIX Port and the Client Application. The Heartbeat message sent by the NOM Participant and subsequently received by the Exchange allows the SQF or FIX Port to continually monitor its connection with the NOM Participant.

(2) SQF Port is the Exchange's System component through which NOM Participants communicate their quotes from the Client Application.

(3) FIX and OTTO Ports are the Exchange's System component through which NOM Participants communicate their orders from the Client Application.

(4) QUO is the Exchange's System component through which NOM Market Makers communicate orders from the Client Application.

(5) Client Application is the System component of the Participant through which the NOM Participant communicates its quotes and orders to the Exchange.

(b) When the FIX Port detects the loss of communication with a NOM Participant's Client Application because the Exchange's server does not receive a Heartbeat message for a certain time period ("nn" seconds), the Exchange will automatically logoff the NOM Participant's affected Client Application and, if the NOM Participant has elected to have its orders cancelled pursuant to Options 3, Section 18(d), automatically cancel all open orders posted.

(c) When the OTTO Port detects the loss of communication with a Participant's Client Application because the Exchange's server does not receive a Heartbeat message for a certain time period ("nn" seconds), the Exchange will automatically logoff the Participant's affected Client Application and if the Participant has elected to have its orders cancelled pursuant to Options 3, Section 18(g) automatically cancel all open orders posted.

(d) When the QUO Port detects the loss of communication with a NOM Market Maker's Client Application because the Exchange's server does not receive a Heartbeat message for a certain time period ("nn" seconds), the Exchange will automatically logoff the NOM Market Maker's affected Client Application and if the NOM Market Maker has elected to have its orders cancelled pursuant to Options 3, Section 18(h) automatically cancel all open orders posted.

(e) The default time period ("nn" seconds) for SQF Ports shall be fifteen (15) seconds. A NOM Market Maker may determine another time period of "nn" seconds of no technical connectivity, as required in paragraph (a) above, to trigger the disconnect and must communicate that time to the Exchange. The period of "nn" seconds may be modified to a number between one hundred (100) milliseconds and 99,999 milliseconds for SQF

Ports prior to each session of connectivity to the Exchange. This feature is enabled for each NOM Market Maker and may not be disabled.

(A) If the NOM Market Maker systemically changes the default number of "nn" seconds, that new setting shall be in effect throughout the current session of connectivity and will then default back to fifteen seconds. The NOM Market Maker change the default setting systemically prior to each session of connectivity.

(B) If a time period is communicated to the Exchange by calling Exchange operations, the number of "nn" seconds selected by the NOM Market Maker shall persist for each subsequent session of connectivity until the NOM Market Maker either contacts Exchange operations and changes the setting or the NOM Market Maker systemically selects another time period prior to the next session of connectivity.

(f) The default period of "nn" seconds for FIX Ports shall be thirty (30) seconds for the disconnect and, if elected, the removal of orders. If the Participant elects to have its orders removed, in addition to the disconnect, the Participant may determine another time period of "nn" seconds of no technical connectivity, as required in paragraph (b) above, to trigger the disconnect and removal of orders and communicate that time to the Exchange. The period of "nn" seconds may be modified to a number between one (1) second and thirty (30) seconds for FIX Ports prior to each session of connectivity to the Exchange. This feature may be disabled for the removal of orders, however the Participant will be disconnected.

(A) If the Participant systemically changes the default number of "nn" seconds, that new setting shall be in effect throughout the current session of connectivity and will then default back to thirty seconds. The Participant may change the default setting systemically prior to each session of connectivity.

(B) If the time period is communicated to the Exchange by calling Exchange operations, the number of "nn" seconds selected by the Participant shall persist for each subsequent session of connectivity until the Participant either contacts Exchange operations and changes the setting or the Participant systemically selects another time period prior to the next session of connectivity.

(g) The default time period ("nn" seconds) for OTTO Ports shall be fifteen (15) seconds for the disconnect and, if elected, the removal of orders. If the Participant elects to have its orders removed, in addition to the disconnect, the Participant may determine another time period of "nn" seconds of no technical connectivity, as required in paragraph (c) above, to trigger the disconnect and removal of orders and communicate that time to the Exchange. The period of "nn" seconds may be modified to a number between one hundred (100) milliseconds and 99,999 milliseconds for OTTO Ports prior to each

session of connectivity to the Exchange. This feature may be disabled for the removal of orders, however the Participant will be disconnected.

(A) If the Participant systemically changes the default number of "nn" seconds, that new setting shall be in effect throughout the current session of connectivity and will then default back to fifteen seconds. The Participant may change the default setting systemically prior to each session of connectivity.

(B) If a time period is communicated to the Exchange by calling Exchange operations, the number of "nn" seconds selected by the Participant shall persist for each subsequent session of connectivity until the Participant either contacts Exchange operations and changes the setting or the Participant systemically selects another time period prior to the next session of connectivity.

(h) The default time period ("nn" seconds) for QUO Ports shall be fifteen (15) seconds for the disconnect and, if elected, the removal of orders. If the NOM Market Maker elects to have its orders removed, in addition to the disconnect, the NOM Market Maker may determine another time period of "nn" seconds of no technical connectivity, as required in paragraph (d) above, to trigger the disconnect and removal of orders and communicate that time to the Exchange. The period of "nn" seconds may be modified to a number between one hundred (100) milliseconds and 99,999 milliseconds for QUO Ports prior to each session of connectivity to the Exchange. This feature may be disabled for the removal of orders, however the NOM Market Maker will be disconnected.

(A) If the NOM Market Maker systemically changes the default number of "nn" seconds, that new setting shall be in effect throughout the current session of connectivity and will then default back to fifteen seconds. The NOM Market Maker may change the default setting systemically prior to each session of connectivity.

(B) If a time period is communicated to the Exchange by calling Exchange operations, the number of "nn" seconds selected by the NOM Market Maker shall persist for each subsequent session of connectivity until the NOM Market Maker either contacts Exchange operations and changes the setting or the NOM Market Maker systemically selects another time period prior to the next session of connectivity.

(i) The trigger for the SQF, FIX, QUO and OTTO Ports is event and Client Application specific. The automatic cancellation of the NOM Market Maker's quotes for SQF Ports and open orders for FIX, QUO and OTTO Ports entered into the respective SQF, FIX, QUO or OTTO Ports via a particular Client Application will neither impact nor determine the treatment of the quotes of other NOM Market Makers entered into SQF Ports or orders of the same or other Participants entered into the FIX, QUO or OTTO Ports via a separate and distinct Client Application.

### **Section 19. Mass Cancellation of Trading Interest**

An Options Participant may simultaneously cancel all its bids, offers, and orders in all series of options by requesting NOM operations staff to effect such cancellation.

### **Section 20. Nullification and Adjustment of Options Transactions including Obvious Errors**

The Exchange may nullify a transaction or adjust the execution price of a transaction in accordance with this Rule. However, the determination as to whether a trade was executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. A trade may be nullified or adjusted on the terms that all parties to a particular transaction agree, provided, however, that such agreement to nullify or adjust must be conveyed to the Exchange in a manner prescribed by the Exchange prior to 8:30 a.m. Eastern Time on the first trading day following the execution. It is considered conduct inconsistent with just and equitable principles of trade for any Participant to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.

#### (a) Definitions.

(1) Customer. For purposes of this Rule, a Customer shall not include any broker-dealer or Professional.

(2) Erroneous Sell/Buy Transaction. For purposes of this Rule, an "erroneous sell transaction" is one in which the price received by the person selling the option is erroneously low, and an "erroneous buy transaction" is one in which the price paid by the person purchasing the option is erroneously high.

(3) Official. For purposes of this Rule, the term "Official" shall mean an Exchange staff member or contract employee designated as such by the Chief Regulatory Officer. A list of individual Officials shall be displayed on the Exchange website. The Chief Regulatory Officer shall maintain the list of Officials and update the website each time a name is added to, or deleted from, the list of Officials. In the event no Official is available to rule on a particular matter, the Chief Regulatory Officer or his/her designee shall rule on such matter.

(4) Size Adjustment Modifier. For purposes of this Rule, the Size Adjustment Modifier will be applied to individual transactions as follows:

<b><u>Number of Contracts per Execution</u></b>	<b><u>Adjustment - Theoretical Price (TP) Plus/Minus</u></b>
<u>1-50</u>	<u>N/A</u>

<u>51-250</u>	<u>2 times adjustment amount</u>
<u>251-1000</u>	<u>2.5 times adjustment amount</u>
<u>1001 or more</u>	<u>3 times adjustment amount</u>

(b) Theoretical Price. Upon receipt of a request for review and prior to any review of a transaction execution price, the "Theoretical Price" for the option must be determined. For purposes of this Rule, if the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is the last NBB just prior to the trade in question with respect to an erroneous sell transaction or the last NBO just prior to the trade in question with respect to an erroneous buy transaction unless one of the exceptions in sub-paragraphs (b)(1) through (3) below exists. For purposes of this provision, when a single order received by the Exchange is executed at multiple price levels, the last NBB and last NBO just prior to the trade in question would be the last NBB and last NBO just prior to Exchange's receipt of the order. The Exchange will rely on this paragraph (b) and Supplementary Material .03 of this Rule when determining Theoretical Price.

(1) Transactions at the Open. For a transaction occurring as part of the Opening Process (as defined in Options 3, Section 8) the Exchange will determine the Theoretical Price if there is no NBB or NBO for the affected series just prior to the erroneous transaction or if the bid/ask differential of the NBB and NBO just prior to the erroneous transaction is equal to or greater than the Minimum Amount set forth in the chart contained in sub-paragraph (b)(3) below. If the bid/ask differential is less than the Minimum Amount, the Theoretical Price is the NBB or NBO just prior to the erroneous transaction.

(2) No Valid Quotes. The Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes. Quotes that are not valid are:

(A) all quotes in the applicable option series published at a time where the last NBB is higher than the last NBO in such series (a "crossed market");

(B) quotes published by the Exchange that were submitted by either party to the transaction in question;

(C) quotes published by another options exchange if either party to the transaction in question submitted the quotes in the series representing such options exchange's best bid or offer, provided that the Exchange will only consider quotes invalid on other options exchanges in up to twenty-five (25) total options series that the party identifies to the Exchange the quotes which were submitted by such party and published by other options exchanges; and

(D) quotes published by another options exchange against which the Exchange has declared self-help.

(3) Wide Quotes. The Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the erroneous transaction was equal to or greater than the Minimum Amount set forth below and there was a bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction. If there was no bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction then the Theoretical Price of an option series is the last NBB or NBO just prior to the transaction in question, as set forth in paragraph (b) above.

<u>Bid Price at Time of Trade</u>	<u>Minimum Amount</u>
<u>Below \$2.00</u>	<u>\$0.75</u>
<u>\$2.00 to \$5.00</u>	<u>\$1.25</u>
<u>Above \$5.00 to \$10.00</u>	<u>\$1.50</u>
<u>Above \$10.00 to \$20.00</u>	<u>\$2.50</u>
<u>Above \$20.00 to \$50.00</u>	<u>\$3.00</u>
<u>Above \$50.00 to \$100.00</u>	<u>\$4.50</u>
<u>Above \$100.00</u>	<u>\$6.00</u>

(c) Obvious Errors.

(1) Definition. For purposes of this Rule, an Obvious Error will be deemed to have occurred when the Exchange receives a properly submitted filing where the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

<u>Theoretical Price</u>	<u>Minimum Amount</u>
<u>Below \$2.00</u>	<u>\$0.25</u>
<u>\$2.00 to \$5.00</u>	<u>\$0.40</u>
<u>Above \$5.00 to \$10.00</u>	<u>\$0.50</u>
<u>Above \$10.00 to \$20.00</u>	<u>\$0.80</u>

<u>Above \$20.00 to \$50.00</u>	<u>\$1.00</u>
<u>Above \$50.00 to \$100.00</u>	<u>\$1.50</u>
<u>Above \$100.00</u>	<u>\$2.00</u>

(2) Time Deadline. A party that believes that it participated in a transaction that was the result of an Obvious Error must notify the Exchange's Official in the manner specified from time to time by the Exchange in a notice distributed to Participants. Such notification must be received by the Exchange's Officials within the timeframes specified below:

(A) Customer Orders. For an execution of a Customer order, a filing must be received by the Exchange within thirty (30) minutes of the execution, subject to sub-paragraph (C) below; and

(B) "Non-Customer" Orders. For an execution of any order other than a Customer order, a filing must be received by the Exchange within fifteen (15) minutes of the execution, subject to sub-paragraph (C) below.

(C) Linkage Trades. Any other options exchange will have a total of forty-five (45) minutes for Customer orders and thirty (30) minutes for non-Customer orders, measured from the time of execution on the Exchange, to file with the Exchange for review of transactions routed to the Exchange from that options exchange and executed on the Exchange ("linkage trades"). This includes filings on behalf of another options exchange filed by a third-party routing broker if such third-party broker identifies the affected transactions as linkage trades. In order to facilitate timely reviews of linkage trades the Exchange will accept filings from either the other options exchange or, if applicable, the third-party routing broker that routed the applicable order(s). The additional fifteen (15) minutes provided with respect to linkage trades shall only apply to the extent the options exchange that originally received and routed the order to the Exchange itself received a timely filing from the entering participant (i.e., within 30 minutes if a Customer order or 15 minutes if a non-Customer order).

(3) Acting on Own Motion. The President or designee thereof, who is an officer of the Exchange (collectively "Exchange officer") may review a transaction believed to be erroneous on his/her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. A transaction reviewed pursuant to this paragraph may be nullified or adjusted only if it is determined by the Exchange officer that the transaction is erroneous in accordance with the provisions of this Rule, provided that the time deadlines of sub-paragraph (c)(2) above shall not apply. The Exchange officer shall act as soon as possible after becoming aware of the transaction, and ordinarily would be expected to act on the same day that the transaction occurred. In no event shall the Exchange officer act later than 8:30 a.m. Eastern Time on the next trading day following the date of the

transaction in question. A party affected by a determination to nullify or adjust a transaction pursuant to this provision may appeal such determination in accordance with paragraph (k) below; however, a determination by an Exchange officer not to review a transaction or determination not to nullify or adjust a transaction for which a review was conducted on an Exchange officer's own motion is not appealable. If a transaction is reviewed and a determination is rendered pursuant to another provision of this Rule, no additional relief may be granted under this provision.

(4) *Adjust or Bust.* If it is determined that an Obvious Error has occurred, the Exchange shall take one of the actions listed below. Upon taking final action, the Exchange shall promptly notify both parties to the trade electronically or via telephone.

(A) *Non-Customer Transactions.* Where neither party to the transaction is a Customer, the execution price of the transaction will be adjusted by the Official pursuant to the table below. Any non-Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier defined in sub-paragraph (a)(4) above.

<u>Theoretical Price (TP)</u>	<u>Buy Transaction Adjustment - TP Plus</u>	<u>Sell Transaction Adjustment - TP Minus</u>
<u>Below \$3.00</u>	<u>\$0.15</u>	<u>\$0.15</u>
<u>At or above \$3.00</u>	<u>\$0.30</u>	<u>\$0.30</u>

(B) *Customer Transactions.* Where at least one party to the Obvious Error is a Customer, the trade will be nullified, subject to subparagraph (C) below.

(C) If any Participant submits requests to the Exchange for review of transactions pursuant to this Rule, and in aggregate that Participant has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, where at least one party to the Obvious Error is a non-Customer, the Exchange will apply the non-Customer adjustment criteria set forth in sub-paragraph (A) above to such transactions.

(d) *Catastrophic Errors.*

(1) *Definition.* For purposes of this Rule, a Catastrophic Error will be deemed to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:



<u>Theoretical Price</u>	<u>Minimum Amount</u>
<u>Below \$2.00</u>	<u>\$0.50</u>
<u>\$2.00 to \$5.00</u>	<u>\$1.00</u>
<u>Above \$5.00 to \$10.00</u>	<u>\$1.50</u>
<u>Above \$10.00 to \$20.00</u>	<u>\$2.00</u>
<u>Above \$20.00 to \$50.00</u>	<u>\$2.50</u>
<u>Above \$50.00 to \$100.00</u>	<u>\$3.00</u>
<u>Above \$100.00</u>	<u>\$4.00</u>

(2) Time Deadline. A party that believes that it participated in a transaction that was the result of a Catastrophic Error must notify the Exchange's Officials in the manner specified from time to time by the Exchange on its website. Such notification must be received by the Exchange's Officials by 8:30 a.m. Eastern Time on the first trading day following the execution. For transactions in an expiring options series that take place on an expiration day, a party must notify the Exchange's Officials within 45 minutes after the close of trading that same day.

(3) Adjust or Bust. If it is determined that a Catastrophic Error has occurred, the Exchange shall take action as set forth below. Upon taking final action, the Exchange shall promptly notify both parties to the trade electronically or via telephone. In the event of a Catastrophic Error, the execution price of the transaction will be adjusted by the Official pursuant to the table below. Any Customer order subject to this sub-paragraph will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price.

<u>Theoretical Price (TP)</u>	<u>Buy Transaction Adjustment - TP Plus</u>	<u>Sell Transaction Adjustment - TP Minus</u>
<u>Below \$2.00</u>	<u>\$0.50</u>	<u>\$0.50</u>
<u>\$2.00 to \$5.00</u>	<u>\$1.00</u>	<u>\$1.00</u>
<u>\$5.00 to \$10.00</u>	<u>\$1.50</u>	<u>\$1.50</u>
<u>\$10.00 to \$20.00</u>	<u>\$2.00</u>	<u>\$2.00</u>

<u>\$20.00 to \$50.00</u>	<u>\$2.50</u>	<u>\$2.50</u>
<u>\$50.00 to \$100.00</u>	<u>\$3.00</u>	<u>\$3.00</u>
<u>Above \$100.00</u>	<u>\$4.00</u>	<u>\$4.00</u>

(e) Significant Market Events.

(1) Definition. For purposes of this Rule, a Significant Market Event will be deemed to have occurred when: criterion (A) below is met or exceeded or the sum of all applicable event statistics, where each is expressed as a percentage of the relevant threshold in criteria (A) through (D) below, is greater than or equal to 150% and 75% or more of at least one category is reached, provided that no single category can contribute more than 100% to the sum and any category contributing more than 100% will be rounded down to 100%. All criteria set forth below will be measured in aggregate across all exchanges.

(A) Transactions that are potentially erroneous would result in a total Worst-Case Adjustment Penalty of \$30,000,000, where the Worst- Case Adjustment Penalty is computed as the sum, across all potentially erroneous trades, of:

(i) \$0.30 (i.e., the largest Transaction Adjustment value listed in sub-paragraph (e)(3)(A) below); times

(ii) the contract multiplier for each traded contract; times

(iii) the number of contracts for each trade; times

(iv) the appropriate Size Adjustment Modifier for each trade, if any, as defined in sub-paragraph (e)(3)(A) below.

(B) Transactions involving 500,000 options contracts are potentially erroneous;

(C) Transactions with a notional value (i.e., number of contracts traded multiplied by the option premium multiplied by the contract multiplier) of \$100,000,000 are potentially erroneous;

(D) 10,000 transactions are potentially erroneous.

(2) Coordination with Other Options Exchanges. To ensure consistent application across options exchanges, in the event of a suspected Significant Market Event, the Exchange shall initiate a coordinated review of potentially erroneous transactions with all other affected options exchanges to determine the full scope of the event. When this paragraph is invoked, the Exchange will promptly coordinate with the other options exchanges to determine the appropriate review period as well as select one or more specific points in time prior to the

transactions in question and use one or more specific points in time to determine Theoretical Price. Other than the selected points in time, if applicable, the Exchange will determine Theoretical Price in accordance with paragraph (b) above.

(3) *Adjust or Bust.* If it is determined that a Significant Market Event has occurred then, using the parameters agreed as set forth in sub-paragraph (e)(2) above, if applicable, an Official will determine whether any or all transactions under review qualify as Obvious Errors. The Exchange shall take one of the actions listed below with respect to all transactions that qualify as Obvious Errors pursuant to sub-paragraph (c)(1) above. Upon taking final action, the Exchange shall promptly notify both parties to the trade electronically or via telephone.

(A) The execution price of each affected transaction will be adjusted by an Official to the price provided below unless both parties agree to adjust the transaction to a different price or agree to bust the trade. In the context of a Significant Market Event, any error exceeding 50 contracts will be subject to the Size Adjustment Modifier defined in subparagraph (a)(4) above.

<u>Theoretical Price (TP)</u>	<u>Buy Transaction Adjustment - TP Plus</u>	<u>Sell Transaction Adjustment - TP Minus</u>
<u>Below \$3.00</u>	<u>\$0.15</u>	<u>\$0.15</u>
<u>At or above \$3.00</u>	<u>\$0.30</u>	<u>\$0.30</u>

(B) Where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price.

(4) *Nullification of Transactions.* If the Exchange, in consultation with other options exchanges, determines that timely adjustment is not feasible due to the extraordinary nature of the situation, then the Exchange will nullify some or all transactions arising out of the Significant Market Event during the review period selected by the Exchange and other options exchanges consistent with this paragraph. To the extent the Exchange, in consultation with other options exchanges, determines to nullify less than all transactions arising out of the Significant Market Event, those transactions subject to nullification will be selected based upon objective criteria with a view toward maintaining a fair and orderly market and the protection of investors and the public interest.

(5) *Final Rulings.* With respect to rulings made pursuant to this paragraph, the number of affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. Accordingly, rulings by the Exchange pursuant to this paragraph are non-appealable.

(f) Trading Halts. The Exchange shall nullify any transaction that occurs during a trading halt in the affected option on the Exchange pursuant to Supplementary Material .02 of this Rule.

(g) Erroneous Print in Underlying. A trade resulting from an erroneous print(s) disseminated by the underlying market that is later nullified by that underlying market shall be adjusted or busted as set forth in sub-paragraph (c)(4) of this Rule, provided a party notifies the Exchange's Officials in a timely manner as set forth below. For purposes of this paragraph, a trade resulting from an erroneous print(s) shall mean any options trade executed during a period of time for which one or more executions in the underlying security are nullified and for one second thereafter. If a party believes that it participated in an erroneous transaction resulting from an erroneous print(s) pursuant to this paragraph it must notify the Exchange's Officials within the timeframes set forth in sub-paragraph (c)(2) above, with the allowed notification timeframe commencing at the time of notification by the underlying market(s) of nullification of transactions in the underlying security. If multiple underlying markets nullify trades in the underlying security, the allowed notification timeframe will commence at the time of the first market's notification.

(h) Erroneous Quote in Underlying. A trade resulting from an erroneous quote(s) in the underlying security shall be adjusted or busted as set forth in subparagraph (c)(4) this Rule, provided a party notifies the Exchange's Officials in a timely manner as set forth below. An erroneous quote occurs when the underlying security has a width of at least \$1.00 and has a width at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of this paragraph, the average quote width shall be determined by adding the quote widths of sample quotations at regular 15-second intervals during the four-minute time period referenced above (excluding the quote(s) in question) and dividing by the number of quotes during such time period (excluding the quote(s) in question). If a party believes that it participated in an erroneous transaction resulting from an erroneous quote(s) pursuant to this paragraph it must notify the Exchange's Officials in accordance with sub-paragraph (c)(2) above.

(i) Linkage Trades. If the Exchange routes an order pursuant to the Plan (as defined in Options 5, Section 1(16)) that results in a transaction on another options exchange (a "Linkage Trade") and such options exchange subsequently nullifies or adjusts the Linkage Trade pursuant to its rules, the Exchange will perform all actions necessary to complete the nullification or adjustment of the Linkage Trade.

(j) Verifiable Disruption or Malfunction of Exchange Systems. Parties to a trade may have a trade nullified or its price adjusted if it resulted from a verifiable disruption or malfunction of Exchange execution, dissemination, or communication systems that caused a quote/order to trade in excess of its disseminated size (e.g. a quote/order that is frozen, because of an Exchange system error, and repeatedly traded). Parties to a trade may have a trade nullified or its price adjusted if it resulted from a verifiable disruption or malfunction of an Exchange dissemination or communication system that

prevented a Member from updating or canceling a quote/order for which the Member is responsible where there is Exchange documentation providing that the Member sought to update or cancel the quote/order.

(k) Appeals. A party to a transaction affected by a decision made under this section may appeal that decision to the Exchange Review Council. An appeal must be made in writing, and must be received by NOM within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed. The Exchange Review Council may review any decision appealed, including whether a complaint was timely, whether an Obvious Error or Catastrophic Error occurred, whether the correct Theoretical Price was used, and whether an adjustment was made at the correct price.

(1) A Nasdaq Review Council panel will be comprised minimally of representatives of one (1) member engaged in Market Making and two (2) industry representatives not engaged in Market Making. At no time should a review panel have more than 50% members engaged in Market Making.

(2) The Nasdaq Review Council, pursuant to the standards set forth in this Rule, shall affirm, modify, or reverse the determination.

(3) The decision of the Nasdaq Review Council pursuant to an appeal, or a determination by a Nasdaq Official that is not appealed, shall be final and binding upon all parties and shall constitute final Nasdaq action on the matter in issue. Any determination by a Nasdaq Official or the Nasdaq Review Council shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

(4) The party initiating the appeal shall be assessed a \$500.00 fee if the Nasdaq Review Council upholds the decision of the Nasdaq Official. In addition, in instances where Nasdaq, on behalf of an Options Participant, requests a determination by another market center that a transaction is clearly erroneous, Nasdaq will pass any resulting charges through to the relevant Options Participant.

### **Supplementary Material to Options 3, Section 20**

**.01** For the purposes of this Rule, to the extent the provisions of this Rule would result in the Exchange applying an adjustment of an erroneous sell transaction to a price lower than the execution price or an erroneous buy transaction to a price higher than the execution price, the Exchange will not adjust or nullify the transaction, but rather, the execution price will stand.

**.02** Trading Halts. Trades on the Exchange will be nullified when:

(A) The trade occurred during a trading halt in the affected option on the Exchange;

(B) Respecting equity options (including options overlying ETFs), the trade occurred during a regulatory halt as declared by the primary market for the underlying security; or

(C) Respecting index options, the trade occurred during a trading halt on the primary market in underlying securities representing more than 10 percent of the current index value for stock index options.

.03 Exchange Determining Theoretical Price. For purposes of this Rule, when the Exchange must determine Theoretical Price pursuant to sub-paragraphs (b)(1)-(3) of this Rule (i.e., at the open, when there are no valid quotes or when there is a wide quote), then the Exchange will determine Theoretical Price as follows.

(A) The Exchange will request Theoretical Price from the third party vendor defined in paragraph (d) below ("TP Provider") to which the Exchange and all other options exchanges have subscribed. The Exchange will apply the Theoretical Price provided by the TP Provider, except as otherwise described below.

(B) To the extent an Official of the Exchange believes that the Theoretical Price provided by the TP Provider is fundamentally incorrect and cannot be used consistent with the maintenance of a fair and orderly market, the Official shall contact the TP Provider to notify the TP Provider of the reason the Official believes such Theoretical Price is inaccurate and to request a review and correction of the calculated Theoretical Price. The Exchange shall also promptly provide electronic notice to other options exchanges that the TP Provider has been contacted consistent with this paragraph and include a brief explanation of the reason for the request.

(C) An Official of the Exchange may determine the Theoretical Price if the TP Provider has experienced a systems issue that has rendered its services unavailable to accurately calculate Theoretical Price and such issue cannot be corrected in a timely manner.

(D) The current TP Provider to which the Exchange and all other options exchanges have subscribed is: CBOE Livevol, LLC. Neither the Exchange, the TP Provider, nor any affiliate of the TP Provider (the TP Provider and its affiliates are referred to collectively as the "TP Provider"), makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of the TP Provider pursuant to this Supplementary Material .03. The TP Provider does not guarantee the accuracy or completeness of the calculated Theoretical Price. The TP Provider disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to such Theoretical Price. Neither the Exchange nor the TP Provider shall have any liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or

unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the use of such Theoretical Price or arising out of any errors or delays in calculating such Theoretical Price.

### **Section 21. Access to and Conduct on NOM**

(a) Access to NOM. Unless otherwise provided in the Rules, no one but a Participant or a person associated with a Participant shall effect any NOM Transactions. The Exchange may share any Participant-designated risk settings in the Trading System with the Clearing Participant that clears transactions on behalf of the Participant.

(b) NOM Conduct. Participants and persons employed by or associated with any Participant, while using the facilities of NOM, shall not engage in conduct: (i) inconsistent with the maintenance of a fair and orderly market; (ii) apt to impair public confidence in the operations of the Exchange; or (iii) inconsistent with the ordinary and efficient conduct of business. Activities that shall violate the provisions of this paragraph (b) include, but are not limited to, the following:

(1) failure of a Market Maker to provide quotations in accordance with Options 2, Section 5 of these Rules;

(2) failure of a Market Maker to bid or offer within the ranges specified by Options 2, Section 4 of these Rules;

(3) failure of a Participant to supervise a person employed by or associated with such Participant adequately to ensure that person's compliance with this paragraph (b).

(4) failure to maintain adequate procedures and controls that permit the Options Participant to effectively monitor and supervise the entry of orders by users to prevent the prohibited practices set forth in this paragraph (b) and Options 9, Section 2 of these Rules;

(5) failure to abide by a determination of Nasdaq Regulation;

(6) effecting transactions that are manipulative as provided in General 9, Section 1 or any other rule of the Exchange;

(7) refusal to provide information requested by Nasdaq Regulation; and

(8) failure to abide by the provisions of the sections of this Options 3, Section 22 related to limitations on orders.

(c) Subject to the Rules, NOM will provide access to the Trading System to Options Participants in good standing that wish to conduct business on NOM.

(d) Pursuant to the Rules and the arrangements referred to in this Rule, Nasdaq Regulation may:

(1) suspend an Options Participant's access to the Trading System following a warning which may be made in writing or verbally (and subsequently confirmed in writing); or

(2) terminate an Options Participant's access to the Trading System by notice in writing.

## **Section 22. Limitations on Order Entry**

**(a) Limitations on Principal Transactions.** With respect to orders routed to NOM, Options Participants may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on NOM for at least one (1) second or (ii) the Options Participant has been bidding or offering on NOM for at least one (1) second prior to receiving an agency order that is executable against such bid or offer. With respect to Price Improving Orders, the exposure requirement of subsection (i) is satisfied if the displayable portion of the order is displayed at its displayable price for one second.

(1) This Rule prevents Options Participants from executing agency orders to increase its economic gain from trading against the order without first giving other trading interest on NOM an opportunity to either trade with the agency order or to trade at the execution price when the Options Participant was already bidding or offering on the book. However, the Exchange recognizes that it may be possible for an Options Participant to establish a relationship with a customer or other person to deny agency orders the opportunity to interact on NOM and to realize similar economic benefits as it would achieve by executing agency orders as principal. It will be a violation of this Rule for an Options Participant to be a party to any arrangement designed to circumvent this Rule by providing an opportunity for a customer to regularly execute against agency orders handled by the Options Participant immediately upon their entry into NOM.

**(b) Limit Orders.** Options Participants shall not enter Public Customer limit orders into the System in the same options series, for the account or accounts of the same or related beneficial owners, in such a manner that the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such options contract on a regular or continuous basis. In determining whether a beneficial owner effectively is operating as a market maker, the Exchange will consider, among other things: the simultaneous or near-simultaneous entry of limit orders to buy and sell the same options contract and the entry of multiple limit orders at different prices in the same options series.

**(c) Limitations on Solicitation Orders.** An Options Participant may not execute an order it represents as agent on NOM against orders solicited from members and non-member broker-dealers, whether such solicited orders are entered into NOM directly by the Options Participant or by the solicited party (either directly or through another



Options Participant), if the Options Participant fails to expose orders on NOM as required by this Rule.

(d) Prior to or after submitting an order to NOM, an Options Participant cannot inform another Options Participant or any other third party of any of the terms of the order for purposes of violating this Rule.

### **Section 23. Data Feeds and Trade Information**

(a) The following data feeds are offered by NOM:

(1) Nasdaq ITCH to Trade Options (ITTO) is a data feed that provides full order and quote depth information for individual orders and quotes on the NOM book, last sale information for trades executed on NOM, and Order Imbalance Information as set forth in NOM Rules Options 3, Section 8. The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on NOM and identifies if the series is available for closing transactions only.

(2) Best of Nasdaq Options (BONO) is a data feed that provides the NOM Best Bid and Offer and last sale information for trades executed on NOM. The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on NOM and identifies if the series is available for closing transactions only.

(b) The following order and execution information is available to Participants:

(1) **Clearing Trade Interface ("CTI")** is a real-time clearing trade update message that is sent to a Participant after an execution has occurred and contains trade details specific to that Participant. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement or "CMTA" or The Options Clearing Corporation or "OCC" number; (ii) Exchange badge or house number; (iii) the Exchange internal firm identifier; (iv) an indicator which will distinguish electronic and non-electronically delivered orders; (v) liquidity indicators and transaction type for billing purposes; and (vi) capacity.

(2) **TradeInfo**, a user interface, permits a Participant to: (i) search all orders submitted in a particular security or all orders of a particular type, regardless of their status (open, canceled, executed, etc.); (ii) cancellation of open orders at the order, port or firm mnemonic level; (iii) a view of orders and executions; and (iv) download of orders and executions for recordkeeping purposes.

(3) **FIX DROP** is a real-time order and execution update message that is sent to a Participant after an order been received/modified or an execution has occurred and

contains trade details specific to that Participant. The information includes, among other things, the following: (i) executions; (ii) cancellations; (iii) modifications to an existing order and (iv) busts or post-trade corrections.

(4) QUO DROP provides real-time information regarding orders entered through QUO and the execution of those orders. The QUO DROP data feed is not a trading interface and does not accept order messages.

#### **Section 24. Transaction Price Binding**

The price at which an order is executed shall be binding notwithstanding that an erroneous report in respect thereto may have been rendered, or no report rendered. A report shall not be binding if an order was not actually executed but was reported to have been executed in error.

#### **Section 25. Anonymity**

(a) The transaction reports produced by the System will indicate the details of the transactions, and shall not reveal contra party identities.

(b) Nasdaq shall reveal a Participant's identity in the following circumstances:

(1) when a registered clearing agency ceases to act for a participant, or the Participant's clearing firm, and the registered clearing agency determines not to guarantee the settlement of the Participant's trades;

(2) for regulatory purposes or to comply with an order of an arbitrator or court;

(3) if both Participants to the transaction consent;

(4) Unless otherwise instructed by a Member, Nasdaq will reveal to a member, no later than the end of the day on the date an anonymous trade was executed, when the member's Order has been decremented by another Order submitted by that same member.

#### **Section 26. Message Traffic Mitigation**

For the purpose of message traffic mitigation, based on NOM's traffic with respect to target traffic levels and in accordance with NOM's overall objective of reducing both peak and overall traffic:

(a) NOM will periodically delist options with an average daily volume ("ADV") of less than 100 contracts. Nasdaq will, on a monthly basis, determine the ADV for each series listed on NOM and delist the current series and not list the next series after expiration where the ADV is less than 100 contracts. For options series traded solely on NOM, Nasdaq will delay delisting until there is no open interest in that options series.

(b) NOM will implement a process by which an outbound quote message that has not been sent, but is about to be sent, will not be sent if a more current quote message for the same series is available for sending. This replace on queue functionality will be applied to all options series listed on the Nasdaq Options Market in real time and will not delay the sending of any messages.

(c) When the size associated with a bid or offer increases by an amount less than or equal to a percentage (never to exceed 20%) of the size associated with the previously disseminated bid or offer, NOM will not disseminate the new bid or offer

(d) All message traffic mitigation mechanisms which are used on NOM will be identical for the OPRA "top of the book" broadcast.

### **Section 27. Limitation of Liability**

(a) Except as provided for in Rule 4626, NOM and its affiliates shall not be liable for any losses, damages, or other claims arising out of the NOM Trading System or its use. Any losses, damages, or other claims, related to a failure of the NOM Trading System to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, message, or other data entered into, or created by, the NOM Trading System shall be absorbed by the member, or the member sponsoring the customer, that entered the order, message, or other data into the NOM Trading System.

### **Section 28. Reserved**

#### **Options 4 Options Listing Rules**

\* \* \* \* \*

[Section 5. Reserved]

#### **Section [6]5. Series of Options Contracts Open for Trading**

\* \* \* \* \*

(g) New series of equity options, options on Exchange-Traded Funds, and options on Trust Issued Receipts opened for trading shall be subject to the range limitations set forth in Supplementary Material .01 to this [Section]Rule. [6.]

#### **Supplementary Material to Section [6]5**

.01 [.01] \$1 Strike Price Interval Program

\* \* \* \* \*

(b) Initial and Additional Series. To be eligible for inclusion into the \$1 Strike Price Interval Program, an underlying security must close below \$50 in the primary market on the previous trading day.

After a security is added to the \$1 Strike Price Interval Program, the Exchange may list \$1 strike price intervals from \$1 to \$50 according to the following parameters:

(i) If the price of the underlying stock is equal to or less than \$20, the Exchange may list series with an exercise price up to 100% above and 100% below the price of the underlying stock. However, the foregoing restriction shall not prohibit the listing of at least five (5) strike prices above and below the price of the underlying stock per expiration month in an option class. For example, if the price of the underlying stock is \$2, the Exchange would be permitted to list the following series: \$1, \$2, \$3, \$4, \$5, \$6 and \$7.

(ii) If the price of the underlying stock is greater than \$20, the Exchange may list series with an exercise price up to 50% above and 50% below the price of the underlying security up to \$50.

(iii) For the purpose of adding strikes under the \$1 Strike Price Interval Program, the "price of the underlying stock" shall be measured in the same way as "the price of the underlying security" is as set forth in .06(a) of Supplemental Material to [Section 6]this Rule.

\* \* \* \* \*

**.02** Select Provisions of Options Listing Procedures Plan. Select provisions of the OLPP were adopted by the Exchange as a quote mitigation strategy and are codified in the OLPP.

(a) The exercise price of each options series listed by the Exchange shall be fixed at a price per share which is reasonably close to the price of the underlying equity security, Exchange Traded Fund ("ETF" and referred to as Exchange Traded Fund Shares in Rule 502(h)) or Trust Issued Receipt ("TIR") at or about the time the Exchange determines to list such series. Additionally, except as provided in subparagraphs (b) through (d) below, if the price of the underlying security is less than or equal to \$20, the Exchange shall not list new option series with an exercise price more than 100% above or below the price of the underlying security. However, the foregoing restriction shall not prohibit the listing of at least three exercise prices per expiration month in an option class. Except as provided in Supplementary Material to Section [6]5 at .07(d), if the price of the underlying security is greater than \$20, the Exchange shall not list new option series with an exercise price more than 50% above or below the price of the underlying security.

\* \* \* \* \*

**.16** U.S. Dollar-Settled Foreign Currency Options ("FCOs"). Within each class of approved U.S. Dollar- Settled Foreign Currency options, the Exchange may open for trading series of options expiring in consecutive calendar months ("consecutive month series"), as provided in subparagraph (A), and series of options expiring at three-month intervals ("cycle month series"), as provided in subparagraph (B) of this paragraph. Prior to the opening of trading in any series of U.S. Dollar- Settled FCOs, the Exchange shall fix the expiration month and exercise price of option contracts included in each such series.

(A) Consecutive Month Series

With respect to each class of U.S. Dollar-Settled FCOs, series of options having up to four consecutive expiration months may be opened for trading simultaneously, with the shortest-term series initially having no more than two months to expiration. Additional consecutive month series of the same class may be opened for trading on the Exchange at or about the time a prior consecutive month series expires, and the expiration month of each such new series shall normally be the month immediately succeeding the expiration month of the then outstanding consecutive month series of the same class of options having the longest remaining time to expiration.

(B) Cycle Month Series

The Exchange may designate one expiration cycle for each class of U.S. Dollar-Settled FCOs. An expiration cycle shall consist of four calendar months ("cycle months") occurring at three-month intervals.

With respect to any particular class of U.S. Dollar-Settled FCOs, series of options expiring in the four cycle months designated by the Exchange for that class may be opened for trading simultaneously, with the shortest-term series initially having approximately three months to expiration. Additional cycle month series of the same class may be opened for trading on the Exchange at or about the time a prior cycle month series expires, and the expiration month of each such new series shall normally be approximately three months after the expiration month of the then outstanding cycle month series of the same class of options having the longest remaining time to expiration.

(C) Long-Term Series

The Exchange may list, with respect to any U.S. Dollar-Settled FCOs having up to three years from the time they are listed until expiration. There may be up to ten options series, options having up to thirty-six months from the time they are listed until expiration. There may be up to six additional expiration months. Strike price interval and bid/ask differential rules shall not apply to such options series until the time to expiration is less than nine months.

(D) For each expiration month opened for trading of U.S. Dollar-Settled FCOs, in addition to the strike prices listed by the Exchange pursuant to the Supplementary Material at .16 to this [Section 6]Rule, the Exchange shall also list a single strike price of \$0.01.

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## **Section 6. Reserved**

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## **Section 10. Reserved**

## **Options 4A Options Index Rules**

### **Section 1. Application of Index Rules**

The Sections in this Options 4A are applicable only to index options (options on indices of securities as defined below). The Sections in Options 4A are also applicable to the options provided for in this Options 4A, unless such Sections are specifically replaced or are supplemented by Sections in this Options 4A. Where the Sections in this Options 4A indicate that particular indices or requirements with respect to particular indices will be "Specified," NOM shall file a proposed rule change with the Commission to specify such indices or requirements.

### **Section 2. Definitions**

(a) The term "aggregate exercise price" means the exercise price of the options contract times the index multiplier.

(b) The term "American-style index option" means an option on an industry or market index that can be exercised on any business day prior to expiration.

(c) The term "A.M.-settled index option" means an index options contract for which the current index value at expiration shall be determined as provided in Section 11(a)(5) of this Options 4A.

(d) The term "call" means an options contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase from the Clearing Corporation the current index value times the index multiplier.

(e) The term "current index value" with respect to a particular index options contract means the level of the underlying index reported by the reporting authority for the index, or any multiple or fraction of such reported level specified by NOM. The current index value with respect to a reduced-value long term options contract is one-tenth of the current index value of the related index option. The "closing index value" shall be the last index value reported on a business day.

(f) The term "exercise price" means the specified price per unit at which the current index value may be purchased or sold upon the exercise of the option.

(g) Unless separately defined elsewhere in these Rules, the term "expiration date" means (i) in the case of such an option expiring prior to February 1, 2015, the Saturday immediately following the third Friday of the expiration month of such option contract; and (ii) in the case of such an option expiring on or after February 1, 2015, the third Friday of the expiration month of such option contract, or if such Friday is a day on which the Exchange on which such option is listed is not open for business, the preceding day on which such Exchange is open for business. Notwithstanding the foregoing, in the case of certain options expiring on or after February 1, 2015 that the Clearing Corporation has designated as grandfathered, the term "expiration date" shall mean the Saturday immediately following the third Friday of the expiration month.

(h) The term "European-style index option" means an option on an industry or market index that can be exercised only on the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the last business day prior to the day it expires.

(i) The term "index multiplier" means the amount specified in the contract by which the current index value is to be multiplied to arrive at the value required to be delivered to the holder of a call or by the holder of a put upon valid exercise of the contract.

(j) The term "industry index" and "narrow-based index" mean an index designed to be representative of a particular industry or a group of related industries.

(k) The term "market index" and "broad-based index" mean an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries.

(l) The term "P.M.-settled index option" means an index options contract for which the current index value at expiration shall be determined as provided in Section 11(a)(6) of this Options 4A.

(m) The term "put" means an options contract under which the holder of the option has the right, in accordance with the terms and provisions of the option, to sell to the Clearing Corporation the current index value times the index multiplier.

(n) The term "Quarterly Option Series" means a series in an options class that is approved for listing and trading on the Exchange in which the series is opened for trading on any business day and expires at the close of business on the last business day of a calendar quarter.

(o) The term "reporting authority" with respect to a particular index means the institution or reporting service designated by Nasdaq as the official source for (1) calculating the level of the index from the reported prices of the underlying securities that are the basis

of the index and (2) reporting such level. The reporting authority for each index approved for options trading on NOM shall be specified in Options 4A at Supplementary Material to Section 2.

(p) The term "Short Term Option Series" means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Thursday or Friday that is a business day and that expires on the Friday of the next business week. If a Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Thursday or Friday, respectively.

(q) The term "underlying security" or "underlying securities" with respect to an index options contract means any of the securities that are the basis for the calculation of the index.

### **Options 4A, Supplementary Material to Section 2**

01. The reporting authorities designated by the Exchange in respect of each index underlying an index options contract traded on the Exchange are as provided below.

#### **Index Reporting Authority**

Nasdaq 100 Index - The Nasdaq Stock Market

Mini Nasdaq 100 Index - The Nasdaq Stock Market

PHLX Oil Service Sector<sup>SM</sup> - The Nasdaq Stock Market

PHLX Semiconductor Sector<sup>SM</sup> - The Nasdaq Stock Market

PHLX Housing Sector<sup>TM</sup> - The Nasdaq Stock Market

MSCI EM Index - MSCI Inc.

MSCI EAFE Index - MSCI Inc.

### **Section 3. Designation of a Broad-Based Index**

(a) The component securities of an index underlying a broad-based index option contract need not meet the requirements of Options 4, Section 3 of these Rules (Criteria for Underlying Securities). Except as set forth in subparagraph (b) below, the listing of a class of index options on a broad-based index requires the filing of a proposed rule change to be approved by the SEC under Section 19(b) of the Exchange Act.

(b) NOM may trade options on a broad-based index pursuant to Rule 19b-4(e) of the Securities Exchange Act of 1934, if each of the following conditions is satisfied:



- (1) The index is broad-based, as defined in Section 2(j) of this Rule;
- (2) Options on the index are designated as A.M.-settled;
- (3) The index is capitalization-weighted, modified capitalization weighted, price-weighted, or equal dollar-weighted;
- (4) The index consists of 50 or more component securities;
- (5) Component securities that account for at least ninety-five percent (95%) of the weight of the index have a market capitalization of at least \$75 million, except that component securities that account for at least sixty-five percent (65%) of the weight of the index have a market capitalization of at least \$100 million;
- (6) Component securities that account for at least eighty percent (80%) of the weight of the index satisfy the requirements of Options 4, Section 3 applicable to individual underlying securities;
- (7) Each component security that accounts for at least one percent (1%) of the weight of the index has an average daily trading volume of at least 90,000 shares during the last six month period;
- (8) No single component security accounts for more than ten percent (10%) 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 thirty-three percent (33%) of the weight of the index;
- (9) Each component security must be an "NMS stock" as defined in Rule 600 of Regulation NMS under the Exchange Act;
- (10) Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than twenty percent (20%) of the weight of the index;
- (11) The current index value is widely disseminated at least once every fifteen (15) seconds by OPRA, CTA/CQ, NIDS or one or more major market data vendors during the time options on the index are traded on NOM;
- (12) NOM reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of NOM's current Independent System Capacity Advisor allocation and the number of new messages per second expected to be generated by options on such index;
- (13) An equal dollar-weighted index is rebalanced at least once every calendar quarter;

(14) If an index is maintained by a broker-dealer, the index is calculated by a third-party who is not a broker-dealer, and the broker-dealer has erected an informational barrier around its personnel who have access to information concerning changes in, and adjustments to, the index;

(15) NOM has written surveillance procedures in place with respect to surveillance of trading of options on the index.

(c) The following maintenance listing standards shall apply to each class of index options originally listed pursuant to paragraph (b) above:

(1) The requirements set forth in subparagraphs (b)(1) - (b)(3) and (b)(9) - (b)(15) must continue to be satisfied. The requirements set forth in subparagraphs (b)(5) - (b)(8) must be satisfied only as of the first day of January and July in each year;

(2) The total number of component securities in the index may not increase or decrease by more than ten percent (10%) from the number of component securities in the index at the time of its initial listing. In the event a class of index options listed on NOM fails to satisfy the maintenance listing standards set forth herein, NOM shall not open for trading any additional series of options of that class unless the continued listing of that class of index options has been approved by the SEC under Section 19(b) (2) of the Exchange Act.

(d) MSCI EM Index

(1) NOM may trade options on the MSCI EM Index if each of the following conditions is satisfied:

(A) The index is broad-based, as defined in Options 4A, Section 2(j);

(B) Options on the index are designated as P.M.-settled index options;

(C) The index is capitalization-weighted, price-weighted, modified capitalization-weighted or equal dollar-weighted;

(D) The index consists of 500 or more component securities;

(E) All of the component securities of the index will have a market capitalization of greater than \$100 million;

(F) No single component security accounts for more than fifteen percent (15%) 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 fifty percent (50%) of the weight of the MSCI EM Index;

(G) Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than twenty-two and a half percent (22.5%) of the weight of the index;

(H) The current index value is widely disseminated at least once every fifteen (15) seconds by one or more major market data vendors during the time options on the index are traded on NOM;

(I) NOM reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of NOM's current Independent System Capacity Advisor (ISCA) allocation and the number of new messages per second expected to be generated by options on such index; and

(10) NOM has written surveillance procedures in place with respect to surveillance of trading of options on the index.

(2) The following maintenance listing standards shall apply to each class of index options originally listed pursuant to paragraph (d).

(A) The conditions set forth in subparagraphs (d)(i) (1), (2), (3), (4), (7) (8), (9) and (10) must continue to be satisfied. The conditions set forth in subparagraphs (d)(i) (5) and (6) must be satisfied only as of the first day of January and July in each year;

(B) The total number of component securities in the index may not increase or decrease by more than thirty-five percent (35%) from the number of component securities in the index at the time of its initial listing.

In the event a class of index options listed on NOM fails to satisfy the maintenance listing standards set forth herein, NOM shall not open for trading any additional series of options of that class unless the continued listing of that class of index options has been approved by the Commission under Section 19(b)(2) of the Exchange Act.

(e) MSCI EAFE Index

(1) NOM may trade options on the MSCI EAFE Index if each of the following conditions is satisfied:

(A) The index is broad-based, as defined in Options 4A, Section 2(j);

(B) Options on the index are designated as P.M.-settled index options;

(C) The index is capitalization-weighted, price-weighted, modified capitalization-weighted or equal dollar-weighted;

(D) The index consists of 500 or more component securities;

(E) All of the component securities of the index will have a market capitalization of greater than \$100 million;

(F) No single component security accounts for more than fifteen percent (15%) 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 fifty percent (50%) of the weight of the MSCI EAFE Index;

(G) Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than twenty percent (20%) of the weight of the index;

(H) The current index value is widely disseminated at least once every fifteen (15) seconds by one or more major market data vendors during the time options on the index are traded on NOM;

(I) NOM reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of the NOM's current Independent System Capacity Advisor (ISCA) allocation and the number of new messages per second expected to be generated by options on such index; and

(J) NOM has written surveillance procedures in place with respect to surveillance of trading of options on the index.

(2) The following maintenance listing standards shall apply to each class of index options originally listed pursuant to paragraph (e).

(A) The conditions set forth in subparagraphs (e)(i) (1), (2), (3), (4), (7) (8), (9) and (10) must continue to be satisfied. The conditions set forth in subparagraphs (e)(i) (5) and (6) must be satisfied only as of the first day of January and July in each year;

(B) The total number of component securities in the index may not increase or decrease by more than thirty-five percent (35%) from the number of component securities in the index at the time of its initial listing.

In the event a class of index options listed on NOM fails to satisfy the maintenance listing standards set forth herein, NOM shall not open for trading

any additional series of options of that class unless the continued listing of that class of index options has been approved by the Commission under Section 19(b)(2) of the Exchange Act.

#### **Section 4. Designation of Narrow-Based and Micro-Narrow-Based Index Options**

(a) The component securities of an index underlying a narrow-based index option contract need not meet the requirements of Options 4, Section 3 (Criteria for Underlying Securities). Except as set forth in subparagraph (b) below, the listing of a class of index options on a narrow-based index requires the filing of a proposed rule change to be approved by the SEC under Section 19(b) of the Exchange Act.

(b) *Narrow-Based Index.* NOM may trade options on a narrow-based index pursuant to Rule 19b-4(e) of the Exchange Act, if each of the following conditions is satisfied:

- (1) The options are designated as A.M.-settled index options;
- (2) The index is capitalization-weighted, price-weighted, equal dollar-weighted, or modified capitalization-weighted, and consists of ten or more component securities;
- (3) Each component security has a market capitalization 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 capitalization is at least \$50 million;
- (4) Trading volume of each component security has been at least one million shares for each of the last six months, 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, trading volume has been at least 500,000 shares for each of the last six months;
- (5) In a capitalization-weighted index or a modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index each have had an average monthly trading volume of at least 2,000,000 shares over the past six months;
- (6) No single component security represents 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% (65% for an index consisting of fewer than 25 component securities) of the weight of the index;
- (7) Component securities that account for at least 90% of the weight of the index and at least 80% of the total number of component securities in the index satisfy

the requirements of Options 4, Section 3 applicable to individual underlying securities;

(8) Each component security must be an "NMS stock" as defined in Rule 600 of Regulation NMS of the Securities Exchange Act of 1934.

(9) Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the index;

(10) The current underlying index value will be reported at least once every fifteen seconds during the time the index options are traded on the Exchange;

(11) An equal dollar-weighted index will be rebalanced at least once every calendar quarter; and

(12) If an underlying index is maintained by a broker-dealer, the index is calculated by a third party who is not a broker-dealer, and the broker-dealer has erected a "Chinese Wall" around its personnel who have access to information concerning changes in and adjustments to the index.

(c) *Maintenance Criteria.* The following maintenance listing standards shall apply to each class of index options originally listed pursuant to subsection (b) above:

(1) The requirements stated in subsections (b)(1), (3), (6), (7), (8), (9), (10), (11) and (12) must continue to be satisfied, provided that the requirements stated in subparagraph (b)(6) must be satisfied only as of the first day of January and July in each year;

(2) The total number of component securities in the index may not increase or decrease by more than 33 1/3% from the number of component securities in the index at the time of its initial listing, and in no event may be less than nine component securities;

(3) Trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months;

(4) In a capitalization-weighted index or a modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index each have had an average monthly trading volume of at least 1,000,000 shares over the past six months.

In the event a class of index options listed on NOM fails to satisfy the maintenance listing standards set forth herein, NOM shall not open for trading any additional series of options of that class unless such failure is determined by NOM not to be significant and the Commission concurs in that determination, or unless the continued listing of that class of index options has been approved by the Commission under Section 19(b)(2) of the Exchange Act.

(d) Notwithstanding paragraph (a) above, NOM may trade options on a Micro Narrow-Based Index pursuant to Rule 19b-4(e) of the Exchange Act, if each of the following condition is satisfied:

(1) The Index is a security index:

(A) that has 9 or fewer component securities; or

(B) in which a component security comprises more than 30 percent of the index's weighting; or

(C) in which the 5 highest weighted component securities in the aggregate comprise more than 60 percent of the index's weighting; or

(D) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than \$50,000,000 (or in the case of an index with 15 or more component securities, \$30,000,000) except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security;

(2) The index is capitalization-weighted, modified capitalization-weighted, price-weighted, share weighted, equal dollar weighted, approximate equal-dollar weighted, or modified equal-dollar weighted;

(A) For the purposes of this paragraph (d), an approximate equal-dollar weighted index is composed of one or more securities in which each component security will be weighted equally based on its market price on the index's selection date and the index must be reconstituted and rebalanced if the notional value of the largest component is at least twice the notional volume of the smallest component for fifty percent or more of the trading days in the three months prior to December 31 of each year. For purposes of this provision the "notional value" is the market price of the component times the number of shares of the underlying component in the index. Reconstitution and rebalancing are also mandatory if the

number of components in the index is greater than five at the time of rebalancing. NOM reserves the right to rebalance quarterly at its discretion.

(B) For the purposes of this paragraph (d), a modified equal-dollar weighted index is an index in which each underlying component represents a pre-determined weighting percentage of the entire index. Each component is assigned a weight that takes into account the relative market capitalization of the securities comprising the index. A modified equal-dollar weighted index will be balanced quarterly.

(C) For the purposes of this paragraph (d), a share-weighted index is calculated by multiplying the price of the component security by an adjustment factor. Adjustment factors are chosen to reflect the investment objective deemed appropriate by the designer of the index and will be published by the Exchange as part of the contract specifications. The value of the index is calculated by adding the weight of each component security and dividing the total by an index divisor, calculated to yield a benchmark index level as of a particular date. A share-weighted index is not adjusted to reflect changes in the number of outstanding shares of its components. A share-weighted Micro Narrow-Based Index will not be rebalanced. If a share-weighted Micro Narrow-Based Index fails to meet the maintenance listing standards under Subsection (e) of this Rule, NOM will restrict trading in existing option series to closing transactions and will not issue additional series for that index.

(D) NOM may rebalance any Micro Narrow-Based Index on an interim basis if warranted as a result of extraordinary changes in the relative values of the component securities. To the extent investors with open positions must rely upon the continuity of the options contract on the index, outstanding contracts are unaffected by rebalancings.

(3) Each component security in the index has a minimum market capitalization of at least \$75 million, except that each of the lowest weighted securities in the index that in the aggregate account for no more than 10% of the weight of the index may have a minimum market capitalization of only \$50 million;

(4) The average daily trading volume in each of the preceding six months for each component security in the index is at least 45,500 shares, except that 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 may have an average daily trading volume of only 22,750 shares for each of the last six months;

(5) In a capitalization-weighted index, the lesser of: (1) the five highest weighted component securities in the index each have had an average daily trading volume of at least 90,000 shares over the past six months; or (2) 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 had an average daily trading volume of at least 90,000 shares over the past six months;

(6) Subject to subparagraphs (4) and (5) above, the component securities that account for at least 90% of the total index weight and at least 80% of the total number of component securities in the index must meet the requirements applicable to individual underlying securities;

(7)

(A) Each component security in the index is a "reported security" as defined in Rule 600 of Regulation NMS under the Exchange Act; and

(B) Foreign securities or ADRs that are not subject to comprehensive surveillance sharing agreements do not represent more than 20% of the weight of the index;

(8) The current underlying index value will be reported at least once every fifteen seconds during the time the index options are traded on NOM;

(9) An equal dollar-weighted index will be rebalanced at least once every quarter;

(10) If the underlying index is maintained by a broker-dealer, the index is calculated by a third party who is not a brokerdealer, and the broker-dealer has in place an information barrier around its personnel who have access to information concerning changes in and adjustments to the index;

(11) Each component security in the index is registered pursuant to Section 12 of the Exchange Act; and

(12) Cash settled index options are designated as A.M.-settled options.

(e) The following maintenance listing standards shall apply to each class of index options originally listed pursuant to paragraph (d) above:

(1) The index meets the criteria of paragraph (d)(1) of this Rule;

(2) Subject to subparagraphs (9) and (10) below, the component securities that account for at least 90% of the total index weight and at least 80% of the total number of component securities in the index must meet the requirements of Options 4, Section 3.

(3) Each component security in the index has a market capitalization of at least \$75 million, except that each of the lowest weighted component securities that in

the aggregate account for no more than 10% of the weight of the index may have a market capitalization of only \$50 million;

(4) Each component security must be an "NMS stock" as defined in Rule 600 of Regulation NMS under the Exchange Act; and

(5) Foreign securities or ADRs thereon that are not subject to comprehensive surveillance sharing agreements do not represent more than 20% of the weight of the index;

(6) The current underlying index value will be reported at least once every fifteen seconds during the time the index options are traded on NOM;

(7) If the underlying index is maintained by a broker-dealer, the index is calculated by a third party who is not a broker-dealer, and the broker-dealer has in place an information barrier around its personnel who have access to information concerning changes in and adjustments to the index;

(8) The total number of component securities in the index may not increase or decrease by more than 33 1/3% from the number of component securities in the index at the time of its initial listing;

(9) Trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months;

(10) In a capitalization-weighted index and a modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index each have had an average monthly trading volume of at least 1,000,000 shares over the past six months;

(11) Each component security in the index is registered pursuant to Section 12 of the Exchange Act;

(12) In an approximate equal-dollar weighted index, the index must be reconstituted and rebalanced if the notional value of the largest component is at least twice the notional volume of the smallest component for fifty percent or more of the trading days in the three months prior to December 31 of each year. For purposes of this provision the "notional value" is the market price of the component times the number of shares of the underlying component in the index. Reconstitution and rebalancing are also mandatory if the number of components

in the index is greater than five at the time of rebalancing. NOM reserves the right to rebalance quarterly at its discretion;

(13) In a modified equal-dollar weighted index NOM will rebalance the index quarterly;

(14) In a share-weighted index, if a share-weighted Micro Narrow-Based Index fails to meet the maintenance listing standards under paragraph (e) of this Rule NOM will not re-balance the index, will restrict trading in existing option series to closing transactions, and will not issue additional series for that index; and

(15) In the event a class of index options listed on NOM fails to satisfy the maintenance listing standards set forth herein, NOM shall not open for trading any additional series of options of that class unless such failure is determined by NOM not to be significant and the Commission concurs in that determination, or unless the continued listing of that class of index options has been approved by the Commission under Section 19(b)(2) of the Exchange Act.

#### **Section 5. Dissemination of Information**

(a) NOM shall disseminate, or shall assure that the current index value is disseminated, after the close of business and from timeto-time on days on which transactions in index options are made on NOM.

(b) NOM shall maintain, or shall assure that the current index value is maintained in files available to the public, information identifying the stocks whose prices are the basis for calculation of the index and the method used to determine the current index value.

#### **Section 6. Position Limits for Broad-Based Index Options**

(a) Options Participants shall comply with the following applicable rules:

(1) rules of the Chicago Board Options Exchange Incorporated ("CBOE") with respect to position limits for broad-based index options if the broad-based index options are traded on CBOE and NOM;

(2) rules of Nasdaq PHLX LLC ("PHLX") with respect to position limits for the following broad-based index options: MSCI EM and MSCI EAFE or any PHLX proprietary product;

(3) rules of NOM for broad-based index options with respect to position limits for broad-based index options if the broad-based index options are traded only on NOM and not traded on CBOE and are not listed in (2) above.

(b) Index options contracts shall not be aggregated with options contracts on any stocks whose prices are the basis for calculation of the index.

(c) Positions in reduced-value index options shall be aggregated with positions in full-value indices. For such purposes, ten reduced-value contracts shall equal one contract.

**Section 7. Position Limits for Industry and Micro-Narrow Based Index Options**

(a) Options Participants shall comply with the following applicable rules:

(1) rules of the Chicago Board Options Exchange Incorporated ("CBOE") with respect to position limits for Industry and Micro-Narrow Based Index Options if the Industry and Micro-Narrow Based Index Options are traded on CBOE and NOM;

(2) rules of Nasdaq PHLX LLC ("PHLX") with respect to position limits for Phlx proprietary products shall be the Phlx position limits;

(3) rules of NOM with respect to position limits for Industry and Micro-Narrow Based Index Options if the Industry and Micro-Narrow Based Index Options are traded only on NOM and not traded on CBOE and are not listed in (2) above.

(b) Index options contracts shall not be aggregated with options contracts on any stocks whose prices are the basis for calculation of the index.

(c) Positions in reduced-value index options shall be aggregated with positions in full-value index options. For such purposes, ten (10) reduced-value options shall equal one (1) full-value contract.

**Section 8. Reserved****Section 9. Exemptions from Position Limits**

An Options Participant may rely upon any available exemptions from applicable position limits granted from time to time by an Options Exchange for any options contract traded on NOM provided that such Options Participant (1) provides Nasdaq Regulation with a copy of any written exemption issued by another Options Exchange or a written, description of any exemption issued by another Options Exchange other than in writing containing sufficient detail for Nasdaq Regulation to verify the validity of that exemption with the issuing Exchange, and (2) fulfills all conditions precedent for such exemption and complies at all times with the requirements of such exemptions with respect to their trading on NOM.

**Section 10. Exercise Limits**

(a) In determining compliance with Options 9, Section 15 (Exercise Limits), exercise limits for index options contracts shall be equivalent to the position limits prescribed for options contracts with the nearest expiration date in Section 5 or Section 10 of Options 4A.

(b) For a market-maker granted an exemption to position limits pursuant to Options 4A, Section 9 (Exemptions from Position Limits), the number of contracts that can be exercised over a five business day period shall equal the market-maker's exempted position.

(c) In determining compliance with exercise limits applicable to stock index options, options contracts on a stock index group shall not be aggregated with options contracts on an underlying stock or stocks included in such group, options contracts on one stock index group shall not be aggregated with options contracts on any other stock index group.

(d) With respect to index options contracts for which an exemption has been granted in accordance with the provisions of Section 9 of Options 4A, the exercise limit shall be equal to the amount of the exemption.

### **Section 11. Trading Sessions**

(a) Days and Hours of Business. Except as otherwise provided in this Rule or under unusual conditions as may be determined by Nasdaq Regulation, transactions in index options may be effected on NOM between the hours of 9:30 a.m. and 4:15 p.m. Eastern time. With respect to options on foreign indexes, Nasdaq Regulation shall determine the days and hours of business, except that transactions in options on the MSCI EAFE Index and MSCI EM Index may be effected on NOM between the hours of 9:30 a.m. and 4:15 p.m. Eastern time. With respect to the MSCI EAFE Index, transactions may be effected on NOM until 11:00 a.m. Eastern Time on the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the last business day before its expiration date.

(b) To begin trading at 9:30 am, an opening shall be held in each class of index options as provided in Section 9 of Options 4A (Opening and Halt Cross).

(c) Instituting Halts and Suspensions. Trading on NOM in any index option shall be halted or suspended whenever trading in underlying securities whose weighted value represents more than twenty percent (20%), in the case of a broad based index, and ten percent (10%) for all other indices, of the index value is halted or suspended. Nasdaq Regulation also may halt trading in an index option when, in his or her judgment, such action is appropriate in the interests of a fair and orderly market and to protect investors. Among the facts that may be considered are the following:

(1) whether all trading has been halted or suspended in the market that is the primary market for a plurality of the underlying stocks;

(2) whether the current calculation of the index derived from the current market prices of the stocks is not available;

(3) the extent to which the opening has been completed or other factors regarding the status of the opening; and

(4) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present, including, but not limited to, the activation of price limits on futures exchanges.

(d) Resumption of Trading Following a Halt or Suspension. Trading in options of a class or series that has been the subject of a halt or suspension by Nasdaq Regulation may resume if Nasdaq Regulation determines that the interests of a fair and orderly market are served by a resumption of trading. Among the factors to be considered in making this determination are whether the conditions that led to the halt or suspension are no longer present, and the extent to which trading is occurring in stocks underlying the index. At the end of a halt, trading in each class of index options shall resume as provided in Options 3, Section 9 of these Rules (Trading Halts).

(e) Circuit Breakers. Options 3, Section 9 of these Rules (Unusual Market Conditions) applies to index options trading with respect to the initiation of a market-wide trading halt commonly known as a "circuit breaker."

(f) Special Provisions for Foreign Indices. When the hours of trading of the underlying primary securities market for an index option do not overlap or coincide with those of NOM, all of the provisions as described in paragraphs (c), (d) and (e) above shall not apply except for (c)(4).

(g) Pricing When Primary Market Does Not Open. When the primary market for a security underlying the current index value of an index option does not open for trading on a given day, which is an expiration day, for purposes of calculating the settlement price at expiration, the last reported sale price of the security from the previous trading day shall be used. This procedure shall not be used if the current index value at expiration is fixed in accordance with the Rules and By-Laws of the Clearing Corporation.

## **Section 12. Terms of Index Options Contracts**

### **(a) General.**

(1) Meaning of Premium Bids and Offers. Bids and offers shall be expressed in terms of dollars and cents per unit of the index.

(2) Exercise Prices. NOM shall determine fixed-point intervals of exercise prices for call and put options.

(3) Expiration Months. Index options contracts may expire at three (3) month intervals or in consecutive months. NOM may list up to six (6) expiration months at any one time, but will not list index options that expire more than twelve (12) months out.

(4) "European-Style Exercise." The following European-style index options, some of which may be A.M.-settled as provided in paragraph (a)(5) or P.M.-settled as provided in paragraph (a)(6), are approved for trading on NOM:

(A) Nasdaq 100 Index.

- (B) Mini Nasdaq 100 Index.
- (C) PHLX Oil Service Sector <sup>SM</sup>.
- (D) PHLX Housing Sector <sup>TM</sup>.
- (E) MSCI EM Index.
- (F) MSCI EAFE Index.

(5) A.M.-Settled Index Options. The last day of trading for A.M.-settled index options shall be the business day prior to the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, the second business day preceding the expiration date. The current index value at the expiration of an A.M.-settled index option shall be determined, for all purposes under these Rules and the Rules of the Clearing Corporation, on the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the last business day before its expiration date, by reference to the reported level of such index as derived from first reported sale (opening) prices of the underlying securities on such day, except that:

(A) In the event that the primary market for an underlying security does not open for trading on that day, the price of that security shall be determined, for the purposes of calculating the current index value at expiration, as set forth in Section 11(g) of this Options 4A, unless the current index value at expiration is fixed in accordance with the Rules and By-Laws of the Clearing Corporation; and

(B) In the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading on that day, the price of that security, for the purposes of calculating the current index value at expiration, shall be the last reported sale price of the security. The following A.M.-settled index options are approved for trading on NOM:

- (i) Nasdaq 100 Index.
- (ii) Mini Nasdaq 100 Index.
- (iii) PHLX Oil Service Sector <sup>SM</sup>.
- (iv) PHLX Semiconductor Sector <sup>SM</sup>.
- (v) PHLX Housing Sector <sup>TM</sup>.

(6) P.M. - Settled Index Options. The last day of trading for P.M.-settled index options shall be the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the last business day before its expiration date. The current index value at expiration of the index is determined by the last reported sale price of each component security. In the event that the primary market for an underlying security does not open for trading on the expiration date, the price of that security shall be the last reported sale price prior to the expiration date. The following P.M.-settled index options are approved for trading on NOM:

(A) MSCI EM Index.

(B) MSCI EAFE Index.

(b) Long-Term Index Options Series.

(1) Notwithstanding the provisions of Paragraph (a)(3), above, NOM may list long-term index options series that expire from nine (9) to sixty (60) months from the date of issuance.

(A) Index long term options series may be based on either the full or reduced value of the underlying index. There may be up to ten (10) expiration months, none further out than sixty (60) months. Strike price interval, bid/ask differential and continuity Rules shall not apply to such options series until the time to expiration is less than nine (9) months.

(B) When a new Index long term options series is listed, such series will be opened for trading either when there is buying or selling interest, or forty (40) minutes prior to the close, whichever occurs first. No quotations will be posted for such options series until they are opened for trading.

(2) Reduced-Value Long Term Options Series.

(A) Reduced-value long term options series may be approved for trading on Specified (as provided in Section 1 of this Options 4A) indices.

(B) Expiration Months. Reduced-value long term options series may expire at six-month intervals. When a new expiration month is listed, series may be near or bracketing the current index value. Additional series may be added when the value of the underlying index increases or decreases by ten (10) to fifteen (15) percent.

(c) Procedures for Adding and Deleting Strike Prices. The procedures for adding and deleting strike prices for index options are provided in Options 4, Section 6 of these Rules (Series of Options Contracts Open for Trading), as amended by the following:



(1) The interval between strike prices will be no less than \$5.00; provided, that in the case of the following classes of index options, the interval between strike prices will be no less than \$2.50:

(A) Nasdaq 100 Index, if the strike price is less than \$200.

(B) Mini Nasdaq 100 Index, if the strike price is less than \$200.

(C) PHLX Oil Service Sector <sup>SM</sup>, if the strike price is less than \$200.

(D) PHLX Semiconductor Sector <sup>SM</sup>, if the strike price is less than \$200.

(E) PHLX Housing Sector <sup>TM</sup>, if the strike price is less than \$200.

(F) MSCI EM Index, if the strike price is less than \$200.

(G) MSCI EAFE Index, if the strike price is less than \$200.

(2) New series of index options contracts may be added up to the fourth business day prior to the business day of expiration, or, in the case of an index option contract expiring on a day that is not a business day, up to the fifth business day prior to expiration.

(3) When new series of index options with a new expiration date are opened for trading, or when additional series of index options in an existing expiration date are opened for trading as the current value of the underlying index to which such series relate moves substantially from the exercise prices of series already opened, the exercise prices of such new or additional series shall be reasonably related to the current value of the underlying index at the time such series are first opened for trading. In the case of all classes of index options, the term "reasonably related to the current value of the underlying index" shall have the meaning set forth in paragraph (c)(4) below.

(4) Notwithstanding any other provision of this paragraph (c), NOM may open for trading additional series of the same class of index options as the current index value of the underlying index moves substantially from the exercise price of those index options that already have been opened for trading on NOM. The exercise price of each series of index options opened for trading on NOM shall be reasonably related to the current index value of the underlying index to which such series relates at or about the time such series of options is first opened for trading on NOM. The term "reasonably related to the current index value of the underlying index" means that the exercise price is within thirty percent (30%) of the current index value. NOM may also open for trading additional series of index options that are more than thirty percent (30%) away from the current index value, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers.

Market-makers trading for their own account shall not be considered when determining customer interest under this provision.

(d) Index Level. The reported level of the underlying index that is calculated by the reporting authority for purposes of determining the current index value at the expiration of an A.M.-settled index option may differ from the level of the index that is separately calculated and reported by the reporting authority and that reflects trading activity subsequent to the opening of trading in any of the underlying securities.

(e) Index Values for Settlement. The Rules of the Clearing Corporation specify that, unless the NOM Rules provide otherwise, the current index value used to settle the exercise of an index options contract shall be the closing index for the day on which the index options contract is exercised in accordance with the Rules of the Clearing Corporation or, if such day is not a business day, for the most recent business day.

(f) Index Level at Expiration . With respect to any securities index on which options are traded on NOM, the source of the prices of component securities used to calculate the current index level at expiration is determined by the reporting authority for that index.

(g)

(1) **Quarterly Options Series Program.** The Exchange may list and trade options series that expire at the close of business on the last business day of a calendar quarter ("Quarterly Options Series"). The Exchange may list Quarterly Options Series for up to five (5) currently listed options classes that are either index options or options on exchange traded funds ("ETF"). In addition, the Exchange may also list Quarterly Options Series on any options classes that are selected by other securities exchanges that employ a similar program under their respective rules. The Exchange may list series that expire at the end of the next consecutive four (4) calendar quarters, as well as the fourth quarter of the next calendar year.

(A) The Exchange will not list a Short Term Option Series on an options class the expiration of which coincides with that of a Quarterly Options Series on that same options class.

(B) Quarterly Options Series shall be P.M. settled.

(C) The strike price of each Quarterly Options Series will be fixed at a price per share, with at least two, but not more than five, strike prices above and two, but not more than five, strike prices below the value of the underlying security at about the time that a Quarterly Options Series is opened for trading on the Exchange. The Exchange may open for trading additional Quarterly Options Series of the same class if the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the current index value of the underlying index moves substantially from the exercise price of those Quarterly Options Series that already have been opened for trading on the Exchange. The

exercise price of each Quarterly Options Series opened for trading on the Exchange shall be reasonably related to the current index value of the underlying index to which such series relates at or about the time such series of options is first opened for trading on the Exchange. The term "reasonably related to the current index value of the underlying index" means that the exercise price is within thirty percent (30%) of the current index value. The Exchange may also open for trading additional Quarterly Options Series that are more than thirty percent (30%) away from the current index value, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market-makers trading for their own account shall not be considered when determining customer interest under this provision. The Exchange may open additional strike prices of a Quarterly Options Series that are above the value of the underlying index provided that the total number of strike prices above the value of the underlying index is no greater than five. The Exchange may open additional strike prices of a Quarterly Options Series that are below the value of the underlying index provided that the total number of strike prices below the value of the underlying index is no greater than five. The opening of any new Quarterly Options Series shall not affect the series of options of the same class previously opened.

(D) The interval between strike prices on Quarterly Options Series shall be the same as the interval for strike prices for series in that same options class that expire in accordance with the normal monthly expiration cycle.

Except as otherwise provided, all Exchange rules applicable to stock index options will also be applicable to quarterly expiring index options listed pursuant to this section.

(h)

(1) Short Term Option Series Program. After an index option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day ("Short Term Option Opening Date") series of options on that class that expire on the Friday of the following business week that is a business day ("Short Term Option Expiration Date"). If the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on the Friday of the following business week, the Short Term Option Expiration Date will be the first business day immediately prior to that Friday. Regarding Short Term Option Series:

(A) The Exchange may select up to thirty (30) currently listed option classes on which Short Term Option Series may be opened on any Short Term Option Opening Date. In addition to the thirty-option class restriction, the Exchange also may list Short Term Option Series on any

option classes that are selected by other securities exchanges that employ a similar program under their respective rules. For each index option class eligible for participation in the Short Term Option Series Program, the Exchange may open up to twenty (20) Short Term Option Series on index options for each expiration date in that class. The Exchange may also open Short Term Option Series that are opened by other securities exchanges in option classes selected by such exchanges under their respective short term option rules.

(B) No Short Term Option Series on an index option class may expire in the same week during which any monthly option series on the same index class expire or, in the case of Quarterly Options Series, on an expiration that coincides with an expiration of Quarterly Option Series on the same index class.

(C) The strike price of each Short Term Option Series will be fixed at a price per share, with approximately the same number of strike prices being opened above and below the calculated value of the underlying index at about the time that the Short Term Option Series are initially opened for trading on the Exchange (e.g., if seven (7) series are initially opened, there will be at least three (3) strike prices above and three (3) strike prices below the value of the underlying security or calculated index value). Any strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current value of the underlying index.

(D) If the Exchange has opened less than twenty (20) Short Term Option Series for a Short Term Option Expiration Date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the current value of the underlying index moves substantially from the exercise price or prices of the series already opened. Any additional strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current value of the underlying index. The Exchange may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current value of the underlying index provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account shall not be considered when determining customer interest under this provision. The opening of the new Short Term Option Series shall not affect the series of options of the same class previously opened.

(E) The interval between strike prices on Short Term Option Series shall be the same as the strike prices for series in that same index option class that expire in accordance with the normal monthly expiration cycle.

(1) Notwithstanding any provisions in this Rule, the interval between strike prices of series of options on the PHLX Oil Service Sector<sup>SM</sup>, PHLX Semiconductor Sector<sup>SM</sup>, and PHLX Housing Sector<sup>TM</sup> (individually the "\$1 Index" and together the "\$1 Indexes"), which may also be known as industry indexes, will be \$1 or greater, subject to following conditions:

(a) Initial Series. The Exchange may list series at \$1 or greater strike price intervals for each \$1 Index, and will list at least two strike prices above and two strike prices below the current value of each \$1 Index at about the time a series is opened for trading on the Exchange. The Exchange shall list strike prices for each \$1 Index that are within 5 points from the closing value of each \$1 Index on the preceding day.

(b) Additional Series. Additional series of the same class of each \$1 Index may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when each underlying \$1 Index moves substantially from the initial exercise price or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices shall be within thirty percent (30%) above or below the closing value of each \$1 Index. The Exchange may also open additional strike prices that are more than 30% above or below each current \$1 Index value provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account shall not be considered when determining customer interest under this provision. In addition to the initial listed series, the Exchange may list up to sixty (60) additional series per expiration month for each series in \$1 Indexes.

(2) The Exchange shall not list LEAPS on \$1 Indexes at intervals less than \$2.50.

(3)

(A) Delisting Policy. With respect to each \$1 Index added pursuant to the above paragraphs, the Exchange will regularly review series that are outside a range of five (5) strikes above and five (5) strikes below the current value of each \$1 Index, and in each \$1 Index may delist series with no open interest in both the put and the call series having a: (A) strike higher than the highest strike price with open interest in the put and/or call series for a given expiration

month; and (B) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

(B) Notwithstanding the above referenced delisting policy, customer requests to add strikes and/or maintain strikes in \$1 Index options eligible for delisting may be granted.

### **Section 13. Debit Put Spread Cash Account Transactions**

Debit put spread positions in European-style, broad-based index options traded on NOM (hereinafter "debit put spreads") may be maintained in a cash account as defined by Federal Reserve Board Regulation T Section 220.8 by a Public Customer, provided that the following procedures and criteria are met:

(a) The customer has received Nasdaq Regulation approval to maintain debit put spreads in a cash account carried by an Options Participant. A customer so approved is hereinafter referred to as a "spread exemption customer."

(b) The spread exemption customer has provided all information required on NOM approved forms and has kept such information current.

(c) The customer holds a net long position in each of the stocks of a portfolio that has been previously established or in securities readily convertible, and additionally in the case of convertible bonds economically convertible, into common stocks which would comprise a portfolio. The debit put spread position must be carried in an account with a member of a self regulatory organization participating in the Intermarket Surveillance Group.

(d) The stock portfolio or its equivalent is composed of net long positions in common stocks in at least four industry groups and contains at least twenty (20) stocks, none of which accounts for more than fifteen percent (15%) of the value of the portfolio (hereinafter "qualified portfolio"). To remain qualified, a portfolio must at all times meet these standards notwithstanding trading activity in the stocks.

(e) The exemption applies to European-style broad-based index options dealt in on NOM to the extent the underlying value of such options position does not exceed the unhedged value of the qualified portfolio. The unhedged value would be determined as follows: (1) the values of the net long or short positions of all qualifying products in the portfolio are totaled; (2) for positions in excess of the standard limit, the underlying market value (A) of any economically equivalent opposite side of the market calls and puts in broad-based index options, and (B) of any opposite side of the market positions in stock index futures, options on stock index futures, and any economically equivalent opposite side of the market positions, assuming no other hedges for these contracts exist, is subtracted from the qualified portfolio; and (3) the market value of the resulting unhedged portfolio is equated to the appropriate number of exempt contracts as follows- -the unhedged qualified portfolio is divided by the correspondent closing index value and the quotient is then divided by the index multiplier or 100.

(f) A debit put spread in NOM-traded broad-based index options with European-style exercises is defined as a long put position coupled with a short put position overlying the same broad-based index and having an equivalent underlying aggregate index value, where the short put(s) expires with the long put(s), and the strike price of the long put(s) exceeds the strike price of the short put(s). A debit put spread will be permitted in the cash account as long as it is continuously associated with a qualified portfolio of securities with a current market value at least equal to the underlying aggregate index value of the long side of the debit put spread.

(g) The qualified portfolio must be maintained with either an Options Participant, another broker-dealer, a bank, or securities depository.

(h) The spread exemption customer shall agree promptly to provide Nasdaq Regulation any information requested concerning the dollar value and composition of the customer's stock portfolio, and the current debit put spread positions.

(1) The spread exemption customer shall agree to and any Options Participant carrying an account for the customer shall:

(A) comply with all NOM Rules and regulations;

(B) liquidate any debit put spreads prior to or contemporaneously with a decrease in the market value of the qualified portfolio, which debit put spreads would thereby be rendered excessive; and

(C) promptly notify Nasdaq Regulation of any change in the qualified portfolio or the debit put spread position which causes the debit put spreads maintained in the cash account to be rendered excessive.

(i) If any Options Participant carrying a cash account for a spread exemption customer with a debit put spread position dealt in on NOM has a reason to believe that as a result of an opening options transaction the customer would violate this spread exemption, and such opening transaction occurs, then the Options Participant has violated this Rule.

(j) Violation of any of these provisions, absent reasonable justification or excuse, shall result in withdrawal of the spread exemption and may form the basis for subsequent denial of an application for a spread exemption hereunder.

#### **Section 14. Disclaimers**

(a) Applicability of Disclaimers. The disclaimers in paragraph (b) below shall apply to the reporting authorities identified in Supplementary .02 to Options 4A, Section 2.

(b) Disclaimer. No reporting authority, and no affiliate of a reporting authority (each such reporting authority, its affiliates, and any other entity identified in this Rule are referred to collectively as a "Reporting Authority"), makes any warranty, express or implied, as to

the results to be obtained by any person or entity from the use of an index it publishes, any opening, intraday or closing value therefore, or any data included therein or relating thereto, in connection with the trading of any options contract based thereon or for any other purpose. The Reporting Authority shall obtain information for inclusion in, or for use in the calculation of, such index from sources it believes to be reliable, but the Reporting Authority does not guarantee the accuracy or completeness of such index, any opening, intra-day or closing value therefore, or any data included therein or related thereto. The Reporting Authority hereby disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to such index, any opening, intra-day, or closing value therefore, any data included therein or relating thereto, or any options contract based thereon. The Reporting Authority shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of such index, any opening, intra-day or closing value therefore, any data included therein or relating thereto, or any options contract based thereon, or arising out of any errors or delays in calculating or disseminating such index.

(c) MSCI Disclaimers

(A) With respect to the MSCI EM Index, the contracts are not sponsored, endorsed, sold or promoted by MSCI Inc., any affiliate of MSCI or any other party involved in, or related to, making or compiling any Indexes. The contracts have not been passed on by MSCI, any of its affiliates or any other party involved in, or related to, making or compiling any Indexes as to their legality or suitability with respect to any person or entity. MSCI, its affiliates and any other party involved in, or related to, making or compiling the MSCI EM Index do not guarantee the originality, accuracy and/or completeness of the MSCI EM Index or any data included therein. Neither MSCI, any of its affiliates nor any other party involved in, or related to, making or compiling the MSCI EM Index makes any express or implied warranties, and expressly disclaims all warranties of merchantability and fitness for a particular purpose or use with respect to the contract, the MSCI EM Index or any data included therein. Without limiting any of the foregoing, in no event shall MSCI, any of its affiliates or any other party involved in, or related to, making or compiling the MSCI EM Index have any liability for any direct, special, punitive, indirect, or consequential damages (including lost profits), even if notified of the possibility of such damages, claims, losses or expenses relating to any futures or options contracts or caused by any errors or delays in calculating or disseminating the MSCI EM Index. Neither MSCI, any of its affiliates nor any other party involved in, or related to, making or compiling the MSCI EM Index has any obligation to take the needs of the issuers of the contracts, the owners of the contracts or NOM into consideration in determining, composing or calculating the Indexes. Neither MSCI, its affiliates nor any other party involved in, or related to, making or compiling the MSCI EM Index is responsible for or have participated in the determination of the timing of,



prices at, or quantities of the contracts to be issued or in the determination or calculation of the equation by which the contracts are redeemable.

(B) With respect to the MSCI EAFE Index, the contracts are not sponsored, endorsed, sold or promoted by MSCI Inc. ("MSCI"), any affiliate of MSCI or any other party involved in, or related to, making or compiling any Indexes. The contracts have not been passed on by MSCI, any of its affiliates or any other party involved in, or related to, making or compiling any Indexes as to their legality or suitability with respect to any person or entity. MSCI, its affiliates and any other party involved in, or related to, making or compiling the MSCI EAFE Index do not guarantee the originality, accuracy and/or completeness of the MSCI EAFE Index or any data included therein. Neither MSCI, any of its affiliates nor any other party involved in, or related to, making or compiling the MSCI EAFE Index makes any express or implied warranties, and expressly disclaims all warranties of merchantability and fitness for a particular purpose or use with respect to the contract, the MSCI EAFE Index or any data included therein. Without limiting any of the foregoing, in no event shall MSCI, any of its affiliates or any other party involved in, or related to, making or compiling the MSCI EAFE Index have any liability for any direct, special, punitive, indirect, or consequential damages (including lost profits), even if notified of the possibility of such damages, claims, losses or expenses relating to any futures or options contracts or caused by any errors or delays in calculating or disseminating the MSCI EAFE Index. Neither MSCI, any of its affiliates nor any other party involved in, or related to, making or compiling the MSCI EAFE Index has any obligation to take the needs of the issuers of the contracts, the owners of the contracts or NOM into consideration in determining, composing or calculating the Indexes. Neither MSCI, its affiliates nor any other party involved in, or related to, making or compiling the MSCI EAFE Index is responsible for or have participated in the determination of the timing of, prices at, or quantities of the contracts to be issued or in the determination or calculation of the equation by which the contracts are redeemable.

### **Section 15. Exercise of American-style Index Options**

No Options Participant may prepare, time stamp or submit an exercise instruction for an American-style index options series if the Options Participant knows or has reason to know that the exercise instruction calls for the exercise of more contracts than the then "net long position" of the account for which the exercise instruction is to be tendered. For purposes of this Rule: (i) the term "net long position" shall mean the net position of the account in such option at the opening of business of the day of such exercise instruction, plus the total number of such options purchased that day in opening purchase transactions up to the time of exercise, less the total number of such options sold that day in closing sale transactions up to the time of exercise; (ii) the "account" shall be the individual account of the particular customer, market-maker or "non-customer" (as that term is defined in the By-Laws of the Clearing Corporation) who wishes to exercise; and (iii) every transaction in an options series effected by a market-maker in a market-maker's account shall be deemed to be a closing transaction in respect of the market-maker's then

positions in such options series. No Options Participant may adjust the designation of an "opening transaction" in any such option to a "closing transaction" except to remedy mistakes or errors made in good faith.

### **Section 16. Reserved**

### **Options 5 [Options Trade Administration] Order Protection and Locked and Crossed Markets**

#### **[Section 100 Exercises and Deliveries**

#### **Section 101 Exercise of Options Contracts**

(a) Subject to the restrictions set forth in Chapter III, Section 9 of these Rules (Exercise Limits) and to such restrictions as may be imposed pursuant to Chapter III, Section 12 of these Rules (Other Restrictions on Options Transactions and Exercises) or pursuant to the Rules of the Clearing Corporation, an outstanding options contract may be exercised during the time period specified in the Rules of the Clearing Corporation by the tender to the Clearing Corporation of an exercise notice in accordance with the Rules of the Clearing Corporation. An exercise notice may be tendered to the Clearing Corporation only by the Clearing Participant in the account of which such options contract is carried with the Clearing Corporation. Participants may establish fixed procedures as to the latest time they will accept exercise instructions from customers.

(b) Special procedures apply to the exercise of equity options on the business day of their expiration, or in the case of option contracts expiring on a day that is not a business day, on the last business day before their expiration ("expiring options"). Unless waived by The Options Clearing Corporation (also known in this Rule as the Clearing Corporation), expiring options are subject to the Exercise-by-Exception ("Ex-by-Ex") procedure under Clearing Corporation Rule 805. This Rule provides that, unless contrary instructions are given, option contracts that are in-the-money by specified amounts shall be automatically exercised. In addition to the Rules of the Clearing Corporation, the following Exchange requirements apply with respect to expiring options. Option holders desiring to exercise or not exercise expiring options must either:

- (1) take no action and allow exercise determinations to be made in accordance with the Clearing Corporation's Ex-by-Ex procedure where applicable; or
- (2) submit a "Contrary Exercise Advice" to the Exchange as specified in paragraph (d) below.

(c) Exercise cut-off time. Option holders have until 5:30 p.m. Eastern Time on the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the business day immediately prior to the expiration date, to make a final decision to exercise or not exercise an expiring option. Participants may not accept exercise instructions for customer or non-customer accounts after 5:30 p.m. Eastern Time.

(d) Submission of Contrary Exercise Advices. A Contrary Exercise Advice is a communication either: (i) to not exercise an option that would be automatically exercised under the Clearing Corporation's Ex-by-Ex procedure, or (ii) to exercise an option that would not be automatically exercised under the Clearing Corporation's Ex-by-Ex procedure.

A Contrary Exercise Advice may be submitted by a Participant by using the Clearing Corporation's ENCORE system, a Contrary Exercise Advice form of any other national securities exchange of which the firm is a Participant and where the option is listed, or such other method as the Exchange may prescribe. A Contrary Exercise Advice may be canceled by filing an Advice Cancel at any time up to the submission cut-off times specified below.

For customer accounts, Participants have until 7:30 p.m. Eastern Time to submit a Contrary Exercise Advice to the Exchange.

For noncustomer accounts, Participants have until 7:30 p.m. Eastern Time to submit a Contrary Exercise Advice to the Exchange if such Participant employs an electronic submission procedure with time stamp for the submission of exercise instructions by option holders. Participants are required to manually submit a Contrary Exercise Advice by 5:30 p.m. for non-customer accounts if such Participants do not employ an electronic submission procedure with time stamp for the submission of exercise instructions by option holders.

(e) If the Clearing Corporation has waived the Ex-by-Ex procedure for an options class, Participants must either:

- (1) submit to the Exchange, a Contrary Exercise Advice, in a manner specified by the Exchange, within the time limits specified in paragraph (d) above if the holder intends to exercise the option; or
- (2) take no action and allow the option to expire without being exercised. In cases where the Ex-by-Ex procedure has been waived, the Rules of the Clearing Corporation require that Participants wishing to exercise such options must submit an affirmative Exercise Notice to the Clearing Corporation, whether or not a Contrary Exercise Advice has been filed with the Exchange.

(f) A Participant that has accepted the responsibility to indicate final exercise decisions on behalf of another Participant or non-Participant broker-dealer shall take the necessary steps to ensure that such decisions are properly indicated to the Exchange. Such Participant may establish a processing cut-off time prior to the Exchange's exercise cutoff time at which it will no longer accept final exercise decisions in expiring options from option holders for whom it indicates final exercise decisions. Each Participant that indicates final exercise decisions through another broker-dealer is responsible for ensuring that final exercise decisions for all of its proprietary (including market maker)

and public customer account positions are indicated in a timely manner to such brokerdealer.

(g) Notwithstanding the foregoing, Participants may make final exercise decisions after the exercise cutoff time but prior to expiration without having submitted a Contrary Exercise Advice in the circumstances listed below. A memorandum setting forth the circumstance giving rise to instructions after the exercise cutoff time shall be maintained by the Participant and a copy thereof shall be filed with the Exchange no later than 12:00 noon Eastern Time on the first business day following the respective expiration. An exercise decision after the exercise cut-off time may be made:

- (1) in order to remedy mistakes or errors made in good faith; or
- (2) where exceptional circumstances have restricted an option holder's ability to inform a Participant of a decision regarding exercise, or a Participant's ability to receive an option holder's decision by the cut-off time. The burden of establishing any of the above exceptions rests solely on the Participant seeking to rely on such exceptions.

(h) In the event the Exchange provides advance notice on or before 5:30 p.m. Eastern Time on the business day immediately prior to the business day of their expiration, or, in the case of an option contract expiring on a day that is not a business day, the second business day immediately prior to the expiration date indicating that a modified time for the close of trading in equity options on such business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, such last business day before expiration will occur, then the deadline to make a final decision to exercise or not exercise an expiring option shall be 1 hour 30 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. Eastern Time deadline found in Paragraph (c) of this Section 101. However, Participants have until 7:30 Eastern Time to deliver a Contrary Exercise Advice or Advice Cancel to the Exchange for customer accounts and noncustomer accounts where such Participant employs an electronic submission procedure with time stamp for the submission of exercise instructions. For non-customer accounts, Participants that do not employ an electronic procedure with time stamp for the submission of exercise instructions are required to deliver a Contrary Exercise Advice or Advice Cancel within 1 hour and 30 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. Eastern Time deadline found in Paragraph (d) of this Section 101.

(i) Modification of cut-off time.

- (1) The Exchange may establish extended cut-off times for decision to exercise or not exercise an expiring option and for the submission of Contrary Exercise Advices on a case-by-case basis due to unusual circumstances. For purposes of this subparagraph (i)(1), an "unusual circumstance" includes, but is not limited to, increased market volatility; significant order imbalances; significant volume surges and/or systems capacity constraints; significant spreads between the bid

and offer in underlying securities; internal system malfunctions affecting the ability to disseminate or update market bids and offers and/or execute or route orders; or other similar occurrences.

- (2) The Exchange with at least one (1) business day prior advance notice, by 12:00 noon on such day, may establish a reduced cut-off time for the decision to exercise or not exercise an expiring option and for the submission of Contrary Exercise Advices on a case-by-case basis due to unusual circumstances; provided, however, that under no circumstances should the exercise cut-off time and the time for submission of a Contrary Exercise Advice be before the close of trading. For purposes of this subparagraph (i) (2), an "unusual circumstance" includes, but is not limited to, a significant news announcement concerning the underlying security of an option contract that is scheduled to be released just after the close on the business day the option contract expires, or, in the case of an option contract expiring on a day that is not a business day, the business day immediately prior to expiration.

(j) Submitting or preparing an exercise instruction, contrary exercise advice or advice cancel after the applicable exercise cut-off time in any expiring options on the basis of material information released after the cut-off time is activity inconsistent with just and equitable principles of trade.

(k) The failure of any Participant to follow the procedures in this Section 101 may result in the assessment of a fine, which may include but is not limited to disgorgement of potential economic gain obtained or loss avoided by the subject exercise, as determined by the Exchange.

(l) Clearing Participants must follow the procedures of the Clearing Corporation when exercising American-style cash-settled index options contracts issued or to be issued in any account at the Clearing Corporation. Options Participants must also follow the procedures set forth below with respect to American-style cash-settled index options:

- (1) For all contracts exercised by the Options Participant or by any customer of the Options Participant, an "exercise advice" must be delivered by the Options Participant in such form or manner prescribed by the Exchange no later than 4:20 p.m. Eastern Time, or if trading hours are extended or modified in the applicable options class, no later than five (5) minutes after the close of trading on that day.
- (2) Subsequent to the delivery of an "exercise advice," should the Options Participant or a customer of the Options Participant determine not to exercise all or part of the advised contracts, the Options Participant must also deliver an "advice cancel" in such form or manner prescribed by the Exchange no later than 4:20 p.m. Eastern Time, or if trading hours are extended or modified in the applicable options class, no later than five (5) minutes after the close of trading on that day.

- (3) The Exchange may determine to extend the applicable deadline for the delivery of "exercise advice" and "advice cancel" notifications pursuant to this paragraph (1) if unusual circumstances are present.
- (4) No Options Participant may prepare, time stamp or submit an "exercise advice" prior to the purchase of the contracts to be exercised if the Options Participant knew or had reason to know that the contracts had not yet been purchased.
- (5) The failure of any Options Participant to follow the procedures in this paragraph (1) may result in the assessment of a fine, which may include but is not limited to disgorgement of potential economic gain obtained or loss avoided by the subject exercise, as determined by the Exchange.
- (6) Preparing or submitting an "exercise advice" or "advice cancel" after the applicable deadline on the basis of material information released after such deadline, in addition to constituting a violation of this Rule, is activity inconsistent with just and equitable principles of trade.
- (7) The procedures set forth in subparagraphs (1)-(2) of this subparagraph (1) do not apply (A) on the business day prior to expiration in series expiring on a day other than a business day or (B) on the expiration day in series expiring on a business day.
- (8) Exercises of American-style, cash-settled index options (and the submission of corresponding "exercise advice" and "advice cancel" forms) shall be prohibited during any time when trading in such options is delayed, halted, or suspended, subject to the following exceptions:
  - (A) The exercise of an American-style, cash-settled index option may be processed and given effect in accordance with and subject to the rules of the Clearing Corporation while trading in the option is delayed, halted, or suspended if it can be documented, in a form prescribed by the Exchange, that the decision to exercise the option was made during allowable time frames prior to the delay, halt, or suspension.
  - (B) Exercises of expiring American-style, cash-settled index options shall not be prohibited on the business day of expiration, or in the case of index option contracts expiring on a day that is not a business day, the last business day prior to their expiration.
  - (C) Exercises of American-style, cash-settled index options shall not be prohibited during a trading halt that occurs at or after 4:00 p.m. Eastern Time. In the event of such a trading halt, exercises may occur through 4:20 p.m. Eastern Time. In addition, if trading resumes following such a trading halt (pursuant to the procedure described in Section 8 of Chapter V of these Rules (Opening the Market)), exercises may occur during the resumption of trading

and for five (5) minutes after the close of the resumption of trading. The provisions of this subparagraph 3) are subject to the authority of the Exchange to impose restrictions on transactions and exercises pursuant to Section 14 of Chapter III of these Rules (Limit on Outstanding Uncovered Short Positions).

(D) The Exchange may determine to permit the exercise of American-style, cash-settled index options while trading in such options is delayed, halted, or suspended.

### ***Commentary***

**.01** For purposes of this Section 101, the terms "customer account" and "non-customer account" have the same meaning as defined in the Clearing Corporation By-Laws Article I(C)(28) and Article I(N)(2), respectively

**.02** Each Participant shall prepare a memorandum of every exercise instruction received showing the time when such instruction was so received. Such memoranda shall be subject to the requirements of SEC Rule 17a-4(b).

**.03** Reserved.

**.04** Each Participant shall establish fixed procedures to insure secure time stamps in connection with their electronic systems employed for the recording of submissions to exercise or not exercise expiring options.

**.05** The filing of a Contrary Exercise Advice required by this Section 101 does not serve to substitute as the effective notice to the Clearing Corporation for the exercise or non-exercise of expiring options.

### **Section 102 Allocation of Exercise Notices**

(a) Each Options Participant shall establish fixed procedures for the allocation of exercise notices assigned in respect of a short position in such Options Participant's customers' accounts. The allocation shall be on a "first in, first out," or automated random selection basis that has been approved by the Exchange, or on a manual random selection basis that has been specified by the Exchange. Each Options Participant shall inform its customers in writing of the method it uses to allocate exercise notices to its customers' account, explaining its manner of operation and the consequences of that system.

(b) Each Options Participant shall report its proposed method of allocation to the Exchange and obtain the Exchange's prior approval thereof, and no Options Participant shall change its method of allocation unless the change has been reported to and approved by the Exchange. The requirements of this paragraph shall not be applicable to allocation procedures submitted to and approved by another SRO having comparable standards pertaining to methods of allocation.

(c) Each Options Participant shall preserve for a three-year period sufficient work papers and other documentary materials relating to the allocation of exercise notices to establish the manner in which allocation of such exercise notices is in fact being accomplished.

### **Section 103 Delivery and Payment**

(a) Delivery of the underlying security upon the exercise of an options contract, and payment of the aggregate exercise price in respect thereof, shall be in accordance with the Rules of the Clearing Corporation.

(b) As promptly as possible after the exercise of an options contract by a customer, the Options Participant shall require the customer to make full cash payment of the aggregate exercise price in the case of a call options contract, or to deposit the underlying security in the case of a put options contract, or to make the required margin deposit in respect thereof if the transaction is effected in a margin account, in accordance with the Rules of the Exchange, the provisions of Chapter XIII of these Rules, and the applicable regulations of the Federal Reserve Board.

(c) As promptly as practicable after the assignment to a customer of an exercise notice the Options Participant shall require the customer to deposit the underlying security in the case of a call options contract if the underlying security is not carried in the customer's account, or to make full cash payment of the aggregate exercise price in the case of a put options contract, or in either case to deposit the required margin in respect thereof if the transaction is effected in a margin account, in accordance with the Rules of the Exchange, the provisions of Chapter XIII of these Rules, and the applicable regulations of the Federal Reserve Board.

(d) In accordance with the applicable rules of The Options Clearing Corporation ("OCC"), upon exercise of an in-the-money U.S. Dollar-Settled Foreign Currency option structured as a call, the holder receives, from OCC, U.S. dollars representing the difference between the exercise strike price and the closing settlement value of the U.S. Dollar-Settled Foreign Currency options contract multiplied by the number of units of currency covered by the contract. For a U.S. Dollar-Settled Foreign Currency option structured as a put, the holder receives U.S. dollars representing the excess of the exercise price over the closing settlement value of the U.S. Dollar- Settled Foreign Currency option contract multiplied by the number of units of foreign currency covered by the contract.]

### **Section 1. Definitions**

The following terms shall have the meaning specified in this Rule solely for the purpose of this Options 5:

(1) "Best Bid" and "Best Offer" mean the highest priced Bid and the lowest priced Offer.

(2) "Bid" or "Offer" means the bid price or the offer price communicated by a member of an Eligible Exchange to any Broker/Dealer, or to any customer, at which it is willing to buy or sell, as either principal or agent, but shall not include indications of interest.



(3) "Broker/Dealer" means an individual or organization registered with the SEC in accordance with Section 15(b)(1) of the Exchange Act or a foreign broker or dealer exempt from such registration pursuant to Rule 15a-6 under the Exchange Act.

(4) "Complex Trade" means: (i) the execution of an order in an option series in conjunction with the execution of one or more related order(s) in different option series in the same underlying security occurring at or near the same time in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.0) and for the purpose of executing a particular investment strategy; or (ii) the execution of a stock-option order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock ("convertible security") coupled with the purchase or sale of option contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock or convertible security necessary to create a delta neutral position, but in no case in a ratio greater than eight (8) option contracts per unit of trading of the underlying stock or convertible security established for that series by the Clearing Corporation.

(5) "Crossed Market" means a quoted market in which a Protected Bid is higher than a Protected Offer in a series of an Eligible Class.

(6) "Customer" means an individual or organization that is not a Broker/Dealer.

(7) "Eligible Exchange" means a national securities exchange registered with the SEC in accordance with Section 6(a) of the Exchange Act that: (a) is a Participant Exchange in OCC (as that term is defined in Section VII of the OCC by-laws); (b) is a party to the OPRA Plan (as that term is described in Section I of the OPRA Plan); and (c) if the national securities exchange chooses not to become a party to this Plan, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection.

(8) "Intermarket Sweep Order (ISO)" means a limit order for an options series that meets the following requirements:

(a) When routed to an Eligible Exchange, the order is identified as an ISO;

(b) Simultaneously with the routing of the order, one or more additional ISOs, as necessary, are routed to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or any Protected Offer, in the case of a limit order to buy, for the options series with a price that is superior to the limit price of the ISO, with such additional orders also marked as ISOs.

(9) "Locked Market" means a quoted market in which a Protected Bid is equal to a Protected Offer in a series of an Eligible Options Class.

(10) "NBBO" means the national best bid and offer in an option series as calculated by an Eligible Exchange.

(11) "Non-Firm" means, with respect to quotations, that Members of an Eligible Exchange are relieved of their obligation to be firm for their quotations pursuant to Rule 602 under the Exchange Act.

(12) "OCC" means The Options Clearing Corporation.

(13) "OPRA" means the Options Price Reporting Authority.

(14) "OPRA Plan" means the plan filed with the SEC pursuant to Section 11Aa(1)(C)(iii) of the Exchange Act, approved by the SEC and declared effective as of January 22, 1976, as from time to time amended.

(15) "Participant" means an Eligible Exchange whose participation in the Plan has become effective pursuant to Section 3(c) of the Plan.

(16) "Plan" means the Options Order Protection and Locked/Crossed Market Plan, as such plan may be amended from time to time.

(17) "Protected Bid" or "Protected Offer" means a Bid or Offer in an options series, respectively, that:

(a) Is disseminated pursuant to the OPRA Plan; and

(b) Is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange.

(18) "Protected Quotation" means a Protected Bid or Protected Offer.

(19) "Quotation" means a Bid or Offer.

(20) "Trade-Through" means a transaction in an options series at a price that is lower than a Protected Bid or higher than a Protected Offer.

## **Section 2. Order Protection**

(a) *Avoidance of Trade-Throughs.* Except as provided in paragraphs (b) and (c) below, Members shall not effect Trade-Throughs.

(b) *Exceptions to Trade-Through Liability.* The provisions of paragraph (a) pertaining to the satisfaction of Trade-Throughs shall not apply under the following circumstances:

(1) If an Eligible Exchange repeatedly fails to respond within one second to incoming orders attempting to access its Protected Quotations, the Exchange may bypass those Protected Quotations by:

(i) Notifying the non-responding Eligible Exchange immediately after (or at the same time as) electing self-help; and

(ii) Assessing whether the cause of the problem lies with its own systems and, if so, taking immediate steps to resolve the problem;

Any time a determination to bypass Protected Quotations of an Eligible Exchange is made pursuant to this sub-paragraph, the Exchange must promptly document the reasons supporting such determination.

(2) The transaction traded through a Protected Quotation being disseminated by an Eligible Exchange during a trading rotation;

(3) The transaction that constituted the Trade-Through occurred when there was a Crossed Market;

(4) The transaction that constitutes the Trade-Through is the execution of an order identified as an ISO;

(5) The transaction that constitutes the Trade-Through is effected by the Exchange while simultaneously routing an ISO to execute against the full displayed size of any better-priced Protected Quotation;

(6) The Eligible Exchange displaying the Protected Quotation that was traded through had displayed, within one second prior to execution of the Trade-Through, a Best bid or Best offer, as applicable, for the options series with a price that was equal or inferior to the price of the Trade-Through transaction;

(7) The Protected Quotation traded through was being disseminated from an Eligible Exchange whose Quotations were Non-Firm with respect to such options series;

(8) The transaction that constituted the Trade-Through was effected as a portion of a Complex Trade;

(9) The transaction that constituted the Trade-Through was the execution of an order for which, at the time of receipt of the order, a Member 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 was, for a stopped buy order, lower than the national Best Bid in the options series at the time of execution, or,

for a stopped sell order, higher than the national Best Offer in the options series at the time of execution;

(10) The transaction that constituted the Trade-Through was the execution of an order that was stopped at a price that did not Trade-Through an Eligible Exchange at the time of the stop; or

(11) 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 options series 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.

### **Section 3. Locked and Crossed Markets**

(a) Prohibition. Except for quotations that fall within the provisions of paragraph (b) of this Rule, Members shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross a Protected Quotation.

(b) Exceptions.

(1) The locking or crossing quotation was displayed at a time when the Exchange was experiencing a failure, material delay, or malfunction of its systems or equipment;

(2) The locking or crossing quotation was displayed at a time when there is a Crossed Market; or

(3) The Member simultaneously routed an ISO to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer.

### **Section 4. Order Routing**

(a) NOM offers two routing strategies, SEEK and SRCH. Each of these routing strategies will be explained in more detail below. An order may in the alternative be marked Do Not Route or “DNR”. The Exchange notes that for purposes of this rule the System will route SEEK and SRCH Orders with no other contingencies. The System checks the Order Book for available contracts for potential execution against the SEEK or SRCH orders. After the System checks the Order Book for available contracts, orders are sent to other available market centers for potential execution. For purposes of this rule, a Route Timer shall not exceed one second and shall begin at the time orders are accepted into the System, and the System will consider whether an order can be routed at the conclusion of each Route Timer. For purposes of this rule, NOM’s opening process is governed by Options 3, Section 8 and includes an opening after a trading halt (“Opening and Halt Cross”).

Routing instructions may be combined with all available order types and times-in-force, with the exception of order types and times-in-force whose terms are inconsistent with the terms of a particular routing instruction. The term "System routing table" refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. The Exchange reserves the right to maintain a different System routing table for different routing instructions and to modify the System routing table at any time without notice. The order routing process shall be available to Participants from 9:30 a.m. Eastern Time until market close and shall route orders as described below. Participants can designate orders as either available for routing or not available for routing. All routing of orders shall comply with Chapter XII, Options Order Protection and Locked and Crossed Market Rules.

(i) **Priority of Routed Orders.** Orders sent to other markets do not retain time priority with respect to other orders in the System and the System shall continue to execute other orders while routed orders are away at another market center. Once routed by the System, an order becomes subject to the rules and procedures of the away market including, but not limited to, order cancellation. A routed order can be for less than the original incoming order's size. If a routed order is subsequently returned, in whole or in part, that routed order, or its remainder, shall receive a new time stamp reflecting the time of its return to the System, unless any portion of the original order remains on the System, in which case the routed order shall retain its timestamp and its priority.

(ii) Options Participants whose orders are routed to away markets shall be obligated to honor such trades that are executed on away markets to the same extent they would be obligated to honor a trade executed on the Exchange.

(A) NOM shall route orders in options via Nasdaq Execution Services, LLC ("NES"), a broker-dealer that is a member of an unaffiliated SRO which is the designated examining authority for the broker-dealer. NES serves as the Routing Facility of NOM. The sole function of the Routing Facility will be to route orders in options listed and open for trading on NOM to away markets either directly or through one or more third-party unaffiliated routing broker-dealers pursuant to NOM rules on behalf of NOM. The Exchange and NES may not use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority. The Routing Facility is subject to regulation as a facility of Nasdaq, including the requirement to file proposed rule changes under Section 19 of the Act.

(B) Use of NES to route orders to other market centers is optional. Parties that do not desire to use NES must designate orders as not available for routing (a DNR Order), as described in subparagraph (iii)(A) below.

(C) NOM shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and

proprietary information between the Exchange and its facilities (including the Routing Facility), and any other entity; or, where there is a routing broker, the Exchange, the Routing Facility and any routing broker, and any other entity, including any affiliate of the routing broker (and if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services).

(D) The books, records, premises, officers, directors, agents, and employees of the Routing Facility, as a facility of the Exchange, shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the Exchange for purposes of and subject to oversight pursuant to the Exchange Act. The books and records of the Routing Facility, as a facility of the Exchange, shall be subject at all times to inspection and copying by the Exchange and the Commission.

(E) *Market Access.* In addition to the Exchange Rules regarding routing to away trading centers, NES has, pursuant to Rule 15c3-5 under the Act, implemented certain tests designed to mitigate risks associated with providing the Exchange's Members with access to such away trading centers. Pursuant to the policies and procedures developed by NES to comply with Rule 15c3-5, if an order or series of orders are deemed to be violative of applicable pre-trade requirements under Rule 15c3-5, the order will be rejected prior to routing and/or NES will seek to cancel the order if it has been routed.

(F) The Exchange will determine the logic that provides when, how, and where orders are routed away to other exchanges. Except as provided in subparagraph (f) below, the routing broker(s) cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order.

(iii) The following order types are available:

(A) **DNR Order.** A DNR Order will never be routed outside of the Exchange regardless of the prices displayed by away markets. A DNR Order may execute on the Exchange at a price equal to or better than, but not inferior to, the best away market price but, if that best away market remains, the DNR Order will remain in the Exchange book and be displayed at a price one minimum price variation ("MPV") away from that ABBO. Any incoming order interacting with such a resting DNR Order will execute at the ABBO price, unless (1) the ABBO is improved to a price which crosses the DNR's displayed price, in which case the incoming order will execute at the previous ABBO price; (2) the ABBO is improved to a price which locks the DNR's displayed price, in which case the

incoming order will execute at the DNR's displayed price. Should the best away market move to an inferior price level, the DNR Order will automatically re-price from its one MPV inferior to the original away best bid/offer price to one MPV away from the new away best bid/offer price or its original limit price.

(B) **SEEK Order.** SEEK is a routing option pursuant to which an order will first check the System for available contracts for execution, and then is sent to other available market centers for potential execution.

(1) If a SEEK is received during the Opening Process it may route as part of the Opening and Halt Cross pursuant to Options 3, Section 8(b)(7).

(2) A SEEK Order received after the Opening Process that is marketable against the ABBO will route immediately after exhausting all Exchange BBO interest at the same or better price.

(3) If the SEEK Order still has remaining size after an initial route attempt, it may: (i) trade at the next Exchange BBO price (or prices) if the SEEK Order price is locking or crossing that price (or prices) up to the next ABBO price, and/or (ii) be entered into the Order Book at its limit price if not locking or crossing the Exchange BBO or the ABBO, except a Price Improving SEEK Order will book at its limit price and display one MPV inferior to its limit price. If the SEEK Order trades at the next Exchange BBO price (or prices) and the SEEK Order still has remaining size after the execution, then it may start a Route Timer if the SEEK Order is locking or crossing the ABBO, provided the SEEK Order is not booked at its limit price.

(4) If during the Route Timer, the ABBO markets move such that the SEEK Order is no longer marketable against the ABBO, it may: (i) trade at the next Exchange BBO price (or prices) if the SEEK Order price is locking or crossing that price (or prices), and/or (ii) be entered into the Order Book at its limit price (or one MPV inferior to its limit price for Price Improving Orders) if not locking or crossing the Exchange BBO. A SEEK Order will be included in the displayed Exchange BBO, unless the SEEK Order locks or crosses the ABBO, in which case it will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO. If there exists a locked ABBO when the SEEK Order is entered onto the Order Book, the SEEK Order will display at the locked ABBO price. If during the Route Timer any new interest arrives opposite the SEEK Order that is marketable against the SEEK Order, such interest will trade against the SEEK Order at the ABBO price unless the ABBO is improved to a price which crosses the SEEK Order's displayed price, in which case the incoming order will execute at the previous ABBO price. When checking the Order Book, the System will seek to execute at the price at which it would send the order to an away market. Eligible

unexecuted orders will continue to be routed as described in paragraph (B)(3).

(5) SEEK Orders booked at their limit price will subsequently be treated as DNR and will not be eligible for routing until the next time the option series is subject to an Opening and Halt Cross Process pursuant to Options 3, Section 8.

(C) **SRCH Order.** SRCH Order is a routing option pursuant to which an order will first check the System for available contracts for execution, and then is sent to other available market centers for potential execution.

(1). If a SRCH Order is received during the Opening Process it may route as part of the Opening and Halt Cross pursuant to Options 3, Section 8(b)(7).

(2) A SRCH Order received after the Opening Process that is marketable against the ABBO will route immediately after exhausting all Exchange BBO interest at the same or better price.

(3) If the SRCH Order still has remaining size after an initial route attempt, it may: (i) trade at the next Exchange BBO price (or prices) if the SRCH Order price is locking or crossing that price (or prices) up to the next ABBO price, and/or (ii) be entered into the Order Book at its limit price if not locking or crossing the Exchange BBO or the ABBO, except a Price Improving SRCH Order will book at its limit price and display one MPV inferior to its limit price. If the SRCH Order trades at the next Exchange BBO price (or prices) and the SRCH Order still has remaining size after the execution, then it may start a Route Timer if the SRCH Order is locking or crossing the ABBO.

(4) If during the Route Timer, the ABBO markets move such that the SRCH Order is no longer marketable against the ABBO, it may: (i) trade at the next Exchange BBO price (or prices) if the SRCH Order price is locking or crossing that price (or prices), and/or (ii) be entered into the Order Book at its limit price (or one MPV inferior to its limit price for Price Improving Orders) if not locking or crossing the Exchange BBO. A SRCH Order will be included in the displayed Exchange BBO, unless the SRCH Order locks or crosses the ABBO, in which case it will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO. If there exists a locked ABBO when the SRCH Order is entered onto the Order Book, the SRCH Order will display at the locked ABBO price. If during the Route Timer any new interest arrives opposite the SRCH Order that is marketable against the SRCH Order, such interest will trade against the SRCH Order at the ABBO price, unless the ABBO is improved to a price which crosses the SRCH Order's displayed price, in which case the incoming order will execute at the previous ABBO price. When checking the Order Book, the System will seek to execute at the price at which it would send



the order to an away market. Eligible unexecuted orders will continue to be routed as described in paragraph (C)(3).

(5) While on the Order Book at the limit price, should the SRCH Order subsequently be locked or crossed by another market center, it may attempt to route at the conclusion of the Route Timer.

### **Section 5. Cancellation of Orders and Error Account**

(a) The Exchange or NES may cancel orders as either deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, NES, or a routing destination. The Exchange or NES shall provide notice of the cancellation to affected members as soon as practicable.

(b) NES shall maintain an error account for the purpose of addressing positions that result from a technical or systems issue at NES, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders ("error positions").

(1) For purposes of this Rule, an error position shall not include any position that results from an order submitted by a member to the Exchange that is executed on the Exchange and automatically processed for clearance and settlement on a locked-in basis.

(2) Except as provided in paragraph 3 below, NES shall not (i) accept any positions in its error account from an account of a member, or (ii) permit any member to transfer any positions from the member's account to NES's error account.

(3) If a technical or systems issue results in the Exchange not having valid clearing instructions for a member to a trade, NES may assume that member's side of the trade so that the trade can be automatically processed for clearance and settlement on a locked-in basis.

(c) In connection with a particular technical or systems issue, NES or the Exchange shall either (i) assign all resulting error positions to members in accordance with subparagraph (A) below, or (ii) have all resulting error positions liquidated in accordance with subparagraph (B) below. Any determination to assign or liquidate error positions, as well as any resulting assignments, shall be made in a nondiscriminatory fashion.

(A) NES or the Exchange shall assign all error positions resulting from a particular technical or systems issue to the members affected by that technical or systems issue if NES or the Exchange:

(i) determines that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the members affected by that technical or systems issue;

(ii) determines that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the members affected by that technical or systems issue; and

(iii) has not determined to cancel all orders affected by that technical or systems issue in accordance with subparagraph (a) above.

(B) If NES or the Exchange is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected members in accordance with subparagraph (A) above, or if NES or the Exchange determines to cancel all orders affected by the technical or systems issue in accordance with subparagraph (a) above, then NES shall liquidate the error positions as soon as practicable. NES shall:

(i) provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading; and

(ii) establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer and NES/the Exchange associated with the liquidation of the error positions.

(d) NES and the Exchange shall make and keep records to document all determinations to treat positions as error positions and all determinations for the assignment of error positions to members or the liquidation of error positions, as well as records associated with the liquidation of error positions through the third-party broker-dealer.

## **Options 6 Options Trade Administration[Order Protection and Locked and Cross Markets]**

### **Section 1. Authorization to Give Up**

(a) General. All transactions will automatically clear through the Participant's guarantor at the time of the trade. For each transaction in which a Participant participates, the Participant may indicate, through post-trade allocation, any Options Clearing Corporation ("OCC") number of a Clearing Participant through which a transaction will be cleared ("Give Up"), provided the Clearing Participant has not elected to Opt In, as defined and described in paragraph (b) below, and restrict one or more of its OCC number(s) ("Restricted OCC Number"). A Participant may Give Up a Restricted OCC Number provided the Participant has written authorization as described in paragraph (b)(ii) below ("Authorized Participant").

(b) Opt In. Clearing Participants may request the Exchange restrict one or more of their OCC clearing numbers ("Opt In") as described in subparagraph (i) below. If a Clearing Participant Opts In, the Exchange will require written authorization from the Clearing Participant permitting a Participant to Give Up a Clearing Participant's Restricted OCC

Number. An Opt In would remain in effect until the Clearing Participant terminates the Opt In as described in subparagraph (iii) below. If a Clearing Participant does not Opt In, that Clearing Participant's OCC number would be subject to Give Up by any Participant.

(i) *Clearing Participant Process to Opt In.* A Clearing Participant may Opt In by sending a completed "Clearing Member Restriction Form" listing all Restricted OCC Numbers and Authorized Participants. A Clearing Participant may elect to restrict one or more OCC clearing numbers that are registered in its name at OCC. The Clearing Participant would be required to submit the Clearing Member Restriction Form to the Exchange's Membership Department as described on the form. Once submitted, the Exchange requires ninety days before a Restricted OCC Number is effective within the System.

(ii) *Participant Give Up Process for Restricted OCC Numbers.* A Participant desiring to Give Up a Restricted OCC Number must become an Authorized Participant. The Clearing Participant will be required to authorize a Participant as described in subparagraph (i) or (iii), unless the Restricted OCC Number is already subject to a Letter of Guarantee that the Participant is a party to, as set forth in paragraph (d) below.

(iii) *Amendments to Authorized Participants or Restricted OCC Numbers.* A Clearing Participant may amend its Authorized Participants or Restricted OCC Numbers by submitting a new Clearing Member Restriction Form to the Exchange's Membership Department indicating the amendment as described on the form. Once a Restricted OCC Number is effective within the System pursuant to paragraph (i) above, the Exchange may permit the Clearing Participant to authorize, or remove authorization for, a Participant to Give Up the Restricted OCC Number intra-day only in unusual circumstances, and on the next business day in all regular circumstances. The Exchange will promptly notify Participants if they are no longer authorized to Give Up a Clearing Participant's Restricted OCC Number. If a Clearing Participant removes a Restricted OCC Number, any Participant may Give Up that OCC clearing number once the removal has become effective on or before the next business day.

(c) *System.* The System will not allow an unauthorized Give Up with a Restricted OCC Number to be submitted at the firm mnemonic level at the point of order entry.

(d) *Letter of Guarantee.* A clearing arrangement subject to a Letter of Guarantee would immediately permit the Give Up of a Restricted OCC Number by the Participant that is party to the arrangement.

(e) *An intentional misuse of this rule is impermissible, and may be treated as a violation of General 9, Section 1 and Options 9, Section 2.*

## **Section 2. Submission for Clearance**

(a) All options transactions effected on NOM shall be submitted for clearance to the Clearing Corporation, and all such transactions shall be subject to the Rules of the Clearing Corporation. Every Clearing Participant shall be responsible for the clearance of NOM Transactions of such Clearing Participant and of each Options Participant that gives up such Clearing Participant's name pursuant to a Letter of Guarantee, written authorization to become an Authorized Participant under Options 6, Section 1, or other authorization given by such Clearing Participant to such Options Participant, which authorization must be submitted to Nasdaq.

(b) On each business day at or prior to such time as may be prescribed by the Clearing Corporation, NOM shall furnish the Clearing Corporation a report of each Clearing Participant's matched trades.

### **Section 3. Reserved**

### **Section 4. Letters of Guarantee**

(a) Required of Each Options Participant. No Options Participant shall make any transactions on NOM unless a Letter of Guarantee has been issued for such Participant by a Clearing Participant and filed with Nasdaq Regulation, and unless such Letter of Guarantee has not been revoked pursuant to paragraph (c) of this Rule.

(b) Terms of Letter of Guarantee. A Letter of Guarantee shall provide that the issuing Clearing Participant accepts financial responsibilities for all NOM Transactions made by the guaranteed Participant.

(c) Revocation of Letter of Guarantee. A Letter of Guarantee filed with Nasdaq Regulation shall remain in effect until a written notice of revocation has been filed with Nasdaq Regulation by the Guarantor Clearing Participant. A revocation shall in no way relieve a Clearing Participant of responsibility for transactions guaranteed prior to the effective date of such revocation.

### **Options 6A Closing Transactions**

#### **Section 1. Contracts of Suspended Participants**

(a) When an Options Participant, other than a Clearing Participant, is suspended pursuant to Options 11, Section 2 of these Rules (Summary Suspension), all open short positions of the suspended Options Participant in options contracts and all open positions resulting from exercise of options contracts, other than positions that are secured in full by a specific deposit or escrow deposit in accordance with the Rules of the Clearing Corporation, shall be closed without unnecessary delay by all Participants carrying such positions for the account of the suspended Participant; provided that Nasdaq Regulation may cause the foregoing requirement to be temporarily waived for such period as it may determine if it shall deem such temporary waiver to be in the interest of the public or the other Participants of NOM.

(b) No temporary waiver hereunder by Nasdaq Regulation shall relieve the suspended Options Participant of its obligations or of damages, nor shall it waive the close out requirements of any other Rules.

(c) When a Clearing Participant is suspended pursuant to Options 11, Section 2 (Summary Suspension) of these Rules, the positions of such Clearing Participant shall be closed out in accordance with the Rules of the Clearing Corporation.

## **Section 2. Failure to Pay Premium**

(a) When the Clearing Corporation shall reject a NOM Transaction because of the failure of the Clearing Participant acting on behalf of the purchaser to pay the aggregate premiums due thereon as required by the Rules of the Clearing Corporation, the Options Participant acting as or on behalf of the writer shall have the right either to cancel the transaction by giving notice thereof to the Clearing Participant or to enter into a closing writing transaction in respect of the same options contract that was the subject of the rejected NOM Transaction for the account of the defaulting Clearing Participant.

(b) Such action shall be taken as soon as possible, and in any event not later than 10:00 A.M. EST on the business day following the day the NOM Transaction was rejected by the Clearing Corporation.

## **Options 6B Exercises and Deliveries**

### **Section 1. Exercise of Options Contracts**

(a) Subject to the restrictions set forth in Options 9, Section 15 of these Rules (Exercise Limits) and to such restrictions as may be imposed pursuant to Options 9, Section 19 of these Rules (Other Restrictions on Options Transactions and Exercises) or pursuant to the Rules of the Clearing Corporation, an outstanding options contract may be exercised during the time period specified in the Rules of the Clearing Corporation by the tender to the Clearing Corporation of an exercise notice in accordance with the Rules of the Clearing Corporation. An exercise notice may be tendered to the Clearing Corporation only by the Clearing Participant in the account of which such options contract is carried with the Clearing Corporation. Participants may establish fixed procedures as to the latest time they will accept exercise instructions from customers.

(b) Special procedures apply to the exercise of equity options on the business day of their expiration, or in the case of option contracts expiring on a day that is not a business day, on the last business day before their expiration ("expiring options"). Unless waived by The Options Clearing Corporation (also known in this Rule as the Clearing Corporation), expiring options are subject to the Exercise-by-Exception ("Ex-by-Ex") procedure under Clearing Corporation Rule 805. This Rule provides that, unless contrary instructions are given, option contracts that are in-the-money by specified amounts shall be automatically exercised. In addition to the Rules of the Clearing Corporation, the following Exchange requirements apply with respect to expiring options. Option holders desiring to exercise or not exercise expiring options must either:

(1) take no action and allow exercise determinations to be made in accordance with the Clearing Corporation's Ex-by-Ex procedure where applicable; or

(2) submit a "Contrary Exercise Advice" to the Exchange as specified in paragraph (d) below.

(c) Exercise cut-off time. Option holders have until 5:30 p.m. Eastern Time on the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the business day immediately prior to the expiration date, to make a final decision to exercise or not exercise an expiring option. Participants may not accept exercise instructions for customer or non-customer accounts after 5:30 p.m. Eastern Time.

(d) Submission of Contrary Exercise Advices. A Contrary Exercise Advice is a communication either: (i) to not exercise an option that would be automatically exercised under the Clearing Corporation's Ex-by-Ex procedure, or (ii) to exercise an option that would not be automatically exercised under the Clearing Corporation's Ex-by-Ex procedure.

A Contrary Exercise Advice may be submitted by a Participant by using the Clearing Corporation's ENCORE system, a Contrary Exercise Advice form of any other national securities exchange of which the firm is a Participant and where the option is listed, or such other method as the Exchange may prescribe. A Contrary Exercise Advice may be canceled by filing an Advice Cancel at any time up to the submission cut-off times specified below.

For customer accounts, Participants have until 7:30 p.m. Eastern Time to submit a Contrary Exercise Advice to the Exchange.

For noncustomer accounts, Participants have until 7:30 p.m. Eastern Time to submit a Contrary Exercise Advice to the Exchange if such Participant employs an electronic submission procedure with time stamp for the submission of exercise instructions by option holders. Participants are required to manually submit a Contrary Exercise Advice by 5:30 p.m. for non-customer accounts if such Participants do not employ an electronic submission procedure with time stamp for the submission of exercise instructions by option holders.

(e) If the Clearing Corporation has waived the Ex-by-Ex procedure for an options class, Participants must either:

(1) submit to the Exchange, a Contrary Exercise Advice, in a manner specified by the Exchange, within the time limits specified in paragraph (d) above if the holder intends to exercise the option; or

(2) take no action and allow the option to expire without being exercised. In cases where the Ex-by-Ex procedure has been waived, the Rules of the Clearing

Corporation require that Participants wishing to exercise such options must submit an affirmative Exercise Notice to the Clearing Corporation, whether or not a Contrary Exercise Advice has been filed with the Exchange.

(f) A Participant that has accepted the responsibility to indicate final exercise decisions on behalf of another Participant or non-Participant broker-dealer shall take the necessary steps to ensure that such decisions are properly indicated to the Exchange. Such Participant may establish a processing cut-off time prior to the Exchange's exercise cutoff time at which it will no longer accept final exercise decisions in expiring options from option holders for whom it indicates final exercise decisions. Each Participant that indicates final exercise decisions through another broker-dealer is responsible for ensuring that final exercise decisions for all of its proprietary (including market maker) and public customer account positions are indicated in a timely manner to such broker-dealer.

(g) Notwithstanding the foregoing, Participants may make final exercise decisions after the exercise cutoff time but prior to expiration without having submitted a Contrary Exercise Advice in the circumstances listed below. A memorandum setting forth the circumstance giving rise to instructions after the exercise cutoff time shall be maintained by the Participant and a copy thereof shall be filed with the Exchange no later than 12:00 noon Eastern Time on the first business day following the respective expiration. An exercise decision after the exercise cut-off time may be made:

(1) in order to remedy mistakes or errors made in good faith; or

(2) where exceptional circumstances have restricted an option holder's ability to inform a Participant of a decision regarding exercise, or a Participant's ability to receive an option holder's decision by the cut-off time. The burden of establishing any of the above exceptions rests solely on the Participant seeking to rely on such exceptions.

(h) In the event the Exchange provides advance notice on or before 5:30 p.m. Eastern Time on the business day immediately prior to the business day of their expiration, or, in the case of an option contract expiring on a day that is not a business day, the second business day immediately prior to the expiration date indicating that a modified time for the close of trading in equity options on such business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, such last business day before expiration will occur, then the deadline to make a final decision to exercise or not exercise an expiring option shall be 1 hour 30 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. Eastern Time deadline found in paragraph (c) of this Rule. However, Participants have until 7:30 Eastern Time to deliver a Contrary Exercise Advice or Advice Cancel to the Exchange for customer accounts and noncustomer accounts where such Participant employs an electronic submission procedure with time stamp for the submission of exercise instructions. For non-customer accounts, Participants that do not employ an electronic procedure with time stamp for the submission of exercise instructions are required to deliver a Contrary Exercise Advice or

Advice Cancel within 1 hour and 30 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. Eastern Time deadline found in paragraph (d) of this Rule.

(i) Modification of cut-off time.

(1) The Exchange may establish extended cut-off times for decision to exercise or not exercise an expiring option and for the submission of Contrary Exercise Advices on a case-by-case basis due to unusual circumstances. For purposes of this subparagraph (i)(1), an "unusual circumstance" includes, but is not limited to, increased market volatility; significant order imbalances; significant volume surges and/or systems capacity constraints; significant spreads between the bid and offer in underlying securities; internal system malfunctions affecting the ability to disseminate or update market bids and offers and/or execute or route orders; or other similar occurrences.

(2) The Exchange with at least one (1) business day prior advance notice, by 12:00 noon on such day, may establish a reduced cut-off time for the decision to exercise or not exercise an expiring option and for the submission of Contrary Exercise Advices on a case-by-case basis due to unusual circumstances; provided, however, that under no circumstances should the exercise cut-off time and the time for submission of a Contrary Exercise Advice be before the close of trading. For purposes of this subparagraph (i) (2), an "unusual circumstance" includes, but is not limited to, a significant news announcement concerning the underlying security of an option contract that is scheduled to be released just after the close on the business day the option contract expires, or, in the case of an option contract expiring on a day that is not a business day, the business day immediately prior to expiration.

(j) Submitting or preparing an exercise instruction, contrary exercise advice or advice cancel after the applicable exercise cut-off time in any expiring options on the basis of material information released after the cut-off time is activity inconsistent with just and equitable principles of trade.

(k) The failure of any Participant to follow the procedures in this Rule may result in the assessment of a fine, which may include but is not limited to disgorgement of potential economic gain obtained or loss avoided by the subject exercise, as determined by the Exchange.

(l) Clearing Participants must follow the procedures of the Clearing Corporation when exercising American-style cash-settled index options contracts issued or to be issued in any account at the Clearing Corporation. Options Participants must also follow the procedures set forth below with respect to American-style cash-settled index options:

(1) For all contracts exercised by the Options Participant or by any customer of the Options Participant, an "exercise advice" must be delivered by the Options Participant in such form or manner prescribed by the Exchange no later than 4:20



p.m. Eastern Time, or if trading hours are extended or modified in the applicable options class, no later than five (5) minutes after the close of trading on that day.

(2) Subsequent to the delivery of an "exercise advice," should the Options Participant or a customer of the Options Participant determine not to exercise all or part of the advised contracts, the Options Participant must also deliver an "advice cancel" in such form or manner prescribed by the Exchange no later than 4:20 p.m. Eastern Time, or if trading hours are extended or modified in the applicable options class, no later than five (5) minutes after the close of trading on that day.

(3) The Exchange may determine to extend the applicable deadline for the delivery of "exercise advice" and "advice cancel" notifications pursuant to this paragraph (1) if unusual circumstances are present.

(4) No Options Participant may prepare, time stamp or submit an "exercise advice" prior to the purchase of the contracts to be exercised if the Options Participant knew or had reason to know that the contracts had not yet been purchased.

(5) The failure of any Options Participant to follow the procedures in this paragraph (1) may result in the assessment of a fine, which may include but is not limited to disgorgement of potential economic gain obtained or loss avoided by the subject exercise, as determined by the Exchange.

(6) Preparing or submitting an "exercise advice" or "advice cancel" after the applicable deadline on the basis of material information released after such deadline, in addition to constituting a violation of this Rule, is activity inconsistent with just and equitable principles of trade.

(7) The procedures set forth in subparagraphs (1)-(2) of this subparagraph (1) do not apply (A) on the business day prior to expiration in series expiring on a day other than a business day or (B) on the expiration day in series expiring on a business day.

(8) Exercises of American-style, cash-settled index options (and the submission of corresponding "exercise advice" and "advice cancel" forms) shall be prohibited during any time when trading in such options is delayed, halted, or suspended, subject to the following exceptions:

(A) The exercise of an American-style, cash-settled index option may be processed and given effect in accordance with and subject to the rules of the Clearing Corporation while trading in the option is delayed, halted, or suspended if it can be documented, in a form prescribed by the Exchange, that the decision to exercise the option was made during allowable time frames prior to the delay, halt, or suspension.

(B) Exercises of expiring American-style, cash-settled index options shall not be prohibited on the business day of expiration, or in the case of index option

contracts expiring on a day that is not a business day, the last business day prior to their expiration.

(C) Exercises of American-style, cash-settled index options shall not be prohibited during a trading halt that occurs at or after 4:00 p.m. Eastern Time. In the event of such a trading halt, exercises may occur through 4:20 p.m. Eastern Time. In addition, if trading resumes following such a trading halt (pursuant to the procedure described in Options 3, Section 8 (Opening and Halt Cross)), exercises may occur during the resumption of trading and for five (5) minutes after the close of the resumption of trading. The provisions of this subparagraph 3) are subject to the authority of the Exchange to impose restrictions on transactions and exercises pursuant to Options 9, Section 18 (Limit on Outstanding Uncovered Short Positions).

(D) The Exchange may determine to permit the exercise of American-style, cash-settled index options while trading in such options is delayed, halted, or suspended.

### **Supplementary Material to Options 6B, Section 1**

.01 For purposes of this Rule, the terms "customer account" and "non-customer account" have the same meaning as defined in the Clearing Corporation By-Laws Article I(C)(28) and Article I(N)(2), respectively

.02 Each Participant shall prepare a memorandum of every exercise instruction received showing the time when such instruction was so received. Such memoranda shall be subject to the requirements of SEC Rule 17a-4(b).

.03 Each Participant shall establish fixed procedures to insure secure time stamps in connection with their electronic systems employed for the recording of submissions to exercise or not exercise expiring options.

.04 The filing of a Contrary Exercise Advice required by this Rule does not serve to substitute as the effective notice to the Clearing Corporation for the exercise or non-exercise of expiring options.

### **Section 2. Allocation of Exercise Notices**

(a) Each Options Participant shall establish fixed procedures for the allocation of exercise notices assigned in respect of a short position in such Options Participant's customers' accounts. The allocation shall be on a "first in, first out," or automated random selection basis that has been approved by the Exchange, or on a manual random selection basis that has been specified by the Exchange. Each Options Participant shall inform its customers in writing of the method it uses to allocate exercise notices to its customers' account, explaining its manner of operation and the consequences of that system.

(b) Each Options Participant shall report its proposed method of allocation to the Exchange and obtain the Exchange's prior approval thereof, and no Options Participant shall change its method of allocation unless the change has been reported to and approved by the Exchange. The requirements of this paragraph shall not be applicable to allocation procedures submitted to and approved by another SRO having comparable standards pertaining to methods of allocation.

(c) Each Options Participant shall preserve for a three-year period sufficient work papers and other documentary materials relating to the allocation of exercise notices to establish the manner in which allocation of such exercise notices is in fact being accomplished.

### **Section 3. Delivery and Payment**

(a) Delivery of the underlying security upon the exercise of an options contract, and payment of the aggregate exercise price in respect thereof, shall be in accordance with the Rules of the Clearing Corporation.

(b) As promptly as possible after the exercise of an options contract by a customer, the Options Participant shall require the customer to make full cash payment of the aggregate exercise price in the case of a call options contract, or to deposit the underlying security in the case of a put options contract, or to make the required margin deposit in respect thereof if the transaction is effected in a margin account, in accordance with the Rules of the Exchange, and the applicable regulations of the Federal Reserve Board.

(c) As promptly as practicable after the assignment to a customer of an exercise notice the Options Participant shall require the customer to deposit the underlying security in the case of a call options contract if the underlying security is not carried in the customer's account, or to make full cash payment of the aggregate exercise price in the case of a put options contract, or in either case to deposit the required margin in respect thereof if the transaction is effected in a margin account, in accordance with the Rules of the Exchange, and the applicable regulations of the Federal Reserve Board.

(d) In accordance with the applicable rules of The Options Clearing Corporation ("OCC"), upon exercise of an in-the-money U.S. Dollar-Settled Foreign Currency option structured as a call, the holder receives, from OCC, U.S. dollars representing the difference between the exercise strike price and the closing settlement value of the U.S. Dollar-Settled Foreign Currency options contract multiplied by the number of units of currency covered by the contract. For a U.S. Dollar-Settled Foreign Currency option structured as a put, the holder receives U.S. dollars representing the excess of the exercise price over the closing settlement value of the U.S. Dollar- Settled Foreign Currency option contract multiplied by the number of units of foreign currency covered by the contract.

## **Options 6C Exercises and Deliveries**

### **Section 1. General Rule**

No Participant or associated person may effect a transaction or carry an account for a Customer, whether a Participant or non-Participant of NOM, without proper and adequate margin in accordance with this section and Regulation T.

### **Section 2. Time Margin Must be Obtained**

The amount of margin required by this Options 6C shall be obtained as promptly as possible and in any event within a reasonable time.

### **Section 3. Margin Requirements**

(a) A Participant or associated person must be bound by the initial and maintenance margin requirements of either the Chicago Board Options Exchange ("CBOE") or the New York Stock Exchange ("NYSE") as the same may be in effect from time to time.

(b) Such election shall be made in writing by a notice filed with Nasdaq Regulation.

(c) Upon the filing of such election, a Participant or associated person shall be bound to comply with the margin rules of the CBOE or the NYSE, as applicable, as though said rules were part of these Rules.

### **Section 4. Reserved**

### **Section 5. Margin Required is Minimum**

(a) The amount of margin prescribed by these Rules is the minimum which must be required initially and subsequently maintained with respect to each account affected thereby: but nothing in these Rules shall be construed to prevent a Participant or associated person from requiring margin in an amount greater than that specified.

(b) NOM may at any time impose higher margin requirements with respect to such positions when it deems such higher margin requirements to be advisable.

### **Section 6. Reserved**

### **Options 6D Net Capital Requirements**

### **Section 1. Reserved**

### **Section 2. Reserved**

### **Section 3. Reserved**

### **Section 4. Joint Back Office Participants**

(a) *Requirements for Joint Back Office Participants.* Every Participant or associated person that maintains a joint back office ("JBO") arrangement with a clearing broker-dealer subject to the requirements of Regulation T Section 220.7 of the Federal Reserve

System that is not an NYSE member and that has elected instead to be bound by CBOE margin requirements shall comply with the requirements prescribed below:

(1) Each JBO participant must be registered as a broker-dealer pursuant to Section 15 of the Securities Exchange Act of 1934 and subject to the capital requirements prescribed by Rule 15c3-1 therein; and shall not be eligible to operate under the provisions of SEC Rule 15c3-1(b)(i).

(2) Each JBO participant must meet and maintain a minimum account equity requirement of \$1,000,000 with each clearing broker-dealer where a JBO account is carried. If equity is below \$1,000,000 the carrying organization must issue a call for additional funds or securities which shall be obtained within five business days. If funds or securities sufficient to eliminate the deficiency are not received within 5 business days, the carrying organization must margin the account in accordance with the requirements prescribed for a customer in Regulation T and Options 6C, Section 3 of these Rules.

(3) Each JBO participant must meet and maintain the ownership standards established by the clearing broker-dealer; and

(4) Each JBO participant must employ (or have access to) a qualified Series 27 principal.

(b) Requirements for Clearing Participants Carrying the Accounts of JBO Participants. Every Clearing Participant carrying JBO accounts in accordance with Regulation T, Section 220.7 of the Federal Reserve Board is subject to the requirements outlined below:

(1) Each Participant which carries JBO accounts shall not allow its (a) tentative net capital to fall below \$25 million; or in the alternative its (b) net capital to fall below \$7 million for a period in excess of three (3) consecutive business days, provided that the broker-dealer has as its primary business the clearance of options Market Maker accounts and provided that at least 60% of the sum of gross haircuts calculated for all options Market Maker and JBO participant accounts, without regard to related account equity or clearing firm net capital charges, is attributable to options Market Maker transactions. In addition, the firm operating pursuant to (b) must include the gross deductions calculated for all JBO participant accounts in the clearing firm's ratio of gross options Market Maker deductions to adjusted net capital in accordance with the provisions of SEC Rule 15c3-1.

(2) Each Participant which maintains JBO accounts shall require and maintain equity of \$1,000,000 for each participant, over all related accounts. If equity is below \$1,000,000 the carrying organization must issue a call for additional funds or securities which shall be obtained within five business days. If funds or securities sufficient to eliminate the deficiency are not received within 5 business days, the carrying organization must margin the account in accordance with the

requirements prescribed for a customer in Regulation T and Options 6C, Section 3 of these Rules.

(3) Each Participant which maintains JBO accounts shall adjust its net worth daily by deducting any deficiency between a JBO Participant's account equity and the proprietary haircut calculated pursuant to SEC Rule 15c3- 1 for the positions maintained in such account.

(4) Each Participant which maintains JBO accounts shall establish and maintain written ownership standards for JBO accounts.

(5) The Participant must develop risk analysis standards which are acceptable to the Nasdaq Regulation. At minimum these standards must comply with the requirements of Options 6E, Section 6 of these Rules.

(6) Each Participant which maintains JBO accounts must notify its Designated Examining Authority ("DEA"), in writing, of its intention to carry such accounts.

(7) If at any time a Clearing Participant operating pursuant to paragraphs i(a) or (b) above determines that its tentative net capital or that its net capital, respectively, has fallen below the applicable requirements, such clearing member shall immediately notify Nasdaq Regulation of such deficiency by telegraphic or facsimile notice; and be subject to the prohibitions against withdrawal of equity capital set forth in SEC Rule 15c3-1(e) and to the prohibitions against reduction, prepayment, and repayment of subordination agreements set forth in paragraph (b)(1) of SEC Rule 15c3-1d, as if such broker or dealer's net capital were below the minimum standards specified by each of these paragraphs.

(c) JBO participants shall not be considered self-clearing for any purpose other than the extension of credit under Options 6C of these Rules.

### **Options 6E Records, Reports and Audits**

#### **Section 1. Maintenance, Retention and Furnishing of Books, Records and Other Information**

(a) Each Options Participant shall make, keep current and preserve such books and records as Nasdaq Regulation may prescribe pursuant to the Rules of the Exchange and as may be prescribed by the Exchange Act and the rules and regulations thereunder.

(b) No Options Participant shall refuse to make available to Nasdaq Regulation such books, records or other information as may be called for under the Rules of the Exchange or as may be requested in connection with an investigation by Nasdaq Regulation.

(c) All Options Participants shall prepare and make available all books and records as required by the Rules of the Exchange in English and U.S. dollars.

**Section 2. Reports of Uncovered Short Positions**

(a) Upon request of Nasdaq Regulation, each Options Participant shall submit a report of the total uncovered short positions in each options contract of a class dealt in on NOM showing:

- (1) positions carried by such Options Participant for its own account and
- (2) positions carried by such Options Participant for the accounts of Customers;
- (3) provided that the Options Participant shall not report positions carried for the accounts of other Options Participants where such other Options Participants report the positions themselves.

(b) Such report shall be submitted not later than the second business day following the date the request is made.

**Section 3. Financial Reports and Audits**

Each Options Participant shall submit to Nasdaq Regulation answers to financial questionnaires, reports of income and expenses and additional financial information in the type, form, manner and time prescribed by the Exchange or Nasdaq Regulation under the Rules of the Exchange.

**Section 4. Reserved****Section 5. Automated Submission of Trade Data**

(a) An Options Participant shall submit requested trade data elements, in such automated format as may be prescribed by Nasdaq Regulation from time to time, in regard to a transaction(s) that is the subject of the particular request for information.

(b) If the transaction was a proprietary transaction effected or caused to be effected by the Options Participant for any account in which such Participant, or any person associated with the Options Participant, is directly or indirectly interested, the Participant shall submit or cause to be submitted, any or all of the following information as requested by Nasdaq Regulation:

- (1) Clearing house number or alpha symbol as used by the Options Participant submitting the data;
- (2) Clearing house number(s) or alpha symbol(s) as may be used from time to time, of the Options Participant(s) on the opposite side of the transaction;
- (3) Identifying symbol assigned to the security and where applicable for the options month and series symbols;
- (4) Date transaction was executed;

(5) Number of option contracts for each specific transaction and whether each transaction was an opening or closing purchase or sale, as well as:

(A) the number of shares traded or held by accounts for which options data is submitted;

(B) where applicable, the number of shares for each specific transaction and whether each transaction was a purchase, sale or short sale;

(6) Transaction price;

(7) Account number; and

(8) Market center where transaction was executed.

(c) If the transaction was effected or caused to be effected by the Options Participant for any Customer, such Options Participant shall submit or cause to be submitted any or all the following information as requested by Nasdaq Regulation:

(1) Data elements (1) through (8) of paragraph (b) above;

(2) If the transaction was effected for a Public Customer, customer name, address(es), branch office number, representative number, whether the order was discretionary, solicited or unsolicited, date the account was opened and employer name and tax identification number(s); and

(3) If the transaction was effected for a Participant broker-dealer customer, whether the broker-dealer was acting as a principal or agent on the transaction or transactions that are the subject of Nasdaq Regulation's request.

(d) In addition to the above trade data elements, an Options Participant shall submit such other information in such automated format as may be prescribed by Nasdaq Regulation, as may from time to time be required.

(e) Nasdaq Regulation may grant exceptions, in such cases and for such time periods as it deems appropriate, from the requirement that the data elements prescribed in paragraphs (b) and (c) above be submitted to Nasdaq Regulation in an automated format.

#### **Section 6. Risk Analysis of Market Maker Accounts**

(a) Each Clearing Participant that clears or guarantees the transactions of Market Makers pursuant to Options 6, Section 4 of these Rules (Letters of Guarantee), shall establish and maintain written procedures for assessing and monitoring the potential risks to the Participant's capital over a specified range of possible market movements of positions maintained in such Market Maker accounts and such related accounts as Nasdaq Regulation shall from time to time direct.



- (1) Current procedures shall be maintained as current and filed with Nasdaq Regulation.
- (2) The procedures shall specify the computations to be made, the frequency of computations, the records to be reviewed and maintained and the position(s) within the organization responsible for the risk management.
- (b) Each affected Participant shall at a minimum assess and monitor its potential risk of loss from options Market Maker accounts each business day as of the close of business the prior day through use of a Nasdaq Regulation-approved computerized risk analysis program, which shall comply with at least the minimum standards specified below and such other standards as from time to time may be prescribed by Nasdaq Regulation:
- (1) The estimated loss to the Clearing Participant for each Market Maker account (potential account deficit) shall be determined given the impact of broad market movements in reasonable intervals over a range from negative fifteen percent (15%) to positive fifteen percent (15%).
- (2) The Participant shall calculate volatility using a method approved by Nasdaq Regulation, with volatility updated at least weekly. The program must have the capability of expanding volatility when projecting losses throughout the range of broad market movements.
- (3) Options prices shall be estimated through use of recognized options pricing models such as, but not limited to, Black-Scholes and Cox-Reubenstein.
- (4) At a minimum, written reports shall be generated which describe for each market scenario:

(A) projected loss per options class by account;

(B) projected total loss per options class for all accounts; and

(C) projected deficits per account and in aggregate.

Upon direction by Nasdaq Regulation, each affected Participant shall provide to Nasdaq Regulation such information as it may reasonably require with respect to the Participant's risk analysis for any or all of its Market Maker accounts.

### **Section 7. Regulatory Cooperation**

(a) Nasdaq Regulation may enter into agreements that provide for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement and other regulatory purposes, with domestic and foreign self-regulatory organizations, as well as associations and contract markets and the regulators of such markets.

(b) No Options Participant, partner, officer, director or other person associated with a Participant or other person or entity subject to the jurisdiction of the Exchange or Nasdaq Regulation shall refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding or refuse to furnish documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange or Nasdaq Regulation requests such information or testimony in connection with an inquiry resulting from an agreement entered into by the Exchange or Nasdaq Regulation pursuant to paragraph (a) of this Rule, including but not limited to Participants and affiliates of the Intermarket Surveillance Group. The requirements of this paragraph (b) shall apply regardless whether the Exchange or Nasdaq Regulation has itself initiated a form investigation or disciplinary proceeding.

(c) Whenever information is requested by Nasdaq Regulation pursuant to this Rule, the Options Participant or person associated with a Participant from whom the information is requested shall have the same rights and procedural protections in responding to such request as such Participant or person would have in the case of any other request for information initiated by Nasdaq Regulation pursuant to Nasdaq Regulation's investigative powers.

### **Section 8 Reserved.**

### **Section 9. Audit Trail**

(a) Order Identification. When entering orders on NOM, each Options Participant shall submit order information in such form as may be prescribed by Nasdaq in order to allow NOM to properly prioritize and match orders and report resulting transactions to the Clearing Corporation.

(b) An Options Participant must ensure that each options order received from a Customer for execution on NOM is recorded and time-stamped immediately. The order record must be time-stamped again on execution and also at the time of any modification or cancellation of the order by the Customer. Order records relating to NOM must contain the following information at a minimum:

- (1) a unique order identification;
- (2) the underlying security;
- (3) opening/closing designation;
- (4) the identity of the Clearing Participant;
- (5) Options Participant identification;
- (6) Participant Capacity;

- (7) identity of the individual/terminal completing the order ticket;
- (8) customer identification;
- (9) account identification;
- (10) buy/sell;
- (11) contract volume;
- (12) contract month;
- (13) exercise price;
- (14) put/call;
- (15) price or price limit, price range or strategy price;
- (16) special instructions (e.g., GTC); and
- (17) and such other information as may be required by NOM.

(c) An Options Participant that employs an electronic system for order routing or order management which complies with NOM requirements will be deemed to be complying with the requirements of this Rule if the required information is recorded in electronic form rather than in written form.

(d) In addition to any related requirement under applicable securities laws, information recorded pursuant to this Rule must be retained by Options Participants for a period of no less than three (3) years after the date of the transaction.

\* \* \* \* \*

### **Options 7 Pricing Schedule**

The term "**Customer**" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Options 1(a)(47)[Chapter I, Section 1(a)(48)]).

The term "**NOM Market Maker**" or ("M") is a Participant that has registered as a Market Maker on NOM pursuant to [Chapter VII, Section 2]Options 2, Section 1(a)(9), and must also remain in good standing pursuant to [Chapter VII, Section 4]Options 2, Section 9. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

\* \* \* \* \*

The term "**Professional**" or ("P") means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to [Chapter I, Section 1(a)(48)]Options 1, Section 1(a)(47). All Professional orders shall be appropriately marked by Participants.

\* \* \* \* \*

The term "**Joint Back Office**" or "**JBO**" applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO will be priced the same as a Broker-Dealer as of September 1, 2014. A JBO participant is a Participant that maintains a JBO arrangement with a clearing broker-dealer ("JBO Broker") subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed in [Chapter XIII, Section 5]Options 6D, Section 4.

#### **Section 4 Nasdaq Options Market Data Distributor Fees**

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(e) Nasdaq ITCH to Trade Options ("ITTO") is a data feed that provides quotation information for individual orders on the NOM book, last sale information for trades executed on NOM, and Order Imbalance Information as set forth in NOM Rules [Chapter VI, Section 8]Options 3, Section 23(a)(1).

\* \* \* \* \*

### **Options 9 Business Conduct[Reserved]**

#### **Section 1. Reserved**

#### **Section 2. Adherence to Law and Compliance with NOM Rules**

(a) No Options Participant shall engage in conduct in violation of the Exchange Act or Rules thereunder, the Rules of the Exchange or the Rules of the Clearing Corporation insofar as they relate to the reporting or clearance of any Exchange transaction, or any written interpretation thereof. Every Options Participant shall supervise persons associated with the Participant to assure compliance therewith.

(b) Each Options Participant shall be responsible for ensuring that all arrangements made and systems used in connection with business conducted on NOM, and the transaction of such business itself, comply with the Options Participant's and associated persons' obligations under the Rules of the Exchange, the Rules of the Clearing Corporation and any other relevant laws, rules, interpretations and obligations. In accordance with the NOM Rules and in connection with business conducted on NOM, each Options Participant shall:

(1) have adequate arrangements to ensure that all staff involved in the conduct of business on NOM are suitable, adequately trained and properly supervised;

- (2) be responsible for the acts and conduct of each associated person,
- (3) establish its trading arrangements such that each Participant is able to meet the requirements set out in subparagraph (a) and that all other relevant obligations contained in the Rules are complied with;
- (4) implement suitable security measures such that only those individuals explicitly authorized by the Options Participant to trade may gain access to passwords and security keys;
- (5) ensure that any trading access granted to individuals (whether employees of the Options Participant or otherwise), for example by way of order routing systems, is adequately controlled and supervised, including appropriate checks before any orders are submitted to the Trading System; and
- (6) ensure that accurate information is input into the System, including, but not limited to, the Options Participant's capacity.

### **Section 3. Reserved**

#### **Section 4. Disruptive Quoting and Trading Activity Prohibited**

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

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

(A) Disruptive Quoting and Trading Activity Type 1:

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

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

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

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

(B) Disruptive Quoting and Trading Activity Type 2:

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

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

(iii) Applicability. For purposes of this Rule, disruptive quoting and trading activity shall include a frequent pattern in which the facts listed above are present. Unless otherwise indicated, the order of the events indicating the pattern does not modify the applicability of the Rule. Further, disruptive quoting and trading activity includes a pattern or practice in which of the quoting and trading activity is conducted on the Exchange as well as a pattern or practice in which some portion of the quoting or trading activity is conducted on the Exchange and the other portions of the quoting or trading activity is conducted on one or more other exchanges.

### **Section 5. Reserved**

### **Section 6. Reserved**

### **Section 7. Reserved**

### **Section 8. Rumors**

No Options Participant or person associated with an Options Participant shall circulate, in any manner, rumors of a character which might affect market conditions in any security; provided, however, that this Rule shall not prohibit discussion of unsubstantiated information, so long as its source and unverified nature are disclosed.

### **Section 9. Prevention of the Misuse of Material Nonpublic Information**

(a) Every Options Participant shall establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the Participant's business, to prevent the misuse of material nonpublic information by such Participant or persons associated with such Participant in violation of the federal securities laws or the Rules thereunder, and the Rules of the Exchange.

(b) Misuse of material nonpublic information includes, but is not limited to:

(1) trading in any securities issued by a corporation, or in any related securities or related options or other derivative securities, while in possession of material nonpublic information concerning that corporation;

(2) trading in an underlying security or related options or other derivative securities, while in possession of material nonpublic information concerning imminent transactions in the underlying security or related securities; and

(3) disclosing to another person any material nonpublic information involving a corporation whose shares are publicly traded or disclosing an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material nonpublic information.

(c) Each Options Participant shall establish, maintain and enforce the following policies and procedures as appropriate for the nature of each Participant's business:

(1) All associated persons must be advised in writing of the prohibition against the misuse of material nonpublic information.

(2) Signed attestations from the Participant and all associated persons affirming their awareness of, and agreement to abide by, the aforementioned prohibitions must be maintained for at least three (3) years, the first two (2) years in an easily accessible place.

(3) Records of all brokerage accounts maintained by the Participant and all associated persons must be acquired and maintained for at least three (3) years, the first two (2) years in an easily accessible place, and such brokerage accounts must be reviewed periodically by the Participant for the purpose of detecting the possible misuse of material nonpublic information.

(4) Any business dealings the Participant may have with any corporation whose securities are publicly traded, or any other circumstances that may result in the Participant receiving, in the ordinary course of business, material nonpublic information concerning any such corporation, must be identified and documented.

(d) Participants that are required to file Form X-17A-5 under the Exchange Act or Rules thereunder, with the Exchange on an annual basis only, shall, contemporaneously with those submissions, file attestations signed by such Participants stating that the procedures mandated by this Rule have been established, enforced and maintained.

(e) Any Options Participant or associated person who becomes aware of any possible misuse of material nonpublic information must promptly notify Nadaq Regulation.

(f) It may be considered conduct inconsistent with just and equitable principles of trade for any Participant or person associated with a Participant who has knowledge of all material terms and conditions of:

(1) an order and a solicited order,

(2) an order being facilitated or submitted to NOM for price improvement, or

(3) orders being crossed;

the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option for the same underlying security as any option that is the subject of the order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument until (a) the terms and conditions of the order and any changes in the terms and conditions of the order of which the Participant or person associated with the Participant has knowledge are disclosed, or (b) the trade can no longer reasonably be

considered imminent in view of the passage of time since the order was received. The terms of an order are "disclosed" to NOM Options Participants when the order is entered into the NOM Book. For purposes of this paragraph (f), an order to buy or sell a "related instrument" means, in reference to an index option, an order to buy or sell securities comprising 10% or more of the component securities in the index or an order to buy or sell a futures contract on an economically equivalent index.

#### **Section 10. Disciplinary Action by Other Organizations**

Every Options Participant shall promptly notify Nasdaq Regulation in writing of any disciplinary action, including the basis therefore, taken by any national securities exchange or registered securities association, clearing corporation, commodity futures market or government regulatory body against the Options Participant or its associated persons who are directly involved in derivatives trading, and shall similarly notify Nasdaq Regulation of any disciplinary action taken by the Options Participant itself against any of its associated persons who are directly involved in derivatives trading involving suspension, termination, the withholding of commissions or imposition of fines in excess of \$2,500, or any other significant limitation on activities.

#### **Section 11. Other Restrictions on Participants**

Whenever the Exchange shall find that an Options Participant has failed to perform on its contracts or is insolvent or is in such financial or operational condition or is otherwise conducting business in such a manner that it cannot safely conduct business with Customers, creditors or the Exchange, the Exchange may summarily suspend the Options Participant in accordance with Options 11, Section 2 (Summary Suspension) or may impose such conditions and restrictions upon the Options Participant as the Exchange considers reasonably necessary for the protection of the Exchange, NOM, and the Customers of such Options Participant.

#### **Section 12. Significant Business Transactions of Options Clearing Participants**

Significant Business Transactions of Options Clearing Participants shall be governed by this Rule and not by Nasdaq Rule 1017. All other Significant Business Transactions of Options Participants shall be subject to Nasdaq Rule 1017.

(a) Except as provided in paragraph (c) below, a Participant that clears Options Market Maker trades is required to notify Nasdaq Regulation in writing fifteen (15) days prior to any of the following proposed significant business transactions ("SBT"):

(1) the combination, merger or consolidation between the Participant and another person engaged in the business of effecting, executing, clearing or financing transactions in securities or futures products;

(2) the transfer from another person, Market Maker, broker-dealer, or customer of securities or futures accounts that are significant in size or number to the business of the Participant;



(3) the assumption or guarantee by the Participant of liabilities of another person engaged in the business of effecting, executing, clearing or financing transactions in securities or futures products, in connection with a direct or indirect acquisition of all or substantially all of the person's assets; or

(4) termination of the Participant's clearing business or any material part thereof.

(b) Notification of any of the following SBTs shall be made in writing to Nasdaq Regulation, not later than five (5) business days from the date on which the SBT becomes effective:

(1) the sale by the Clearing Participant of a significant part of its assets to another person;

(2) a change in the identity of any general partner or a change in the beneficial ownership of ten percent (10%) or more of any class of the outstanding stock of any corporate general partner;

(3) a change in the beneficial ownership of twenty percent (20%) or more of any class of the outstanding stock of the Participant or the issuance of any capital stock of the Participant; or

(4) the acquisition by the Clearing Participant of assets of another person that would constitute a "business" that is "significant," as those terms are defined in Section 11-01 of Regulation S-X under the Exchange Act.

(c) A Clearing Participant is required to notify Nasdaq Regulation in writing thirty (30) days prior to a proposed SBT included in paragraph (a) of this Rule, and such SBT shall be subject to the prior approval of Nasdaq Regulation, if the Participant's Market Maker clearance activities exceed, or would exceed as a result of the proposed SBT, any of the following parameters:

(1) fifteen percent (15%) of cleared NOM Market Maker contract volume for the most recent three (3) months;

(2) an average of fifteen percent (15%) of the number of NOM Market Makers as of each month and for the most recent three (3) months; or

(3) twenty-five percent (25%) of NOM Market Maker gross deductions (haircuts) defined by Rule 15c3-1(a)(6) or (c)(2)(x) under the Exchange Act carried by the Clearing Participant in relation to the aggregate of such haircuts carried by all other Clearing Participants for any month end within the most recent three (3) months.

(d) An SBT that comes within paragraph (c) of this Rule may be disapproved or conditioned within the thirty (30) day period if Nasdaq Regulation determines that such

SBT has the potential to threaten the financial or operational integrity of Market Maker transactions. In making this determination, Nasdaq Regulation may consider, among other relevant matters, the following:

- (1) The effect of the proposed SBT on the capital size and structure of the resulting Clearing Participant(s), the potential for financial failure and the consequences of any such failure on the NOM market as a whole, and the potential for increased or decreased operational efficiencies arising from the proposed transaction.
  - (2) The effect of the proposed SBT upon overall concentration of Market Makers, including a comparison of the following measures before and after the proposed transaction:
    - (A) proportion of NOM Market Maker contract volume cleared;
    - (B) proportion of NOM Market Makers cleared; and
    - (C) proportion of Market Maker gross deductions (haircuts) as defined by Rule 15c3-1(a)(6) or (c)(2)(x) under the Exchange Act carried by the Clearing Participant(s) in relation to the aggregate of such deductions carried by other Participants that clear Market Maker transactions.
  - (3) The regulatory history of the affected Participants, specifically as it may indicate a tendency to financial or operational weakness.
- (e) Transactions that come within paragraph (c) of this Rule shall be reviewed according to the following procedures:
- (1) A Participant must provide promptly, in writing, all information reasonably requested by Nasdaq Regulation. Any information disclosed by Participants pursuant to the requirements of this Rule shall be kept confidential by Nasdaq Regulation until such information is otherwise publicly disclosed and shall be used only for purposes of reviewing the proposal.
  - (2) If Nasdaq Regulation determines, prior to the expiration of the thirty (30) day period, that a proposed SBT may be approved without conditions, Nasdaq Regulation shall promptly so advise the Participant.
  - (3) All decisions to disapprove or condition a proposed SBT or to impose extraordinary requirements shall be in writing, shall include a statement setting forth the grounds for the decision, and the Participant shall be promptly notified of any such decisions by Nasdaq Regulation.
  - (4) Notwithstanding any other provisions of the NOM Rules, the Participant may appeal a decision to disapprove or condition a proposed SBT directly to the Board

by filing an application for review with the Secretary of the Exchange within fifteen (15) days of the date of service of the decision. Appeal to the Board shall be the exclusive method of reviewing such a decision.

(5) An appeal to the Board of a decision to disapprove or condition a proposed SBT shall not operate as a stay of that decision during the pendency of the appeal.

(6) Nasdaq Regulation shall file notice with the SEC in accordance with the provisions of Section 19(d)(1) of the Exchange Act of all final decisions to disapprove or condition a proposed SBT.

(f) Nasdaq Regulation may impose additional financial and/or operational requirements on a Participant that clears Market Maker trades at any time when it determines that the Participant's continuance in business without such requirements has the potential to threaten the financial or operational integrity of Market Maker transactions.

(g) The provisions of this Rule do not preclude summary action under Options 11, Section 2, Discipline and Summary Suspensions, of these Rules, or other Nasdaq Regulation action pursuant to the NOM Rules.

(h) Nasdaq Regulation, upon approval by the Chief Regulatory Officer of Nasdaq, may exempt a Participant from the requirements of this Rule, either generally or in respect of specific types of transactions, based on the limited proportion of Market Maker trades on NOM that are cleared by the Participant or on the limited importance that the clearing of Market Maker trades bears to the total business of the Participant.

### **Section 13. Position Limits**

(a) No Options Participant shall make, for any account in which it has an interest or for the account of any Customer, an opening transaction on any exchange if the Options Participant has reason to believe that as a result of such transaction the Options Participant or its Customer would, acting alone or in concert with others, directly or indirectly:

(1) exceed the applicable position limit fixed from time to time by the Chicago Board Options Exchange for any options contract traded on NOM and the Chicago Board Options Exchange, notwithstanding the foregoing options contracts overlying SPDR® S&P 500® exchange-traded fund ("SPY ETF" or "SPY") shall have a position limit of 1,800,000 contracts on the same side of the market;

(2) exceed the position limit fixed by NOM from time to time for any options contract traded on NOM but not traded on the Chicago Board Options Exchange;  
or

(3) exceed the applicable position limit fixed from time to time by another exchange for an options contract not traded on NOM, when the Options

Participant is not a member of the other exchange on which the transaction was effected; or

(4) exceed the applicable position limit fixed from time to time by PHLX with respect to U.S. Dollar-Settled Foreign Currency Options.

(b) Should an Options Participant have reason to believe that a position in any account in which it has an interest or for the account of any Customer of such Options Participant is in excess of the applicable limit, such Options Participant shall promptly take the action necessary to bring the position into compliance.

#### **Section 14. Exemptions from Position Limits**

An Options Participant may rely upon any available exemptions from applicable position limits granted from time to time by another Options Exchange for any options contract traded on NOM provided that such Options Participant (1) provides Nasdaq Regulation with a copy of any written exemption issued by another Options Exchange or a written, description of any exemption issued by another Options Exchange other than in writing containing sufficient detail for Nasdaq Regulation to verify the validity of that exemption with the issuing Exchange, and (2) fulfills all conditions precedent for such exemption and complies at all times with the requirements of such exemptions with respect to its trading on NOM.

#### **Section 15. Exercise Limits**

(a) No Options Participant shall exercise, for any account in which it has an interest or for the account of any Customer, a long position in any options contract where such Options Participant or Customer, acting alone or in concert with others, directly or indirectly, has or will have:

(1) exceeded the applicable exercise limit fixed from time-to-time by the Chicago Board Options Exchange for any options contract traded on NOM and the Chicago Board Options Exchange, notwithstanding the foregoing options contracts overlying SPDR® S&P 500® exchange-traded fund ("SPY ETF" or "SPY") shall have an exercise limit of 1,800,000 contracts on the same side of the market;

(2) exceeded the exercise limit fixed by NOM from time to time for any options contract traded on NOM but not traded on the Chicago Board Options Exchange;

(3) exceeded the applicable exercise limit fixed from time to time by another exchange for an options contract not traded on NOM, when the Options Participant is not a member of the other exchange on which the transaction was effected; or

(4) exceeded the applicable exercise limit fixed from time-to-time by PHLX with respect to U.S. Dollar-Settled Foreign Currency Options.

(b) an Options Market Maker that has been granted an exemption to position limits pursuant to Options 9, Section 14 (Exemption to Position Limits), the number of contracts which can be exercised over a five (5) business day period shall equal the Market Maker's exempted position.

#### **Section 16. Reports Related to Position Limits**

Each Options Participant shall maintain and furnish to Nasdaq Regulation all reports required by the applicable rule of any Options Exchange of which it is a Member with respect to reports related to position limits.

#### **Section 17. Liquidation Positions**

(a) Whenever Nasdaq Regulation shall find that a person or group of persons acting in concert holds or controls, or is obligated in respect of, an aggregate position (whether long or short) in all options contracts or one or more classes or series traded on NOM in excess of the applicable position limit established pursuant to Options 9, Section 13 (Position Limits), it may order all Options Participants carrying a position in options contracts of such classes or series for such person or persons to liquidate such positions as expeditiously as possible, consistent with the maintenance of a fair and orderly market.

(b) Whenever such an order is given, no Options Participant shall accept any order to purchase, sell or exercise any options contract for the account of the person or persons named in the order, unless and until Nasdaq Regulation expressly approves such person or persons for options transactions.

#### **Section 18. Limit on Outstanding Uncovered Short Positions**

(a) Whenever it is determined from the reports of uncovered short positions submitted pursuant to Options 6E, Section 2 of these Rules (Reports of Uncovered Short Positions), viewed in light of current market conditions in options and in underlying securities, that there are outstanding an excessive number of uncovered short positions in options contracts of a given class traded on NOM or that an excessively high percentage of outstanding short positions in options contracts of a given class traded on NOM are uncovered, Nasdaq Regulation may determine to prohibit Options Participants from any further opening writing transactions on any exchange in options contracts of that class unless the resulting short position will be covered, and Nasdaq Regulation may prohibit the uncovering of any existing covered short positions in one or more series of options of that class, as it deems appropriate in the interest of maintaining a fair and orderly market in options contracts or in underlying securities.

(b) Nasdaq Regulation may exempt transactions of Options Market Makers from restrictions imposed under this Rule. Such restrictions shall be rescinded upon a determination that they are no longer appropriate.

#### **Section 19. Other Restrictions on Options Transactions and Exercises**

(a) NOM may impose such restrictions on transactions or exercises in one or more series of options of any class traded on NOM as Nasdaq Regulation in its judgment deems advisable in the interests of maintaining a fair and orderly market in options contracts or in underlying securities, or otherwise deems advisable in the public interest or for the protection of investors.

(1) During the effectiveness of such restrictions, no Options Participant shall, for any account in which it has an interest or for the account of any Customer, engage in any transaction or exercise in contravention of such restrictions.

(2) Notwithstanding the foregoing, during the ten (10) business days prior to the expiration date of a given series of options, other than index options, which shall include such expiration date for an option contract that expires on a business day, no restriction on exercise under this Rule may be in effect with respect to that series of options. With respect to index options, restrictions on exercise may be in effect until the opening of business on the business day of their expiration or, in the case of an option contract expiring on a day that is not a business day, on the last business day before the expiration date.

(3) Exercises of American-style, cash-settled index options shall be prohibited during any time when trading in such options is delayed, halted, or suspended, subject to the following exceptions:

(A) The exercise of an American-style, cash-settled index option may be processed and given effect in accordance with and subject to the Rules of the Clearing Corporation while trading in the option is delayed, halted, or suspended if it can be documented, in a form prescribed by Nasdaq Regulation, that the decision to exercise the option was made during allowable time frames prior to the delay, halt, or suspension;

(B) Exercises of expiring American-style, cash-settled index options shall not be prohibited on the business day of expiration, or in the case of an option contract expiring on a day that is not a business day, the last business day prior to their expiration;

(C) Exercises of American-style, cash-settled index options shall not be prohibited during a trading halt that occurs at or after 4:00 p.m. Eastern time. In the event of such a trading halt, exercises may occur through 4:20 p.m. Eastern time. In addition, if trading resumes following such a trading halt pursuant to the procedure described in Options 3, Section 9 of these Rules, exercises may occur during the resumption of trading and for five (5) minutes after the close of the resumption of trading. The provisions of this subparagraph (a)(3)(C) are subject to the authority of the Board to impose restrictions on transactions and exercises pursuant to paragraph (a) of this Rule; and

(D) NOM may determine to permit the exercise of American-style, cash-settled index options while trading in such options is delayed, halted, or suspended.

(b) Whenever the issuer of a security underlying a call option traded on NOM is engaged or proposes to engage in a public underwritten distribution ("public distribution") of such underlying security or securities exchangeable for or convertible into such underlying security, the underwriters may request that NOM impose restrictions upon all opening writing transactions in such options at a "discount" where the resulting short position will be uncovered ("uncovered opening writing transactions").

(1) In addition to a request, the following conditions are necessary for the imposition of restrictions:

(A) less than a majority of the securities to be publicly distributed in such distribution are being sold by existing security holders;

(B) the underwriters agree to notify Nasdaq Regulation upon the termination of their stabilization activities; and

(C) the underwriters initiate stabilization activities in such underlying security on a national securities exchange when the price of such security is either at a "minus" or "zero minus" tick.

(2) Upon receipt of such a request and determination that the conditions listed above are met, Nasdaq Regulation shall impose the requested restrictions as promptly as possible but no earlier than fifteen (15) minutes after Participants shall have been notified and shall terminate such restrictions upon request of the underwriters or when Nasdaq Regulation otherwise discovers that stabilizing transactions by the underwriters has been terminated.

(3) For purposes of paragraph (b) of this Rule, an uncovered opening writing transaction in a call option will be deemed to be effected at a "discount" when the premium in such transaction is either:

(A) in the case of a distribution of the underlying security not involving the issuance of rights and in the case of a distribution of securities exchangeable for or convertible into the underlying security, less than the amount by which the underwriters' stabilization bid for the underlying security exceeds the exercise price of such option; or

(B) in the case of a distribution being offered pursuant to rights, less than the amount by which the underwriters' stabilization bid in the underlying security at the subscription price exceeds the exercise price of such option.

## **Section 20. Mandatory Systems Testing**

(a) Each Options Participant that Nasdaq designates as required to participate in a system test must conduct or participate in the testing of its computer systems to ascertain the compatibility of such systems with the Exchange's systems in the manner and frequency

prescribed by the Exchange. Nasdaq will designate Options Participants as required to participate in a system test based on: (1) the category of the Participant (Market Maker and OEF); (2) the computer system(s) the Participant uses; and (3) the manner in which the Participant connects to the Exchange. Nasdaq will give Participants reasonable notice of any mandatory systems test, which notice will specify the nature of the test and Participants' obligations in participating in the test.

(b) Every Options Participant required by Nasdaq to conduct or participate in testing of computer systems shall provide to the Exchange such reports relating to the testing as the Exchange may prescribe. Participants shall maintain adequate documentation of tests required by this Rule and results of such testing for examination by the Exchange.

(c) An Options Participant that is subject to this Rule and that fails to conduct or participate in the tests, fails to file the required reports, or fails to maintain the required documentation, may be subject to a summary suspension or other action taken pursuant to Options 11, Section 2 of these Rules and/or a disciplinary action pursuant to General 5 (Discipline).

### **Section 21. Anti-Money Laundering Compliance Program**

Each Options Participant shall comply with General 9, Section 37.

### **Section 22. Reserved**

### **Section 23. Reserved**

## **Options 10 Doing Business with the Public**

### **Section 1. Eligibility**

An OEF may only transact business with Public Customers if such Participant also is a member of another registered national securities exchange or association with which the Exchange has entered into an agreement under Rule 17d-2 under the Exchange Act pursuant to which such other exchange or association shall be the designated options examining authority for the OEF. Eligibility to transact business with the public shall be based upon an OEF's meeting the general requirements set forth in this Options 10 and the net capital requirements set forth in Exchange Act Rule 15c3-1 (Net Capital Requirements). Such approval may be withdrawn if any such requirements cease to be met.

### **Section 2. Registration of Options Principals**

No OEF shall be approved to transact options business with the public until those associated persons who are designated as Options Principals have been approved by and registered with the Exchange. Persons engaged in the management and supervision of the OEF's business pertaining to options contracts shall be designated as Options Principals and shall have responsibility for the overall oversight of the OEF's options related activities on the Exchange.



### **Section 3. Registration of Representatives**

(a) No OEF shall be approved to transact business with the public until those persons associated with it who are designated representatives have been approved by and registered with the Exchange.

(b) Persons who perform duties for the OEF which are customarily performed by sales representatives or branch office managers shall be designated as representatives of the OEF. A person accepting orders from non-Member customers (unless such customer is a broker-dealer registered with the Securities and Exchange Commission) is required to register with the Exchange and to be qualified by passing the General Securities Registered Representative Examination (Series 7).

### **Section 4. Discipline, Suspension, Expulsion of Registered Persons**

The Exchange or Nasdaq Regulation may discipline, suspend or terminate the registration of any registered person for violation of the Rules of the Exchange or the Rules of the Clearing Corporation.

### **Section 5. Branch Offices**

(a) Every OEF approved to do options business with the public under this Options 10 shall file with Nasdaq Regulation 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.

(b) No branch office of an OEF shall transact options business with the public unless the manager of such branch office has been qualified as a Registered Options and Security Futures Principal; provided, that this requirement shall not apply to branch offices in which not more than three (3) representatives are located so long as the OEF can demonstrate to the satisfaction of Nasdaq Regulation that the options activities of such branch offices are appropriately supervised by a Registered Options and Security Futures Principal.

### **Section 6. Opening of Accounts**

(a) *Approval Required.* No OEF shall accept an order from a Public Customer to purchase or write an options contract unless the Public Customer's account has been approved for options transactions in accordance with the provisions of this Rule.

(b) *Diligence in Opening Account.* In approving a Public Customer's account for options transactions, an OEF shall exercise due diligence to learn the essential facts as to the Public Customer and his investment objectives and financial situation, and shall make a record of such information, which shall be retained in accordance with SEC Rule 17a-4 under the Exchange Act. Based upon such information, the branch office manager or other Options Principal shall approve in writing the Public Customer's account for options transactions; provided, that if the branch office manager is not an Options

Principal, his approval shall within a reasonable time be confirmed by an Options Principal.

(1) In fulfilling its obligations under this paragraph (b) with respect to options Public Customers that are natural persons, an OEF shall seek to obtain the following information at a minimum (information shall be obtained for all participants in a joint account):

- (A) investment objectives (e.g., safety of principal, income, growth, trading profits, speculation);
- (B) employment status (name of employer, self-employed or retired);
- (C) estimated annual income from all sources;
- (D) estimated net worth (exclusive of primary residence);
- (E) estimated liquid net worth (cash, securities, other);
- (F) marital status;
- (G) number of dependents;
- (H) age; and
- (I) investment experience and knowledge (e.g., number of years, size, frequency and type of transactions for options, stocks and bonds, commodities, other).

(2) In addition to the information required in subparagraph (b)(1) above, the Public Customer's account records shall contain the following information, if applicable:

- (A) the source or sources of background and financial information (including estimates) concerning the Public Customer;
- (B) discretionary trading authorization, including agreement on file, name, relationship to Public Customer and experience of person holding trading authority;
- (C) date(s) options disclosure document(s) furnished to Public Customer;
- (D) nature and types of transactions for which account is approved (e.g., buying, covered writing, uncovered writing, spreading, discretionary transactions);

(E) name of representative;

(F) name of the Options Principal approving account;

(G) date of approval; and

(H) dates of verification of currency of account information.

(3) Refusal of a Public Customer to provide any of the information called for in this paragraph (b) shall be so noted on the Public Customer's records at the time the account is opened. Information provided shall be considered together with other information available in determining whether and to what extent to approve the account for options transactions.

(c) Verification of Public Customer Background and Financial Information. The background and financial information upon which the account of every new Public Customer that is a natural person has been approved for options trading, including all of the information required in paragraph (b)(ii) of this Rule, unless the information is included in the Public Customer's account agreement, shall be sent to the Public Customer for verification or correction within fifteen (15) days after the Public Customer's account has been approved for options transactions. A copy of the background and financial information on file with the OEF shall also be sent to the Public Customer for verification within fifteen (15) days after the OEF becomes aware of any material change in the Public Customer's financial situation. Absent advice from the Public Customer to the contrary, the information will be deemed to be verified.

(d) Agreements to Be Obtained. Within fifteen (15) days after a Public Customer's account has been approved for options transactions, an OEF shall obtain from the Public Customer a written agreement that the account shall be handled in accordance with the Rules of the Exchange and the Rules of the Clearing Corporation and that such Public Customer, acting alone or in concert with others, will not violate the position or exercise limits set forth in Options 9, Sections 13 and 15 of these Rules.

(e) Options Disclosure Documents to Be Furnished. At or prior to the time a Public Customer's account is approved for options transactions, an OEF shall furnish the Public Customer with one (1) or more current options disclosure documents issued by the OCC in accordance with the requirements of Options 10, Section 13 (Delivery of Current Options Disclosure Documents and Prospectus).

(f) Every OEF transacting business with the public in uncovered options contracts shall develop, implement and maintain specific written procedures governing the conduct of such business that shall at least include the following:

(A) specific criteria and standards to be used in evaluating the suitability of a Public Customer for uncovered short options transactions;

(B) specific procedures for approval of accounts engaged in writing uncovered short options contracts (which for the purposes of this Rule shall include combinations and any transactions that involve naked writing), including written approval of such accounts by an Options Principal;

(C) designation of a specific Registered Options and Security Futures Principal(s) as responsible for approving accounts that do not meet the specific criteria and standards for writing uncovered short options transactions and for maintaining written records of the reasons for every account so approved;

(D) establishment of specific minimum net equity requirements for initial approval and maintenance of Public Customer uncovered options accounts; and

(E) requirements that Public Customers approved for writing uncovered short options transactions be provided with a special written description of the risks inherent in writing uncovered short options transactions, at or prior to the initial uncovered short options transaction pursuant to Options 10, Section 13 (Delivery of Current Options Disclosure Documents and Prospectus).

### **Section 7. Supervision of Accounts**

(a) *Duty to Supervise - General.* Each Member that conducts a public customer options business shall ensure that its written supervisory system policies and procedures pursuant to FINRA Rules 3110, 3120, 3130 and 3170 adequately address the Member's public customer options business.

(b) *Duty to Supervise — Non-Participant Accounts.* Every OEF shall develop and implement a written program for the review of the its non-Participant Public Customer accounts and all orders in such accounts, insofar as such accounts and orders relate to options contracts.

(c) *Duty to Supervise — Uncovered Short Options.* Every OEF shall develop and implement specific written procedures concerning the manner of supervision of Public Customer accounts maintaining uncovered short (written) options positions (which for the purposes of this Rule shall include combinations and any transactions that involve naked writing) and specifically providing for frequent supervisory review of such accounts.

(d) *Maintenance of Public Customer Records.* Background and financial information of Public Customers who have been approved for options transactions shall be maintained at the principal supervisory office having jurisdiction over the office servicing a Public Customer's account, or shall have readily accessible and promptly retrievable, information to permit review of each Public Customer's options account on a timely basis to determine:

(A) the compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved;

- (B) the size and frequency of options transactions;
- (C) commission activity in the account;
- (D) profit or loss in the account;
- (E) undue concentration in any options class or classes; and
- (F) compliance with the provisions of Regulation T of the Federal Reserve Board.

### **Section 8. Suitability of Recommendations**

(a) Every OEF, Options Principal or representative who recommends to a Public Customer the purchase or sale (writing) of any options contract shall have reasonable grounds for believing that the recommendation is not unsuitable for such Public Customer on the basis of the information furnished by such Public Customer after reasonable inquiry as to his investment objectives, financial situation and needs, and any other information known by such OEF, Options Principal or representative.

(b) No OEF, Options Principal or representative shall recommend to a Public Customer an opening transaction in any options contract unless the person making the recommendation has a reasonable basis for believing at the time of making the recommendation that the Public Customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the options contract.

### **Section 9. Discretionary Accounts**

(a) *Authorization and Approval Required.* No OEF shall exercise any discretionary power with respect to trading in options contracts in a Public Customer's account unless such Public Customer has given prior written authorization and the account has been accepted in writing by a Registered Options and Security Futures Principal.

(1) Each participant shall designate specific Registered Options and Security Futures Principals to review discretionary accounts. A Registered Options and Security Futures Principal other than the Registered Options and Security Futures Principal who accepted the account shall review the acceptance of each discretionary account to determine that the Registered Options and Security Futures Principal accepting the account had a reasonable basis for believing that the Public Customer was able to understand and bear the risks of the strategies or transactions proposed, and the reviewing Registered Options and Security Futures Principal shall maintain a record of the basis for his determination.

(2) Every discretionary order shall be identified as discretionary on the order at the time of its entry into NOM market.

- (2) Discretionary accounts shall receive frequent appropriate supervisory review by a Registered Options and Security Futures Principal who is not exercising the discretionary authority.
- (b) Record of Transactions. A record shall be made of every options transaction for an account with respect to which an OEF is vested with any discretionary power, such record to include the name of the Public Customer, options class and series, number of contracts, premium, and date and time when such transaction took place.
- (c) Excessive Transactions Prohibited. No OEF shall effect with or for any Public Customer's account with respect to which such Participant is vested with any discretionary power any transactions of purchase or sale of options contracts that are excessive in size or frequency in view of the financial resources and character of such account.
- (d) Options Programs. Where the discretionary account utilizes options programs involving the systematic use of one or more options strategies, the Public Customer shall be furnished with a written explanation of the nature and risks of such programs.
- (e) Discretion as to Price or Time Excepted. This rule shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite number of option contracts in a specified security shall be executed, except that the authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent a specific, written contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretion exercised in an institutional account, as defined in General 9, Section 30(b)(2) pursuant to valid Good-Till-Cancelled instructions issued on a "not held" basis. Any exercise of time and price discretion must be reflected on the order ticket.
- (f) Any participant that does not utilize computerized surveillance tools for the frequent and appropriate review of discretionary account activity must establish and implement procedures to require Registered Options and Security Futures Principal qualified individuals who have been designated to review discretionary accounts to approve and initial each discretionary order on the day entered.

#### **Section 10. Confirmation to Public Customers**

- (a) Every OEF shall promptly furnish to each Public Customer a written confirmation of each transaction in options contracts that shows the underlying security, type of options, expiration month, exercise price, number of options contracts, premium, commissions, date of transaction and settlement date, and shall indicate whether the transaction is a purchase or sale and whether a principal or agency transaction.
- (b) The confirmation shall, by appropriate symbols, distinguish between Exchange options transactions and other transactions in option contracts though such confirmation

does not need to specify the exchange or exchanges on which such option contracts were executed.

### **Section 11. Statement of Accounts to Public Customers**

(a) Every OEF shall send to its Public Customers a statement of account showing security and money positions, entries, interest charges and any special charges that have been assessed against such account during the period covered by the statement; provided, however, that such charges need not be specifically delineated on the statement if they are otherwise accounted for on the statement and have been itemized on transaction confirmations.

(b) With respect to options Public Customers having a general (margin) account, the Public Customer statement shall also provide the mark-to-market price and market value of each options position and other security position in the general (margin) account, the total market value of all positions in the account, the outstanding debit or credit balance in the account, and the general (margin) account equity. For purposes of this paragraph (b), general (margin) account equity shall be computed by subtracting the total of the short security values and any debit balance from the total of the long security values and any credit balance.

(c) The Public Customer statement shall bear a legend stating that further information with respect to commissions and other charges related to the execution of listed options transactions has been included in confirmations of such transactions previously furnished to the Public Customer, and that such information will be made available to the Public Customer promptly upon request.

(d) Public Customer statements shall bear a legend requesting that the Public Customer promptly advise the Participant of any material change in the Public Customer's investment objectives or financial situation.

(e) Public Customer statements shall be sent at least quarterly to all accounts having a money or a security position during the preceding quarter and at least monthly to all accounts having an entry during the preceding month.

### **Section 12. Statements of Financial Condition to Public Customers**

Every OEF shall send to each of its Public Customers statements of the Participant's financial condition as required by SEC Rule 17a-5 under the Exchange Act.

### **Section 13. Delivery of Current Options Disclosure Documents and Prospectus**

(a) *Options Disclosure Documents.* Every OEF shall deliver a current options disclosure document issued by the OCC to each Public Customer at or prior to the time such Public Customer's account is approved for options transactions. Where a Public Customer is a broker or dealer, the OEF shall take reasonable steps to assure that such broker or dealer is furnished reasonable quantities of current options disclosure documents, as requested by the broker or dealer, to enable it to comply with the requirements of this Rule.

(1) The term "current options disclosure document" means, as to any category of underlying security, the most recent edition of such document that meets the requirements of Rule 9b-1 under the Exchange Act.

(2) A copy of each amendment to an options disclosure document shall be furnished to each Public Customer who was previously furnished the options disclosure document to which the amendment pertains, not later than the time a confirmation of a transaction in the category of options to which the amendment pertains is delivered to such Public Customer. Nasdaq Regulation will advise OEFs when an options disclosure document is amended.

(b) The written description of risks required by this Rule shall be in a format prescribed by the Exchange or in a format developed by the Participant, provided it contains substantially similar information as the prescribed Exchange format and has received prior written approval of the Exchange.

(c) Below is a sample risk description for use by OEFs to satisfy the requirements of paragraph (b) of this Rule:

*Special Statement for Uncovered Options Writers.*

*There are special risks associated with uncovered options writing which expose the investor to potentially significant loss. Therefore, this type of strategy may not be suitable for all Public Customers approved for options transactions.*

*1. The potential loss of uncovered call writing is unlimited. The writer of an uncovered call is in an extremely risky position, and may incur large losses if the value of the underlying instrument increases above the exercise price.*

*2. As with writing uncovered calls, the risk of writing uncovered put options is substantial. The writer of an uncovered put option bears a risk of loss if the value of the underlying instrument declines below the exercise price. Such loss could be substantial if there is a significant decline in the value of the underlying instrument.*

*3. Uncovered options writing is thus suitable only for the knowledgeable investor who understands the risks, has the financial capacity and willingness to incur potentially substantial losses, and has sufficient liquid assets to meet applicable margin requirements. In this regard, if the value of the underlying instrument moves against an uncovered writer's options position, the investor's broker may request significant additional margin payments. If an investor does not make such margin payments, the broker may liquidate stock or options positions in the investor's account with little or no prior notice in accordance with the investor's margin agreement.*

*4. For combination writing, where the investor writes both a put and a call on the same underlying instrument, the potential risk is unlimited.*



5. If a secondary market in options were to become unavailable, investors could not engage in closing transactions, and an options writer would remain obligated until expiration or assignment.

6. The writer of an American-style option is subject to being assigned an exercise at any time after he has written the option until the option expires. By contrast, the writer of a European-style option is subject to exercise assignment only during the exercise period. NOTE: It is expected that you will read the booklet entitled CHARACTERISTICS AND RISKS OF STANDARDIZED OPTIONS available from your broker. In particular, your attention is directed to the chapter entitled Risks of Buying and Writing Options. This statement is not intended to enumerate all of the risks entailed in writing uncovered options.

#### **Section 14. Restrictions on Pledge and Lending of Public Customers' Securities**

(a) No OEF shall lend, either to itself or to others, securities carried for the account of any Public Customer, unless such OEF shall first have obtained a separate written authorization from such Public Customer permitting the lending of the securities.

(b) Regardless of any agreement between an OEF and a Public Customer authorizing the OEF to lend or pledge such securities, no OEF shall lend or pledge more of such securities than is fair and reasonable in view of the indebtedness of the Public Customer to such OEF, except such lending as may be specifically authorized under paragraph (c) of this Rule.

(c) No OEF shall lend securities carried for the account of any Public Customer that have been fully paid for, or that are in excess of the amount that may be loaned in view of the indebtedness of the Public Customer, unless such OEF first obtains from such Public Customer a separate written authorization designating the particular securities to be loaned.

(d) No OEF shall hold securities carried for the account of any Public Customer that have been fully paid for, or that are in excess of the amount that may be pledged in view of the indebtedness of the Public Customer, unless such securities are segregated and identified by a method that clearly indicates the interest of such Public Customer in those securities.

#### **Section 15. Transactions of Certain Public Customers**

(a) No OEF shall execute any transaction in securities or carry a position in any security in which:

(1) an officer or employee of the Exchange, Nasdaq Regulation, NOM or any national securities exchange that is a participant of the Clearing Corporation, or an officer or employee of a corporation in which the Exchange, or such other exchange owns the majority of the capital stock, is directly or indirectly interested, without the prior written consent of the Exchange; or

(2) a partner, officer, director, principal shareholder or employee of another OEF is directly or indirectly interested, without the consent of such other OEF.

(b) Where the required consent has been granted, duplicate reports of the transaction and position shall promptly be sent to the Exchange or OEF, as the case may be.

#### **Section 16. Guarantees**

No OEF shall guarantee a Public Customer against loss in his account or in any transaction effected with or for such Public Customer.

#### **Section 17. Profit Sharing**

(a) No OEF, person associated with an OEF or Options Principal shall share directly or indirectly in the profits or losses in any Public Customer's account, whether carried by such OEF, or any other OEF, without the prior written consent of the OEF carrying the account.

(b) Where such consent is obtained, the OEF, person associated with an OEF or Options Principal shall share in the profits or losses in such account only in direct proportion to the financial contribution made to the account by such person.

#### **Section 18. Assuming Losses**

No OEF shall assume for its own account any position established for a Public Customer in a security traded on the Exchange after a loss to the Public Customer has been established or ascertained, unless the position was created by the OEF's mistake or unless approval of Nasdaq Regulation has first been obtained.

#### **Section 19. Transfer of Accounts**

Every Options Participant shall expedite the transfer of a customer's account pursuant to Nasdaq Rule 11870.

#### **Section 20. Communications with Public Customers**

(a) Options Participants and associated persons of Options Participants shall be bound to comply with the Communications with Public Customers rule of the FINRA, as applicable, as though said rules were part of these Rules.

(b) No OEF shall address any communications to a Public Customer in care of any other person unless either: (1) the Public Customer, within the preceding twelve (12) months, has instructed the OEF in writing to send communications in care of such other persons, or (2) duplicate copies are sent to the Public Customer at some other address designated in writing by him.

#### **Section 21. Fidelity Bond**

Options Participants approved to transact business with the public under these Rules and every Clearing Participant shall comply with all applicable provisions of General 9, Section 38.

**Section 22. Public Customer Complaints**

(a) Every OEF conducting a non-Participant Public Customer business shall make and keep current a separate central log, index or other file for all options-related complaints, through which these complaints can easily be identified and retrieved.

(b) The term "options-related complaint" shall mean any written statement by a Public Customer or person acting on behalf of a Public Customer alleging a grievance arising out of or in connection with listed options.

(c) The central file shall be located at the principal place of business of the Participant or such other principal office as shall be designated by the OEF.

(1) Each options-related complaint received by a branch office of an OEF shall be forwarded to the office in which the separate, central file is located not later than thirty (30) days after receipt by the branch office.

(2) A copy of every options-related complaint shall be maintained at the branch office that is the subject of a complaint.

(d) At a minimum, the central file shall include:

(1) identification of complainant;

(2) date complaint was received;

(3) identification of the representative servicing the account, if applicable;

(4) a general description of the subject of the complaint; and

(5) a record of what action, if any, has been taken by the Participant with respect to the complaint.

**Section 23. Telephone Solicitation**

Options Participants and associated persons shall comply with all applicable provisions of General 9, Section 5.

**Section 24. Other Affiliations of Registered Persons**

Except with the express written permission of Nasdaq Regulation, every registered person shall devote his entire time during business hours to the business of the OEF employing him, or to the business of its affiliates that are engaged in the transaction of business as a broker or dealer in securities or commodities or in such other businesses as have been approved by the OEF's designated examining authority.

**Section 25. Reserved****Options 11 Minor Rule Plan Violations**

### **Section 1. Minor Rule Plan Violations**

The following NOM rule and policy violations may be determined by Nasdaq Regulation to be minor in nature. If so, Nasdaq Regulation may, with respect to any such violation, proceed under General 5, Section 2 and impose the fine set forth below. Nasdaq Regulation is not required to proceed under said Sections as to any rule violation and may, whenever such action is deemed appropriate, commence a disciplinary proceeding under General 5, Section 2 as to any such violation. A subsequent violation is calculated on the basis of a rolling 24-month period (“Period”).

(a) **Position Limit Violations.** Violations of Options 9, Section 13 of these Rules (Position Limit) are subject to fines as follows:

<u>Number of Cumulative Violations Within Any Twenty four Month Rolling Period*</u>	<u>Sanction (Imposed on Exchange Members or violations occurring in all other accounts)</u>
<u>First Offense</u>	<u>\$500</u>
<u>Second Offense</u>	<u>\$1,000</u>
<u>Third Offense</u>	<u>\$2,500</u>
<u>Fourth and Each Subsequent Offense</u>	<u>\$5,000</u>

\* A violation that consists of (i) a 1 trade date overage, (ii) a consecutive string of trade date overage violations where the position does not change or where a steady reduction in the overage occurs, or (iii) a consecutive string of trade date overage violations resulting from other mitigating circumstances, may be deemed to constitute one offense, provided that the violations are inadvertent.

(b) **Order Entry.** Violations of Options 2, Section 5(a) - (c) of these Rules, (Market Maker Quotations) regarding restrictions on orders entered by Market Makers, will be subject to the fines listed below. Each paragraph of such sections subject to this Rule shall be treated separately for purposes of determining the number of cumulative violations.

Number of Violations Fine Amount Within One Period

<u>1 to 5</u>	<u>Letter of Caution</u>
<u>6 to 10</u>	<u>\$500</u>
<u>11 to 15</u>	<u>\$1000</u>

\$200016 to 20

**(c) Intra-day Quotes.** Violations of Options 2, Section 5(d) of these Rules regarding Market Maker intra-day bids and offers shall be subject to the fines listed below. Violations of the rule that continue over consecutive trading days will be subject to a separate fine, pursuant to this paragraph (d), for each day during which the violation occurs and is continuing up to a limit of fifteen consecutive trading days. In calculating fine thresholds for each Market Maker, all violations occurring within the Period in any of the Market Makers registered series are to be added together.

Number of Cumulative Fine Amount Violations Within One Period

<u>1</u>	<u>Letter of Caution</u>
<u>2 or more</u>	<u>\$300 per day</u>

**(d) LOPR Reporting and Position Limit Violations.** Violations of Options 9, Section 13-16 of these Rules regarding position limits and maintaining and furnishing reports related to applicable position limits for Options contracts.

<u>FINE SCHEDULE</u>	<u>LOPR Reporting</u>	<u>Position Limits</u>
<u>First Offense</u>	<u>\$1,000</u>	<u>\$500</u>
<u>Second Offense</u>	<u>\$2,500</u>	<u>\$1,000</u>
<u>Subsequent Offense</u>	<u>\$5,000</u>	<u>\$2,500</u>

**(e) Expiring Exercise Declaration Rules.** Violations of Options 6B, Section 1 of these Rules regarding exercise of Options Contracts, allocation of exercise notices and delivery and payment of the underlying security.

<u>FINE SCHEDULE</u>	<u>Individual</u>	<u>Firm</u>
<u>First Offense</u>	<u>\$500</u>	<u>\$1,000</u>
<u>Second Offense</u>	<u>\$1,000</u>	<u>\$2,500</u>
<u>Subsequent Offense</u>	<u>\$2,500</u>	<u>\$5,000</u>

**(f) Audit Trail Submissions and Record Keeping Requirements.** Options 6E, Section 9, regarding the submission of audit trail information; and Options 6E, Sections 1-3 of these Rules regarding information to be recorded, retained and provided upon request by Nasdaq Regulation or other applicable regulatory entity.

<u>FINE SCHEDULE</u>	<u>Audit Trail Information</u>	<u>Records Provisions</u>
<u>First Offense</u>	<u>\$1,500</u>	<u>\$2,000</u>
<u>Second Offense</u>	<u>\$3,000</u>	<u>\$4,000</u>
<u>Subsequent Offense</u>	<u>\$5,000</u>	<u>\$5,000</u>

**(g) Representation of Orders.** Options 3, Section 22 of these Rules regarding Options Participants' restriction on execution of principal orders they represent as agent unless proper exposure parameters are applied.

FINE SCHEDULE

<u>First Offense</u>	<u>\$1,000</u>
<u>Second Offense</u>	<u>\$2,500</u>
<u>Subsequent Offense</u>	<u>\$5,000</u>

**(h) Trade Reporting.** Options 6, Sections 1 and 2 of these Rules regarding all transactions effected on NOM shall be submitted for clearance to the Clearing Corporation, the Options Participants' obligation to give up the name of the Clearing Participants and the prompt reporting of any change in this identity to NOM.

FINE SCHEDULE

<u>First Offense</u>	<u>\$1,500</u>
<u>Second Offense</u>	<u>\$3,000</u>
<u>Subsequent Offense</u>	<u>\$5,000</u>

**(i) Locked and Cross Market Violations.** Options 5, Section 3 of these Rules (Locked and Crossed Markets) regarding procedures to be followed in the instance of a Locked or a Crossed Market.

FINE SCHEDULE

<u>First Offense</u>	<u>\$500</u>
<u>Second Offense</u>	<u>\$1,000</u>
<u>Subsequent Offense</u>	<u>\$2,500</u>

(j) **Trade-Through Violations.** Options 5, Section 2(a) of these Rules (Order Protection) regarding trade throughs.

FINE SCHEDULE

<u>First Offense</u>	<u>\$500</u>
<u>Second Offense</u>	<u>\$1,000</u>
<u>Subsequent Offense</u>	<u>\$2,500</u>

(k) **Failure to Timely File Amendments to Form U4, Form U5 and Form BD.** Any member and/or participant organization that is required to file Form U4, Form U5 or Form BD pursuant to Section 1031 of the NOM Rules and the Securities and Exchange Act of 1934, and the rules promulgated thereunder, is required to amend the applicable Form U4, Form U5 or Form BD to keep such forms current at all times. Members and/or participant organizations shall amend Form U4, Form U5 and Form BD not later than thirty (30) days after the filer knew of or should have known of the need for the amendment.

FINE SCHEDULE (Implemented on a running 12 month period)

<u>First Offense</u>	<u>\$500</u>
<u>Second Offense</u>	<u>\$1,000</u>
<u>Subsequent Offense</u>	<u>\$2,000</u>

**Section 2. Suspension**

(a) **Imposition of Suspension.** An Options Participant or person associated with an Options Participant that has been expelled or suspended from any SRO or barred or suspended from being associated with a Participant of any SRO, or an Options Participant that is in such financial or operating difficulty that Nasdaq Regulation determines that the Options Participant cannot be permitted to continue to do business as a Participant with safety to investors, creditors, other Options Participants, or NOM, may be summarily

suspended. Nasdaq Regulation may limit or prohibit any person with respect to access to services offered by NOM if any of the criteria of the foregoing sentence is applicable to such person or, in the case of a person who is an Options Participant, if the Exchange determines that such person does not meet the qualification requirements or other prerequisites for such access with safety to investors, creditors, Options Participants or the Exchange.

(1) In the event a determination is made to take summary action pursuant to this Rule, notice thereof will be sent to the SEC. Any person aggrieved by any summary action taken under this Rule shall be promptly afforded an opportunity for a hearing by Nasdaq Regulation in accordance with the provisions of General 5, Section 2 of the Exchange. A summary suspension or other action taken pursuant to this Options 11 shall not be deemed to be disciplinary action under General 5, Section 2. The provisions of such General 5, Section 2 shall be applicable regardless of any action taken pursuant to Options 11.

(b) Investigation Following Suspension Violations. Every Options Participant or person associated with a Participant against which action has been taken in accordance with the Summary Suspension procedures of these Rules shall immediately afford every facility required by Nasdaq Regulation for the investigation of his or its affairs and shall forthwith file with the Secretary a written statement covering all information requested, including a complete list of creditors and the amount owing to each and a complete list of each open long and short position in NOM options contracts maintained by the Options Participant and each of his or its Customers. Paragraph (f) includes, without limitation, the furnishing of such books and records of the Options Participant or person associated with an Options Participant and the giving of such sworn testimony as may be requested by Nasdaq Regulation.

(c) Reinstatement Following Suspension

1. *General*

(A) An Options Participant, person associated with an Options Participant or other person suspended or limited or prohibited with respect to access to services offered by NOM under the Summary Suspension procedures of these Rules may apply for reinstatement within the time period set forth below.

(B) Notice of an application for reinstatement shall be given to the Secretary by the Participant and shall be posted by Nasdaq Regulation at least five (5) business days prior to the consideration by Nasdaq Regulation of said application.

(C) Nasdaq Regulation may approve an application for reinstatement if it finds that the applicant is operationally and financially able to conduct his business with safety to investors, creditors, Participants, and NOM.



(2) Suspension Due to Operating Difficulty.

(A) An applicant that, by reason of operating difficulty, has been suspended or limited or prohibited with respect to NOM services, must file any application for reinstatement within six (6) months from the date of such action. Such application must include a statement of all actions taken by the applicant to remedy the operational difficulty in question.

(B) If the applicant fails to receive reinstatement, or if the application is not acted upon ninety (90) days of its submission, the applicant shall be afforded an opportunity for a hearing in accordance with the provisions of General 5, Section 2.

(3) Suspension Due to Financial Difficulty.

(A) An applicant who, by reason of financial difficulty, has been suspended or limited or prohibited with respect to NOM services, must file any application for reinstatement within thirty (30) days of such action.

(B) Such application must include a list of all creditors of the applicant a statement of the amount originally owing and the nature of the settlement in each case, and such other information as may be requested by Nasdaq Regulation.

(C) The Participant status of an Options Participant summarily suspended by reason of financial difficulty may not be disposed of by Nasdaq Regulation until that Participant has been afforded an opportunity for a hearing respecting such summary suspension pursuant to the provisions of General 5, Section 2.

(d) Failure to Obtain Reinstatement. If an Options Participant suspended under the provisions of Options 11 fails or is unable to apply for reinstatement in accordance with Section 3 of Options 11 or fails to obtain reinstatement as therein provided, his or its Participant status shall be disposed of by Nasdaq Regulation in accordance with General 5, Section 2.

(e) Termination of Rights by Suspension. An Options Participant suspended under the provisions of this Options 11 shall be deprived during the term of his or its suspension of all rights and privileges of Participation.

(f) Contracts of Suspended Participants. When an Options Participant, other than a Clearing Participant, is suspended pursuant to Chapter X of these Rules (Summary Suspension), all open short positions of the suspended Options Participant in options contracts and all open positions resulting from exercise of options contracts, other than positions that are secured in full by a specific deposit or escrow deposit in accordance with the Rules of the Clearing Corporation, shall be closed without unnecessary delay by all Participants carrying such positions for the account of the suspended Participant;

provided that Nasdaq Regulation may cause the foregoing requirement to be temporarily waived for such period as it may determine if it shall deem such temporary waiver to be in the interest of the public or the other Participants of NOM. No temporary waiver hereunder by Nasdaq Regulation shall relieve the suspended Options Participant of its obligations or of damages, nor shall it waive the close out requirements of any other Rules. When a Clearing Participant is suspended pursuant to Chapter X (Summary Suspension) of these Rules, the positions of such Clearing Participant shall be closed out in accordance with the Rules of the Clearing Corporation.

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