EXHIBIT 5

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NASDAQ TEXAS, LLC RULES

The Qualification, Listing and Delisting of Companies

5000. NASDAQ TEXAS LISTING RULES

5001. The Qualification, Listing, and Delisting of Companies

This Rule Series 5000 (consisting of Rules 5000-5999) contains rules related to the qualification, listing and delisting of Companies on Nasdaq Texas.

The Rule 5100 Series (consisting of Rules 5100-5199) discusses Nasdaq Texas' general regulatory authority. The Rule 5200 Series (consisting of Rules 5200-5299) sets forth the procedures and prerequisites for gaining a listing on Nasdaq Texas, as well as the disclosure obligations of listed Companies. The Rule 5400 Series (consisting of Rules 5400-5499) contain the specific quantitative listing requirements for listing on Nasdaq Texas. The corporate governance requirements are contained in the Rule 5600 Series (consisting of Rules 5600-5699). Special listing requirements for securities other than common or preferred stock and warrants are contained in the Rule 5700 Series (consisting of Rules 5700- 5799). The consequences of a failure to meet Nasdaq Texas's listing standards are contained in the Rule 5800 Series (consisting of Rules 5800-5899). Finally, Company listing fees are described in the Rule 5900 Series (consisting of Rules 5900-5999).

Nasdaq Texas exercises other authorities important to listed Companies discussed in other Rules Series in the Rules. For example, Nasdaq Texas may close markets upon request of the SEC (see Rule 4121). It may also halt the trading of a Company's securities under certain circumstances and pursuant to established procedures (See Rule 4120 and IM-5250-1 and IM-5810). These authorities are exercised primarily by the Nasdaq Texas MarketWatch Department and are contained in the Rule 4000 Series.

Nasdaq Texas and Financial Industry Regulatory Authority, Inc. ("FINRA") are parties to a regulatory contract pursuant to which FINRA has agreed to perform certain functions described in the Rules on behalf of Nasdaq Texas. Notwithstanding the fact that Nasdaq Texas has entered into the regulatory contract with FINRA to perform some of Nasdaq Texas's functions, Nasdaq Texas shall retain ultimate legal responsibility for, and control of, such functions.

5005. Definitions

(a) The following is a list of definitions used throughout the Nasdaq Texas Listing Rules. This section also lists various terms together with references to other rules where they are specifically defined. Unless otherwise specified by the Rules, these terms shall have the meanings set forth below. Defined terms are capitalized throughout the Listing Rules.

- "Act" means the Securities Exchange Act of 1934.
- "Best efforts offering" means an offering of securities by members of a selling group under an agreement that imposes no financial commitment on the members of such group to purchase any such securities except as they may elect to do so.
- "Bid Price" means the closing bid price.
- "Commission" or "SEC" means the United States Securities and Exchange Commission.
- "Company" means the issuer of a security listed or applying to list on Nasdaq Texas. For purposes of the Rule 5000 Series, the term "Company" includes an issuer that is not incorporated, such as, for example, a limited partnership.
- "Consolidated Quotation Service" (CQS) means the consolidated quotation collection system for securities listed on an exchange other than Nasdaq implementing Rule 602 of Regulation NMS under the Act.
- "Country of Domicile" means the country under whose laws a Company is organized or incorporated.
- "Covered Security" means a security described in Section 18(b) of the Securities Act of 1933.
- "Direct Registration Program" means any program by a Company, directly or through its transfer agent, whereby a Shareholder may have securities registered in the Shareholder's name on the books of the Company or its transfer agent without the need for a physical certificate to evidence ownership.
- "Dually-Listed Security" means a security, listed on Nasdaq Texas, which is also listed on another national securities exchange.
- "EDGAR System" means the SEC's Electronic Data Gathering, Analysis, and Retrieval system.
- "Equity Investment Tracking Stock" means a class of common equity securities that tracks on an unleveraged basis the performance of an investment by the issuer in the common equity securities of a single other company listed on Nasdaq Texas. An Equity Investment Tracking Stock may track multiple classes of common equity securities of a single issuer, so long as all of those classes have identical economic rights and at least one of those classes is listed on Nasdaq Texas.
- "ESOP" means employee stock option plan.
- "Executive Officer" is defined in Rule 5605(a)(1).
- "Filed with Nasdaq Texas" means submitted to Nasdaq Texas directly or filed with the Commission through the EDGAR System.
- "Firm Commitment Offering" means an offering of securities by participants in a selling syndicate under an agreement that imposes a financial commitment on participants in such syndicate to purchase such securities.

- "Family Member" is defined in Rule 5605(a)(2).
- "Foreign Private Issuer" shall have the same meaning as under Rule 3b-4 under the Act.
- "Independent Director" is defined in Rule 5605(a)(2).
- "Index Warrants" is defined in Rule 5725(a).
- "Listed Securities" means securities listed on Nasdaq Texas or another national securities exchange.
- "Market Value" means the consolidated closing bid price multiplied by the measure to be valued (e.g., a Company's Market Value of Publicly Held Shares is equal to the consolidated closing bid price multiplied by a Company's Publicly Held Shares).
- "Member" means a broker or dealer admitted to membership in Nasdaq Texas.
- "Market Maker" means a dealer that, with respect to a security, holds itself out (by entering quotations in the Nasdaq Texas Market Center) as being willing to buy and sell such security for its own account on a regular and continuous basis and that is registered as such.
- "Other Regulatory Authority" means: (i) in the case of a bank or savings authority identified in Section 12(i) of the Act, the agency vested with authority to enforce the provisions of Section 12 of the Act; or (ii) in the case of an insurance company that is subject to an exemption issued by the Commission that permits the listing of the security, notwithstanding its failure to be registered pursuant to section 12(b), the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary state.
- "Primary Equity Security" means a Company's first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depositary Receipts (ADR) or Shares (ADS).
- "Private Placement Market" is a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer.
- "Publicly Held Shares" means shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding. Determinations of beneficial ownership in calculating publicly held shares shall be made in accordance with Rule 13d-3 under the Act.
- "Public Holders" means holders of a security that includes both beneficial holders and holders of record, but does not include any holder who is, either directly or indirectly, an Executive Officer, director, or the beneficial holder of more than 10% of the total shares outstanding.
- "Restrictive Market" means a jurisdiction that does not provide the Public Company Accounting Oversight Board with access to conduct inspections of public accounting firms that audit Nasdaq Texas-listed companies. A Company's business will be considered to be principally administered in a Restrictive Market if: (i) the Company's books and records are located in that jurisdiction; (ii) at least 50% of the

Company's assets are located in such jurisdiction; or (iii) at least 50% of the Company's revenues are derived from such jurisdiction.

- "Restricted Securities" means securities that are subject to resale restrictions for any reason, including, but not limited to, securities: (1) acquired directly or indirectly from the issuer or an affiliate of the issuer in unregistered offerings such as private placements or Regulation D offerings; (2) acquired through an employee stock benefit plan or as compensation for professional services; (3) acquired in reliance on Regulation S, which cannot be resold within the United States; (4) subject to a lockup agreement or a similar contractual restriction; or (5) considered "restricted securities" under Rule 144.
- "Reverse Merger" means any transaction whereby an operating company becomes an Exchange Act reporting company by combining, either directly or indirectly, with a shell company which is an Exchange Act reporting company, whether through a reverse merger, exchange offer, or otherwise. However, a Reverse Merger does not include a de-SPAC transaction, as that term is defined in Item 1601(a) of Regulation S-K, involving a SPAC, as that term is defined in Item 1601(b) of Regulation S-K, which is listed or was previously listed on a national securities exchange and provides its public shareholders the opportunity to redeem or tender their shares in connection with the de-SPAC transaction in exchange for a pro rata share of the IPO proceeds and concurrent sale by the company of equity securities; where the Company is listing in connection with an effective 1933 Securities Act registration statement; or a business combination described in Rule 5110(a). In determining whether a Company is a shell company, Nasdaq will look to a number of factors, including but not limited to: whether the Company is considered a "shell company" as defined in Rule 12b-2 under the Act; what percentage of the Company's assets are active versus passive; whether the Company generates revenues, and if so, whether the revenues are passively or actively generated; whether the Company's expenses are reasonably related to the revenues being generated; how many employees support the Company's revenue-generating business operations; how long the Company has been without material business operations; and whether the Company has publicly announced a plan to begin operating activities or generate revenues, including through a near-term acquisition or transaction..
- "Round Lot" or "Normal Unit of Trading" is defined pursuant to Rule 600(b)(93) of Regulation NMS under the Act. The Exchange shall publish semi-annual updates of the round lot unit for all Nasdaq Texas-listed securities.
- "Round Lot Holder" means a holder of a Normal Unit of Trading of Unrestricted Securities. The number of beneficial holders will be considered in addition to holders of record.
- "Shareholder" means a record or beneficial owner of a security listed or applying to list. For purposes of the Rule 5000 Series, the term "Shareholder" includes, for example, a limited partner, the owner of a depository receipt, or unit.
- "Substantial Shareholder" is defined in Rule 5635(e)(3).

- "Substitution Listing Event" means: a re-incorporation or a change in the Company's place of organization, the formation of a holding company that replaces a listed Company, reclassification or exchange of a Company's listed shares for another security, the listing of a new class of securities in substitution for a previously-listed class of securities, a business combination described in IM-5101-2, a change in the obligor of a listed debt security, or any technical change whereby the Shareholders of the original Company receive a share-for-share interest in the new Company without any change in their equity position or rights. A Substitution Listing Event also includes the replacement of, or any significant modification to, the index, portfolio or Reference Asset underlying a security listed under the Rule 5700 Series (including, but not limited to, a significant modification to the index methodology, a change in the index provider, or a change in control of the index provider).
- "Total Holders" means holders of a security that includes both beneficial holders and holders of record.
- "Unrestricted Publicly Held Shares" means the Publicly Held Shares that are Unrestricted Securities.
- "Unrestricted Securities" are securities that are not Restricted Securities.

5100. The Exchange's Regulatory Authority

5101. Preamble to the Rule 5100 Series

Nasdaq Texas is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. Nasdaq Texas stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy and supporting the capital formation process. Nasdaq Texas Companies, from new public Companies to Companies of international stature, are publicly recognized as sharing these important objectives.

Nasdaq Texas, therefore, in addition to applying the enumerated criteria set forth in the Rule 5000 Series, has broad discretionary authority over the initial and continued listing of securities in Nasdaq Texas in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Nasdaq Texas may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on Nasdaq Texas inadvisable or unwarranted in the opinion of Nasdaq Texas, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq Texas. In all circumstances where the Listing Qualifications Department (as defined in Rule 5805) exercises its authority under Rule 5101, the Listing Qualifications Department shall issue a Staff Delisting Determination under Rule 5810(c)(1), and in all circumstances where an Adjudicatory Body (as defined in Rule 5805) exercises such authority, the use of the authority shall be described in the written decision of the Adjudicatory Body.

IM-5101-1. Use of Discretionary Authority

To further Companies' understanding of Rule 5101, Nasdaq Texas has adopted this Interpretive Material as a non-exclusive description of the circumstances in which the Rule is generally invoked.

Nasdaq Texas may use its authority under Rule 5101 to deny initial or continued listing to a Company when an individual with a history of regulatory misconduct is associated with the Company. Such individuals are typically an officer, director, Substantial Shareholder (as defined in Rule 5635(e)(3)), or consultant to the Company. In making this determination, Nasdaq Texas will consider a variety of factors, including:

• the nature and severity of the conduct, taken in conjunction with the length of time since the conduct occurred;

• whether the conduct involved fraud or dishonesty;

• whether the conduct was securities-related;

• whether the investing public was involved;

• how the individual has been employed since the violative conduct;

• whether there are continuing sanctions (either criminal or civil) against the individual;

• whether the individual made restitution;

• whether the Company has taken effective remedial action; and

• the totality of the individual's relationship to the Company, giving consideration to:

    ° the individual's current or proposed position;

    ° the individual's current or proposed scope of authority;

    ° the extent to which the individual has responsibility for financial accounting or reporting; and

    ° the individual's equity interest.

Based on this review, Nasdaq Texas may determine that the regulatory history rises to the level of a public interest concern, but may also consider whether remedial measures proposed by the Company, if taken, would allay that concern. Examples of such remedial measures could include any or all of the following, as appropriate:

• the individual's resignation from officer and director positions, and/or other employment with the Company;

• divestiture of stock holdings;

• terminations of contractual arrangements between the Company and the individual; or

• the establishment of a voting trust surrounding the individual's shares.

Nasdaq Texas staff is willing to discuss with Companies, on a case-by-case basis, what remedial measures may be appropriate to address public interest concerns, and for how long such remedial measures would be required. Alternatively, Nasdaq Texas may conclude that a public interest concern is so serious that no remedial measure would be sufficient to alleviate it. In the event that Nasdaq Texas staff denies initial or continued listing based on such public interest considerations, the Company may seek review of that determination through the procedures set forth in the Rule 5800 Series. On consideration of such appeal, a listing qualifications panel comprised of persons independent of Nasdaq Texas may accept, reject or modify the staff's recommendations by imposing conditions.

Nasdaq Texas may also use its discretionary authority, for example, when a Company files for protection under any provision of the federal bankruptcy laws or comparable foreign laws, when a Company's independent accountants issue a disclaimer opinion on financial statements required to be audited, or when financial statements do not contain a required certification.

In addition, pursuant to its discretionary authority, Nasdaq Texas will review the Company's past corporate governance activities. This review may include activities taking place while the Company is listed on Nasdaq Texas or an exchange that imposes corporate governance requirements, as well as activities taking place after a formerly listed company is no longer listed on Nasdaq Texas or such an exchange. Based on such review, and in accordance with the Rule 5800 Series, Nasdaq Texas may take any appropriate action, including placing restrictions on or additional requirements for listing, or denying listing of a security, if Nasdaq Texas determines that there have been violations or evasions of such corporate governance standards. Such determinations will be made on a case-by-case basis as necessary to protect investors and the public interest.

Although Nasdaq Texas has broad discretion under Rule 5101 to impose additional or more stringent criteria, the Rule does not provide a basis for Nasdaq Texas to grant exemptions or exceptions from the enumerated criteria for initial or continued listing, which may be granted solely pursuant to rules explicitly providing such authority.

IM-5101-2. Listing of Companies Whose Business Plan is to Complete One or More Acquisitions

Generally, Nasdaq Texas will not permit the initial or continued listing of a Company that has no specific business plan or that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies.

However, in the case of a Company whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time, Nasdaq Texas will permit the listing if the Company meets all applicable initial listing requirements, as well as the conditions described below.

(a) At least 90% of the gross proceeds from the initial public offering and any concurrent sale by the company of equity securities must be deposited in a trust account maintained by an independent trustee, an escrow account maintained by an "insured depository institution," as that term is defined in Section 3(c)(2) of the Federal Deposit Insurance Act or in a separate bank account established by a registered broker or dealer (collectively, a "deposit account").

(b) Within 36 months of the effectiveness of its IPO registration statement, or such shorter period that the company specifies in its registration statement, the Company must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account) at the time of the agreement to enter into the initial combination.

(c) Until the Company has satisfied the condition in paragraph (b) above, each business combination must be approved by a majority of the Company's Independent Directors.

(d) Until the Company has satisfied the condition in paragraph (b) above, if the Company holds a shareholder vote on a business combination for which the Company must file and furnish a proxy or information statement subject to Regulation 14A or 14C under the Act in advance of the shareholder meeting, the business combination must be approved by a majority of the shares of common stock voting at the meeting at which the combination is being considered. If a shareholder vote on the business combination is held, public Shareholders voting against a business combination must have the right to convert their shares of common stock into a pro rata share of the aggregate amount then in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes) if the business combination is approved and consummated. A Company may establish a limit (set no lower than 10% of the shares sold in the IPO) as to the maximum number of shares with respect to which any Shareholder, together with any affiliate of such Shareholder or any person with whom such shareholder is acting as a "group" (as such term is used in Sections 13(d) and 14(d) of the Act), may exercise such conversion rights. For purposes of this paragraph (d), public Shareholder excludes officers and directors of the Company, the Company's sponsor, the founding Shareholders of the Company, and any Family Member or affiliate of any of the foregoing persons, or the beneficial holder of more than 10% of the total shares outstanding.

Until the Company completes a business combination where all conditions in paragraph (b) above are met, the Company must notify Nasdaq Texas on the appropriate form about each proposed business combination. Following each business combination, the combined Company must meet the requirements for initial listing. If the Company does not meet the requirements for initial listing following a business combination or does not comply with one of the requirements set forth above, Nasdaq Texas will issue a Staff Delisting Determination under Rule 5810 to delist the Company's securities.

(e) Until the Company has satisfied the condition in paragraph (b) above, if a shareholder vote on the business combination is not held for which the Company must file and furnish a proxy or information statement subject to Regulation 14A or 14C under the Act, the Company must provide all Shareholders with the opportunity to redeem all their shares for cash equal to their pro rata share of the aggregate amount then in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes), pursuant to Rule 13e-4 and Regulation 14E under the Act, which regulate issuer tender offers. The Company must file tender offer documents with the Commission containing substantially the same financial and other information about the business combination and the redemption rights as would be required under Regulation 14A of the Act, which regulates the solicitation of proxies.

Until the Company completes a business combination where all conditions in paragraph (b) above are met, the Company must notify Nasdaq Texas on the appropriate form about each proposed business combination. Following each business combination, the combined Company must meet the requirements for initial listing. If the Company does not meet the requirements for initial listing following a business combination or does not comply with one of the requirements set forth above, Nasdaq Texas will issue a Staff Delisting Determination under Rule 5810 to delist the Company's securities.

IM-5101-3. Application of Discretion to Deny Initial Listing

Nasdaq Texas may use its authority under Rule 5101 to deny initial listing to a Company based on factors that make the Company's securities susceptible to manipulation. The basis for use of this authority can include considerations related to the Company's advisors (including auditors, underwriters, law firms, brokers, clearing firms, or other professional service providers) or concerns Nasdaq Texas has identified with other previously listed Companies that are similarly situated to the Company, even where the applicant meets all stated listing requirements. In determining whether to use this authority, Nasdaq Texas will consider the following non-exclusive list of factors:

- where the Company is located, including the availability of legal remedies to U.S. shareholders in that jurisdiction, the existence of blocking statutes, data privacy laws and other laws in foreign jurisdictions that may present challenges to regulators seeking to enforce rules against the Company, the ability of parties to conduct comprehensive due diligence in that jurisdiction, and the transparency of regulators in the jurisdiction;
- whether a person or entity exercises substantial influence over the Company and, if so, where that person or entity is located, including the availability of legal remedies to U.S. shareholders in that jurisdiction, the existence of blocking statutes, data privacy laws and other laws in foreign jurisdictions that may present challenges to regulators seeking to enforce rules against the person or entity, the ability of parties to conduct comprehensive due diligence in that jurisdiction, and the transparency of regulators in the jurisdiction;
- whether the expected public float and dissemination of the share distribution, based on a review of underwriter, broker and clearing allocations and consideration of prior deals involving those service providers, at the time of the IPO and post offering, raises concerns about adequate liquidity and potential concentration;

- whether there are issues concerning the Company's advisors (including auditors, underwriters, law firms, brokers, clearing firms, or other professional service providers), based on factors including, but not limited to, whether the advisor has been reviewed by applicable regulators and, if so, what were the results of those reviews;
    - if the Company's advisor is a new entity, whether the advisor's principals were involved with other firms with a regulatory history;
- whether any of the Company's advisors were involved in prior transactions where the securities became subject to a pattern of concerning or volatile trading;
- whether the Company's management and Board has experience or familiarity with U.S. public company requirements, including regulatory and reporting requirements under Nasdaq Texas rules and federal securities laws;
- whether there are any FINRA, SEC or other regulatory referrals related to the Company or its advisors, which can be included in the record of the matter and, if applicable, the results of those referrals;
- whether the Company currently has, or recently has had, a going concern audit opinion and, if so, what is the Company's plan to continue as a going concern; and
- whether there are other factors that raise concerns about the integrity of the Company's board, management, significant shareholders, or advisors.

Where Nasdaq Texas determines to deny initial listing based on its application of this authority, Nasdaq Texas Staff will issue a written determination describing the basis for its decision. As provided in Rule 5205(i)(2), the Company must, within four business days from the date of Staff's written determination, make a public announcement in a press release or other Regulation FD compliant manner about the receipt of the determination and the Rule(s) upon which the determination is based, describing each specific basis and concern identified by Nasdaq Texas in reaching its determination. The Company may seek review of a denial as set forth in Rule 5815.

5110. Change of Control, Bankruptcy and Liquidation, and Reverse Mergers

(a) **Business Combinations with non-Nasdaq Texas Entities Resulting in a Change of Control**

A Company must apply for initial listing in connection with a transaction whereby the Company combines with a non-Nasdaq Texas entity, resulting in a change of control of the Company and potentially allowing the non-Nasdaq Texas entity to obtain a Nasdaq Texas Listing. In determining whether a change of control has occurred, Nasdaq Texas shall consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the Company. Nasdaq Texas shall also consider the nature of the businesses and the relative size of the Nasdaq Texas Company and non-Nasdaq Texas entity. The Company must submit an application for the post-transaction entity with sufficient time to allow Nasdaq Texas to complete its review before the transaction is completed. If the Company's application for initial listing has not

been approved prior to consummation of the transaction, Nasdaq Texas will issue a Staff Delisting Determination and begin delisting proceedings pursuant to the Rule 5800 Series.

(b) **Bankruptcy and Liquidation**

Nasdaq Texas may use its discretionary authority under the Rule 5100 Series to suspend or terminate the listing of a Company that has filed for protection under any provision of the federal bankruptcy laws or comparable foreign laws, or has announced that liquidation has been authorized by its board of directors and that it is committed to proceed, even though the Company's securities otherwise meet all enumerated criteria for continued listing on Nasdaq Texas. In the event that Nasdaq Texas determines to continue the listing of such a Company during a bankruptcy reorganization, the Company shall nevertheless be required to satisfy all requirements for initial listing, including the payment of initial listing fees, upon emerging from bankruptcy proceedings.

(c) **Reverse Mergers**

(1) A Company that is formed by a Reverse Merger (a "Reverse Merger Company") shall be eligible to submit an application for initial listing only if the combined entity has, immediately preceding the filing of the initial listing application:

(A) traded for at least one year in the U.S. over-the-counter market, on another national securities exchange, or on a regulated foreign exchange, following the filing with the Commission or Other Regulatory Authority of all required information about the transaction, including audited financial statements for the combined entity; and

(B) maintained a closing price equal to the share price requirement applicable to the initial listing standard under which the Reverse Merger Company is qualifying to list for a sustained period of time, but in no event for less than 30 of the most recent 60 trading days.

(2) In addition to satisfying all of Nasdaq Texas' other initial listing requirements, a Reverse Merger Company will only be approved for listing if, at the time of approval, it has:

(A) timely filed all required periodic financial reports with the Commission or Other Regulatory Authority (Forms 10-Q, 10-K or 20-F) for the prior year, including at least one annual report. The annual report must contain audited financial statements for a full fiscal year commencing after filing the information described in paragraph (1)(A) above; and

(B) maintained a closing price equal to the share price requirement applicable to the initial listing standard under which the Reverse Merger Company is qualifying to list for a sustained period of time, but in no event for less than 30 of the most recent 60 trading days prior to approval.

(3) A Reverse Merger Company will not be subject to the requirements of this Rule 5110(c) if, in connection with its listing, it completes a firm commitment underwritten public offering where the gross proceeds to the Reverse Merger Company will be at least $40 million. In

addition, a Reverse Merger Company will no longer be subject to the requirements of this Rule 5110(c) once it has satisfied the one-year trading requirement contained in paragraph (1)(A) above and has filed at least four annual reports with the Commission or Other Regulatory Authority containing all required audited financial statements for a full fiscal year commencing after filing the information described in that paragraph. In either case described in this paragraph (3), the Reverse Merger Company must satisfy all applicable requirements for initial listing, including the minimum price requirement and the requirement contained in Rule 5210(e) that the Company is not delinquent in its filing obligation with the Commission or Other Regulatory Authority.

5200. GENERAL PROCEDURES AND PREREQUISITES FOR INITIAL AND CONTINUED LISTING ON NASDAQ TEXAS

5205. The Applications and Qualifications Process

(a) To apply for listing on Nasdaq Texas, a Company shall execute a Listing Agreement and a Listing Application on the forms designated by Nasdaq Texas providing the information required by Section 12(b) of the Act.

(b) A Company's compliance with the initial listing criteria will be determined on the basis of the Company's most recent information filed with the Commission or Other Regulatory Authority and information provided to Nasdaq Texas. The Company shall certify, at or before the time of listing, that all applicable listing criteria have been satisfied.

(c) A Company's qualifications will be determined on the basis of financial statements that are either: (i) prepared in accordance with U.S. generally accepted accounting principles; or (ii) reconciled to U.S. generally accepted accounting principles as required by the Commission's rules; or (iii) prepared in accordance with International Financial Reporting Standards, as issued by the International Accounting Standards Board, for Companies that are permitted to file financial statements using those standards consistent with the Commission's rules.

(d) A Company that has applied for initial listing on Nasdaq Texas shall file with Nasdaq Texas all reports and other documents filed or required to be filed with the Commission or Other Regulatory Authority. This requirement is satisfied by publicly filing documents through the EDGAR System. All required reports must be filed with Nasdaq Texas on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with Nasdaq Texas shall contain audited financial statements.

(e) Nasdaq Texas may request any information or documentation, public or non-public, deemed necessary to make a determination regarding a security's initial listing, including, but not limited to, any material provided to or received from the Commission or Other Regulatory Authority. A Company's security may be denied listing if the Company fails to provide such information within a reasonable period of time or if any communication to Nasdaq Texas contains a material misrepresentation or omits material information necessary to make the communication to Nasdaq Texas not misleading.

(f) All forms and applications relating to listing of securities on Nasdaq Texas referenced in the Rule 5000 Series are available on *www.nasdaq.com.*

(g) The computation of Publicly Held Shares, Unrestricted Publicly Held Shares, Market Value of Publicly Held Shares and Market Value of Unrestricted Publicly Held Shares shall be as of the date of application of the Company.

(h) An account of a Member that is beneficially owned by a customer (as defined in Rule Equity 1, Section 1) will be considered a holder of a security upon appropriate verification by the Member.

(i) (1) A Company may withdraw its application for initial listing at any time.

(2) A Company that receives a written determination denying its application for listing must, within four business days, make a public announcement in a press release or other Regulation FD compliant manner about the receipt of the determination and the Rule(s) upon which the determination is based, describing each specific basis and concern identified by Nasdaq Texas in reaching its determination. If the public announcement is not made by the Company within the time allotted or does not include all of the required information, Nasdaq Texas will make a public announcement with the required information and, if the Company appeals the determination as set forth in Rule 5815, the Hearings Panel will consider the Company's failure to make the public announcement in considering whether to list the Company.

5210. Prerequisites for Applying to List on Nasdaq Texas

All Companies applying to list on Nasdaq Texas must meet the following prerequisites:

(a) **Registration under 12(b) of the Act**

A security shall be eligible for listing on Nasdaq Texas provided that it is:

(1) registered pursuant to Section 12(b) of the Act; or

(2) subject to an exemption issued by the Commission that permits the listing of the security notwithstanding its failure to be registered pursuant to Section 12(b).

(b) **Auditor Registration**

Each Company applying for initial listing must be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. 7212].

(c) **Direct Registration Program**

All securities initially listing on Nasdaq Texas, except securities which are book-entry only, must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act. A foreign issuer, as defined under Rule 3b-4 under the Act, including a Foreign Private Issuer, shall not be subject to this requirement if it submits to Nasdaq Texas a written statement from an independent counsel in such Company's home country certifying that a law or regulation in the home country prohibits compliance.

(d) **Fees**

The Company is required to pay all applicable fees as described in the Rule 5900 Series.

(e) **Good Standing**

No security shall be approved for listing that is delinquent in its filing obligation with the Commission or Other Regulatory Authority or suspended from trading by the Commission pursuant to Section 12(k) of the Act or by the appropriate regulatory authorities of the Company's country of domicile.

(f) **Nasdaq Texas Certification**

Upon approval of a listing application, Nasdaq Texas shall certify to the Commission, pursuant to Section 12(d) of the Act and the rules thereunder, that it has approved the security for listing and registration. Listing can commence only upon effectiveness of the security's registration pursuant to Section 12(d).

(g) **Security Depository**

(1) "Securities Depository" means a securities depository registered as a clearing agency under Section 17A of the Act.

(2) For initial listing, a security shall have a CUSIP number or foreign equivalent identifying the securities included in the file of eligible issues maintained by a Securities Depository in accordance with the rules and procedures of such securities depository. This subparagraph shall not apply to a security if the terms of the security do not and cannot be reasonably modified to meet the criteria for depository eligibility at all Securities Depositories.

(3) A Security Depository's inclusion of a CUSIP number or foreign equivalent identifying a security in its file of eligible issues does not render the security "depository eligible" under Rule 11310 until:

(A) in the case of any new issue distributed by an underwriting syndicate on or after the date a Securities Depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available, the date of the commencement of trading in such security on Nasdaq Texas; or

(B) in the case of any new issue distributed by an underwriting syndicate prior to the date a Securities Depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available where the managing underwriter elects not to deposit the securities on the date of the commencement of trading in such security on Nasdaq Texas, such later date designated by the managing underwriter in a notification submitted to the Securities Depository; but in no event more than three (3) months after the commencement of trading in such security on Nasdaq Texas.

(h) **Limited Partnerships**

No security issued in a limited partnership rollup transaction (as defined by Section 14(h) of the Act), shall be eligible for listing unless:

(i) the rollup transaction was conducted in accordance with procedures designed to protect the rights of limited partners as provided in Section 6(b)(9) of the Act, as it may from time to time be amended, and

(ii) a broker-dealer that is a member of a national securities association subject to Section 15A(b)(12) of the Act participates in the rollup transaction.

The Company shall further provide an opinion of counsel stating that such broker-dealer's participation in the rollup transaction was conducted in compliance with the rules of a national securities association designed to protect the rights of limited partners, as specified in the Limited Partnership Rollup Reform Act of 1993.

In addition to any other applicable requirements, each limited partnership listed on the Exchange shall have a corporate general partner or co-general partner that satisfies the Independent Director and audit committee requirements set forth in the Rule 5600 Series.

Note: The only currently existing national securities association subject to Section 15A(b)(12) of the Act is FINRA. Its rules designed to protect the rights of limited partners, pursuant to the Limited Partnership Rollup Reform Act of 1993, are specified in FINRA Rule 2310.

(i) **Reverse Mergers**

A security issued by a Company formed by a Reverse Merger shall be eligible for initial listing only if the conditions set forth in Rule 5110(c) are satisfied.

(j) **Regulation A Offerings**

Any Company listing on Nasdaq Texas in connection with an offering under Regulation A of the Securities Act of 1933 must, at the time of approval of its initial listing application, have a minimum operating history of two years.

(k) **Restrictive Market Requirements**

(i) Any Company that is listing its Primary Equity Security on Nasdaq Texas in connection with its initial public offering, and that principally administers its business in a Restrictive Market, must offer a minimum amount of securities in a Firm Commitment Offering in the United States to Public Holders that: (a) will result in gross proceeds to the Company of at least $25 million; or (b) will represent at least 25% of the Company's post-offering Market Value of Listed Securities, whichever is lower.

(ii) Any Company that is conducting a business combination, as described in Rule 5110(a) or IM-5101-2, with an entity that principally administers its business in a Restrictive Market, must have a minimum Market Value of Unrestricted Publicly Held Shares following the business combination equal to the lesser of: (a) $25 million; or (b) 25% of the post-business combination entity's Market Value of Listed Securities.

(iii) Any Company that is listing its Primary Equity Security on Nasdaq Texas in connection with a Direct Listing, as defined in IM-5405-1, and that principally administers its business in a Restrictive Market, is permitted to list on Nasdaq Texas, provided that the Company meets all applicable listing requirements including the requirements of IM-5405-1.

(l) As required by SEC Rule 10D-1, any Company listing on Nasdaq Texas must comply with the requirements of Rule 5608 (Recovery of Erroneously Awarded Compensation).

(m) Principal Underwriter

(i) "Principal underwriter" shall have the same definition used in Rule 405 promulgated under the Securities Act of 1933.

(ii) Each Company applying for initial listing in connection with a transaction involving an underwriter must have a principal underwriter that is a Member or Limited Underwriting Member, as defined in General 1, Section 1 of the Nasdaq Texas Rules.

5215. American Depositary Receipts

(a) **Eligibility**

American Depositary Receipts can be listed on Nasdaq Texas provided they represent shares in a foreign Company.

(b) **Computations**

In the case of American Depositary Receipts, annual income from continuing operations and Stockholders' Equity shall relate to the foreign issuer and not to any depositary or any other person deemed to be an issuer for purposes of Form F-6 under the Securities Act of 1933. The underlying security will be considered when determining annual income from continuing operations, Publicly Held Shares, Unrestricted Publicly Held Shares, Market Value of Publicly Held Shares, Market Value of Unrestricted Publicly Held Shares, Stockholders' Equity, Round Lot or Public Holders, operating history, Market Value of Listed Securities, average daily

trading volume, total assets and total revenue. When calculating the Unrestricted Publicly Held Shares, Market Value of Unrestricted Publicly Held Shares and Round Lot Holders of the underlying security, Nasdaq Texas will only consider restrictions that prohibit the resale or trading of the underlying security on the foreign issuer's home country market.

5220. Dually-Listed Securities

Issuer Designation Requirements

Pursuant to Rule 600 of Regulation NMS under the Act, those securities for which transaction reporting is required by an effective transaction reporting plan are designated as national market system securities. A transaction reporting plan has been filed with the Commission covering securities listed on Nasdaq Texas.

IM-5220. Impact of Non-Designation of Dually Listed Securities

To foster competition among markets and further the development of the national market system, Nasdaq Texas shall permit Companies whose securities are listed on other national securities exchanges to apply also to list those securities on Nasdaq Texas. Nasdaq Texas shall make an independent determination of whether such Companies satisfy all applicable listing requirements and shall require Companies to enter into a dual listing agreement with Nasdaq Texas.

While Nasdaq Texas shall certify such dually listed securities for listing, Nasdaq Texas shall not exercise its authority under Rule 5220 separately to designate or register such dually listed securities as national market system securities within the meaning of Section 11A of the Act or the rules thereunder. As a result, these securities, which are already designated as national market system securities under the Consolidated Quotation Service ("CQS") and Consolidated Tape Association ("CTA") national market system plans ("CQ and CT Plans"), shall remain subject to those plans. For purposes of the national market system, such securities shall continue to trade under their current ticker symbols. Nasdaq Texas shall continue to send all quotations and transaction reports in such securities to the processors for the appropriate CQ and CT Plans and the Nasdaq UTP Plan.

Through this interpretation, Nasdaq Texas also resolves any potential conflicts that arise under Nasdaq Texas rules as a result of a single security being both a security subject to the plans referenced above (a "Plan Security"), which is subject to either the CQ and CT Plans or the Nasdaq UTP Plan, and a listed Nasdaq Texas security, which is subject to a different set of rules. Specifically, dually listed securities shall be Nasdaq Texas securities for purposes of rules related to listing and delisting, and shall remain as Plan Securities under all other Nasdaq Texas rules. Treating dually listed securities as Plan Securities under Nasdaq Texas rules is consistent with their continuing status as Plan Securities under the CQ and CT Plans or the Nasdaq UTP Plan, as described above. This interpretation also preserves the status quo and avoids creating potential confusion for investors and market participants that currently trade these securities on Nasdaq Texas.

For example, Nasdaq Texas shall continue to honor the regulatory trade halt authority of the primary market under the CQ and CT Plans and the Nasdaq UTP Plan. The fees applicable to Plan Securities set forth in Equity 7, Section 100 shall continue to apply to dually listed issues.

IM-5220-1. Dually-Listed Company

All Companies listed on Nasdaq Texas must be listed on another national securities exchange.

5222. Equity Investment Tracking Stock

(a) Eligibility

(1) An Equity Investment Tracking Stock may be listed under the Rule 5400 Series, provided it also meets the additional requirements set forth in paragraphs (b) and (c) of this Rule.

(2) Prior to the commencement of trading of any Equity Investment Tracking Stock, Nasdaq Texas will distribute an information circular to its members that describes any special characteristics and risks of trading the Equity Investment Tracking Stock, and Nasdaq Texas' rules that apply to the Equity Investment Tracking Stock, including the rules that:

(A) require members to use reasonable diligence in regard to the opening and maintenance of every account, to know (and retain) the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer; and

(B) require members in recommending transactions in the Equity Investment Tracking Stock to have a reasonable basis to believe that: (i) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such members, and (ii) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Equity Investment Tracking Stock.

(b) Additional Initial Listing Requirements

(1) The issuer of the Equity Investment Tracking Stock must own (directly or indirectly) at least 50% of both the economic interest and voting power of all of the outstanding classes of common equity securities of the issuer whose equity is tracked by the Equity Investment Tracking Stock.

(2) At the time of listing, the issuer of the equity security tracked by the Equity Investment Tracking Stock must not have received a Staff Delisting Determination with respect to such security and must not have been notified about a deficiency, except with respect to a corporate governance requirement where the issuer of the equity security tracked by the Equity Investment Tracking Stock has received a grace period under Rule 5810(c)(3)(E).

(c) Additional Continued Listing Requirements

(1) The following additional continued listing requirements apply to Equity Investment Tracking Stocks:

(A) the listed equity security or securities whose value is tracked by the Equity Investment Tracking Stock must remain listed on Nasdaq Texas and not be suspended pending delisting;

(B) the issuer of the Equity Investment Tracking Stock must continue to own (directly or indirectly) at least 50% of the economic interest and the voting power of all of the outstanding classes of common equity of the issuer whose equity is tracked by the Equity Investment Tracking Stock; and

(C) the Equity Investment Tracking Stock must continue to track the performance of the listed equity security or securities that was tracked at the time of initial listing.

(2) If any of the requirements of the paragraph (1) above are not met then Nasdaq Texas will determine whether the Equity Investment Tracking Stock meets any other applicable initial listing standard in place at that time. If the Equity Investment Tracking Stock does not qualify for initial listing at that time under another applicable initial listing standard, Nasdaq Texas will halt trading in the security and issue a Staff Delisting Determination pursuant to Listing Rule 5810(c)(1).

(d) Deficiency Proceedings Involving a Listed Equity Security whose Value is Tracked by the Equity Investment Tracking Stock

Rule 5222(c)(1)(A) requires the listed equity security or securities whose value is tracked by the Equity Investment Tracking Stock must remain listed on Nasdaq Texas and not be suspended pending delisting. In order to provide investors in the Equity Investment Tracking Stock with notice about the potential delisting of the listed equity security or securities whose value is tracked by the Equity Investment Tracking Stock and to assure orderly trading in the Equity Investment Tracking Stock, additional disclosure and procedural requirements are placed on the Equity Investment Tracking Stock when a listed equity security whose value is tracked by the Equity Investment Tracking Stock is subject to deficiency procedures, as follows:

(1) If the issuer of the listed equity security whose value is tracked by the Equity Investment Tracking Stock makes a public announcement disclosing receipt of a deficiency notification as required by Rules 5250(b)(2) and 5810(b), the issuer of the Equity Investment Tracking Stock must promptly disclose that fact by making a public announcement either by filing a Form 8-K, where required by SEC rules, or by issuing a press release.

(2) Rule 5810(c)(1) provides that Nasdaq Texas Staff will issue a Staff Delisting Determination to an Equity Investment Tracking Stock if a Staff Delisting Determination has been issued with respect to the security such Equity Investment Tracking Stock tracks. Notwithstanding any provisions to the contrary, if the Staff Delisting Determination issued

to the security such Equity Investment Tracking Stock tracks is stayed pursuant to the Rule 5800 Series, the suspension of the Equity Investment Tracking Stock also will be stayed and will remain stayed on the same terms that apply to the security such Equity Investment Tracking Stock tracks.

5225. Listing Requirements for Units (other than Paired Share Units)

(a) **Initial and Continued Listing Requirements**

(1) All units shall have at least one equity component. All components of such units shall satisfy the requirements for initial and continued listing, as applicable, or, in the case of debt components, satisfy the requirements of Rule 5225(a)(2), set forth below.

(2) All debt components of a unit, if any, shall meet the following requirements:

(A) the debt issue must have an aggregate market value or principal amount of at least $5 million;

(B) the issuer of the debt security must have equity securities listed on Nasdaq Texas; and

(C) in the case of convertible debt, the equity into which the debt is convertible must itself be subject to real-time last sale reporting in the United States, and the convertible debt must not contain a provision which gives the company the right, at its discretion, to reduce the conversion price for periods of time or from time to time unless the company establishes a minimum period of ten business days within which such price reduction will be in effect.

(3) All components of the unit shall be issued by the same issuer. All units and issuers of such units shall comply with the initial and continued listing requirements, as applicable.

(b) **Minimum Listing Period and Notice of Withdrawal**

In the case of units, the minimum listing period of the units shall be 30 days from the first day of listing, except the period may be shortened if the units are suspended or withdrawn for regulatory purposes. Companies and underwriters seeking to withdraw units from listing must provide Nasdaq Texas with notice of such intent at least 15 days prior to withdrawal.

(c) **Disclosure Requirements for Units**

Each Nasdaq Texas issuer of units shall include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed with the Commission under the federal securities laws and the rules and regulations promulgated thereunder a statement regarding any intention to delist the units immediately after the minimum inclusion period. The issuer of a unit shall further provide information regarding the terms and conditions of the components of the unit (including information with respect

to any original issue discount or other significant tax attributes of any component) and the ratio of the components comprising the unit. A Company shall also disclose when a component of the unit is separately listed on Nasdaq Texas. These disclosures shall be made on the Company's website, or if it does not maintain a website, in its annual report provided to unit holders. A Company shall also immediately make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing, any change in the terms of the unit, such as changes to the terms and conditions of any of the components (including changes with respect to any original issue discount or other significant tax attributes of any component), or to the ratio of the components within the unit. Such public announcement shall be made as soon as practicable in relation to the effective date of the change.

(d) **Market Makers**

(1) For initial inclusion, a unit shall have at least three registered and active Market Makers.

(2) For continued listing, a unit shall have at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

5226. Paired Share Units

A "Paired Share Unit" is a security consisting of a share of the common stock of a Company (the "Parent") and a share of the common stock of that Company's controlled subsidiary, which: (1) are attached together; and (2) only can be traded together as a unit pursuant to a pairing agreement. Instead of the requirements in Rule 5225 (except as indicated below), a Paired Share Unit can list on Nasdaq Texas if it meets the following requirements:

(a) For initial and continued listing, the controlled subsidiary must be a real estate investment trust (the "REIT") and the Parent must maintain ownership control, including voting control, over the REIT.

(b) For initial listing, the Parent and the REIT must each separately satisfy the entity-level requirements of Rule 5405(b) (e.g., the stockholders' equity, income, market capitalization, assets, revenue and operating history requirements), as applicable, and the Paired Share Unit must satisfy the security-level requirements of Rule 5405 (e.g., the price, Unrestricted Publicly Held Shares, Round Lot Holders, Market Value of Unrestricted Publicly Held Shares, average daily trading volume and Market Maker requirements).

(c) For continued listing, the Parent and the REIT must each separately satisfy the applicable entity-level requirements of Rule 5450(b) and the Paired Share Unit must satisfy the applicable security-level requirements of Rules 5450(a) and 5450(b).

(d) For initial and continued listing, the Parent and the REIT must each separately satisfy all other requirements of the listing rules applicable to a Company listing its primary equity

security, including, without limitation, the corporate governance requirements in the Rule 5600 Series.

(e) For initial and continued listing, the common stock of the Parent, the common stock of the REIT and the Paired Share Unit must each be registered pursuant to Section 12(b) of the Act.

(f) For initial and continued listing, the common stock of the Parent and the common stock of the REIT, as attached and traded together in the Paired Share Unit, must be the only securities of each of the Parent and the REIT available to public investors.

(g) The provisions of Rules 5225(b) and 5225(c) are applicable to Paired Share Units.

(h) In the event the common stock of the REIT becomes separately tradable from the common stock of the Parent, Nasdaq Texas will immediately issue a Staff Delisting Determination for the Paired Share Unit pursuant to Rule 5810(c)(1), and each of the Parent and the REIT must apply, and each of the Parent and the REIT, and their respective securities, must separately qualify for initial listing to remain listed on Nasdaq Texas.

5250. Obligations for Companies Listed on Nasdaq Texas

(a) **Obligation to Provide Information to Nasdaq Texas**

(1) Nasdaq Texas may request any additional information or documentation, public or non-public, deemed necessary to make a determination regarding a Company's continued listing, including, but not limited to, any material provided to or received from the Commission or Other Regulatory Authority. A Company may be denied continued listing if it fails to provide such information within a reasonable period of time or if any communication to Nasdaq Texas contains a material misrepresentation or omits material information necessary to make the communication to Nasdaq Texas not misleading. The Company shall provide full and prompt responses to requests by Nasdaq Texas or by FINRA acting on behalf of Nasdaq Texas for information related to unusual market activity or to events that may have a material impact on trading of its securities in Nasdaq Texas.

(2) As set forth in Rule 5625, a Company must provide Nasdaq Texas with prompt notification after an Executive Officer of the Company becomes aware of any noncompliance by the Company with the requirements of the Rule 5600 Series.

(b) **Obligation to Make Public Disclosure**

(1) **Disclosure of Material Information**

Except in unusual circumstances, a Nasdaq Texas-listed Company shall make prompt disclosure to the public through any Regulation FD compliant method (or combination of methods) of disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions. The Company shall, prior

to the release of the information, provide notice of such disclosure to Nasdaq Texas' MarketWatch Department at least ten minutes prior to public announcement if the information involves any of the events set forth in IM-5250-1 and the public release of the material information is made between 7:00 a.m. to 8:00 p.m. ET. If the public release of the material information is made outside the hours of 7:00 a.m. to 8:00 p.m. ET, Nasdaq Texas Companies must notify Nasdaq Texas MarketWatch of the material information prior to 6:50 a.m. ET. As described in IM-5250-1, prior notice to the Nasdaq Texas MarketWatch Department must be made through the electronic disclosure submission system available at *www.nasdaq.net*, except in emergency situations, when notification may instead be provided by telephone or facsimile. For disclosure and notification requirements related to reverse stock splits, please refer to subparagraph (4) below and Rule 5250(e)(7).

(2) **Disclosure of Notification of Deficiency**

As set forth in Rule 5810(b) and IM-5810-1, a Company that receives a notification of deficiency from Nasdaq Texas is required to make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing receipt of the notification and the Rule(s) upon which the deficiency is based, and describing each specific basis and concern identified by Nasdaq Texas in reaching its determination that the Company does not meet the listing standard. However, note that in the case of a deficiency related to the requirement to file a periodic report contained in Rule 5250(c)(1) or (2), the Company is required to make the public announcement by issuing a press release. As described in Rule 5250(b)(1) and IM-5250-1, the Company must notify Nasdaq Texas' MarketWatch Department about the announcement through the electronic disclosure submission system available at www.nasdaq.net, except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made between 7:00 a.m. to 8:00 p.m., the Company must notify Nasdaq Texas MarketWatch at least ten minutes prior to the announcement. If the public announcement is made outside 7:00 a.m. to 8:00 p.m., the Company must notify Nasdaq Texas MarketWatch of the announcement prior to 6:50 a.m. ET.

(3) **Disclosure of Third Party Director and Nominee Compensation**

Companies must disclose all agreements and arrangements in accordance with this rule by no later than the date on which the Company files or furnishes a proxy or information statement subject to Regulation 14A or 14C under the Act in connection with the Company's next shareholders' meeting at which directors are elected (or, if they do not file proxy or information statements, no later than when the Company files its next Form 10-K or Form 20-F).

(A) A Company shall disclose either on or through the Company's website or in the proxy or information statement for the next shareholders' meeting at which directors are elected (or, if the Company does not file proxy or information statements, in its Form 10-K or 20-F), the material terms of all agreements and arrangements between any director or nominee for director, and any person or entity other than the Company (the "Third Party"), relating to compensation or other payment in connection with such person's candidacy or service as a

director of the Company. A Company need not disclose pursuant to this rule agreements and arrangements that: (i) relate only to reimbursement of expenses in connection with candidacy as a director; (ii) existed prior to the nominee's candidacy (including as an employee of the other person or entity) and the nominee's relationship with the Third Party has been publicly disclosed in a proxy or information statement or annual report (such as in the director or nominee's biography); or (iii) have been disclosed under Item 5(b) of Schedule 14A of the Act or Item 5.02(d)(2) of Form 8-K in the current fiscal year. Disclosure pursuant to Commission rule shall not relieve a Company of its annual obligation to make disclosure under subparagraph (B).

(B) A Company must make the disclosure required in subparagraph (A) at least annually until the earlier of the resignation of the director or one year following the termination of the agreement or arrangement.

(C) If a Company discovers an agreement or arrangement that should have been disclosed pursuant to subparagraph (A) but was not, the Company must promptly make the required disclosure by filing a Form 8-K or 6-K, where required by SEC rules, or by issuing a press release. Remedial disclosure under this subparagraph, regardless of its timing, does not satisfy the annual disclosure requirements under subparagraph (B).

(D) A Company shall not be considered deficient with respect to this paragraph for purposes of Rule 5810 if the Company has undertaken reasonable efforts to identify all such agreements or arrangements, including asking each director or nominee in a manner designed to allow timely disclosure, and makes the disclosure required by subparagraph (C) promptly upon discovery of the agreement or arrangement. In all other cases, the Company must submit a plan sufficient to satisfy Nasdaq Texas staff that the Company has adopted processes and procedures designed to identify and disclose relevant agreements or arrangements.

(E) A Foreign Private Issuer may follow its home country practice in lieu of the requirements of Rule 5250(b)(3) by utilizing the process described in Rule 5615(a)(3).

(4) **Disclosure of Reverse Stock Split**

A Company must make disclosure to the public through any Regulation FD compliant method (or combination of methods) about a reverse stock split no later than 12:00 p.m. ET at least two (2) business days prior to the proposed market effective date. The Company shall, prior to the release of this information, provide notice of such disclosure to Nasdaq Texas MarketWatch Department, at least ten minutes prior to public announcement if the public release of the material information is made between 7:00 a.m. to 8:00 p.m. ET. If the public release of this information is made outside the hours of 7:00 a.m. to 8:00 p.m. ET, Nasdaq Texas Companies must notify Nasdaq Texas MarketWatch of the material information prior to 6:50 a.m. ET. The prior notice of this disclosure must be made to the Nasdaq Texas MarketWatch Department through the electronic disclosure submission system available at www.nasdaq.net, except in emergency situations, as described in IM-5250-1, when notification may instead be provided by telephone or facsimile.

(c) **Obligation to File Periodic Financial Reports**

(1) A Company shall timely file all required periodic financial reports with the Commission through the EDGAR System or with the Other Regulatory Authority. A Company that does not file through the EDGAR System shall supply to Nasdaq Texas two (2) copies of all reports required to be filed with the Other Regulatory Authority or email an electronic version of the report to Nasdaq Texas at *continuedlisting@nasdaq.com*. All required reports must be filed with Nasdaq Texas on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with Nasdaq Texas shall contain audited financial statements.

(2) **Foreign Private Issuer Interim Reports**

Each Foreign Private Issuer shall submit on a Form 6-K an interim balance sheet and income statement as of the end of its second quarter. This information, which must be presented in English, but does not have to be reconciled to U.S. GAAP, must be provided no later than six months following the end of the Company's second quarter. In the case of a Foreign Private Issuer that is a limited partnership, such information shall be distributed to limited partners if required by statute or regulation in the jurisdiction in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement.

(3) **Auditor Registration**

Each listed Company shall be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. 7212].

(d) **Distribution of Annual and Interim Reports**

(1) Distribution of Annual Reports

Each Company (including a limited partnership) shall make available to Shareholders an annual report containing audited financial statements of the Company and its subsidiaries (which, for example, may be on Form 10-K, 20-F, 40-F or N-CSR) within a reasonable period of time following the filing of the annual report with the Commission. A Company may comply with this requirement either:

(A) by mailing the report to Shareholders;

(B) by satisfying the requirements for furnishing an annual report contained in Rule 14a-16 under the Act; or

(C) by posting the annual report to Shareholders on or through the Company's website (or, in the case of a Company that is an investment company that does not maintain its own website, on a website that the Company is allowed to use to satisfy the website

posting requirement in Rule 16a-3(k) under the Act), along with a prominent undertaking in the English language to provide Shareholders, upon request, a hard copy of the Company's annual report free of charge. A Company that chooses to satisfy this requirement pursuant to this paragraph (C) must, simultaneous with this posting, issue a press release stating that its annual report has been filed with the Commission (or Other Regulatory Authority). This press release shall also state that the annual report is available on the Company's website and include the website address and that Shareholders may receive a hard copy free of charge upon request. A Company must provide such hard copies within a reasonable period of time following the request.

(2) Distribution of Interim Reports

Nasdaq Texas Companies that distribute interim reports to Shareholders should distribute such reports to both registered and beneficial Shareholders. Nasdaq Texas Companies are also encouraged to consider additional technological methods to communicate such information to Shareholders in a timely and less costly manner as such technology becomes available.

(3) Access to Quarterly Reports

(A) Each Company that is not a limited partnership (limited partnerships are governed by paragraph (B) below) and is subject to Rule 13a-13 under the Act shall make available copies of quarterly reports including statements of operating results to Shareholders either prior to or as soon as practicable following the Company's filing of its Form 10-Q with the Commission. If the form of such quarterly report differs from the Form 10-Q, the Company shall file one copy of the report with Nasdaq Texas in addition to filing its Form 10-Q pursuant to Rule 5250(c)(1). The statement of operations contained in quarterly reports shall disclose, at a minimum, any substantial items of an unusual or non-recurrent nature and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.

(B) Each Company that is limited partnership and is subject to Rule 13a-13 under the Act shall make available copies of quarterly reports including statements of operating results to limited partners either prior to or as soon as practicable following the partnership's filing of its Form 10-Q with the Commission. Such reports shall be distributed to limited partners if required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. If the form of such quarterly report differs from the Form 10-Q, the Company shall file one copy of the report with Nasdaq Texas in addition to filing its Form 10-Q pursuant to Rule 5250(c)(1). The statement of operations contained in quarterly reports shall disclose, at a minimum, any substantial items of an unusual or non-recurrent nature and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.

(4) Access to Interim Reports

(A) Each Company that is not a limited partnership and is not subject to Rule 13a-13 under the Act and that is required to file with the Commission, or Other Regulatory Authority, interim reports relating primarily to operations and financial position, shall make available to Shareholders reports which reflect the information contained in those interim reports. Such reports shall be made available to Shareholders either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report provided to Shareholders differs from that filed with the regulatory authority, the Company shall file one copy of the report to Shareholders with Nasdaq Texas in addition to the report to the regulatory authority that is filed with Nasdaq Texas pursuant to Rule 5250(c)(1).

(B) Each Company that is a limited partnership that is not subject to Rule 13a-13 under the Act and is required to file with the Commission, or Other Regulatory Authority, interim reports relating primarily to operations and financial position, shall make available to limited partners reports which reflect the information contained in those interim reports. Such reports shall be distributed to limited partners if required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. Such reports shall be distributed to limited partners either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report provided to limited partners differs from that filed with the regulatory authority, the Company shall file one copy of the report to limited partners with Nasdaq Texas in addition to the report to the regulatory authority that is filed with Nasdaq Texas pursuant to Rule 5250(c)(1).

(5) A Foreign Private Issuer may follow its home country practice in lieu of the requirements of Rules 5250(d)(1), (2), (3) or (4) by utilizing the process described in Rule 5615(a)(3).

(6) The Company shall comply with any obligation of any person regarding filing or disclosure of information material to the Company or the security, whether such obligation arises under the securities laws of the United States or the Company's country of domicile, or other applicable federal or state statutes or rules.

(e) **Nasdaq Texas Notification Requirements**

Various corporate events resulting in material changes will trigger the requirement for Companies to submit certain forms to Nasdaq Texas as specified below.

All applicable forms can be found at *http://www.nasdaq.com/about/listing_information.stm#forms*.

(1) **Change in Number of Shares Outstanding**

The Company shall file, on a form designated by Nasdaq Texas no later than 10 days after the occurrence, any aggregate increase or decrease of any class of securities listed on Nasdaq Texas that exceeds 5% of the amount of securities of the class outstanding.

(2) **Listing of Additional Shares**

A Company shall be required to notify Nasdaq Texas, except for a Company solely listing American Depositary Receipts, at least 15 calendar days prior to:

(A) (i) establishing or materially amending a stock option plan, purchase plan or other equity compensation arrangement pursuant to which stock may be acquired by officers, directors, employees, or consultants without shareholder approval;

(ii) Nasdaq Texas recognizes that when a Company makes an equity grant to induce an individual to accept employment, as permitted by the exception contained in Rule 5635(c)(4), it may not be practical to provide the advance notice otherwise required by this Rule. Therefore, when a Company relies on that exception to make such an inducement grant without shareholder approval, it is sufficient to notify Nasdaq Texas about the grant and the use of the exception no later than the earlier of: (x) five calendar days after entering into the agreement to issue the securities; or (y) the date of the public announcement of the award required by Rule 5635(c)(4); or

(B) issuing securities that may potentially result in a change of control of the Company; or

(C) issuing any common stock or security convertible into common stock in connection with the acquisition of the stock or assets of another company, if any officer or director or Substantial Shareholder of the Company has a 5% or greater interest (or if such persons collectively have a 10% or greater interest) in the Company to be acquired or in the consideration to be paid; or

(D) issuing any common stock, or any security convertible into common stock in a transaction that may result in the potential issuance of common stock (or securities convertible into common stock) greater than 10% of either the total shares outstanding or the voting power outstanding on a pre-transaction basis.

The notifications required by this paragraph must be made on the Notification Form: Listing of Additional Shares and Nasdaq Texas encourages Companies to file this form as soon as practicable, even if all of the relevant terms are not yet known. The Exchange reviews these forms to determine compliance with applicable Nasdaq Texas rules, including the shareholder approval requirements. Therefore, if a Company fails to file timely the form required by this paragraph, Nasdaq Texas may issue either a Public Reprimand Letter or a Delisting Determination (pursuant to the Rule 5800 Series).

(3) **Record Keeping Change**

(A) The Company shall file on a form designated by Nasdaq Texas notification of any change to its name, the par value or title of its security, its symbol, or a similar change, no later than 10 days after the change.

(B) The Company shall also notify Nasdaq Texas promptly in writing of any change in the general character or nature of its business and any change in the address of its principal executive offices.

(C) The Company shall provide at least ten (10) calendar days advance notice to Nasdaq Texas of certain corporate actions relating to non-convertible bonds listed on the Nasdaq Texas Bond Exchange, including redemptions (full or partial calls), tender offers, changes in par value, and changes in identifier (e.g., CUSIP number or symbol), by filing the appropriate form as designated by Nasdaq Texas.

(4) **Substitution Listing**

The Company shall notify Nasdaq Texas of a Substitution Listing Event (other than a re-incorporation or a change to a Company's place of organization) no later than 15 calendar days prior to the implementation of such event by filing the appropriate form as designated by Nasdaq Texas. For a re-incorporation or change to a Company's place of organization, a Company shall notify Nasdaq Texas as soon as practicable after such event has been implemented by filing the appropriate form as designated by Nasdaq Texas.

(5) **Transfer Agent, Registrar, ADR Bank Changes**

The issuer of any class of securities listed on Nasdaq Texas, except for American Depositary Receipts, shall notify Nasdaq Texas promptly in writing of any change in the Company's transfer agent or registrar.

(6) **Dividend Action or Stock Distribution**

In the case of any dividend action or action relating to a stock distribution of a listed stock the Company shall, no later than 10 calendar days prior to the record date of such action:

(i) notify Nasdaq Texas by filing the appropriate form as designated by the Exchange; and

(ii) provide public notice using a Regulation FD compliant method.

Notice to Nasdaq Texas should be given as soon as possible after declaration and, in any event, no later than simultaneously with the public notice.

(7) **Reverse Stock Split**

In the case of a reverse stock split, a Company must file a complete Company Event Notification Form no later than 12:00 p.m. ET ten (10) calendar days prior to the proposed market effective date. The submission must include all information required by the form and a draft of the disclosure required by Rule 5250(b)(4). Nasdaq Texas will not process a reverse stock split unless the requirements set forth in this subparagraph (7) and Rule 5250(b)(4) have been timely satisfied. If a Company takes legal action to effect a

reverse stock split notwithstanding its failure to timely satisfy these requirements, or provides incomplete or inaccurate information about the timing or ratio of the reverse stock split in its public disclosure, Nasdaq Texas will halt the stock in accordance with the procedure set forth in Equity 4, Rule 4120(b)(1)(A)(iv).

(f) Obligation to Pay Fees

The Company is required to pay all applicable fees as described in the Rule 5900 Series.

IM-5250-1. Disclosure of Material Information

Rule 5250(b)(1) requires that, except in unusual circumstances, Nasdaq Texas Companies disclose promptly to the public through any Regulation FD compliant method (or combination of methods) of disclosure any material information that would reasonably be expected to affect the value of their securities or influence investors' decisions. Nasdaq Texas Companies must notify Nasdaq Texas at least ten minutes prior to the release to the public of material information that involves any of the events set forth below when the public release of the information is made between 7:00 a.m. to 8:00 pm. ET. If the public release of the material information is made outside of 7:00 a.m. to 8:00 p.m. Nasdaq Texas Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET. Under unusual circumstances Companies may not be required to make public disclosure of material events; for example, where it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the Company to pursue its legitimate corporate objectives. However, Nasdaq Texas Companies remain obligated to disclose this information to Nasdaq Texas upon request pursuant to Rule 5250(a).

Whenever unusual market activity takes place in a Nasdaq Texas Company's securities, the Company normally should determine whether there is material information or news which should be disclosed. If rumors or unusual market activity indicate that information on impending developments has become known to the investing public, or if information from a source other than the Company becomes known to the investing public, a clear public announcement may be required as to the state of negotiations or development of Company plans. Such an announcement may be required, even though the Company may not have previously been advised of such information or the matter has not yet been presented to the Company's Board of Directors for consideration. In certain circumstances, it may also be appropriate to publicly deny false or inaccurate rumors, which are likely to have, or have had, an effect on the trading in its securities or would likely have an influence on investment decisions.

Notification to Nasdaq Texas MarketWatch Department

Nasdaq Texas Companies must notify Nasdaq Texas' MarketWatch Department prior to the distribution of certain material news at least ten minutes prior to public announcement of the news when the public release of the information is made from 7:00 a.m. to 8:00 p.m. ET. If the public release of the material information is made outside of 7:00 a.m. to 8:00 p.m., Nasdaq Texas Companies must notify Nasdaq Texas MarketWatch of the material information prior to 6:50 a.m. ET. Except in emergency situations, this notification must be made through Nasdaq

Texas' electronic disclosure submission system available at www.nasdaq.net. In emergency situations, Companies may instead provide notification by telephone or facsimile. Examples of an emergency situation include: lack of computer or internet access; technical problems on either the Company or Nasdaq Texas system or an incompatibility between those systems; and a material development such that no draft disclosure document exists, but immediate notification to Nasdaq Texas MarketWatch is important based on the material event.

If a Nasdaq Texas Company repeatedly fails to either notify Nasdaq Texas at least ten minutes prior to the distribution of material news from 7:00 a.m. to 8:00 p.m. or prior to 6:50 a.m. ET for material news distributed outside of market hours, or repeatedly fails to use the electronic disclosure submission system when Nasdaq Texas finds no emergency situation existed, Nasdaq Texas may issue a Public Reprimand Letter (as defined in Rule 5805(j)) or, in extreme cases, a Staff Delisting Determination (as defined in Rule 5805(h)). In determining whether to issue a Public Reprimand Letter, Nasdaq Texas will consider whether the Company has demonstrated a pattern of failures, whether the Company has been contacted concerning previous violations, and whether the Company has taken steps to assure that future violations will not occur.

Trading Halts

A trading halt benefits current and potential Shareholders by halting all trading in any Nasdaq Texas securities until there has been an opportunity for the information to be disseminated to the public. This decreases the possibility of some investors acting on information known only to them. A trading halt provides the public with an opportunity to evaluate the information and consider it in making investment decisions. It also alerts the marketplace to the fact that news has been released.

Nasdaq Texas' MarketWatch Department monitors real time trading in all Nasdaq Texas securities during the trading day for price and volume activity. In the event of certain price and volume movements, the Nasdaq Texas MarketWatch Department may contact a Company and its Market Makers in order to ascertain the cause of the unusual market activity. The Nasdaq Texas MarketWatch Department treats the information provided by the Company and other sources in a highly confidential manner, and uses it to assess market activity and assist in maintaining fair and orderly markets. A Nasdaq Texas listing includes an obligation to disclose to the Nasdaq Texas MarketWatch Department information that the Company is not otherwise disclosing to the investing public or the financial community. On, occasion, changes in market activity prior to the Company's release of material information may indicate that the information has become known to the investing public. Changes in market activity also may occur when there is a release of material information by a source other than the Company, such as when a Nasdaq Texas Company is subject to an unsolicited take-over bid by another company. Depending on the nature of the event and the Company's views regarding the business advisability of disclosing the information, the Nasdaq Texas MarketWatch Department may work with the Company to accomplish a timely release of the information. Furthermore, depending on the materiality of the information and the anticipated affect of the information on the price of the Company's securities, the Nasdaq Texas MarketWatch Department may advise the Company that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The institution of a temporary trading halt

pending the release of information is not a reflection on the value of the securities halted. Such trading halts are instituted, among other reasons, to insure that material information is fairly and adequately disseminated to the investing public and the marketplace, and to provide investors with the opportunity to evaluate the information in making investment decisions. A trading halt normally lasts one half hour but may last longer if a determination is made that news has not been adequately disseminated or that the original or an additional basis under Rule 4120 exists for continuing the trading halt.

The Nasdaq Texas MarketWatch Department is required to keep non-public information, confidential and to use such information only for regulatory purposes.

Companies are required to notify the Nasdaq Texas MarketWatch Department of the release of material information included in the following list of events at least ten minutes prior to the release of such information to the public when the public release of the information is made from 7:00 a.m. to 8:00 p.m. ET. If the public release of the material information is made outside of 7:00 a.m. to 8:00 p.m., Nasdaq Texas Companies must notify Nasdaq Texas MarketWatch of the material information prior to 6:50 a.m. ET. It should also be noted that every development that might be reported to Nasdaq Texas in these areas would not necessarily be deemed to warrant a trading halt. In addition to the following list of events, Nasdaq Texas encourages Companies to avail themselves of the opportunity for advance notification to the Nasdaq Texas MarketWatch Department in situations where they believe, based upon their knowledge of the significance of the information, that a temporary trading halt may be necessary or appropriate.

(a) Financial-related disclosures, including quarterly or yearly earnings, earnings restatements, pre-announcements or “guidance.”

(b) Corporate reorganizations and acquisitions, including mergers, tender offers, asset transactions and bankruptcies or receiverships.

(c) New products or discoveries, or developments regarding customers or suppliers (e.g., significant developments in clinical or customer trials, and receipt or cancellation of a material contract or order).

(d) Senior management changes of a material nature or a change in control.

(e) Resignation or termination of independent auditors, or withdrawal of a previously issued audit report.

(f) Events regarding the Company's securities — e.g., defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, or public or private sales of additional securities.

(g) Significant legal or regulatory developments. Regulation FD

(h) Any event requiring the filing of a Form 8-K.

Whenever Nasdaq Texas halts trading in a security of a listed company for any of the reasons set forth above or implements any other regulatory trading halt, Nasdaq Texas will also halt trading in any listed Equity Investment Tracking Stock that tracks the performance of such listed company and any Subscription Receipt that is exchangeable into that security.

Use of Regulation FD Compliant Methods in the Disclosure of Material Information

Regardless of the method of disclosure that a Company chooses to use, Companies are required to notify the MarketWatch Department of the release of material information that involves any of the events set forth above at least ten minutes prior to its release to the public when the public release of the information is made from 7:00 a.m. to 8:00 p.m. ET. If the public release of the material information is made outside of 7:00 a.m. to 8:00 p.m., Nasdaq Texas Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET. When a Company chooses to utilize a Regulation FD compliant method for disclosure other than a press release or Form 8-K, the Company will be required to provide prior notice to the Nasdaq Texas MarketWatch Department of: 1) the press release announcing the logistics of the future disclosure event; and 2) a descriptive summary of the material information to be announced during the disclosure event if the press release does not contain such a summary.

Depending on the materiality of the information and the anticipated effect of the information on the price of the Company's securities, the Nasdaq Texas MarketWatch Department may advise the Company that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The Nasdaq Texas MarketWatch Department will assess with Companies using methods of disclosure other than a press release or Form 8-K the timing within the disclosure event when the Company will cover the material information so that the halt can be commenced accordingly. Companies will be responsible for promptly alerting the Nasdaq Texas MarketWatch Department of any significant changes to the previously outlined disclosure timeline. Companies are reminded that the posting of information on the company's website may not by itself be considered a sufficient method of public disclosure under Regulation FD and SEC guidance and releases thereunder, and as a result, under Nasdaq Texas rules.

IM-5250-2. Disclosure of Third Party Director and Nominee Compensation

Rule 5250(b)(3) requires listed companies to publicly disclose the material terms of all agreements and arrangements between any director or nominee and any person or entity (other than the Company) relating to compensation or other payment in connection with that person's candidacy or service as a director. The terms “compensation” and “other payment” as used in this rule are not limited to cash payments and are intended to be construed broadly.

Subject to exceptions provided in the rule, the disclosure must be made on or through the Company's website or in the proxy or information statement for the next shareholders' meeting at which directors are elected in order to provide shareholders with information and sufficient time to help them make meaningful voting decisions. A Company posting the requisite disclosure on or through its website must make it publicly available no later than the date on which the Company files a proxy or information statement in connection with such shareholders' meeting

(or, if they do not file proxy or information statements, no later than when the Company files its next Form 10-K or Form 20-F). Disclosure made available on the Company's website or through it by hyperlinking to another website, must be continuously accessible. If the website hosting the disclosure subsequently becomes inaccessible or that hyperlink inoperable, the company must promptly restore it or make other disclosure in accordance with this rule.

Rule 5250(b)(3) does not separately require the initial disclosure of newly entered into agreements or arrangements, provided that disclosure is made pursuant to this rule for the next shareholders' meeting at which directors are elected. In addition, for publicly disclosed agreements and arrangements that existed prior to the nominee's candidacy and thus not required to be disclosed in accordance with Rule 5250(b)(3)(A)(ii) but where the director or nominee's remuneration is thereafter materially increased specifically in connection with such person's candidacy or service as a director of the Company, only the difference between the new and previous level of compensation or other payment obligation needs be disclosed.

All references in this rule to proxy or information statements are to the definitive versions thereof.

IM-5250-3. Notification and Disclosure of Reverse Stock Splits

A Company conducting a reverse stock split is required to notify Nasdaq Texas of the reverse stock split no later than 12:00 p.m. ET at least ten (10) calendar days prior to the proposed market effective date of the split, in accordance with Rule 5250(e)(7). The Company is also required to provide Nasdaq Texas with a copy of their draft public disclosure within the same time frame. Further, the Company must provide, in accordance with Rule 5250(b)(4), public disclosure of the reverse split no later than 12 p.m. ET at least two (2) business days prior to the proposed market effective date of the reverse stock split, and notice of such disclosure to Nasdaq Texas' MarketWatch Department, at least ten minutes prior to public announcement if the public release of the material information is made between 7:00 a.m. to 8:00 p.m. ET. If the public release of this information is made outside the hours of 7:00 a.m. to 8:00 p.m. ET, Nasdaq Texas Companies must notify Nasdaq Texas MarketWatch of the material information prior to 6:50 a.m. ET. The prior notice of this disclosure must be made to the Nasdaq Texas MarketWatch Department through the electronic disclosure submission system available at www.nasdaq.net, except in emergency situations, as described in IM-5250-1, when notification may instead be provided by telephone or facsimile.

Nasdaq Texas will not process the reverse split until the above requirements have been satisfied, and will halt trading in accordance with the procedure set forth in Rule 4120(b)(1)(A)(iv) in the security of any issuer that effects a reverse stock split without meeting the requirements set forth in Rules 5250(b)(4) and (e)(7).

5255. Direct Registration Program

(a) Except as indicated in paragraph (c) below, all securities listed on Nasdaq Texas (except securities which are book-entry only) must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act.

(b) If a Company establishes or maintains a Direct Registration Program for its Shareholders, the Company shall, directly or through its transfer agent, participate in an electronic link with a clearing agency registered under Section 17A of the Act to facilitate the electronic transfer of securities held pursuant to such program.

(c) **Exemption**

A foreign issuer, as defined under Rule 3b-4 under the Act, including a Foreign Private Issuer, shall not be subject to this requirement if it submits to Nasdaq Texas a written statement from an independent counsel in such Company's home country certifying that a law or regulation in the home country prohibits compliance.

5400. LISTING REQUIREMENTS

5401. Preamble to Nasdaq Texas Listing Requirements

This section contains the initial and continued listing requirements and standards for listing a Company's Primary Equity Security on Nasdaq Texas. This section also contains the initial and continued listing requirements for Rights and Warrants, and Preferred and Secondary Classes of Common Stock. An Equity Investment Tracking Stock may be listed as a Primary Equity Security or as a Secondary Class of Common Stock, as applicable, provided it must also meet the initial and continued listing requirements, as applicable, set forth in Rule 5222.

In addition to meeting the quantitative requirements in this section, a Company must meet the requirements of the Rule 5100 Series, the disclosure obligations set forth in the Rule 5200 Series, the Corporate Governance requirements set forth in the Rule 5600 Series, and pay any applicable fees in the Rule 5900 Series. A Company's failure to meet any of the continued listing requirements will be processed in accordance with the provisions set forth in the Rule 5800 Series.

For the requirements relating to other securities listed on Nasdaq Texas, see the Rule 5700 Series.

5405. Initial Listing Requirements and Standards for Primary Equity Securities

A Company applying to list its Primary Equity Security shall meet all of the requirements set forth in Rule 5405(a) and at least one of the Standards in Rule 5405(b).

(a) **Initial Listing Requirements for Primary Equity Securities:**

(1) Minimum bid price of at least $4 per share;

(2) At least 1,100,000 Unrestricted Publicly Held Shares;

(3) (i) At least 400 Round Lot Holders; and (ii) at least 50% of such Round Lot Holders must each hold Unrestricted Securities with a Market Value of at least $2,500; provided that (ii) shall not apply to a Company whose business plan is to complete one or more acquisitions, as described in IM-5101-2;

(4) If the security is trading in the U.S. over-the-counter market as of the date of application (except for the security of a Company listing in connection with a de-SPAC transaction, as that term is defined in Item 1601(a) of Regulation S-K, involving a SPAC, as that term is defined in Item 1601(b) of Regulation S-K, which was previously listed on a national securities exchange and provides its public shareholders the opportunity to redeem or tender their shares in connection with the de-SPAC transaction in exchange for a pro rata share of the IPO proceeds and concurrent sale by the company of equity securities; in connection with an effective 1933 Securities Act registration statement), such security must have a minimum average daily trading volume of 2,000 shares over the 30 trading day period prior to listing (including trading volume of the underlying security on the primary market with respect to an ADR), with trading occurring on more than half of those 30 days, unless such security is listed on the Exchange in connection with a firm commitment underwritten public offering of at least $8 million and the Company satisfies the applicable Market Value of Unrestricted Publicly Held Shares of paragraph (b) below from the offering proceeds; and

(5) In the case of ADRs, at least 400,000 issued.

(b) **Initial Listing Standards for Primary Equity Securities:**

(1) **Income Standard**

(A) Annual income from continuing operations before income taxes of at least $1,000,000 in the most recently completed fiscal year or in two of the three most recently completed fiscal years;

(B) Stockholders' equity of at least $15 million;

(C) Market Value of Unrestricted Publicly Held Shares of at least $15 million (for a Company listing in connection with an initial public offering, including through the issuance of American Depository Receipts, this requirement must be satisfied from the offering proceeds); and

(D) At least three registered and active Market Makers.

(2) **Equity Standard**

(A) Stockholders' equity of at least $30 million;

(B) Two-year operating history;

(C) Market Value of Unrestricted Publicly Held Shares of at least $18 million (for a Company listing in connection with an initial public offering, including through the issuance of American Depository Receipts, this requirement must be satisfied from the offering proceeds); and

(D) At least three registered and active Market Makers.

(3) **Market Value Standard**

(A) Market Value of Listed Securities of $75 million (current publicly traded Companies must meet this requirement and the $4 bid price requirement for 90 consecutive trading days prior to applying for listing if qualifying to list only under the Market Value Standard);

(B) Market Value of Unrestricted Publicly Held Shares of at least $20 million (for a Company listing in connection with an initial public offering, including through the issuance of American Depository Receipts, this requirement must be satisfied from the offering proceeds); and

(C) At least four registered and active Market Makers.

(4) **Total Assets/Total Revenue Standard**

(A) Total assets and total revenue of $75 million each for the most recently completed fiscal year or two of the three most recently completed fiscal years;

(B) Market Value of Unrestricted Publicly Held Shares of at least $20 million (for a Company listing in connection with an initial public offering, including through the issuance of American Depository Receipts, this requirement must be satisfied from the offering proceeds); and

(C) At least four registered and active Market Makers.

5406. Alternative Initial Listing Requirements for Companies whose Business Plan is to Complete One or More Acquisitions

In addition to being able to list under the requirements described in Rule 5405, a Company whose business plan is to complete one or more acquisitions, as described in IM-5101-2 (an "Acquisition Company"), can alternatively list its Primary Equity Security (other than an ADR) on Nasdaq Texas as set forth in this Rule. For Acquisition Companies that list at the time of their IPOs, Nasdaq Texas will require that the offering be on a firm commitment basis, and, if necessary, Nasdaq Texas will rely on a written commitment from the underwriter to represent the anticipated value of the Acquisition Company's offering in order to determine an Acquisition Company's compliance with certain listing standards, including the number of Publicly Held Shares.

(a) The Acquisition Company must satisfy all requirements described in IM-5101-2;

(b) The Acquisition Company must have a Market Value of Listed Securities of at least $100 million;

(c) The Primary Equity Security must:

(1) have a closing price or, if listing in connection with an IPO, an IPO price of at least $4 per share;

(2) have a Market Value of Publicly Held Shares of at least $80 million;

(3) have at least 1,100,000 Publicly Held Shares; and

(4) satisfy one of the following distribution criteria:

(A) In the case of an Acquisition Company listing in connection with an IPO, at least 300 Round Lot Holders.

(B) In the case of an Acquisition Company listing in connection with a transfer or quotation:

(1) at least 300 Round Lot Holders; or

(2) at least 2,200 total stockholders and average monthly trading volume of 100,000 shares (for most recent 6 months); or

(3) at least 500 total stockholders and average monthly trading volume of 1,000,000 shares (for most recent 12 months).

(d) As required by Rule 5225(a)(1)(A), if the Acquisition Company lists units, the components of the units (other than Primary Equity Security, which must satisfy the requirements of Rule 5406(c)) must satisfy the initial listing requirements for Nasdaq Texas applicable to the component. If a component of a unit is a warrant, it must meet the following additional requirements:

(1) At least 1,000,000 warrants outstanding;

(2) At least $4 million aggregate market value;

(3) Warrants should have a minimum life of one year; and

(4) The Exchange will not list warrant issues containing provisions which give the company the right, at its discretion, to reduce the exercise price of the warrants for periods of time, or from time to time, during the life of the warrants unless (i) the company undertakes to comply with any applicable tender offer regulatory provisions under the federal securities laws, including a minimum period of 20 business days within which such price reduction will be in effect (or such longer period as may be required under the SEC's tender offer rules) and (ii) the company promptly gives public notice of the reduction in exercise price in a manner consistent with the Exchange's immediate release policy set forth in Rules 5250(b)(1) and IM-5250-1. The Exchange will apply the requirements in the immediately preceding sentence to the taking of any other action which has the same economic effect as a reduction in the exercise price of a listed warrant. This policy will not preclude the listing of warrant issues for which regularly scheduled and specified changes in the exercise price have been previously established at the time of issuance of the warrants.

5410. Initial Listing Requirements for Rights and Warrants and Convertible Debt

(a) For initial listing, the rights or warrants must meet all the requirements below:

(1) At least 450,000 rights or warrants issued;

(2) The underlying security must be listed on Nasdaq Texas or be a Covered Security;

(3) There must be at least three registered and active Market Makers; and

(4) In the case of warrants, there must be at least 400 Round Lot Holders (except that this requirement will not apply to the listing of warrants in connection with the initial firm commitment underwritten public offering of such warrants).

(b) For initial listing, a convertible debt security must meet the requirements in (1) through (3), and one of the conditions in (4) must be satisfied:

(1) Principal amount outstanding of at least $10 million;

(2) Current last sale information must be available in the United States with respect to the underlying security into which the bond or debenture is convertible;

(3) At least three registered and active Market Makers; and

(4)

(A) the issuer of the debt must have an equity security that is listed on the Nasdaq, Nasdaq Texas, NYSE American or the New York Stock Exchange;

(B) an issuer whose equity security is listed on the Nasdaq, Nasdaq Texas, NYSE American or the New York Stock Exchange, directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security, or has guaranteed the debt security;

(C) a nationally recognized securities rating organization (an "NRSRO") has assigned a current rating to the debt security that is no lower than an S&P Corporation "B" rating or equivalent rating by another NRSRO; or

(D) if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned: (1) an investment grade rating to an immediately senior issue; or (2) a rating that is no lower than an S&P Corporation "B" rating, or an equivalent rating by another NRSRO, to a pari passu or junior issue.

5415. Initial Listing Requirements for Preferred Stock and Secondary Classes of Common Stock

(a) When the Primary Equity Security of the Company is listed on Nasdaq Texas or is a Covered Security, the preferred stock or secondary class of common stock must meet all of the requirements set forth in (1) through (6) below.

(1) At least 200,000 Unrestricted Publicly Held Shares;

(2) A Market Value of Unrestricted Publicly Held Shares of at least $4,000,000;

(3) Minimum bid price of at least $4 per share;

(4) At least 100 Round Lot Holders and at least 50% of such Round Lot Holders must each hold Unrestricted Securities with a Market Value of at least $2,500;

(5) At least three registered and active Market Makers; and

(6) If the security is trading in the U.S. over-the-counter market as of the date of application, such security must have a minimum average daily trading volume of 2,000 shares over the 30 trading day period prior to listing, with trading occurring on more than half of those 30 days, unless such security is listed on the Exchange in connection with a firm commitment underwritten public offering of at least $4 million.

(b) When the Company's Primary Equity Security is not listed on Nasdaq Texas or is not a Covered Security, the preferred stock and/or secondary class of common stock may be listed on Nasdaq Texas so long as it satisfies the initial listing criteria for Primary Equity Securities set forth in Rule 5405.

5420. Initial Listing Requirements for Subscription Receipts

Subscription Receipts are securities used to raise money for a specific acquisition. Nasdaq Texas will list Subscription Receipts subject to the following requirements:

(a) The security that the Subscription Receipts are exchangeable for must be listed on Nasdaq Texas.

(b) At the time of listing the Subscription Receipts, the issuer must not have received a Staff Delisting Determination with respect to the security the Subscription Receipt is exchangeable for and must not have been notified about a deficiency in any continued listing standard with respect to the issuer of the security or the security that the Subscription Receipt is exchangeable for, except with respect to a corporate governance requirement where the issuer of the Subscription Receipt has received a grace period under Rule 5810(c)(3)(E).

(c) The proceeds of the Subscription Receipts offering must be designated solely for use in connection with the consummation of a specified acquisition that is the subject of a binding acquisition agreement (the "Specified Acquisition").

(d) The proceeds of the Subscription Receipts offering must be held in an interest-bearing custody account controlled by an independent custodian.

(e) The Subscription Receipts will promptly be redeemed for cash: (i) at any time that the acquisition agreement in relation to the Specified Acquisition is terminated; or (ii) if the Specified Acquisition does not close within twelve months from the date of issuance of the Subscription Receipts, or such earlier time as is specified in the operative agreements. If the Subscription Receipts are redeemed, the holders will receive cash payments equal to their pro rata share of the funds in the custody account, including any interest earned on those funds.

(f) If the Specified Acquisition is consummated, the holders of the Subscription Receipts will receive the shares of common stock for which their Subscription Receipts are exchangeable.

(g) At the time of initial listing, the Subscription Receipts must have:

(1) a price per Subscription Receipt of at least $4.00;

(2) a minimum Market Value of Unrestricted Publicly Held Shares of $100 million;

(3) At least 1,100,000 Unrestricted Publicly Held Shares; and

(4) At least 400 Round Lot Holders and at least 50% of such Round Lot Holders must each hold Unrestricted Securities with a Market Value of at least $2,500.

(h) The sale of the Subscription Receipts and the issuance of the common stock of the issuer in exchange for the Subscription Receipts must both be registered under the Securities Act.

5450. Continued Listing Requirements and Standards for Primary Equity Securities

A Company that has its Primary Equity Security listed on Nasdaq Texas must continue to substantially meet all of the requirements set forth in Rule 5450(a) and at least one of the Standards in Rule 5450(b). Failure to meet any of the continued listing requirements will be processed in accordance with the provisions set forth in the Rule 5800 Series.

(a) **Continued Listing Requirements for Primary Equity Securities:**

(1) Minimum bid price of $1 per share; and

(2) At least 400 Total Holders.

(b) **Continued Listing Standards for Primary Equity Securities:**

(1) **Equity Standard**

(A) Stockholders' equity of at least $10 million;

(B) At least 750,000 Publicly Held Shares;

(C) Market Value of Publicly Held Shares of at least $5 million; and

(D) At least two registered and active Market Makers.

(2) **Market Value Standard**

(A) Market Value of Listed Securities of at least $50 million;

(B) At least 1,100,000 Publicly Held Shares;

(C) Market Value of Publicly Held Shares of at least $15 million; and

(D) At least four registered and active Market Makers.

(3) **Total Assets/Total Revenue Standard**

(A) Total assets and total revenue of at least $50 million each for the most recently completed fiscal year or two of the three most recently completed fiscal years;

(B) At least 1,100,000 Publicly Held Shares;

(C) Market Value of Publicly Held Shares of at least $15 million; and

(D) At least four registered and active Market Makers.

5452. Continued Listing Requirements for Acquisition Companies listed under Rule 5406

A Company whose business plan is to complete one or more acquisitions, as described in IM-5101-2 (an "Acquisition Company"), that qualified for listing on Nasdaq Texas pursuant to the alternative initial listing requirements in Rule 5406 must continue to meet all of the requirements set forth in this rule and IM-5101-2, in addition to the minimum bid price of $1 per share requirement in Rule 5450(a)(1) and the requirement to have at least four registered and active

Market Makers in Rule 5450(b)(2)(D). All other continued listing requirements of Rule 5450 are superseded by the requirements set forth below.

(a) Until an Acquisition Company has satisfied the condition of consummating its business combination described in Rule IM-5101-2(b), Nasdaq Texas will promptly initiate suspension and delisting procedures if:

(1) the Acquisition Company's average Market Value of Listed Securities is below $50,000,000 or the average Market Value of Publicly Held Shares is below $40,000,000, in each case over 30 consecutive trading days. An Acquisition Company will not be eligible to follow the procedures outlined in Rule 5810(c)(2) with respect to this criterion, and will be subject to the procedures in Rule 5810(c)(1) which provides that Nasdaq Texas Staff will issue a Staff Delisting Determination to such Acquisition Company. Nasdaq Texas will notify the Acquisition Company if its average Market Value of Listed Securities falls below $75,000,000 or the average Market Value of Publicly Held Shares falls below $60,000,000 and will advise the Acquisition Company of the delisting standard.

(2) the Acquisition Company's securities initially listed (either common equity securities or units, as the case may be), fall below the following distribution criteria:

(A) at least 300 public stockholders (if a component of a unit is a warrant, at least 100 warrant holders);

(B) at least 1,200 total stockholders and average monthly trading volume of 100,000 shares (for most recent 12 months); or

(C) at least 600,000 Publicly Held Shares.

(3) the Acquisition Company fails to consummate its business combination, required by Rule IM-5101-2 (b), within the time period specified by its constitutive documents or required by contract, or as provided by Rule IM-5101-2 (b), whichever is shorter.

(b) In the case of an Acquisition Company listed warrants, the warrants must meet the following continued listing requirements (in addition to the requirements of Listing Rule 5455):

(A) The number of publicly-held warrants is at least 100,000;

(B) The number of warrant holders is at least 100; and

(C) Aggregate market value of warrants outstanding is at least $1,000,000.

IM-5452-1. Treatment of Acquisition Company units, and unit components, for purposes of the distribution requirements

For purposes of Rule 5452, "public stockholders" exclude holders that are directors, officers, or their immediate families and holders of other concentrated holdings of 10% or more.

In addition, Rule 5452(a)(2) sets forth certain distribution criteria applicable to an Acquisition Company listed under Rule 5406. In the case of Acquisition Company securities traded as a unit, such securities will be subject to suspension and delisting if any of the component parts do not

meet the applicable listing standards. However, if one or more of the components is otherwise qualified for listing, such component(s) may remain listed.

For the purposes of determining whether an individual component satisfies the applicable distribution criteria, the units that are intact and freely separable into their component parts shall be counted toward the total numbers required for continued listing of the component. If a component is a warrant, (in addition to the distribution requirement of 100 holders) the warrants will be subject to the continued listing standards for warrants set forth in Rules 5452 and 5455.

Notwithstanding the foregoing, Nasdaq Texas will consider the suspension of trading in, or removal from listing of, any individual component or unit when, in the opinion of Nasdaq Texas, it appears that the extent of public distribution or the aggregate market value of such component or unit has become so reduced as to make continued listing on the Exchange inadvisable. In its review of the advisability of the continued listing of an individual component or unit, the Exchange will consider the trading characteristics of such component or unit and whether it would be in the public interest for trading to continue.

5455. Continued Listing Requirements for Rights and Warrants and Convertible Debt

(a) For continued listing, the rights or warrants must meet all the requirements below:

(1) The underlying security must continue to be listed on Nasdaq Texas or be a Covered Security; and

(2) There must be at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

(b) A convertible debt security must meet the following requirements for continued listing:

(1) A principal amount outstanding of at least $5 million;

(2) At least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid; and

(3) Current last sale information must be available in the United States with respect to the underlying security into which the bond or debenture is convertible.

5460. Continued Listing Requirements for Preferred Stock and Secondary Classes of Common Stock

(a) When the Company's Primary Equity Security of the Company is listed on Nasdaq Texas or is a Covered Security, the preferred stock or secondary class of common stock must meet all of the requirements set forth in (1) through (5) below.

(1) At least 100,000 Publicly Held Shares;

(2) A Market Value of Publicly Held Shares of at least $1,000,000;

(3) Minimum bid price of at least $1 per share;

(4) At least 100 Public Holders; and

(5) At least two registered and active Market Makers.

(b) When the Primary Equity Security of the Company is not listed on Nasdaq Texas or is not a Covered Security, the preferred stock and/or secondary class of common stock may continue to be listed on Nasdaq Texas so long as it satisfies the continued listing criteria for Primary Equity Securities set forth in Rule 5450.

5465. Continued Listing Requirements for Subscription Receipts

Subscription Receipts must meet all of the requirements in paragraphs (a) through (e) below in order to remain listed. Failure to meet any of the continued listing requirements will be processed in accordance with the provisions set forth in the Rule 5800 Series.

(a) At least 100,000 Publicly Held Shares;

(b) At least 100 Public Holders;

(c) At least $15 million Market Value of Listed Securities for the Subscription Receipts over 30 consecutive trading days;

(d) the common equity security that the Subscription Receipt is exchangeable for must remain listed on Nasdaq Texas and not have received a Staff Delisting Determination with respect to the security such Subscription Receipt is exchangeable for; and

(e) the Company must not have announced that the Specified Acquisition (as defined in Rule 5420) has been terminated.

5600. CORPORATE GOVERNANCE REQUIREMENTS

5601. Preamble to the Corporate Governance Requirements

In addition to meeting the quantitative requirements in the Rule 5200 and 5400 Series, Companies applying to list and listed on Nasdaq Texas must meet the qualitative requirements outlined in this Rule 5600 Series. These requirements include rules relating to a Company's board of directors, including audit committees and Independent Director oversight of executive compensation and the director nomination process; recovery of erroneously awarded compensation; code of conduct; shareholder meetings, including proxy solicitation and quorum; review of related party transactions; and shareholder approval, including voting rights. Exemptions to these rules, including phase-in schedules, are set forth in Rule 5615.

Nasdaq Texas maintains a website that provides guidance on the applicability of the corporate governance requirements by FAQs and published summaries of anonymous versions of previously issued staff interpretative letters. Companies are encouraged to contact Nasdaq Texas Listing Qualifications Department (as defined in Rule 5805(f)) to discuss any complex issues or transactions. Companies can also submit a request for a written interpretation pursuant to Rule 5602.

5602. Written Interpretations of Nasdaq Texas Listing Rules

(a) A Company, as defined in Rule 5005(a)(6), and a company that has a class of securities that has been suspended or delisted, but the suspension or delisting decision is under review pursuant to the Rule 5800 Series, may request from Nasdaq Texas a written interpretation of the Rules contained in the Rule 5000 through 5900 Series. A response to such a request generally will be provided within four weeks from the date Nasdaq Texas receives all information necessary to respond to the request.

(b) Nasdaq Texas shall publish on its website a summary of each interpretation within 90 days from the date such interpretation is issued.

5605. Board of Directors and Committees

(a) Definitions

(1) "Executive Officer" means those officers covered in Rule 16a-1(f) under the Act.

(2) "Independent Director" means a person other than an Executive Officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. For purposes of this rule, "Family Member" means a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home. The following persons shall not be considered independent:

(A) a director who is, or at any time during the past three years was, employed by the Company;

(B) a director who accepted or who has a Family Member who accepted any compensation from the Company in excess of $120,000 during any period of twelve consecutive months within the three years preceding the determination of independence, other than the following:

(i) compensation for board or board committee service;

(ii) compensation paid to a Family Member who is an employee (other than an Executive Officer) of the Company; or

(iii) benefits under a tax-qualified retirement plan, or non-discretionary compensation.

Provided, however, that in addition to the requirements contained in this paragraph (B), audit committee members are also subject to additional, more stringent requirements under Rule 5605(c)(2).

(C) a director who is a Family Member of an individual who is, or at any time during the past three years was, employed by the Company as an Executive Officer;

(D) a director who is, or has a Family Member who is, a partner in, or a controlling Shareholder or an Executive Officer of, any organization to which the Company made, or from which the Company received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year, or $200,000, whichever is more, other than the following:

(i) payments arising solely from investments in the Company's securities; or

(ii) payments under non-discretionary charitable contribution matching programs.

(E) a director of the Company who is, or has a Family Member who is, employed as an Executive Officer of another entity where at any time during the past three years any of the Executive Officers of the Company serve on the compensation committee of such other entity; or

(F) a director who is, or has a Family Member who is, a current partner of the Company's outside auditor, or was a partner or employee of the Company's outside auditor who worked on the Company's audit at any time during any of the past three years.

(G) in the case of an investment company, in lieu of paragraphs (A)-(F), a director who is an "interested person" of the Company as defined in Section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee.

IM-5605. Definition of Independence — Rule 5605(a)(2)

It is important for investors to have confidence that individuals serving as Independent Directors do not have a relationship with the listed Company that would impair their independence. The board has a responsibility to make an affirmative determination that no such relationships exist through the application of Rule 5605(a)(2). Rule 5605(a)(2) also provides a list of certain relationships that preclude a board finding of independence. These objective measures provide transparency to investors and Companies, facilitate uniform application of the rules, and ease administration. Because Nasdaq Texas does not believe that ownership of Company stock by itself would preclude a board finding of independence, it is not included in the aforementioned objective factors. It should be noted that there are additional, more stringent requirements that apply to directors serving on audit committees, as specified in Rule 5605(c).

The Rule's reference to the "Company" includes any parent or subsidiary of the Company. The term "parent or subsidiary" is intended to cover entities the Company controls and consolidates with the Company's financial statements as filed with the Commission (but not if the Company reflects such entity solely as an investment in its financial statements). The reference to Executive Officer means those officers covered in Rule 16a-1(f) under the Act. In the context of the definition of Family Member under Rule 5605(a)(2), the reference to marriage is intended to

capture relationships specified in the Rule (parents, children and siblings) that arise as a result of marriage, such as "in-law" relationships.

The three year look-back periods referenced in paragraphs (A), (C), (E) and (F) of the Rule commence on the date the relationship ceases. For example, a director employed by the Company is not independent until three years after such employment terminates.

For purposes of paragraph (A) of the Rule, employment by a director as an Executive Officer on an interim basis shall not disqualify that director from being considered independent following such employment, provided the interim employment did not last longer than one year. A director would not be considered independent while serving as an interim officer. Similarly, for purposes of paragraph (B) of the Rule, compensation received by a director for former service as an interim Executive Officer need not be considered as compensation in determining independence after such service, provided such interim employment did not last longer than one year. Nonetheless, the Company's board of directors still must consider whether such former employment and any compensation received would interfere with the director's exercise of independent judgment in carrying out the responsibilities of a director. In addition, if the director participated in the preparation of the Company's financial statements while serving as an interim Executive Officer. Rule 5605(c)(2)(A)(iii) would preclude service on the audit committee for three years.

Paragraph (B) of the Rule is generally intended to capture situations where a compensation is made directly to (or for the benefit of) the director or a Family Member of the director. For example, consulting or personal service contracts with a director or Family Member of the director would be analyzed under paragraph (B) of the Rule. In addition, political contributions to the campaign of a director or a Family Member of the director would be considered indirect compensation under paragraph (B). Non-preferential payments made in the ordinary course of providing business services (such as payments of interest or proceeds related to banking services or loans by a Company that is a financial institution or payment of claims on a policy by a Company that is an insurance company), payments arising solely from investments in the Company's securities and loans permitted under Section 13(k) of the Act will not preclude a finding of director independence as long as the payments are non-compensatory in nature. Depending on the circumstances, a loan or payment could be compensatory if, for example, it is not on terms generally available to the public.

Paragraph (D) of the Rule is generally intended to capture payments to an entity with which the director or Family Member of the director is affiliated by serving as a partner, controlling Shareholder or Executive Officer of such entity. Under exceptional circumstances, such as where a director has direct, significant business holdings, it may be appropriate to apply the corporate measurements in paragraph (D), rather than the individual measurements of paragraph (B). Issuers should contact Nasdaq Texas if they wish to apply the Rule in this manner. The reference to a partner in paragraph (D) is not intended to include limited partners. It should be noted that the independence requirements of paragraph (D) of the Rule are broader than Rule 10A-3(e)(8) under the Act.

Under paragraph (D), a director who is, or who has a Family Member who is, an Executive Officer of a charitable organization may not be considered independent if the Company makes payments to the charity in excess of the greater of 5% of the charity's revenues or $200,000. However, Nasdaq Texas encourages Companies to consider other situations where a director or their Family Member and the Company each have a relationship with the same charity when assessing director independence.

For purposes of determining whether a lawyer is eligible to serve on an audit committee, Rule 10A-3 under the Act generally provides that any partner in a law firm that receives payments from the issuer is ineligible to serve on that issuer's audit committee. In determining whether a director may be considered independent for purposes other than the audit committee, payments to a law firm would generally be considered under Rule 5605(a)(2), which looks to whether the payment exceeds the greater of 5% of the recipient's gross revenues or $200,000; however, if the firm is a sole proprietorship, Rule 5605(a)(2)(B), which looks to whether the payment exceeds $120,000, applies.

Paragraph (G) of the Rule provides a different measurement for independence for investment companies in order to harmonize with the Investment Company Act of 1940. In particular, in lieu of paragraphs (A)-(F), a director who is an "interested person" of the Company as defined in Section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee, shall not be considered independent.

(b) **Independent Directors**

(1) **Majority Independent Board**

A majority of the board of directors must be comprised of Independent Directors as defined in Rule 5605(a)(2). The Company, other than a Foreign Private Issuer, must comply with the disclosure requirements set forth in Item 407(a) of Regulation S-K. A Foreign Private Issuer must disclose in its next annual report (e.g., Form 20-F or 40-F) those directors that the board of directors has determined to be independent under Rule 5605(a)(2).

(A) **Cure Period for Majority Independent Board**

If a Company fails to comply with this requirement due to one vacancy, or one director ceases to be independent due to circumstances beyond their reasonable control, except as provided in paragraph (B) below, the Company shall regain compliance with the requirement by the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the failure to comply with this requirement, the Company shall instead have 180 days from such event to regain compliance. A Company relying on this provision shall provide notice to Nasdaq Texas immediately upon learning of the event or circumstance that caused the noncompliance.

(B) Prior Reliance on a Phase-in Period

A Company is not eligible for the cure period provided for in paragraph (A) above, immediately following the expiration of a phase-in period under Rule 5615(b) upon which the Company was relying, unless:

(i) the Company complied with the majority independent board requirement during the phase-in period; and

(ii) the Company fell out of compliance with the majority independent board requirement after having complied with the requirement before the end of the phase-in period.

In these circumstances, as provided in Rule 5615(b), the Company will not be considered non-compliant with the requirement until the end of the phase-in period. For purposes of computing the applicable cure period, the event that caused the failure to comply shall be the event causing the Company to fall out of compliance after having complied with the requirement, and not the end of the phase-in period.

IM-5605-1. Majority Independent Board

Majority Independent Board. Independent Directors (as defined in Rule 5605(a)(2)) play an important role in assuring investor confidence. Through the exercise of independent judgment, they act on behalf of investors to maximize shareholder value in the Companies they oversee and guard against conflicts of interest. Requiring that the board be comprised of a majority of Independent Directors empowers such directors to carry out more effectively these responsibilities.

(2) **Executive Sessions**

Independent Directors must have regularly scheduled meetings at which only Independent Directors are present ("executive sessions").

IM-5605-2. Executive Sessions of Independent Directors

Regularly scheduled executive sessions encourage and enhance communication among Independent Directors. It is contemplated that executive sessions will occur at least twice a year, and perhaps more frequently, in conjunction with regularly scheduled board meetings.

(c) **Audit Committee Requirements**

(1) **Audit Committee Charter**

Each Company must certify that it has adopted a formal written audit committee charter and that the audit committee will review and reassess the adequacy of the formal written charter on an annual basis. The charter must specify:

(A) the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes and membership requirements;

(B) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the Company, actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to oversee the independence of the outside auditor;

(C) the committee's purpose of overseeing the accounting and financial reporting processes of the Company and the audits of the financial statements of the Company; and

(D) the specific audit committee responsibilities and authority set forth in Rule 5605(c)(3).

IM-5605-3. Audit Committee Charter

Each Company is required to adopt a formal written charter that specifies the scope of its responsibilities and the means by which it carries out those responsibilities; the outside auditor's accountability to the audit committee; and the audit committee's responsibility to ensure the independence of the outside auditor. Consistent with this, the charter must specify all audit committee responsibilities set forth in Rule 10A-3(b)(2), (3), (4) and (5) under the Act. Rule 10A -3(b)(3)(ii) under the Act requires that each audit committee must establish procedures for the confidential, anonymous submission by employees of the listed Company of concerns regarding questionable accounting or auditing matters. The rights and responsibilities as articulated in the audit committee charter empower the audit committee and enhance its effectiveness in carrying out its responsibilities.

Rule 5605(c)(3) imposes additional requirements for investment company audit committees that must also be set forth in audit committee charters for these Companies.

(2) **Audit Committee Composition**

(A) Each Company must have, and certify that it has and will continue to have, an audit committee of at least three members, each of whom must: (i) be an Independent Director as defined under Rule 5605(a)(2); (ii) meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act); (iii) not have participated in the preparation of the financial statements of the Company or any current subsidiary of the Company at any time during the past three years; and (iv) be able to read and understand fundamental financial statements, including a Company's balance sheet, income statement, and cash flow statement. Additionally, each Company must certify that it has, and will continue to have, at least one member of the audit committee who has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a

chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(B) **Non-Independent Director for Exceptional and Limited Circumstances**

Notwithstanding paragraph (2)(A)(i), one director who: (i) is not an Independent Director as defined in Rule 5605(a)(2); (ii) meets the criteria set forth in Section 10A(m)(3) under the Act and the rules thereunder; and (iii) is not currently an Executive Officer or employee or a Family Member of an Executive Officer, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the Company and its Shareholders. A Company, other than a Foreign Private Issuer, that relies on this exception must comply with the disclosure requirements set forth in Item 407(d)(2) of Regulation S-K. A Foreign Private Issuer that relies on this exception must disclose in its next annual report (e.g., Form 20-F or 40-F) the nature of the relationship that makes the individual not independent and the reasons for the board's determination. A member appointed under this exception may not serve longer than two years and may not chair the audit committee.

IM-5605-4. Audit Committee Composition

Audit committees are required to have a minimum of three members and be comprised only of Independent Directors. In addition to satisfying the Independent Director requirements under Rule 5605(a)(2), audit committee members must meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act): they must not accept any consulting, advisory, or other compensatory fee from the Company other than for board service, and they must not be an affiliated person of the Company. As described in Rule 10A-3(d)(1) and (2), a Company must disclose reliance on certain exceptions from Rule 10A-3 and disclose an assessment of whether, and if so, how, such reliance would materially adversely affect the ability of the audit committee to act independently and to satisfy the other requirements of Rule 10A-3. It is recommended also that a Company disclose in its annual proxy (or, if the Company does not file a proxy, in its Form 10-K or 20-F) if any director is deemed eligible to serve on the audit committee but falls outside the safe harbor provisions of Rule 10A-3(e)(1)(ii) under the Act. A director who qualifies as an audit committee financial expert under Item 407(d)(5)(ii) and (iii) of Regulation S-K is presumed to qualify as a financially sophisticated audit committee member under Rule 5605(c)(2)(A).

(3) **Audit Committee Responsibilities and Authority**

The audit committee must have the specific audit committee responsibilities and authority necessary to comply with Rule 10A-3(b)(2), (3), (4) and (5) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act), concerning responsibilities relating to: (i) registered public accounting firms, (ii) complaints relating to accounting, internal accounting controls or auditing matters, (iii) authority to engage advisers, and (iv) funding as determined by the audit committee. Audit committees for investment companies must also establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser,

administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

IM-5605-5. The Audit Committee Responsibilities and Authority

Audit committees must have the specific audit committee responsibilities and authority necessary to comply with Rule 10A-3(b)(2), (3), (4) and (5) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act), concerning responsibilities relating to registered public accounting firms; complaints relating to accounting; internal accounting controls or auditing matters; authority to engage advisers; and funding. Audit committees for investment companies must also establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

(4) **Cure Periods for Audit Committee**

(A) If a Company fails to comply with the audit committee composition requirement under Rule 10A-3(b)(1) under the Act and Rule 5605(c)(2)(A) because an audit committee member ceases to be independent for reasons outside the member's reasonable control, except as provided in paragraph (C) below, the audit committee member may remain on the audit committee until the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement. A Company relying on this provision must provide notice to Nasdaq Texas immediately upon learning of the event or circumstance that caused the noncompliance.

(B) If a Company fails to comply with the audit committee composition requirement under Rule 5605(c)(2)(A) due to one vacancy on the audit committee, and the cure period in paragraph (A) is not otherwise being relied upon for another member, except as provided in paragraph (C) below, the Company will have until the earlier of the next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the vacancy, the Company shall instead have 180 days from such event to regain compliance. A Company relying on this provision must provide notice to Nasdaq Texas immediately upon learning of the event or circumstance that caused the noncompliance.

(C) A Company is not eligible for the cure periods provided for under Rule 5605(c)(4)(A) or (B) immediately following the expiration of a phase-in period under Rule 5615(b) upon which the Company was relying, unless:

(i) the Company complied with the audit committee composition requirement during the phase-in period; and

(ii) the Company fell out of compliance with the audit committee composition requirement after having complied with the requirement before the end of the phase-in period.

In these circumstances, as provided in Rule 5615(b), the Company will not be considered non-compliant with the requirement until the end of the phase-in period. For purposes of computing the applicable cure period, the event that caused the failure to comply shall be the event causing the Company to fall out of compliance after having complied with the requirement, and not the end of the phase-in period.

(5) **Exception**

At any time when a Company has a class of common equity securities (or similar securities') that is listed on another national securities exchange or national securities association subject to the requirements of Rule 10A-3 under the Act, the listing of classes of securities of a direct or indirect consolidated subsidiary or an at least 50% beneficially owned subsidiary of the Company (except classes of equity securities, other than non-convertible, non-participating preferred securities, of such subsidiary) shall not be subject to the requirements of Rule 5605(c).

(d) **Compensation Committee Requirements**

(1) **Compensation Committee Charter**

Each Company must certify that it has adopted a formal written compensation committee charter and that the compensation committee will review and reassess the adequacy of the formal written charter on an annual basis. The charter must specify:

(A) the scope of the compensation committee's responsibilities, and how it carries out those responsibilities, including structure, processes and membership requirements;

(B) the compensation committee's responsibility for determining, or recommending to the board for determination, the compensation of the chief executive officer and all other Executive Officers of the Company;

(C) that the chief executive officer may not be present during voting or deliberations on his or her compensation; and

(D) the specific compensation committee responsibilities and authority set forth in Rule 5605(d)(3).

(2) **Compensation Committee Composition**

(A) Each Company must have, and certify that it has and will continue to have, a compensation committee of at least two members. Each committee member must be an Independent Director as defined under Rule 5605(a)(2). In addition, in affirmatively

determining the independence of any director who will serve on the compensation committee of a board of directors, the board of directors must consider all factors specifically relevant to determining whether a director has a relationship to the Company which is material to that director's ability to be independent from management in connection with the duties of a compensation committee member, including, but not limited to:

(i) the source of compensation of such director, including any consulting, advisory or other compensatory fee paid by the Company to such director; and

(ii) whether such director is affiliated with the Company, a subsidiary of the Company or an affiliate of a subsidiary of the Company.

(B) **Non-Independent Committee Member under Exceptional and Limited Circumstances**

Notwithstanding paragraph 5605(d)(2)(A) above, if the compensation committee is comprised of at least three members, one director who does not meet the requirements of paragraph 5605(d)(2)(A) and is not currently an Executive Officer or employee or a Family Member of an Executive Officer, may be appointed to the compensation committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the Company and its Shareholders. A Company that relies on this exception must disclose either on or through the Company's website or in the proxy statement for the next annual meeting subsequent to such determination (or, if the Company does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. In addition, the Company must provide any disclosure required by Instruction 1 to Item 407(a) of Regulation S-K regarding its reliance on this exception. A member appointed under this exception may not serve longer than two years.

(3) **Compensation Committee Responsibilities and Authority**

As required by Rule 10C-1(b)(2), (3) and (4)(i)-(vi) under the Act, the compensation committee must have the following specific responsibilities and authority.

(A) The compensation committee may, in its sole discretion, retain or obtain the advice of a compensation consultant, legal counsel or other adviser.

(B) The compensation committee shall be directly responsible for the appointment, compensation and oversight of the work of any compensation consultant, legal counsel and other adviser retained by the compensation committee.

(C) The Company must provide for appropriate funding, as determined by the compensation committee, for payment of reasonable compensation to a compensation consultant, legal counsel or any other adviser retained by the compensation committee.

(D) The compensation committee may select, or receive advice from, a compensation consultant, legal counsel or other adviser to the compensation committee, other than in-house legal counsel, only after taking into consideration the following factors:

(i) the provision of other services to the Company by the person that employs the compensation consultant, legal counsel or other adviser;

(ii) the amount of fees received from the Company by the person that employs the compensation consultant, legal counsel or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel or other adviser;

(iii) the policies and procedures of the person that employs the compensation consultant, legal counsel or other adviser that are designed to prevent conflicts of interest;

(iv) any business or personal relationship of the compensation consultant, legal counsel or other adviser with a member of the compensation committee;

(v) any stock of the Company owned by the compensation consultant, legal counsel or other adviser; and

(vi) any business or personal relationship of the compensation consultant, legal counsel, other adviser or the person employing the adviser with an Executive Officer of the Company.

Nothing in this Rule shall be construed: (i) to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant, legal counsel or other adviser to the compensation committee; or (ii) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

The compensation committee is required to conduct the independence assessment outlined in this Rule with respect to any compensation consultant, legal counsel or other adviser that provides advice to the compensation committee, other than in-house legal counsel. However, nothing in this Rule requires a compensation consultant, legal counsel or other compensation adviser to be independent, only that the compensation committee consider the enumerated independence factors before selecting, or receiving advice from, a compensation adviser. Compensation committees may select, or receive advice from, any compensation adviser they prefer, including ones that are not independent, after considering the six independence factors outlined above.

For purposes of this Rule, the compensation committee is not required to conduct an independence assessment for a compensation adviser that acts in a role limited to the following activities for which no disclosure is required under Item 407(e)(3)(iii) of Regulation S-K: (a) consulting on any broad-based plan that does not discriminate in scope,

terms, or operation, in favor of Executive Officers or directors of the Company, and that is available generally to all salaried employees; and/or (b) providing information that either is not customized for a particular issuer or that is customized based on parameters that are not developed by the adviser, and about which the adviser does not provide advice.

(4) **Cure Period for Compensation Committee**

(A) If a Company fails to comply with the compensation committee composition requirement under Rule 5605(d)(2)(A) due to one vacancy, or one compensation committee member ceases to be independent due to circumstances beyond the member's reasonable control, except as provided in paragraph (B) below, the Company shall regain compliance with the requirement by the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the failure to comply with this requirement, the Company shall instead have 180 days from such event to regain compliance. A Company relying on this provision shall provide notice to Nasdaq Texas immediately upon learning of the event or circumstance that caused the noncompliance.

(B) A Company is not eligible for the cure period provided for in paragraph (A) above, immediately following the expiration of a phase-in period under Rule 5615(b) upon which the Company was relying, unless:

(i) the Company complied with the compensation committee composition requirement during the phase-in period; and

(ii) the Company fell out of compliance with the compensation committee composition after having complied with the requirement before the end of the phase-in period.

In these circumstances, as provided in Rule 5615(b), the Company will not be considered non-compliant with the requirement until the end of the phase-in period. For purposes of computing the applicable cure period, the event that caused the failure to comply shall be the event causing the Company to fall out of compliance after having complied with the requirement, and not the end of the phase-in period.

(5) **Smaller Reporting Companies**

A Smaller Reporting Company, as defined in Rule 12b-2 under the Act, is not subject to the requirements of Rule 5605(d), except that a Smaller Reporting Company must have, and certify that it has and will continue to have, a compensation committee of at least two members, each of whom must be an Independent Director as defined under Rule 5605(a)(2). A Smaller Reporting Company may rely on the exception in Rule 5605(d)(2)(B) and the cure period in Rule 5605(d)(4). In addition, a Smaller Reporting Company must certify that it has adopted a formal written compensation committee charter or board resolution that specifies the content set forth in Rule 5605(d)(1)(A)-(C). A Smaller Reporting Company does not need to include in its formal written compensation committee charter or board

resolution the specific compensation committee responsibilities and authority set forth in Rule 5605(d)(3).

IM-5605-6. Independent Director Oversight of Executive Compensation

Independent oversight of executive officer compensation helps assure that appropriate incentives are in place, consistent with the board's responsibility to act in the best interests of the corporation. Compensation committees are required to have a minimum of two members and be comprised only of Independent Directors as defined under Rule 5605(a)(2).

In addition, Rule 5605(d)(2)(A) includes an additional independence test for compensation committee members. When considering the sources of a director's compensation for this purpose, the board should consider whether the director receives compensation from any person or entity that would impair the director's ability to make independent judgments about the Company's executive compensation. Similarly, when considering any affiliate relationship a director has with the Company, a subsidiary of the Company, or an affiliate of a subsidiary of the Company, in determining independence for purposes of compensation committee service, the board should consider whether the affiliate relationship places the director under the direct or indirect control of the Company or its senior management, or creates a direct relationship between the director and members of senior management, in each case of a nature that would impair the director's ability to make independent judgments about the Company's executive compensation. In that regard, while a board may conclude differently with respect to individual facts and circumstances, Nasdaq Texas does not believe that ownership of Company stock by itself, or possession of a controlling interest through ownership of Company stock by itself, precludes a board finding that it is appropriate for a director to serve on the compensation committee. In fact, it may be appropriate for certain affiliates, such as representatives of significant stockholders, to serve on compensation committees since their interests are likely aligned with those of other stockholders in seeking an appropriate executive compensation program.

For purposes of the additional independence test for compensation committee members described in Rule 5605(d)(2)(A), any reference to the "Company" includes any parent or subsidiary of the Company. The term "parent or subsidiary" is intended to cover entities the Company controls and consolidates with the Company's financial statements as filed with the Commission (but not if the Company reflects such entity solely as an investment in its financial statements).

A Smaller Reporting Company must have a compensation committee with a minimum of two members. Each compensation committee member must be an Independent Director as defined under Rule 5605(a)(2). In addition, each Smaller Reporting Company must have a formal written compensation committee charter or board resolution that specifies the committee's responsibilities and authority set forth in Rule 5605(d)(1)(A)-(C). However, in recognition of the fact that Smaller Reporting Companies may have fewer resources than larger Companies, Smaller Reporting Companies are not required to adhere to the additional compensation committee eligibility requirements in Rule 5605(d)(2)(A), or to incorporate into their formal written compensation committee charter or board resolution the specific compensation committee responsibilities and authority set forth in Rule 5605(d)(3).

(e) **Independent Director Oversight of Director Nominations**

(1) Director nominees must either be selected, or recommended for the Board's selection, either by:

(A) Independent Directors constituting a majority of the Board's Independent Directors in a vote in which only Independent Directors participate, or

(B) a nominations committee comprised solely of Independent Directors.

(2) Each Company must certify that it has adopted a formal written charter or board resolution, as applicable, addressing the nominations process and such related matters as may be required under the federal securities laws.

(3) **Non-Independent Committee Member under Exceptional and Limited Circumstances**

Notwithstanding paragraph 5605(e)(1)(B) above, if the nominations committee is comprised of at least three members, one director, who is not an Independent Director as defined in Rule 5605(a)(2) and is not currently an Executive Officer or employee or a Family Member of an Executive Officer, may be appointed to the nominations committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the Company and its Shareholders. A Company that relies on this exception must disclose either on or through the Company's website or in the proxy statement for next annual meeting subsequent to such determination (or, if the Company does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. In addition, the Company must provide any disclosure required by Instruction 1 to Item 407(a) of Regulation S-K regarding its reliance on this exception. A member appointed under this exception may not serve longer than two years.

(4) Independent Director oversight of director nominations shall not apply in cases where the right to nominate a director legally belongs to a third party. However, this does not relieve a Company's obligation to comply with the committee composition requirements under Rules 5605(c), (d) and (e).

(5) This Rule 5605(e) is not applicable to a Company if the Company is subject to a binding obligation that requires a director nomination structure inconsistent with this rule and such obligation pre-dates the approval date of this rule.

IM-5605-7. Independent Director Oversight of Director Nominations

Independent Director oversight of nominations enhances investor confidence in the selection of well-qualified director nominees, as well as independent nominees as required by the rules. This rule is also intended to provide flexibility for a Company to choose an appropriate board

structure and reduce resource burdens, while ensuring that Independent Directors approve all nominations.

This rule does not apply in cases where the right to nominate a director legally belongs to a third party. For example, investors may negotiate the right to nominate directors in connection with an investment in the Company, holders of preferred stock may be permitted to nominate or appoint directors upon certain defaults, or the Company may be a party to a shareholder's agreement that allocates the right to nominate some directors. Because the right to nominate directors in these cases does not reside with the Company, Independent Director approval would not be required. This rule is not applicable if the Company is subject to a binding obligation that requires a director nomination structure inconsistent with the rule and such obligation pre-dates the approval date of this rule.

5608. Recovery of Erroneously Awarded Compensation

(a) **Preamble**. As required by SEC Rule 10D-1, this Rule 5608 requires Companies to adopt a compensation recovery policy, comply with that policy, and provide the compensation recovery policy disclosures required by this rule and in the applicable Commission filings.

(b) **Recovery of Erroneously Awarded Compensation**. Each Company must:

(1) Adopt and comply with a written policy providing that the Company will recover reasonably promptly the amount of erroneously awarded incentive-based compensation in the event that the Company is required to prepare an accounting restatement due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.

(i) The Company's recovery policy must apply to all incentive-based compensation received by a person:

(A) After beginning service as an executive officer;

(B) Who served as an executive officer at any time during the performance period for that incentive-based compensation;

(C) While the Company has a class of securities listed on a national securities exchange or a national securities association; and

(D) During the three completed fiscal years immediately preceding the date that the Company is required to prepare an accounting restatement as described in paragraph (b)(1) of this Rule. In addition to these last three completed fiscal years, the recovery policy must apply to any transition period (that results from a change in the Company's fiscal year) within or immediately following those three completed fiscal years. However,

a transition period between the last day of the Company's previous fiscal year end and the first day of its new fiscal year that comprises a period of nine to 12 months would be deemed a completed fiscal year. A Company's obligation to recover erroneously awarded compensation is not dependent on if or when the restated financial statements are filed.

(ii) For purposes of determining the relevant recovery period, the date that a Company is required to prepare an accounting restatement as described in paragraph (b)(1) of this Rule is the earlier to occur of:

(A) The date the Company's board of directors, a committee of the board of directors, or the officer or officers of the Company authorized to take such action if board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare an accounting restatement as described in paragraph (b)(1) of this Rule; or

(B) The date a court, regulator, or other legally authorized body directs the Company to prepare an accounting restatement as described in paragraph (b)(1) of this Rule.

(iii) The amount of incentive-based compensation that must be subject to the Company's recovery policy ("erroneously awarded compensation") is the amount of incentive-based compensation received that exceeds the amount of incentive-based compensation that otherwise would have been received had it been determined based on the restated amounts, and must be computed without regard to any taxes paid. For incentive-based compensation based on stock price or total shareholder return, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in an accounting restatement:

(A) The amount must be based on a reasonable estimate of the effect of the accounting restatement on the stock price or total shareholder return upon which the incentive-based compensation was received; and

(B) The Company must maintain documentation of the determination of that reasonable estimate and provide such documentation to Nasdaq Texas.

(iv) The Company must recover erroneously awarded compensation in compliance with its recovery policy except to the extent that the conditions of paragraphs (b)(1)(iv)(A), (B), or (C) of this Rule are met, and the Company's Compensation Committee, or in the absence of such a committee, a majority of the independent directors serving on the board, has made a determination that recovery would be impracticable.

(A) The direct expense paid to a third party to assist in enforcing the policy would exceed the amount to be recovered. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on expense of enforcement, the Company must make a reasonable attempt to recover such erroneously awarded compensation, document such reasonable attempt(s) to recover, and provide that documentation to Nasdaq Texas.

(B) Recovery would violate home country law where that law was adopted prior to November 28, 2022. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on violation of home country law, the Company must obtain an opinion of home country counsel, acceptable to Nasdaq Texas, that recovery would result in such a violation, and must provide such opinion to Nasdaq Texas.

(C) Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the registrant, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.

(v) The Company is prohibited from indemnifying any executive officer or former executive officer against the loss of erroneously awarded compensation.

(2) File all disclosures with respect to such recovery policy in accordance with the requirements of the Federal securities laws, including the disclosure required by the applicable Commission filings.

(c) **General Exemptions**. The requirements of this Rule 5608 do not apply to the listing of:

(1) Any security issued by a unit investment trust, as defined in 15 U.S.C. 80a-4(2); and

(2) Any security issued by a management company, as defined in 15 U.S.C. 80a-4(3), that is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), if such management company has not awarded incentive-based compensation to any executive officer of the company in any of the last three fiscal years, or in the case of a company that has been listed for less than three fiscal years, since the listing of the company.

(d) **Definitions**. Unless the context otherwise requires, the following definitions apply for purposes of this Rule 5608 (and only for purposes of this Rule 5608):

Executive Officer. An executive officer is the Company's president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice-president of the Company in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the Company. Executive officers of the Company's parent(s) or subsidiaries are deemed executive officers of the Company if they perform such policy making functions for the Company. In addition, when the Company is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. When the Company is a trust, officers, or employees of the trustee(s) who perform policy-making functions for the trust are deemed officers of the trust. Policy-making function is not intended to include policy-making functions that are not significant. Identification of an executive officer for purposes of this Rule would include at a minimum executive officers identified pursuant to 17 CFR 229.401(b).

Financial Reporting Measures. Financial reporting measures are measures that are determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and any measures that are derived wholly or in part from such measures. Stock price and total shareholder return are also financial reporting measures. A financial reporting measure need not be presented within the financial statements or included in a filing with the Commission.

Incentive-Based Compensation. Incentive-based compensation is any compensation that is granted, earned, or vested based wholly or in part upon the attainment of a financial reporting measure.

Received. Incentive-based compensation is deemed received in the Company's fiscal period during which the financial reporting measure specified in the incentive-based compensation award is attained, even if the payment or grant of the incentive-based compensation occurs after the end of that period.

5610. Code of Conduct

Each Company shall adopt a code of conduct applicable to all directors, officers and employees, which shall be publicly available. A code of conduct satisfying this rule must comply with the definition of a "code of ethics" set out in Section 406(c) of the Sarbanes-Oxley Act of 2002 ("the Sarbanes-Oxley Act") and any regulations promulgated thereunder by the Commission. In addition, the code must provide for an enforcement mechanism. Any waivers of the code for directors or Executive Officers must be approved by the board or a board committee. Companies, other than Foreign Private Issuers, shall disclose such waivers within four business days by filing a current report on Form 8-K with the Commission or, in cases where a Form 8-K is not required, by distributing a press release. Foreign Private Issuers shall disclose such waivers within four business days either by distributing a press release or including disclosure in a Form 6-K. Alternatively, within four business days, a Company, including a Foreign Private Issuer, may disclose waivers on the Company's website in a manner that satisfies the requirements of Item 5.05(c) of Form 8-K.

IM-5610. Code of Conduct

Ethical behavior is required and expected of every corporate director, officer and employee whether or not a formal code of conduct exists. The requirement of a publicly available code of conduct applicable to all directors, officers and employees of a Company is intended to demonstrate to investors that the board and management of Nasdaq Texas Companies have carefully considered the requirement of ethical dealing and have put in place a system to ensure that they become aware of and take prompt action against any questionable behavior. For Company personnel, a code of conduct with enforcement provisions provides assurance that reporting of questionable behavior is protected and encouraged, and fosters an atmosphere of self-awareness and prudent conduct.

Rule 5610 requires Companies to adopt a code of conduct complying with the definition of a "code of ethics" under Section 406(c) of the Sarbanes-Oxley Act of 2002 ("the Sarbanes-Oxley

Act") and any regulations promulgated thereunder by the Commission. Thus, the code must include such standards as are reasonably necessary to promote the ethical handling of conflicts of interest, full and fair disclosure, and compliance with laws, rules and regulations, as specified by the Sarbanes-Oxley Act. However, the code of conduct required by Rule 5610 must apply to all directors, officers, and employees. Companies can satisfy this obligation by adopting one or more codes of conduct, such that all directors, officers and employees are subject to a code that satisfies the definition of a "code of ethics."

As the Sarbanes-Oxley Act recognizes, investors are harmed when the real or perceived private interest of a director, officer or employee is in conflict with the interests of the Company, as when the individual receives improper personal benefits as a result of his or her position with the Company, or when the individual has other duties, responsibilities or obligations that run counter to his or her duty to the Company. Also, the disclosures a Company makes to the Commission are the essential source of information about the Company for regulators and investors — there can be no question about the duty to make them fairly, accurately and timely. Finally, illegal action must be dealt with swiftly and the violators reported to the appropriate authorities. Each code of conduct must require that any waiver of the code for Executive Officers or directors may be made only by the board or a board committee and must be disclosed to Shareholders, along with the reasons for the waiver. All Companies, other than Foreign Private Issuers, must disclose such waivers within four business days by filing a current report on Form 8-K with the Commission, providing website disclosure that satisfies the requirements of Item 5.05(c) of Form 8-K, or, in cases where a Form 8-K is not required, by distributing a press release. Foreign Private Issuers must disclose such waivers within four business days either by providing website disclosure that satisfies the requirements of Item 5.05(c) of Form 8-K, by including disclosure in a Form 6-K or by distributing a press release. This disclosure requirement provides investors the comfort that waivers are not granted except where they are truly necessary and warranted, and that they are limited and qualified so as to protect the Company and its Shareholders to the greatest extent possible.

Each code of conduct must also contain an enforcement mechanism that ensures prompt and consistent enforcement of the code, protection for persons reporting questionable behavior, clear and objective standards for compliance, and a fair process by which to determine violations.

5615. Exemptions from Certain Corporate Governance Requirements

This rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, including Controlled Companies, and sets forth the phase-in schedules for Companies listing in connection with initial public offerings, Companies emerging from bankruptcy, Companies transferring from other markets and national securities exchanges, Companies listing in connection with a spin-off transaction, and Companies ceasing to be Smaller Reporting Companies, Foreign Private Issuers, or Controlled Companies.

(a) **Exemptions to the Corporate Governance Requirements**

(1) **Asset-backed Issuers and Other Passive Issuers**

The following are exempt from the requirements relating to:

(A) Majority Independent Board (Rule 5605(b)), Audit Committee (Rule 5605(c)), Compensation Committee (Rule 5605(d)), Director Nominations (Rule 5605(e)), the Controlled Company Exemption (Rule 5615(c)(2)), and Code of Conduct (Rule 5610):

(i) asset-backed issuers; and

(ii) issuers, such as unit investment trusts, including Portfolio Depository Receipts, which are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

(B) Shareholder Approval: issuers of Portfolio Depository Receipts as defined in Rule 5705(a), shall not be required to comply with Rule 5635(a) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a-8 under the Investment Company Act of 1940 and does not otherwise require shareholder approval under the Investment Company Act of 1940 and the rules thereunder or any other Exchange rule.

IM-5615-1. Asset-backed Issuers and Other Passive Issuers

Because of their unique attributes, Rules 5605(b), 5605(c), 5605(d), 5605(e) and 5610 do not apply to asset-backed issuers and issuers, such as unit investment trusts, that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities. This is consistent with Nasdaq Texas's traditional approach to such issuers.

(2) **Cooperatives**

Cooperative entities, such as agricultural cooperatives, that are structured to comply with relevant state law and federal tax law and that do not have a publicly traded class of common stock are exempt from Rules 5605(b), (d), (e), and 5615(c)(2). However, such entities must comply with all federal securities laws, including without limitation those rules required by Section 10A(m) of the Act and Rule 10A-3 thereunder.

IM-5615-2. Cooperatives

Certain member-owned cooperatives that list their preferred stock are required to have their common stock owned by their members. Because of their unique structure and the fact that they do not have a publicly traded class of common stock, such entities are exempt from Rule

5605(b), (d), and (e). This is consistent with Nasdaq Texas's traditional approach to such Companies.

(3) **Foreign Private Issuers**

(A) A Foreign Private Issuer may follow its home country practice in lieu of the requirements of the Rule 5600 Series, the requirement to disclose third party director and nominee compensation set forth in Rule 5250(b)(3), and the requirement to distribute annual and interim reports set forth in Rule 5250(d), provided, however, that such a Company shall: comply with the Notification of Noncompliance requirement (Rule 5625), the Voting Rights requirement (Rule 5640), have an audit committee that satisfies Rule 5605(c)(3), and ensure that such audit committee's members meet the independence requirement in Rule 5605(c)(2)(A)(ii). Except as provided in this paragraph, a Foreign Private Issuer must comply with the requirements of the Rule 5000 Series.

(B) Disclosure Requirements

(i) A Foreign Private Issuer that follows a home country practice in lieu of one or more of the Listing Rules shall disclose in its annual reports filed with the Commission each requirement that it does not follow and describe the home country practice followed by the Company in lieu of such requirements. Alternatively, a Foreign Private Issuer that is not required to file its annual report with the Commission on Form 20-F may make this disclosure only on its website. A Foreign Private Issuer that follows a home country practice in lieu of the requirement in Rule 5605(d)(2) to have an independent compensation committee must disclose in its annual reports filed with the Commission the reasons why it does not have such an independent committee.

(ii) A Foreign Private Issuer making its initial public offering or first U.S. listing on Nasdaq Texas shall disclose in its registration statement or on its website each requirement that it does not follow and describe the home country practice followed by the Company in lieu of such requirements.

IM-5615-3. Foreign Private Issuers

A Foreign Private Issuer (as defined in Rule 5005) listed on Nasdaq Texas may follow the practice in such Company's home country (as defined in General Instruction F of Form 20-F) in lieu of the provisions of the Rule 5600 Series, Rule 5250(b)(3), and Rule 5250(d), subject to several important exceptions. First, such an issuer shall comply with Rule 5625 (Notification of Noncompliance). Second, such a Company shall have an audit committee that satisfies Rule 5605(c)(3). Third, members of such audit committee shall meet the criteria for independence referenced in Rule 5605(c)(2)(A)(ii) (the criteria set forth in Rule 10A-3(b)(1) under the Act, subject to the exemptions provided in Rule 10A-3(c) under the Act). Finally, a Foreign Private Issuer that elects to follow home country practice in lieu of a requirement of Rules 5600, 5250(b)(3), or 5250(d) shall submit to Nasdaq Texas a written statement from an independent counsel in such Company's home country certifying that the Company's practices are not

prohibited by the home country's laws. In the case of new listings, this certification is required at the time of listing. For existing Companies, the certification is required at the time the Company seeks to adopt its first noncompliant practice. In the interest of transparency, the rule requires a Foreign Private Issuer to make appropriate disclosures in the Company's annual filings with the Commission (typically Form 20-F or 40-F), and at the time of the Company's original listing in the United States, if that listing is on Nasdaq Texas, in its registration statement (typically Form F-1, 20-F, or 40-F); alternatively, a Company that is not required to file an annual report on Form 20-F may provide these disclosures in English on its website in addition to, or instead of, providing these disclosures on its registration statement or annual report. The Company shall disclose each requirement that it does not follow and include a brief statement of the home country practice the Company follows in lieu of these corporate governance requirement(s). If the disclosure is only available on the website, the annual report and registration statement should so state and provide the web address at which the information may be obtained. Companies that must file annual reports on Form 20-F are encouraged to provide these disclosures on their websites, in addition to the required Form 20-F disclosures, to provide maximum transparency about their practices.

(4) **Limited Partnerships**

A limited partnership is not subject to the requirements of the Rule 5600 Series, except as provided in this Rule 5615(a)(4). A limited partnership may request a written interpretation pursuant to Rule 5602.

(A) No provision of this Rule shall be construed to require any foreign Company that is a partnership to do any act that is contrary to a law, rule or regulation of any public authority exercising jurisdiction over such Company or that is contrary to generally accepted business practices in the Company's country of domicile. Nasdaq Texas shall have the ability to provide exemptions from applicability of these provisions as may be necessary or appropriate to carry out this intent.

(B) **Corporate General Partner**

Each Company that is a limited partnership shall maintain a corporate general partner or co-general partner, which shall have the authority to manage the day-to-day affairs of the partnership.

(C) **Independent Directors/Audit Committee**

The corporate general partner or co-general partner shall maintain a sufficient number of Independent Directors on its board to satisfy the audit committee requirements set forth in Rule 5605(c).

(D) **Partner Meetings**

A Company that is a limited partnership shall not be required to hold an annual meeting of limited partners unless required by statute or regulation in the state in which the

limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement.

(E) **Quorum**

(i) In the event that a meeting of limited partners is required pursuant to paragraph (D), the quorum for such meeting shall be not less than 33-1/3 percent of the limited partnership interests outstanding.

(ii) Notwithstanding the quorum requirements in paragraph (i) above, Nasdaq Texas will accept any quorum requirement for a non-U.S. Company, that is not a Foreign Private Issuer, if the Company's home country law mandates such quorum for the shareholders' meeting and prohibits the Company from establishing a higher quorum required by paragraph (i) above. A Company relying on this provision shall submit to Nasdaq Texas a written statement from an independent counsel in such Company's home country describing the home country law that conflicts with Nasdaq Texas's quorum requirement and certifying that, as the result, the Company is prohibited from complying with the quorum requirements in paragraph (i) above and cannot obtain an exemption or waiver from that law. Any Company relying on this exception from the quorum requirements must:

(a) make a public announcement as promptly as possible but not more than four business days following the submission of the independent counsel's statement to Nasdaq Texas, as described above, on or through the Company's website and either by filing a Form 8-K, where required by SEC rules, or by issuing a press release explaining the Company's reliance on the exception;

(b) maintain the website disclosure for the period of time the Company continues to rely on this exception from the quorum requirements; and

(c) update the website disclosure at least annually to indicate that the Company is prohibited under its home country law from complying with Nasdaq Texas's quorum requirements as of such date.

(F) **Solicitation of Proxies**

In the event that a meeting of limited partners is required pursuant to paragraph (D), the Company shall provide all limited partners with proxy or information statements and if a vote is required, shall solicit proxies thereon

(G) **Review of Related Party Transactions**

Each Company that is a limited partnership shall conduct an appropriate review of all related party transactions on an ongoing basis and shall utilize the Audit Committee or a comparable body of the Board of Directors for the review of potential material conflict of interest situations where appropriate.

(H) **Shareholder Approval**
Each Company that is a limited partnership must obtain shareholder approval when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which stock may be acquired by officers, directors, employees, or consultants, as would be required under Rule 5635(c) and IM-5635-1.

(I) **Auditor Registration**

Each Company that is a limited partnership must be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. 7212].

(J) **Notification of Noncompliance.**

Each Company that is a limited partnership must provide Nasdaq Texas with prompt notification after an Executive Officer of the Company, or a person performing an equivalent role, becomes aware of any noncompliance by the Company with the requirements of this Rule 5600 Series.

(5) Management Investment Companies

Management investment companies (including business development companies) are subject to all the requirements of the Rule 5600 Series, except that such management investment companies registered under the Investment Company Act of 1940 are exempt from the requirements relating to Independent Directors (as set forth in Rule 5605(b)), Compensation Committee (as set forth in Rule 5605(d)), Independent Director Oversight of Director Nominations (as set forth in Rule 5605(e)), and Codes of Conduct (as set forth in Rule 5610).

Management investment companies that are Index Fund Shares (as defined in Rule 5705(b)), Managed Fund Shares (as defined in Rule 5735), Managed Portfolio Shares (as defined in Rule 5760), Exchange Traded Fund Shares (as defined in Rule 5704), and Proxy Portfolio Shares (as defined in Rule 5750), respectively, shall not be required to comply with Rule 5635(a) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a-8 under the Investment Company Act of 1940 and does not otherwise require shareholder approval under the Investment Company Act of 1940 and the rules thereunder or any other Exchange rule.

Management investment companies defined as Derivative Securities are exempt from additional requirements of the Rule 5600 Series as outlined in Nasdaq Texas Rule 5615(a)(6)(A) below.

IM-5615-4. Management Investment Companies

Management investment companies registered under the Investment Company Act of 1940 are already subject to a pervasive system of federal regulation in certain areas of corporate governance covered by 5600. In light of this, Nasdaq Texas exempts from Rules 5605(b), (d), (e) and 5610 management investment companies registered under the Investment Company Act of 1940. Business development companies, which are a type of closed-end management investment

company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that Act, are required to comply with all of the provisions of the Rule 5600 Series.

Management investment companies defined as Derivative Securities are exempt from additional requirements of the Rule 5600 Series as outlined in Nasdaq Texas Rule 5615(a)(6)(A) below.

(6) **Issuers of Non- Voting Preferred Securities, Debt Securities and Derivative Securities**

(A) Issuers whose only securities listed on Nasdaq Texas are non-voting preferred securities, debt securities or Derivative Securities, are exempt from the requirements relating to Independent Directors (as set forth in Rule 5605(b)), Compensation Committees (as set forth in Rule 5605(d)), Director Nominations (as set forth in Rule 5605(e)), Codes of Conduct (as set forth in Rule 5610), and Meetings of Shareholders (as set forth in Rule 5620(a)). In addition, these issuers are exempt from the requirements relating to Audit Committees (as set forth in Rule 5605(c)), except for the applicable requirements of SEC Rule 10A-3. Notwithstanding, if the issuer also lists its common stock or voting preferred stock, or their equivalent on Nasdaq Texas it will be subject to all the requirements of the Nasdaq Texas 5600 Rule Series.

(B) For the purposes of this Rule 5600 Series only, the term "Derivative Securities" is defined as the following: Class ETF Shares (Rule 5703), Exchange Traded Fund Shares (Rule 5704), Portfolio Depository Receipts and Index Fund Shares (Rule 5705); Equity Index-Linked Securities (Rule 5710(k)(i)), Commodity-Linked Securities (Rule 5710(k)(ii)), Fixed Income Index-Linked Securities (5710(k)(iii)), Futures-Linked Securities (5710(k)(iv)), Multifactor Index-Linked Securities (5710(k)(v)), Index-Linked Exchangeable Notes (Rule 5711(a)), Equity Gold Shares (Rule 5711(b)), Trust Certificates (Rule 5711(c)), Commodity-Based Trust Shares (Rule 5711(d)), Currency Trust Shares (Rule 5711(e)), Commodity Index Trust Shares (Rule 5711(f)), Commodity Futures Trust Shares (Rule 5711(g)), Partnership Units (Rule 5711(h)), Managed Trust Securities (Rule 5711(j)), SEEDS (Rule 5715), Trust Issued Receipts (Rule 5720), Managed Fund Shares (Rule 5735), NextShares (Rule 5745), and Proxy Portfolio Shares (Rule 5750). Derivative Securities are subject to certain exemptions to the Rule 5600 Series as described in Rule 5615(a)(6).

(7) **Controlled Companies**

(A) Definition

A Controlled Company is a Company of which more than 50% of the voting power for the election of directors is held by an individual, a group or another company.

(B) Exemptions Afforded to a Controlled Company

A Controlled Company is exempt from the requirements of Rules 5605(b), (d) and (e), except for the requirements of subsection (b)(2) which pertain to executive sessions of

Independent Directors. A Controlled Company, other than a Foreign Private Issuer, relying upon this exemption must comply with the disclosure requirements set forth in Instruction 1 to Item 407(a) of Regulation S-K. A Foreign Private Issuer must disclose in its next annual report (e.g., Form 20-F or 40-F) that it is a Controlled Company and the basis for that determination.

(b) **Phase-In Schedules**

As set forth in this Rule 5615(b), certain Companies initially listing on Nasdaq Texas, or undergoing changes in their reporting requirements, are eligible for phase-in periods before they are required to fully comply with provisions of the majority independent board requirement of Rule 5605(b), the audit committee requirements for Rule 5605(c)(2), and the independent nominations and compensation committee requirements of Rules 5605(d)(2) and 5605(e)(1)(B). This section describes the applicable phase-in periods. If a Company demonstrates compliance with a requirement during a phase-in period but subsequently falls out of compliance before the end of the phase-in period, the Company will not be considered deficient with the requirement until the end of the phase-in period.

(1) **A Company Listing in Connection with Initial Public Offering**

A Company listing on Nasdaq Texas in connection with its initial public offering shall be permitted to phase in its compliance as provided in this Rule 5615(b)(1). Except as set forth below related to the audit committee requirements, for purposes of the Rule 5600 Series a Company shall be considered to be listing in conjunction with an initial public offering if, immediately prior to listing, it does not have a class of common stock registered under the Act.

(A) A Company shall have twelve months from the date the Company's securities first trade on Nasdaq Texas (the "Listing Date") to comply with the majority independent board requirement set forth in Rule 5605(b).

(B) A Company shall be permitted to phase in its compliance with the audit committee requirements set forth in Rule 5605(c)(2) as follows: (1) one member must satisfy the requirements by the Listing Date; (2) a majority of members must satisfy the requirements within 90 days of the effective date of its registration statement; and (3) all members must satisfy the requirements within one year of the effective date of its registration statement. Regarding the requirement to have at least three members on the audit committee, the Company must have at least one member on its audit committee by the Listing Date, at least two members within 90 days of the Listing Date and at least three members within one year of the Listing Date.

Pursuant to Rule 10A-3(b)(1)(iii) under the Act management investment companies registered under the Investment Company Act of 1940 are not afforded the exemptions under Rule 10A-3(b)(1)(iv) under the Act and therefore cannot rely on the phase-in periods in this Rule 5615(b).

For purposes of Rule 5605(c)(2)(A)(ii), which requires each member of the audit committee to meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act), a Company shall be considered to be listing in conjunction with an initial public offering only if it meets the conditions in Rule 10A-3(b)(1)(iv)(A) under the Act, namely, that the Company was not, immediately prior to the effective date of a registration statement, required to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Act.

(C) A Company shall be permitted to phase in its compliance with the independent compensation and nominations committee requirements set forth in Rules 5605(d)(2) and (e)(1)(B) on the same schedule as it is permitted to phase in its compliance with the independent audit committee requirement pursuant to Rule 10A-3(b)(1)(iv)(A) under the Act. Accordingly, a Company listing in connection with its initial public offering shall be permitted to phase in its compliance with the committee composition requirements set forth in Rule 5605(d)(2) and (e)(1)(B) as follows: (1) one member must satisfy the requirements by the earlier of the date the initial public offering closes or five business days from the Listing Date; (2) a majority of members must satisfy the requirements within 90 days of the Listing Date; and (3) all members must satisfy the requirements within one year of the Listing Date. Regarding the requirement to have at least a two-member compensation committee, the Company must have at least one member on its compensation committee by the Listing Date and at least two members within one year of the Listing Date. A Company may choose not to adopt a nominations committee and may instead rely upon a majority of the Independent Directors to discharge responsibilities under Rule 5605(e).

(2) **A Company Emerging from Bankruptcy**

A Company that is emerging from bankruptcy shall be permitted to phase-in the majority independent board and independent nominations and compensation committees requirements on the same schedule as described in paragraphs (b)(1)(A) and (C) for Companies listing in conjunction with their initial public offering, except that the applicable phase-in periods will be computed beginning on the Listing Date. A Company emerging from bankruptcy must comply with the audit committee requirements set forth in Rule 5605(c)(2) by the Listing Date unless an exemption is available pursuant to Rule 10A-3 under the Act.

(3) **A Company Transferring from a National Securities Exchange or other Market**

(A) A Company that transfers securities registered pursuant to Section 12(b) of the Act from another national securities exchange with a substantially similar requirements to those in Rule 5605 shall be afforded the balance of any grace period afforded by the other exchange. A Company transferring securities registered pursuant to Section 12(b) of the Act from another national securities exchange that does not have substantially similar requirements to those in Rule 5605 shall be afforded one year from the date of listing on Nasdaq Texas to

comply with such requirements. This transition period is not intended to supplant any applicable requirements of Rule 10A-3 under the Act.

(B) A Company whose securities were registered pursuant to Section 12(g) of the Act immediately prior to listing on Nasdaq Texas shall be permitted the following phase-in periods:

(i) The Company shall have twelve months from its Listing Date to comply with the majority independent board requirement set forth in Rule 5605(b);

(ii) The Company must satisfy the audit committee requirements set forth in Rule 5605(c) by the Listing Date, unless an exemption is available pursuant to Rule 10A-3 under the Act. However, with respect only to the requirement to have at least three members on the audit committee, as set forth in Rule 5605(c)(2)(A), the Company must have at least one member on its audit committee by the Listing Date, at least two members within 90 days of the Listing Date and at least three members within one year of the Listing Date; and

(iii) The Company must satisfy the independent compensation and nominations committee composition requirements set forth in Rules 5605(d)(2) and (e)(1)(B) as follows: (1) one member must satisfy the requirements by the Listing Date; (2) a majority of members must satisfy the requirements within 90 days of the Listing Date; and (3) all members must satisfy the requirements within one year of the Listing Date. Regarding the requirement to have two members on the compensation committee set forth in Rule 5605(d)(2)(A), the Company must have at least one member on its compensation committee by the Listing Date and at least two members within one year of the Listing Date.

(4) **A Company Listing in Connection with a Carve-out or Spin-off Transaction**

(A) A Company listing in connection with a carve-out or spin-off transaction shall have twelve months from its Listing Date to comply with the majority independent board requirement set forth in Rule 5605(b);

(B) The Company shall be permitted to phase in its compliance with the audit committee requirements set forth in Rule 5605(c)(2) as follows: (1) one member must satisfy the requirements by the Listing Date; (2) a majority of members must satisfy the requirements within 90 days of the effective date of its registration statement; and (3) all members must satisfy the requirements within one year of the effective date of its registration statement. Regarding the requirement to have at least three members on the audit committee, the Company must have at least one member on its audit committee by the Listing Date, at least two members within 90 days of the Listing Date and at least three members within one year of the Listing Date; and

(C) The Company must satisfy the independent compensation and nominations committee composition requirements set forth in Rules 5605(d)(2) and (e)(1)(B) as follows: (1) one

member must satisfy the requirements by the date the transaction closes; (2) a majority of members must satisfy the requirements within 90 days of the Listing Date; and (3) all members must satisfy the requirements within one year of the Listing Date. Regarding the requirement to have at least two members on the compensation committee set forth in Rule 5605(d)(2)(A), the Company must have at least one member on its compensation committee by the date the transaction closes and at least two members within one year of the Listing Date.

(5) **A Company Ceasing to be a Smaller Reporting Company**

A Company that ceases to qualify as a Smaller Reporting Company under SEC rules shall be permitted to phase in its compliance as provided in this Rule 5615(b)(5). Pursuant to Rule 12b-2 under the Act, a Company tests its status as a Smaller Reporting Company on an annual basis as of the last business day of its most recently completed second fiscal quarter (for purposes of this Rule, the "Determination Date"). A Company which ceases to meet the requirements for smaller reporting company status as of the Determination Date will cease to be a Smaller Reporting Company as of the beginning of the fiscal year following the Determination Date (the "Start Date").

By six months from the Start Date, a Company must comply with Rule 5605(d)(3) and certify to Nasdaq Texas that: (i) it has complied with the requirement in Rule 5605(d)(1) to adopt a formal written compensation committee charter including the content specified in Rule 5605(d)(1)(A)- (D); and (ii) it has complied, or within the applicable phase-in schedule will comply, with the additional requirements in Rule 5605(d)(2)(A) regarding compensation committee composition.

A Company shall be permitted to phase in its compliance with the additional compensation committee eligibility requirements of Rule 5605(d)(2)(A) relating to compensatory fees and affiliation as follows: (i) one member must satisfy the requirements by six months from the Start Date; (ii) a majority of members must satisfy the requirements by nine months from the Start Date; and (iii) all members must satisfy the requirements by one year from the Start Date.

Since a Smaller Reporting Company is required to have a compensation committee comprised of at least two Independent Directors, a Company that has ceased to be a Smaller Reporting Company may not use the phase-in schedule for the requirements of Rule 5605(d)(2)(A) relating to minimum committee size or that the committee consist only of Independent Directors as defined under Rule 5605(a)(2).

During this phase-in schedule, a Company that has ceased to be a Smaller Reporting Company must continue to comply with Rule 5605(d)(5).

(6) **A Company Ceasing to be a Foreign Private Issuer**

A Company that ceases to qualify as a Foreign Private Issuer under SEC rules shall be permitted to phase in its compliance as provided in this Rule 5615(b)(6). Rule 3b-4 under

the Act requires a Foreign Private Issuer to test on an annual basis at the end of its most recently completed second fiscal quarter whether it continues to qualify a Foreign Private Issuer (for purposes of this Rule, the "Foreign Private Issuer Determination Date").

If a Company ceases to qualify as a Foreign Private Issuer, the Company will have six months from the Foreign Private Issuer Determination Date to comply with the majority independent board and executive sessions requirements set forth in Rule 5605(b); the independent compensation and nominations committee requirements set forth in Rules 5605(d)(2) and (e)(1)(B); and the audit committee requirements set forth in Rule 5605(c)(2) except for the requirement set forth in Rule 5605(c)(2)(A)(ii), including the requirement to have three members on the audit committee. During the phase-in period, the Company must continue to have an audit committee that satisfies Rule 5605(c)(3) and members of such audit committee must meet the criteria for independence referenced in Rule 5605(c)(2)(A)(ii) (the criteria set forth in Rule 10A-3(b)(1) under the Act, subject to the exemptions provided in Rule 10A-3(c) under the Act).

(7) **A Company Ceasing to be a Controlled Company**

A Company that has ceased to be a Controlled Company within the meaning of Rule 5615(a)(7) shall be permitted to phase in its independent nominations and compensation committees and majority independent board on the same schedule as Companies listing in conjunction with their initial public offering, except that the applicable phase-in periods will be computed beginning on the date the Company ceases to be a Controlled Company. It should be noted, however, that a Company that has ceased to be a Controlled Company within the meaning of Rule 5615(a)(7) must comply with the audit committee requirements of Rule 5605(c) as of the date it ceases to be a Controlled Company. Furthermore, the executive sessions requirement of Rule 5605(b)(2) applies to Controlled Companies as of the date of listing and continues to apply after it ceases to be controlled.

IM-5615-5. Controlled Company Exemption

This exemption recognizes that majority Shareholders, including parent companies, have the right to select directors and control certain key decisions, such as executive officer compensation, by virtue of their ownership rights. In order for a group to exist for purposes of this rule, the Shareholders must have publicly filed a notice that they are acting as a group (e.g., a Schedule 13D). A Controlled Company not relying upon this exemption need not provide any special disclosures about its controlled status. It should be emphasized that this controlled company exemption does not extend to the audit committee requirements under Rule 5605(c) or the requirement for executive sessions of Independent Directors under Rule 5605(b)(2).

5620. Meetings of Shareholders

(a) Each Company listing common stock or voting preferred stock, and their equivalents, shall hold an annual meeting of Shareholders no later than one year after the end of the Company's fiscal year-end, unless such Company is a limited partnership that meets the requirements of Rule 5615(a)(4)(D).

IM-5620. Meetings of Shareholders or Partners

Rule 5620(a) requires that each Company listing common stock or voting preferred stock, and their equivalents, hold an annual meeting of Shareholders within one year of the end of each fiscal year. At each such meeting, Shareholders must be afforded the opportunity to discuss Company affairs with management and, if required by the Company's governing documents, to elect directors. A new listing that was not previously subject to a requirement to hold an annual meeting is required to hold its first meeting within one-year after its first fiscal year-end following listing. Of course, Nasdaq Texas's meeting requirement does not supplant any applicable state or federal securities laws concerning annual meetings.

This requirement is not applicable to issuers whose only securities listed on Nasdaq Texas are non-voting preferred securities, debt securities, Derivative Securities as defined in Rule 5615(a)(6)(B) or securities listed pursuant to Rule 5730(a) (such as Trust Preferred Securities and Contingent Value Rights), unless the listed security is a common stock or voting preferred stock equivalent (e.g., a callable common stock). Notwithstanding, if the Company also lists common stock or voting preferred stock, or their equivalent, the Company must still hold an annual meeting for the holders of that common stock or voting preferred stock, or their equivalent.

(b) **Proxy Solicitation**

Each Company that is not a limited partnership shall solicit proxies and provide proxy statements for all meetings of Shareholders and shall provide copies of such proxy solicitation to Nasdaq Texas. Limited partnerships that are required to hold an annual meeting of partners are subject to the requirements of Rule 5615(a)(4)(F).

(c) **Quorum**

(i) Each Company that is not a limited partnership shall provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33 1/3 % of the outstanding shares of the Company's common voting stock. Limited partnerships that are required to hold an annual meeting of partners are subject to the requirements of Rule 5615(a)(4)(E).

(ii) Notwithstanding the quorum requirements in paragraph (i) above, Nasdaq Texas will accept any quorum requirement for a non-U.S. Company, that is not a Foreign Private Issuer, if the Company's home country law mandates such quorum for the shareholders' meeting and prohibits the Company from establishing a higher quorum required by paragraph (i) above, and the Company cannot obtain an exemption or waiver from that law. A Company relying on this provision shall submit to Nasdaq Texas a written statement from an independent counsel in such Company's home country describing the home country law that conflicts with Nasdaq Texas's quorum requirement and certifying that, as the result, the Company is prohibited from complying with the quorum requirements in paragraph (i) above, and the Company cannot obtain an exemption or

waiver from that law. Any Company relying on this exception from the quorum requirements must:

(a) make a public announcement as promptly as possible but not more than four business days following the submission of the independent counsel's statement to Nasdaq Texas, as described above, on or through the Company's website and either by filing a Form 8-K, where required by SEC rules, or by issuing a press release explaining the Company's reliance on the exception

(b) maintain the website disclosure for the period of time the Company continues to rely on this exception from the quorum requirements; and

(c) update the website disclosure at least annually to indicate that the Company is prohibited under its home country law from complying with Nasdaq Texas's quorum requirements as of such date.

5625. Notification of Noncompliance

A Company must provide Nasdaq Texas with prompt notification after an Executive Officer of the Company becomes aware of any noncompliance by the Company with the requirements of this Rule 5600 Series.

5630. Review of Related Party Transactions

(a) Each Company that is not a limited partnership shall conduct an appropriate review and oversight of all related party transactions for potential conflict of interest situations on an ongoing basis by the Company's audit committee or another independent body of the board of directors. For purposes of this rule, the term "related party transaction" shall refer to transactions required to be disclosed pursuant to Item 404 of Regulation S-K under the Act. However, in the case of non-U.S. issuers, the term "related party transactions" shall refer to transactions required to be disclosed pursuant to Form 20-F, Item 7.B.

(b) Limited partnerships shall comply with the requirements of Rule 5615(a)(4)(G).

5635. Shareholder Approval

This Rule sets forth the circumstances under which shareholder approval is required prior to an issuance of securities in connection with: (i) the acquisition of the stock or assets of another company; (ii) equity-based compensation of officers, directors, employees or consultants; (iii) a change of control; and (iv) transactions other than public offerings. General provisions relating to shareholder approval are set forth in Rule 5635(e), and the financial viability exception to the shareholder approval requirement is set forth in Rule 5635(f). Nasdaq Texas-listed Companies and their representatives are encouraged to use the interpretative letter process described in Rule 5602.

(a) **Acquisition of Stock or Assets of Another Company**

Shareholder approval is required prior to the issuance of securities in connection with the acquisition of the stock or assets of another company if:

(1) where, due to the present or potential issuance of common stock, including shares issued pursuant to an earn-out provision or similar type of provision, or securities convertible into or exercisable for common stock, other than a public offering for cash:

(A) the common stock has or will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance of stock or securities convertible into or exercisable for common stock; or

(B) the number of shares of common stock to be issued is or will be equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the stock or securities; or

(2) any director, officer or Substantial Shareholder (as defined by Rule 5635(e)(3)) of the Company has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the Company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more; or

(b) **Change of Control**

Shareholder approval is required prior to the issuance of securities when the issuance or potential issuance will result in a change of control of the Company.

(c) **Equity Compensation**

Shareholder approval is required prior to the issuance of securities when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which stock may be acquired by officers, directors, employees, or consultants, except for:

(1) warrants or rights issued generally to all security holders of the Company or stock purchase plans available on equal terms to all security holders of the Company (such as a typical dividend reinvestment plan);

(2) tax qualified, non-discriminatory employee benefit plans (e.g., plans that meet the requirements of Section 401(a) or 423 of the Internal Revenue Code) or parallel nonqualified plans, provided such plans are approved by the Company's independent compensation committee or a majority of the Company's Independent Directors; or plans that merely provide a convenient way to purchase shares on the open market or from the Company at Market Value;

(3) plans or arrangements relating to an acquisition or merger as permitted under IM-5635-1; or

(4) issuances to a person not previously an employee or director of the Company, or following a bona fide period of non-employment, as an inducement material to the individual's entering into employment with the Company, provided such issuances are approved by either the Company's independent compensation committee or a majority of the Company's Independent Directors. Promptly following an issuance of any employment inducement grant in reliance on this exception, a Company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

IM-5635-1. Shareholder Approval for Stock Option Plans or Other Equity Compensation Arrangements

Employee ownership of Company stock can be an effective tool to align employee interests with those of other Shareholders. Stock option plans or other equity compensation arrangements can also assist in the recruitment and retention of employees, which is especially critical to young, growing Companies, or Companies with insufficient cash resources to attract and retain highly qualified employees. However, these plans can potentially dilute shareholder interests. Rule 5635(c) ensures that Shareholders have a voice in these situations, given this potential for dilution.

Rule 5635(c) requires shareholder approval when a plan or other equity compensation arrangement is established or materially amended. For these purposes, a material amendment would include, but not be limited to, the following:

(1) any material increase in the number of shares to be issued under the plan (other than to reflect a reorganization, stock split, merger, spinoff or similar transaction);

(2) any material increase in benefits to participants, including any material change to: (i) permit a repricing (or decrease in exercise price) of outstanding options, (ii) reduce the price at which shares or options to purchase shares may be offered, or (iii) extend the duration of a plan;

(3) any material expansion of the class of participants eligible to participate in the plan; and

(4) any expansion in the types of options or awards provided under the plan.

While general authority to amend a plan would not obviate the need for shareholder approval, if a plan permits a specific action without further shareholder approval, then no such approval would generally be required. However, if a plan contains a formula for automatic increases in the shares available (sometimes called an "evergreen formula"), or for automatic grants pursuant to a dollar-based formula (such as annual grants based on a certain dollar value, or matching contributions based upon the amount of compensation the participant elects to defer), such plans cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. However, plans that do not contain a formula and do not impose a limit on the number of shares

available for grant would require shareholder approval of each grant under the plan. A requirement that grants be made out of treasury shares or repurchased shares will not alleviate these additional shareholder approval requirements.

As a general matter, when preparing plans and presenting them for shareholder approval, Companies should strive to make plan terms easy to understand. In that regard, it is recommended that plans meant to permit repricing use explicit terminology to make this clear.

Rule 5635(c) provides an exception to the requirement for shareholder approval for warrants or rights offered generally to all Shareholders. In addition, an exception is provided for tax qualified, non-discriminatory employee benefit plans as well as parallel nonqualified plans as these plans are regulated under the Internal Revenue Code and Treasury Department regulations. An equity compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable tax qualified, non-discriminatory employee benefit plan or parallel nonqualified plan that the Company provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law, is also exempt from shareholder approval under this section.

Further, the rule provides an exception for inducement grants to new employees because in these cases a Company has an arm's length relationship with the new employees. Inducement grants for these purposes include grants of options or stock to new employees in connection with a merger or acquisition. The rule requires that such issuances be approved by the Company's independent compensation committee or a majority of the Company's Independent Directors. The rule further requires that promptly following an issuance of any employment inducement grant in reliance on this exception, a Company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

In addition, plans or arrangements involving a merger or acquisition do not require shareholder approval in two situations. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that meet the requirements of this Rule 5635(c). These shares may be used for post-transaction grants of options and other equity awards by the listed Company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or arrangement or another plan or arrangement, without further shareholder approval, provided: (1) the time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company or its subsidiaries at the time the merger or acquisition was consummated. Nasdaq Texas would view a plan or arrangement adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. This exception is appropriate because it will not result in any increase in the aggregate potential dilution of the combined enterprise. In this regard, any additional shares available for issuance under a plan or arrangement acquired in connection with a merger or acquisition would

be counted by Nasdaq Texas in determining whether the transaction involved the issuance of 20% or more of the Company's outstanding common stock, thus triggering the shareholder approval requirements under Rule 5635(a).

Inducement grants, tax qualified non-discriminatory benefit plans, and parallel nonqualified plans are subject to approval by either the Company's independent compensation committee or a majority of the Company's Independent Directors. It should also be noted that a Company would not be permitted to use repurchased shares to fund option plans or grants without prior shareholder approval.

For purposes of Rule 5635(c) and IM-5635-1, the term "parallel nonqualified plan" means a plan that is a "pension plan" within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §1002 (1999), that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may thereafter be enacted. However, a plan will not be considered a parallel nonqualified plan unless: (i) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitation that may hereafter be enacted); (ii) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limitations described in the preceding sentence; and, (iii) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.

(d) **Transactions other than Public Offerings**

(1) For purposes of this Rule 5635(d):

(A) "Minimum Price" means a price that is the lower of: (i) the Nasdaq Texas Official Closing Price (as reflected on Nasdaq Texas.com) immediately preceding the signing of the binding agreement; or (ii) the average Nasdaq Texas Official Closing Price of the common stock (as reflected on Nasdaq Texas.com) for the five trading days immediately preceding the signing of the binding agreement.

(B) "20% Issuance" means a transaction, other than a public offering as defined in IM-5635-3, involving the sale, issuance or potential issuance by the Company of common stock (or securities convertible into or exercisable for common stock), which alone or together with sales by officers, directors or Substantial Shareholders of the Company, equals 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance.

(2) Shareholder approval is required prior to a 20% Issuance at a price that is less than the Minimum Price.

IM-5635-2. Interpretative Material Regarding the Use of Share Caps to Comply with Rule 5635

Rule 5635 limits the number of shares or voting power that can be issued or granted without shareholder approval prior to the issuance of certain securities. (An exception to this rule is available to Companies when the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise as set forth in Rule 5635(f). However, a share cap is not permissible in conjunction with the financial viability exception provided in Rule 5635(f), because the application to Nasdaq Texas and the notice to Shareholders required in the rule must occur prior to the issuance of any common stock or securities convertible into or exercisable for common stock.) Generally, this limitation applies to issuances of 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance. (While Nasdaq Texas's experience is that this issue is generally implicated with respect to these situations, it may also arise with respect to the 5% threshold set forth in Rule 5635(a)(2).) Companies sometimes comply with the 20% limitation in this rule by placing a "cap" on the number of shares that can be issued in the transaction, such that there cannot, under any circumstances, be an issuance of 20% or more of the common stock or voting power previously outstanding without prior shareholder approval. If a Company determines to defer a shareholder vote in this manner, shares that are issuable under the cap (in the first part of the transaction) must not be entitled to vote to approve the remainder of the transaction. In addition, a cap must apply for the life of the transaction, unless shareholder approval is obtained. For example, caps that no longer apply if a Company is not listed on Nasdaq Texas are not permissible under the Rule. Of course, if shareholder approval is not obtained, then the investor will not be able to acquire 20% or more of the common stock or voting power outstanding before the transaction and would continue to hold the balance of the original security in its unconverted form.

Nasdaq Texas has observed situations where Companies have attempted to cap the issuance of shares at below 20% but have also provided an alternative outcome based upon whether shareholder approval is obtained, including, but not limited to a "penalty" or a "sweetener." Instead, if the terms of a transaction can change based upon the outcome of the shareholder vote, no common shares may be issued prior to the approval of the Shareholders. Companies that engage in transactions with defective caps may be subject to delisting. For example, a Company issues a convertible preferred stock or debt instrument that provides for conversions of up to 20% of the total shares outstanding with any further conversions subject to shareholder approval. However, the terms of the instrument provide that if Shareholders reject the transaction, the coupon or conversion ratio will increase or the Company will be penalized by a specified monetary payment, including a rescission of the transaction. Likewise, a transaction may provide for improved terms if shareholder approval is obtained. Nasdaq Texas believes that in such situations the cap is defective because the presence of the alternative outcome has a coercive effect on the shareholder vote, and thus may deprive Shareholders of their ability to freely exercise their vote. Accordingly, Nasdaq Texas will not accept a cap that defers the need for shareholder approval in such situations.

Companies having questions regarding this policy are encouraged to contact the Nasdaq Texas Listing Qualifications Department at (301) 978-8008, which will provide a written interpretation

of the application of Nasdaq Texas Rules to a specific transaction, upon prior written request of the Company.

IM-5635-3. Definition of a Public Offering

Rule 5635(d) provides that shareholder approval is required for a 20% Issuance at a price that is less than the Minimum Price. Under this rule, however, shareholder approval is not required for a "public offering."

Companies are encouraged to consult with Nasdaq Texas staff in order to determine if a particular offering is a "public offering" for purposes of the shareholder approval rules. Generally, a firm commitment underwritten securities offering registered with the Securities and Exchange Commission will be considered a public offering for these purposes. Likewise, any other securities offering which is registered with the Securities and Exchange Commission and which is publicly disclosed and distributed in the same general manner and extent as a firm commitment underwritten securities offering will be considered a public offering for purposes of the shareholder approval rules. However, Nasdaq Texas staff will not treat an offering as a "public offering" for purposes of the shareholder approval rules merely because they are registered with the Commission prior to the closing of the transaction.

When determining whether an offering is a "public offering" for purposes of these rules, Nasdaq Texas staff will consider all relevant factors, including but not limited to:

(i) the type of offering (including whether the offering is conducted by an underwriter on a firm commitment basis, or an underwriter or placement agent on a best-efforts basis, or whether the offering is self-directed by the Company);

(ii) the manner in which the offering is marketed (including the number of investors offered securities, how those investors were chosen, and the breadth of the marketing effort);

(iii) the extent of the offering's distribution (including the number and identity of the investors who participate in the offering and whether any prior relationship existed between the Company and those investors);

(iv) the offering price (including the extent of any discount to the market price of the securities offered); and

(v) the extent to which the Company controls the offering and its distribution.

(e) **Definitions and Computations Relating to the Shareholder Approval Requirements**

(1) For purposes of making any computation in this paragraph, when determining the number of shares issuable in a transaction, all shares that could be issued are included, regardless of whether they are currently treasury shares. When determining the number of shares outstanding, only shares issued and outstanding are considered. Treasury shares,

shares held by a subsidiary, and unissued shares reserved for issuance upon conversion of securities or upon exercise of options or warrants are not considered outstanding.

(2) Voting power outstanding as used in this Rule refers to the aggregate number of votes which may be cast by holders of those securities outstanding which entitle the holders thereof to vote generally on all matters submitted to the Company's security holders for a vote.

(3) An interest consisting of less than either 5% of the number of shares of common stock or 5% of the voting power outstanding of a Company or party shall not be considered a substantial interest or cause the holder of such an interest to be regarded as a "Substantial Shareholder."

(4) Where shareholder approval is required, the minimum vote that will constitute shareholder approval shall be a majority of the total votes cast on the proposal. These votes may be cast in person, by proxy at a meeting of Shareholders or by written consent in lieu of a special meeting to the extent permitted by applicable state and federal law and rules (including interpretations thereof), including, without limitation, Regulations 14A and 14C under the Act. Nothing contained in this Rule 5635(e)(4) shall affect a Company's obligation to hold an annual meeting of Shareholders as required by Rule 5620(a).

(5) Shareholder approval shall not be required for any share issuance if such issuance is part of a court-approved reorganization under the federal bankruptcy laws or comparable foreign laws.

(f) **Financial Viability Exception**

An exception applicable to a specified issuance of securities may be made upon prior written application to Nasdaq Texas's Listing Qualifications Department when:

(1) the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise; and

(2) reliance by the Company on this exception is expressly approved by the audit committee or a comparable body of the board of directors comprised solely of independent, disinterested directors. The Listing Qualifications Department shall respond to each application for such an exception in writing.

A Company that receives such an exception must mail to all Shareholders not later than ten days before issuance of the securities a letter alerting them to its omission to seek the shareholder approval that would otherwise be required. Such notification shall disclose the terms of the transaction (including the number of shares of common stock that could be issued and the consideration received), the fact that the Company is relying on a financial viability exception to the stockholder approval rules, and that the audit committee or a comparable body of the board of directors comprised solely of independent, disinterested directors has expressly approved reliance on the exception. The Company shall also make a

public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing the same information as promptly as possible, but no later than ten days before the issuance of the securities.

IM-5635-4. Interpretive Material Regarding Future Priced Securities and Other Securities with Variable Conversion Terms

Summary

Provisions of this IM-5635-4 would apply to any security with variable conversion terms. For example, Future Priced Securities are private financing instruments which were created as an alternative means of quickly raising capital for Companies. The security is generally structured in the form of a convertible security and is often issued via a private placement. Companies will typically receive all capital proceeds at the closing. The conversion price of the Future Priced Security is generally linked to a percentage discount to the market price of the underlying common stock at the time of conversion and accordingly the conversion rate for Future Priced Securities floats with the market price of the common stock. As such, the lower the price of the Company's common stock at the time of conversion, the more shares into which the Future Priced Security is convertible. The delay in setting the conversion price is appealing to Companies who believe that their stock will achieve greater value after the financing is received. However, the issuance of Future Priced Securities may be followed by a decline in the common stock price, creating additional dilution to the existing holders of the common stock. Such a price decline allows holders to convert the Future Priced Security into large amounts of the Company's common stock. As these shares are issued upon conversion of the Future Priced Security, the common stock price may tend to decline further.

For example, a Company may issue $10 million of convertible preferred stock (the Future Priced Security), which is convertible by the holder or holders into $10 million of common stock based on a conversion price of 80% of the closing price of the common stock on the date of conversion. If the closing price is $5 on the date of conversion, the Future Priced Security holders would receive 2,500,000 shares of common stock. If, on the other hand, the closing price is $1 on the date of conversion, the Future Priced Security holders would receive 12,500,000 shares of common stock.

Unless the Company carefully considers the terms of the securities in connection with several Nasdaq Texas Rules, the issuance of Future Priced Securities could result in a failure to comply with Nasdaq Texas listing standards and the concomitant delisting of the Company's securities from Nasdaq Texas. Nasdaq Texas's experience has been that Companies do not always appreciate this potential consequence. Nasdaq Texas Rules that bear upon the continued listing qualification of a Company and that must be considered when issuing Future Priced Securities include:

1. the shareholder approval rules (see Rule 5635)

2. the voting rights rules {(see Rule 5640)

3. the bid price requirement (see Rule 5450(a)(1))

4. the listing of additional shares rules (see Rule 5250(e)(2))

5. the change in control rules (see Rule 5635(b) and 5110(a))

6. Nasdaq Texas's discretionary authority rules {see the Rule 5100 Series}

It is important for Companies to clearly understand that failure to comply with any of these rules could result in the delisting of the Company's securities.

This notice is intended to be of assistance to Companies considering financings involving Future Priced Securities. By adhering to the above requirements, Companies can avoid unintended listing qualifications problems. Companies having any questions about this notice should contact the Nasdaq Texas Office of General Counsel at (301) 978-8400 or Listing Qualifications Department at (301) 978-8008. Nasdaq Texas will provide a Company with a written interpretation of the application of Nasdaq Texas Rules to a specific transaction, upon request of the Company.

How the Rules Apply

Shareholder Approval

Rule 5635(d) requires shareholder approval prior to a 20% Issuance at a price that is less than the Minimum Price.

(Nasdaq Texas may make exceptions to this requirement when the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise and reliance by the Company on this exception is expressly approved by the Audit Committee or a comparable body of the Board of Directors.)

When Nasdaq Texas staff is unable to determine the number of shares to be issued in a transaction, it looks to the maximum potential issuance of shares to determine whether there will be an issuance of 20 percent or more of the common stock outstanding. In the case of Future Priced Securities, the actual conversion price is dependent on the market price at the time of conversion and so the number of shares that will be issued is uncertain until the conversion occurs. Accordingly, staff will look to the maximum potential issuance of common shares at the time the Future Priced Security is issued. Typically, with a Future Priced Security, the maximum potential issuance will exceed 20 percent of the common stock outstanding because the Future Priced Security could, potentially, be converted into common stock based on a share price of one cent per share, or less. Further, for purposes of this calculation, the lowest possible conversion price is below the Minimum Price of the stock for purposes of Rule 5635(d) at the time of issuance of the Future Priced Security. Therefore, shareholder approval must be obtained *prior* to the issuance of the Future Priced Security. Companies should also be cautioned that obtaining shareholder ratification of the transaction after the issuance of a Future Priced Security does not satisfy the shareholder approval requirements.

Some Future Priced Securities may contain features to obviate the need for shareholder approval by: (1) placing a cap on the number of shares that can be issued upon conversion, such that the holders of the Future Priced Security cannot, without prior shareholder approval, convert the security into 20% or more of the common stock or voting power outstanding before the issuance of the Future Priced Security (See IM-5635-2, Interpretative Material Regarding the Use of Share Caps to Comply with Rule 5635), or (2) placing a floor on the conversion price, such that the conversion price will always be at least as high as the Minimum Price prior to the issuance of the Future Priced Securities. Even when a Future Priced Security contains these features, however, shareholder approval is still required under Rule 5635(b) if the issuance will result in a change of control. Additionally, discounted issuances *of* common stock to officers, directors, employees or consultants require shareholder approval pursuant to 5635(c).

Voting Rights

Rule 5640 provides:

Voting rights of existing Shareholders of publicly traded common stock registered under Section 12 of the Act cannot be disparately reduced or restricted through any corporate action or issuance.

IM-5640 also provides rules relating to voting rights of Nasdaq Texas Companies.

Under the voting rights rules, a Company cannot create a new class of security that votes at a higher rate than an existing class of securities or take any other action that has the effect of restricting or reducing the voting rights of an existing class of securities. The voting rights rules are typically implicated when the holders of the Future Priced Security are entitled to vote on an as-converted basis or when the holders of the Future Priced Security are entitled to representation on the Board of Directors. The percentage of the overall vote attributable to the Future Priced Security holders and the Future Priced Security holders' representation on the board of directors must not exceed their relative contribution to the Company based on the Minimum Price at the time of the issuance of the Future Priced Security. Staff will consider whether a voting rights violation exists by comparing the Future Priced Security holders' voting rights to their relative contribution to the Company based on the Minimum Price at the time of the issuance of the Future Priced Security. If the voting power or the board percentage exceeds that percentage interest, a violation exists because a new class of securities has been created that votes at a higher rate than an already existing class. Future Priced Securities that vote on an as-converted basis also raise voting rights concerns because of the possibility that, due to a decline in the price of the underlying common stock, the Future Priced Security holder will have voting rights disproportionate to its investment in the Company.

It is important to note that compliance with the shareholder approval rules prior to the issuance of a Future Priced Security does not affect whether the transaction is in violation of the voting rights rule. Furthermore, Shareholders can not otherwise agree to permit a voting rights violation by the Company. Because a violation of the voting rights requirement can result in delisting of the Company's securities from Nasdaq Texas, careful attention must be given to this issue to prevent a violation of the rule.

The Bid Price Requirement

The bid price requirement establishes a minimum bid price for issues listed on Nasdaq Texas. The Nasdaq Texas Rules provide that, for an issue to be eligible for continued listing on Nasdaq Texas, the minimum bid price per share shall be $1. An issue is subject to delisting from Nasdaq Texas, as described in the Rule 5800 Series if its bid price falls below $1.

The bid price rules must be thoroughly considered because the characteristics of Future Priced Securities often exert downward pressure on the bid price of the Company's common stock. Specifically, dilution from the discounted conversion of the Future Priced Security may result in a significant decline in the price of the common stock. Furthermore, there appear to be instances where short selling has contributed to a substantial price decline, which, in turn, could lead to a failure to comply with the bid price requirement. (If used to manipulate the price of the stock, short selling by the holders of the Future Priced Security is prohibited by the antifraud provisions of the securities laws and by Nasdaq Texas Rules and may be prohibited by the terms of the placement.)

Listing of Additional Shares

Rule 5250(e)(2) provides:

The Company shall be required to notify Nasdaq Texas on the appropriate form no later than 15 calendar days prior to: establishing or materially amending a stock option plan, purchase plan or other equity compensation arrangement pursuant to which stock may be acquired by officers, directors, employees, or consultants without shareholder approval; issuing securities that may potentially result in a change of control of the Company; issuing any common stock or security convertible into common stock in connection with the acquisition of the stock or assets of another company, if any officer or director or Substantial Shareholder of the Company has a 5% or greater interest (or if such persons collectively have a 10% or greater interest) in the Company to be acquired or in the consideration to be paid; or entering into a transaction that may result in the potential issuance of common stock (or securities convertible into common stock) greater than 10% of either the total shares outstanding or the voting power outstanding on a pre-transaction basis.

Companies should be cognizant that under this rule notification is required at least 15 days *prior* to issuing any security (including a Future Priced Security) convertible into shares of a class of securities already listed on Nasdaq Texas. Failure to provide such notice can result in a Company's removal from Nasdaq Texas.

Public Interest Concerns

Rule 5101 provides:

Nasdaq Texas is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. Nasdaq Texas stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy

and supporting the capital formation process. Nasdaq Texas Companies, from new public Companies to Companies of international stature, are publicly recognized as sharing these important objectives.

Nasdaq Texas, therefore, in addition to applying the enumerated criteria set forth in the Listing Rules, has broad discretionary authority over the initial and continued listing of securities in Nasdaq Texas in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Nasdaq Texas may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on Nasdaq Texas inadvisable or unwarranted in the opinion of Nasdaq Texas, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq Texas.

The returns on Future Priced Securities may become excessive compared with those of public investors in the Company's common securities. In egregious situations, the use of a Future Priced Security may raise public interest concerns under the Rule 5100 Series. In addition to the demonstrable business purpose of the transaction, other factors that Nasdaq Texas staff will consider in determining whether a transaction raises public interest concerns include: (1) the amount raised in the transaction relative to the Company's existing capital structure; (2) the dilutive effect of the transaction on the existing holders of common stock; (3) the risk undertaken by the Future Priced Security investor; (4) the relationship between the Future Priced Security investor and the Company; (5) whether the transaction was preceded by other similar transactions; and (6) whether the transaction is consistent with the just and equitable principles of trade.

Some Future Priced Securities may contain features that address the public interest concerns. These features tend to provide incentives to the investor to hold the security for a longer time period and limit the number of shares into which the Future Priced Security may be converted. Such features may limit the dilutive effect of the transaction and increase the risk undertaken by the Future Priced Security investor in relationship to the reward available.

Business Combinations with non-Nasdaq Texas Entities Resulting in a Change of Control

Rule 5110(a) provides:

A Company must apply for initial listing in connection with a transaction whereby the Company combines with a non-Nasdaq Texas entity, resulting in a change of control of the Company and potentially allowing the non-Nasdaq Texas entity to obtain a Nasdaq Texas Listing. In determining whether a change of control has occurred, Nasdaq Texas shall consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the Company. Nasdaq Texas shall also consider the nature of the businesses and the relative size of the Nasdaq Texas Company and non-Nasdaq Texas entity. The Company must submit an application for the post-transaction entity with sufficient time to allow Nasdaq Texas to complete its review before the transaction is completed.

If the Company's application for initial listing has not been approved prior to consummation of the transaction, Nasdaq Texas will issue a Staff Determination Letter as set forth in Rule 5810 and begin delisting proceedings pursuant to the Rule 5800 Series.

This provision, which applies regardless of whether the Company obtains shareholder approval for the transaction, requires Companies to qualify under the initial listing standards in connection with a combination that results in a change of control. It is important for Companies to realize that in certain instances, the conversion of a Future Priced Security may implicate this provision. For example, if there is no limit on the number of common shares issuable upon conversion, or if the limit is set high enough, the exercise of conversion rights under a Future Priced Security could result in the holders of the Future Priced Securities obtaining control of the listed Company. In such event, a Company may be required to re-apply for initial listing and satisfy all initial listing requirements.

5640. Voting Rights

Voting rights of existing Shareholders of publicly traded common stock registered under Section 12 of the Act cannot be disparately reduced or restricted through any corporate action or issuance. Examples of such corporate action or issuance include, but are not limited to, the adoption of time-phased voting plans, the adoption of capped voting rights plans, the issuance of super-voting stock, or the issuance of stock with voting rights less than the per share voting rights of the existing common stock through an exchange offer.

IM-5640. Voting Rights Policy

The following Voting Rights Policy is based upon, but more flexible than, former Rule 19c-4 under the Act. Accordingly, Nasdaq Texas will permit corporate actions or issuances by Nasdaq Texas Companies that would have been permitted under former Rule 19c-4, as well as other actions or issuances that are not inconsistent with this policy. In evaluating such other actions or issuances, Nasdaq Texas will consider, among other things, the economics of such actions or issuances and the voting rights being granted. Nasdaq Texas's interpretations under the policy will be flexible, recognizing that both the capital markets and the circumstances and needs of Nasdaq Texas Companies change over time. The text of the Nasdaq Texas Voting Rights Policy is as follows:

Companies with Dual Class Structures

The restriction against the issuance of super voting stock is primarily intended to apply to the issuance of a new class of stock, and Companies with existing dual class capital structures would generally be permitted to issue additional shares of the existing super voting stock without conflict with this policy.

Consultation with Nasdaq Texas

Violation of the Nasdaq Texas Voting Rights Policy could result in the loss of a Company's Nasdaq Texas or public trading market. The policy can apply to a variety of corporate actions

and securities issuances, not just super voting or so-called "time phase" voting common stock. While the policy will continue to permit actions previously permitted under former Rule 19c-4, it is extremely important that Nasdaq Texas Companies communicate their intentions to their Nasdaq Texas representatives as early as possible before taking any action or committing to take any action that may be inconsistent with the policy. Nasdaq Texas urges Companies listed on Nasdaq Texas not to assume, without first discussing the matter with the Nasdaq Texas staff, that a particular issuance of common or preferred stock or the taking of some other corporate action will necessarily be consistent with the policy. It is suggested that copies of preliminary proxy or other material concerning matters subject to the policy be furnished to Nasdaq Texas for review prior to formal filing.

Review of Past Voting Rights Activities

In reviewing an application for initial qualification for listing of a security in Nasdaq Texas, Nasdaq Texas will review the Company's past corporate actions to determine whether another self-regulatory organization (SRO) has found any of the Company's actions to have been a violation or evasion of the SRO's voting rights policy. Based on such review, Nasdaq Texas may take any appropriate action, including the denial of the application or the placing of restrictions on such listing. Nasdaq Texas will also review whether a Company seeking initial listing of a security in Nasdaq Texas has requested a ruling or interpretation from another SRO regarding the application of that SRO's voting rights policy with respect to a proposed transaction. If so, Nasdaq Texas will consider that fact in determining its response to any ruling or interpretation that the Company may request on the same or similar transaction.

Non-U.S. Companies

Nasdaq Texas will accept any action or issuance relating to the voting rights structure of a non-U.S. Company that is in compliance with Nasdaq Texas's requirements for domestic Companies or that is not prohibited by the Company's home country law.

5800. FAILURE TO MEET LISTING STANDARDS

5801. Preamble to the Rules and Procedures Applicable When a Company Fails to Meet a Listing Standard

Securities of a Company that does not meet the listing standards set forth in the Rule 5000 Series are subject to delisting from, or denial of initial listing on Nasdaq Texas. This Section sets forth procedures for the independent review, suspension, and delisting of Companies that fail to satisfy one or more standards for initial or continued listing, and thus are "deficient" with respect to the listing standards.

The Listings Qualifications Department is responsible for identifying deficiencies that may lead to delisting or denial of a listing application; notifying the Company of the deficiency or denial; and issuing Staff Delisting Determinations and Public Reprimand Letters. Rule 5810 contains provisions regarding the Listing Qualifications Department's process for notifying Companies of different types of deficiencies and their corresponding consequences.

The Hearings Panel, upon timely request by a Company, will review a Staff Delisting Determination, denial of a listing application, or Public Reprimand Letter at an oral or written hearing, and issue a Decision that may, among other things, grant an "exception" to Nasdaq Texas' listing standards or affirm a delisting. Rule 5815 contains provisions relating to the hearings process.

The Nasdaq Texas Listing and Hearings Review Council, upon timely appeal by a Company or on its own initiative, may review the Decisions of the Hearings Panel. Rule 5820 contains provisions relating to the Listing Council appeal process.

Finally, the Nasdaq Texas Board of Directors may exercise discretion to call for review a Listing Council Decision. Rule 5825 contains provisions related to that process.

Procedures related to SEC notification of Nasdaq Texas' final Delisting Determinations are discussed in Rule 5830. Rules applicable to Adjudicators and Advisors are provided in Rule 5835 and general information relating to the adjudicatory process is provided in Rule 5840.

A Company's failure to maintain compliance with the applicable provisions of the Rule 5000 Series will result in the termination of the listing unless an exception is granted to the Company, as described below. The termination of the Company's listing will become effective in accordance with the procedures set forth herein, including Rule 5830.

5805. Definitions

(a) "Adjudicatory Body" or "Adjudicator" means the Hearings Panel, the Listing Council, or the Nasdaq Texas Board, or a member thereof.

(b) "Advisor" means an individual employed by Nasdaq Texas who is advising an Adjudicatory Body with respect to a proceeding under this section.

(c) "Hearings Department" means the Hearings Department of the Nasdaq Texas Office of General Counsel.

(d) The "Hearings Panel" is an independent panel made up of at least two persons who are not employees or otherwise affiliated with Nasdaq Texas or its affiliates, and who have been authorized by the Nasdaq Texas Board of Directors.

(e) "Listing Council" means the Nasdaq Texas Listing and Hearing Review Council.

(f) The "Listing Qualifications Department" is the department of Nasdaq Texas responsible for evaluating Company compliance with quantitative and qualitative listing standards and determining eligibility for initial and continued listing of a Company's securities.

(g) "Staff" refers to employees of the Listing Qualifications Department.

(h) "Staff Delisting Determination" or "Delisting Determination" is a written determination by the Listing Qualifications Department to delist a listed Company's securities for failure to meet a continued listing standard.

(i) "Decision" means a written decision of an Adjudicatory Body.

(j) "Public Reprimand Letter" means a letter issued by Staff or a Decision of an Adjudicatory Body in cases where the Company has violated a Nasdaq Texas corporate governance or notification listing standard (other than one required by Rule 10A-3 or Rule 10D-1 under the Act) and Staff or the Adjudicatory Body determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, Staff or the Adjudicatory Body will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.

(k) "Office of Appeals and Review" means the Office of Appeals and Review of the Nasdaq Texas Office of General Counsel.

5810. Notification of Deficiency by the Listing Qualifications Department

When the Listing Qualifications Department determines that a Company does not meet a listing standard set forth in the Rule 5000 Series, it will immediately notify the Company of the deficiency. As explained in more detail below, deficiency notifications are of four types:

(1) Staff Delisting Determinations, which are notifications of deficiencies that, unless appealed, subject the Company to immediate suspension and delisting;

(2) notifications of deficiencies for which a Company may submit a plan of compliance for staff review;

(3) notifications of deficiencies for which a Company is entitled to an automatic cure or compliance period; and

(4) Public Reprimand Letters, except such notification type is not available for unresolved deficiencies from the standards of Rules 5250(c) {Obligation to File Periodic Financial Reports}, 5615(a)(4)(D) {Partner Meetings of Limited Partnerships} and 5620(a) {Meetings of Shareholders}.

Notifications of deficiencies that allow for submission of a compliance plan or an automatic cure or compliance period may result, after review of the compliance plan or expiration of the cure or compliance period, in issuance of a Staff Delisting Determination or a Public Reprimand Letter.

(a) Information Contained in Deficiency Notification and Delisting Determination

Deficiency notifications and Delisting Determinations will:

(1) inform the Company of the factual bases for Staff's determination of deficiency or delisting, and the quantitative or qualitative standard the Company has failed to satisfy;

(2) provide the Company with instructions regarding its obligations to disclose the deficiency under Nasdaq Texas Listing Rules; and

(3) inform the Company:

(A) in the case of a Staff Delisting Determination, that the Company's securities will be suspended as of a date certain; the Company has a right to request review of the Delisting Determination by a Hearings Panel; and that a request for review within seven days (as set forth in Rule 5815(a)(1)) will stay the suspension;

(B) in the case of a deficiency for which the Company may submit a plan of compliance for review by Staff, the deadline by which a plan must be submitted;

(C) in the case of a deficiency for which the Company is entitled to an automatic cure or compliance period, the expiration date of the cure or compliance period; and

(D) in the case of a Public Reprimand Letter, an explanation of why Staff concluded the letter is appropriate and the Company's right to request review of the Letter by a Hearings Panel.

(b) Company Disclosure Obligations

A Company that receives a notification of deficiency, Staff Delisting Determination, or Public Reprimand Letter is required to make a public announcement disclosing receipt of the notification and the Rule(s) upon which the deficiency is based, and describing each specific basis and concern identified by Nasdaq Texas in reaching its determination that the Company does not meet the listing standard. If the deficiency or Staff Delisting Determination relates to the requirement to file a periodic report contained in Rule 5250(c)(1) or (2), the Company is required to make the public announcement by issuing a press release, in addition to filing any Form 8-K required by SEC rules. In all other cases, the Company may make the public announcement either by filing a Form 8-K, where required by SEC rules, or by issuing a press release. Additional information about this disclosure obligation is provided in IM-5810-1.

As described in Rule 5250(b)(1) and IM-5250-1, the Company must notify Nasdaq Texas' MarketWatch Department about the announcement through the electronic disclosure submission system available at www.nasdaq.net, except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during Nasdaq Texas market hours, the Company must notify MarketWatch at least ten minutes prior to the announcement. If the public announcement is made outside of Nasdaq Texas market hours, the Company must notify MarketWatch of the announcement prior to 6:50 a.m. ET. The Company should make the public announcement as promptly as possible but not more than four business days following receipt of the notification.

IM-5810-1. Disclosure of Written Notice of Staff Determination

Rule 5810(b) requires that a Company make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing the receipt of (i) a notice that the Company does not meet a listing standard set forth in the Rule 5000 Series, (ii) a Staff Delisting Determination to limit or prohibit continued listing of the Company's securities under Rule 5810 as a result of the Company's failure to comply with the continued listing requirements, or (iii) a Public Reprimand Letter; provided, however, that if the notification relates to a failure to meet the requirements of Rules 5250(c)(1) or (2), the Company must make the public announcement by issuing a press release. Such public announcement shall be made as promptly as possible, but not more than four business days following the receipt of the notification, Staff Delisting Determination, or Public Reprimand Letter, as applicable. In addition to containing all disclosure required by Form 8-K, if applicable, the public announcement must describe each specific basis and concern identified by Nasdaq Texas in its determination that the Company does not meet the listing standard and identify the Rules upon which the deficiency is based. For example, if the Listing Qualifications Department determines to delist a Company based on its discretionary authority under Rule 5101, the Company must include in its public announcement the specific concerns cited in the Staff Delisting Determination. In addition, a Company may provide its own analysis of the issues raised in the Staff Delisting Determination.

If the public announcement is not made by the Company within the time allotted or does not include all of the required information, trading of its securities shall be halted (if not already halted), even if the Company appeals the Staff Delisting Determination or Public Reprimand Letter as set forth in Rule 5815, and Nasdaq Texas may make a public announcement with the required information. If the company's failure to make this public announcement is the only basis for a trading halt, Nasdaq Texas would ordinarily resume trading if Nasdaq Texas makes the public announcement. If the Company fails to make the public announcement by the time that the Hearings Panel issues its Decision, that Decision will also determine whether to delist the Company's securities for failure to make the public announcement.

Rule 5810(b) does not relieve a Company of its disclosure obligation under the federal securities laws, nor should it be construed as providing a safe harbor under the federal securities laws. It is suggested that the Company consult with corporate/securities counsel in assessing its disclosure obligations under the federal securities laws.

(c) **Types of Deficiencies and Notifications**

The type of deficiency at issue determines whether the Company will be immediately suspended and delisted, or whether it may submit a compliance plan for review or is entitled to an automatic cure or compliance period before a Staff Delisting Determination is issued. In the case of a deficiency not specified below, Staff will issue the Company a Staff Delisting Determination or a Public Reprimand Letter.

(1) **Deficiencies that Immediately Result in a Staff Delisting Determination**

Staff's notice will inform the Company that its securities are immediately subject to suspension and delisting when:

- a Company fails to timely solicit proxies;
- an Equity Investment Tracking Stock fails to comply with the additional continued listing requirements in Rule 5222(c) or a Staff Delisting Determination has been issued with respect to the security such Equity Investment Tracking Stock tracks;
- the common stock of the REIT in a Paired Share Unit listed under Rule 5226 becomes separately tradable from the common stock of the Parent;
- An issuer of non-convertible bonds listed on Nasdaq Texas fails to meet its obligations on the non-convertible bonds, as set forth in Rule 5702(b)(2);
- a Subscription Receipt listed under Rule 5420 fails to comply with the continued listing requirements in Rule 5465 or a Staff Delisting Determination has been issued with respect to the security such Subscription Receipt is exchangeable for;
- a security fails to meet the continued listing requirement for minimum bid price and is not eligible to receive a compliance period as described under Rule 5810(c)(3)(A)(i) or (ii);
- a security of a Company whose business plan is to complete one or more acquisitions, as described in Rule IM-5101-2, that: (i) fails to comply with one or more of the requirements set forth in Rule IM-5101-2, including, without limitation, a failure to complete one or more business combinations satisfying the requirements set forth in Rule IM-5101-2(b) within 36 months of the effectiveness of its IPO registration statement or a failure to meet the requirements for initial listing following a business combination as described in Rule IM-5101-2(d) and (e); or (ii) in the case of a Company that qualified for listing pursuant to the alternative initial listing requirements in Rule 5406 fails to meet the continued listing requirement in Rules 5452(a)(1) and (3); or
- Staff has determined, under its discretionary authority in the Rule 5100 Series, that the Company's continued listing raises a public interest concern.

(2) **Deficiencies for which a Company may Submit a Plan of Compliance for Staff Review**

(A) Unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination, the Listing Qualifications Department may accept and review a plan to regain compliance when a Company is deficient with respect to one of the standards listed in subsections (i) through (vi) below. In accordance with Rule 5810(c)(2)(C), plans provided pursuant to subsections (i) through (iv) and (vi) below must be provided generally within 45 calendar days, and in accordance with Rule

5810(c)(2)(F), plans provided pursuant to subsection (v) must be provided generally within 60 calendar days.

(i) all quantitative deficiencies from standards that do not provide a compliance period;

(ii) deficiencies from the standards of Rules 5605 {Board of Directors and Committees} or 5615(a)(4)(C) {Independent Directors/Audit Committee of Limited Partnerships} where the cure period of the Rule is not applicable;

(iii) deficiencies from the standards of Rules 5620(a) Meetings of Shareholders, 5620(c) Quorum, 5630 Review of Related Party Transactions, 5635 Shareholder Approval, 5250(c)(3) Auditor Registration, 5255(a) Direct Registration Program, 5608 Recovery of Erroneously Awarded Compensation, 5610 Code of Conduct, 5615(a)(4)(D) Partner Meetings of Limited Partnerships, 5615(a)(4)(E) Quorum of Limited Partnerships, 5615(a)(4)(G) Related Party Transactions of Limited Partnerships, or 5640 Voting Rights; or

(iv) failure to make the disclosure required by Rule 5250(b)(3) {Disclosure of Third Party Director and Nominee Compensation};

(v) failure to file periodic reports as required by Rules 5250(c)(1) or (2); or

(vi) failure to meet a continued listing requirement contained in the Rule 5700 Series.

IM-5810-2. Staff Review of Deficiencies

As provided in Rule 5810(c)(2)(A)(i), the Staff may accept a plan to regain compliance with respect to quantitative deficiencies from standards that do not themselves provide a compliance period. Such standards include:

Rules 5450(b)(1)(A) {Stockholders' Equity}, and 5450(a)(2) {Total Holders}

Rules 5450(b)(3)(A) {Total Assets/Total Revenue}, 5450(b)(2)(B) {Publicly Held Shares}, and 5450(a)(2) {Total Holders}, and

Rules 5460(a)(1) {Publicly Held Shares} and 5460(a)(4) {Public Holders}.

(B) **Staff Alternatives Upon Review of Plan**

Staff may request such additional information from the Company as is necessary to make a determination, as described below. In cases other than filing delinquencies and annual meeting deficiencies, which are governed by Rules 5810(c)(2)(F) and 5810(c)(2)(G), respectively, upon review of a plan of compliance, Staff may either:

(i) grant an extension of time to regain compliance not greater than 180 calendar days from the date of Staff's initial notification, unless the Company is currently under review by an

Adjudicatory Body for a Staff Delisting Determination. If Staff grants an extension, it will inform the Company in writing of the basis for granting the extension and the terms of the extension;

(ii) issue a Staff Delisting Determination letter that includes a description of the basis for denying the extension; or

(iii) issue a Public Reprimand Letter, as defined in Rule 5805(j).

(C) **Timeline for Submission of Compliance Plans**

Except for deficiencies from the standards of Rule 5250(c)(1) or (2), Staff's notification of deficiencies that allow for compliance plan review will inform the Company that it has 45 calendar days to submit a plan to regain compliance with Nasdaq Texas' listing standard(s). Staff may extend this deadline for up to an additional 5 calendar days upon good cause shown and may request such additional information from the Company as is necessary to make a determination regarding whether to grant such an extension.

(D) **Restrictions on Compliance Plans for Certain Deficiencies**

Staff will not accept a plan to achieve compliance with deficiencies in net income from continuing operations or total assets and total revenue, since compliance requires stated levels of net income or assets and revenues during completed fiscal years and therefore can only be demonstrated through audited financial statements. Similarly, a Company may not submit a plan relying on partial-year performance to demonstrate compliance with these standards. A Company may, however, submit a plan that demonstrates current or near-term compliance with the listing requirement relating to stockholders' equity or Market Value of Listed Securities.

(E) **Failure to Meet the Terms of a Staff Extension**

If the Company does not regain compliance within the time period provided by all applicable Staff extensions, Staff will immediately issue a Staff Delisting Determination indicating the date on which the Company's securities will be suspended unless it requests review by a Hearings Panel.

(F) **Filing Delinquencies**

In the case of deficiencies from the standards of Rule 5250(c)(1) or (2):

(i) Staff's notice shall provide the Company with 60 calendar days to submit a plan to regain compliance with the listing standard; provided, however, that the Company shall not be provided with an opportunity to submit such a plan if review under the Rule 5800 Series of a prior Staff Delisting Determination with respect to the Company is already pending. Staff may extend this deadline for up to an additional 15 calendar days upon good cause shown

and may request such additional information from the Company as is necessary to make a determination regarding whether to grant such an extension.

(ii) The maximum additional time provided by all exceptions granted by Staff for a deficiency described in paragraph (i) above is 180 calendar days from the due date of the first late periodic report (as extended by Rule 12b-25 under the Act, if applicable). In determining whether to grant an exception, and the length of any such exception, Staff will consider, and the Company should address in its plan of compliance, the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

(G) **Annual Meeting**

In the case of deficiencies from the standards of Rules 5620(a) and 5615(a)(4)(D):

(i) Staff's notice shall provide the Company with 45 calendar days to submit a plan to regain compliance with the listing standard; provided, however, that the Company shall not be provided with an opportunity to submit such a plan if review under the Rule 5800 Series of a prior Staff Delisting Determination with respect to the Company is already pending. Staff may extend this deadline for up to an additional 15 calendar days upon good cause shown and may request such additional information from the Company as is necessary to make a determination regarding whether to grant such an extension.

(ii) The maximum additional time provided by all exceptions granted by Staff is 180 calendar days from the deadline to hold the annual meeting (one year after the end of the Company's fiscal year). In determining whether to grant an exception, and the length of any such exception, Staff will consider, and the Company should address in its plan of compliance, the Company's specific circumstances, including the likelihood that the Company would be able to hold an annual meeting within the exception period, the Company's past compliance history, the reasons for the failure to hold the annual meeting timely, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

(3) **Deficiencies for which the Rules Provide a Specified Cure or Compliance Period**

With respect to deficiencies related to the standards listed in (A) - (G) below, Staff's notification will inform the Company of the applicable cure or compliance period provided by these Rules and discussed below. If the Company does not regain compliance within the specified cure or compliance period, the Listing Qualifications Department will immediately issue a Staff Delisting Determination letter.

(A) **Bid Price**

A failure to meet the continued listing requirement for minimum bid price shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. Compliance can be achieved during any compliance period by meeting the applicable standard for a minimum of 10 consecutive business days during the applicable compliance period, unless Staff exercises its discretion to extend this 10 day period as discussed in Rule 5810(c)(3)(H).

Notwithstanding the foregoing, a Company will not be considered to have regained compliance with the bid price requirement if the Company takes an action to achieve compliance and that action results in the Company's security falling below the numeric threshold for another listing requirement without regard to any compliance periods otherwise available for that other listing requirement. In such event, the Company will continue to be considered non-compliant until both: (i) the other deficiency is cured and (ii) thereafter the Company meets the bid price standard for a minimum of 10 consecutive business days, unless Staff exercises its discretion to extend this 10 day period as discussed in Rule 5810(c)(3)(H). If the Company does not demonstrate compliance with (i) and (ii) during the compliance period(s) applicable to the initial bid price deficiency, Nasdaq Texas will issue a Staff Delisting Determination Letter.

(i) **Low Priced Stocks**

Notwithstanding the foregoing, a failure to meet the continued listing requirement for minimum bid price shall be determined to exist if a Company's security has a closing bid price of $0.10 or less for ten consecutive business days. Upon such failure, the Listing Qualifications Department shall issue a Staff Delisting Determination under Rule 5810 with respect to that security and the security shall be suspended from trading on Nasdaq; the Company shall be ineligible for any compliance period otherwise described in this Rule 5810(c)(3)(A). Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days, unless Staff exercises its discretion to extend this 10-day period as discussed in Rule 5810(c)(3)(H).

(ii) **Excessive Reverse Stock Splits**

Notwithstanding the foregoing, if a Company's security fails to meet the continued listing requirement for minimum bid price and the Company has effected a reverse stock split over the prior one-year period; or has effected one or more reverse stock splits over the prior two-year period with a cumulative ratio of 250 shares or more to one, then the Company shall not be eligible for any compliance period specified in this Rule 5810(c)(3)(A) and the Listing Qualifications Department shall issue a Staff Delisting Determination under Rule 5810 with respect to that security.

(B) **Market Makers**

A failure to meet the continued listing requirement for a number of Market Makers shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.

(C) **Market Value of Listed Securities**

A failure to meet the continued listing requirements for Market Value of Listed Securities shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 180 day compliance period, unless Staff exercises its discretion to extend this 10 day period as discussed in Rule 5810(c)(3)(H).

(D) **Market Value of Publicly Held Shares**

A failure to meet the continued listing requirement for Market Value of Publicly Held Shares shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 180 day compliance period, unless Staff exercises its discretion to extend this 10 day period as discussed in Rule 5810(c)(3)(H).

(E) **Independent Director, Audit, and Compensation Committee Rules**

If a Company fails to meet the majority board independence requirement in Rule 5605(b)(1) due to one vacancy, or because one director ceases to be independent for reasons beyond his/her reasonable control, the Listing Qualifications Department will promptly notify the Company and inform it has until the earlier of its next annual shareholders meeting or one year from the event that caused the deficiency to cure the deficiency. However, if the Company's next annual shareholders' meeting is held sooner than 180 days after the event that caused the deficiency, then the Company has 180 days from the event that caused the deficiency to cure it.

If a Company fails to meet the audit committee composition requirements in Rule 5605(c)(2) because an audit committee member ceases to be independent for reasons outside his/her control, the Listing Qualifications Department will promptly notify the Company and inform it has until the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure, to cure the deficiency. If the Company fails to meet the audit committee composition requirement due to one vacancy on the audit committee, and the Company is not relying upon a cure period for another member, the Listing Qualifications Department will promptly notify the Company and

inform it that it has until the earlier of its next annual shareholders meeting or one year from the event that caused the failure to cure the deficiency. However, if the Company's next annual shareholders' meeting is held sooner than 180 days after the event that caused the deficiency, then the Company has 180 days from the event that caused the deficiency to cure it.

If a Company fails to meet the compensation committee composition requirement under Rule 5605(d)(2)(A) due to one vacancy, or one compensation committee member ceases to be independent due to circumstances beyond the member's reasonable control, the Listing Qualifications Department will promptly notify the Company and inform it has until the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement to cure the deficiency. However, if the Company's next annual shareholders' meeting is held sooner than 180 days after the event that caused the deficiency, then the Company has 180 days from the event that caused the deficiency to cure it.

A Company is not eligible for this cure period immediately following the expiration of a phase-in period the Company relied on under Rule 5615(b) upon which the Company was relying, except as provided for in Rules 5605(b)(1)(B) and 5605(c)(4)(C) and 5605(d)(4)(B). If a Company is not eligible for this cure period, the Listing Qualifications Department will issue a Staff Delisting Determination letter to delist the Company's securities.

(F) Reserved

(G) **Market Value/Principal Amount Outstanding of Non-Convertible Bonds**

A failure to meet the continued listing requirement for non-convertible bonds, as set forth in Rule 5702(b)(1) (requiring non-convertible bonds to have at least $400,000 in market value or principal amount outstanding) shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. Compliance can be achieved during this 180 calendar day compliance period by meeting the applicable standard for a minimum of 10 consecutive business days during the applicable compliance period, unless Staff exercises its discretion to extend this 10 day period as discussed in Rule 5810(c)(3)(H).

(H) **Staff Discretion Relating to the Price-based Requirements**

If a Company fails to meet the Market Value of Listed Securities, Market Value of Publicly Held Shares, Bid Price, or Market Value/Principal Amount Outstanding requirements, each of which is related to the Company's security price and collectively called the "Price-based Requirements," compliance is generally achieved by meeting the requirement for a minimum of ten consecutive business days. However, Staff may, in its discretion, require a Company to satisfy the applicable Price-based Requirement for a period in excess of ten consecutive business days, but generally no more than 20 consecutive business days, before

determining that the Company has demonstrated an ability to maintain long-term compliance. In determining whether to require a Company to meet the applicable Price-based-requirement beyond ten business days, Staff may consider all relevant facts and circumstances, including without limitation:

(i) the margin of compliance (the amount by which a Company exceeds the applicable Price-based Requirement);

(ii) the trading volume (a lack of trading volume may indicate a lack of bona fide market interest in the security at the posted bid price);

(iii) the Market Maker montage (the number of Market Makers quoting at or above $1.00 or the minimum price necessary to satisfy another Price-based Requirement; and the size of their quotes); and

(iv) the trend of the security price (is it up or down).

(4) **Public Reprimand Letter**

Staff's notification may be in the form of a Public Reprimand Letter in cases where the Company has violated a Nasdaq Texas corporate governance or notification listing standard (other than one required by Rule 10A-3 or Rule 10D-1 under the Act) and Staff determines that delisting is an inappropriate sanction. In determining whether to issue a public reprimand letter, the Listing Qualifications Department will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.

(d) **Additional Deficiencies**

The Listing Qualifications Department continues to evaluate the compliance of Companies while they are under review by Adjudicatory Bodies and may identify additional deficiencies. Upon identification of an additional deficiency, Staff will issue an additional notification of deficiency to the Company and send a copy to the appropriate Adjudicatory Body.

(1) Staff's notification of the additional deficiency will conform to the requirements set forth in Rule 5810(a) if:

(A) the matter under review by an Adjudicatory Body is a Public Reprimand Letter; or

(B) the additional deficiency identified is one that has an automatic cure or compliance period.

(2) If the additional deficiency is one that would in the normal course result in immediate suspension and delisting, or one for which the Company may submit a compliance plan to

Staff for review, Staff's notification will instruct the Company to address the issue to the Hearings Panel at its hearing, unless the hearing for the original deficiency has already taken place. If the hearing has already taken place, Staff's notification will instruct the Company to provide in writing, within a specified time period, a submission that addresses the deficiency to the Adjudicatory Body before which its matter is pending.

5815. Review of Staff Determinations by Hearings Panel

When a Company receives a Staff Delisting Determination or a Public Reprimand Letter issued by the Listing Qualifications Department, or when its application for initial listing is denied, it may request in writing that the Hearings Panel review the matter in a written or an oral hearing. This section sets forth the procedures for requesting a hearing before a Hearings Panel, describes the Hearings Panel and the possible outcomes of a hearing, and sets forth Hearings Panel procedures.

(a) **Procedures for Requesting and Preparing for a Hearing**

(1) **Timely Request Stays Delisting**

(A) A Company may, within seven calendar days of the date of the Staff Delisting Determination notification, Public Reprimand Letter, or written denial of a listing application, request a written or oral hearing before a Hearings Panel to review the Staff Delisting Determination, Public Reprimand Letter, or written denial of a listing application. Requests for hearings should be submitted in writing to the Hearings Department.

(B) Subject to the following limitations, a timely request for a hearing shall ordinarily stay the suspension and delisting action pending the issuance of a written Panel Decision.

(i) If the Staff Delisting Determination relates to deficiencies from the standards of Rule 5250(c)(1) or (2), which require a Company to timely file its periodic reports with the Commission, the delisting action will only be stayed for 15 calendar days from the deadline to request a hearing unless the Company specifically requests and the Hearings Panel grants a further stay. A request for a further stay must include an explanation of why such a stay would be appropriate and should be included in the Company's request for a hearing. Based on that submission and any recommendation provided by Staff, the Hearings Panel will determine whether to grant the Company a further stay. In determining whether to grant the stay, the Hearings Panel will consider the Company's specific circumstances, including the likelihood that the filing can be made within any exception period that could subsequently be granted, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. The Hearings Panel will notify the Company of its conclusion as soon as is practicable, but in no event more than 15 calendar days following the deadline to request the hearing. In the event the Hearings Panel determines not to grant the

Company a stay, the Company's securities will be immediately suspended and will remain suspended unless the Panel Decision issued after the hearing determines to reinstate the securities.

(ii) A timely request for a hearing will not stay the suspension of the securities from trading pending the issuance of a written Panel Decision when the Staff Delisting Determination is related to one of the following deficiencies:

a. A Company whose application for initial listing has not been approved prior to consummation of a transaction whereby the Company combines with a non-Nasdaq Texas entity, resulting in a change of control of the Company and potentially allowing the non-Nasdaq Texas entity to obtain a Nasdaq Texas Listing, as described in Nasdaq Texas Rule 5110(a);

b. A Company that has filed for protection under any provision of the federal bankruptcy laws, or comparable foreign laws, or that has announced that liquidation has been authorized by its board of directors and that it is committed to proceed, as described in Nasdaq Texas Rule 5110(b);

c. A Company whose business plan is to complete one or more acquisitions, as described in Rule IM-5101-2, which fails to meet (i) the continued listing requirement in Rules 5452(a)(1) and (3), for companies that listed pursuant to the alternative initial listing requirements in Rule 5406; (ii) the requirement set forth in Rule IM-5101-2(b) to complete one or more business combinations within 36 months of the effectiveness of its IPO registration statement; or (iii) the requirements for initial listing immediately following a business combination as required by Rule IM-5101-2; or

d. A failure to maintain a closing bid price of greater than $0.10 as required by Rule 5810(c)(3)(A)(i).

In each case, the Company's securities will be immediately suspended and will remain suspended unless the Panel Decision issued after the hearing determines to reinstate the securities.

(2) **Failure to Request Results in Immediate Delisting**

If a Company fails to request in writing a hearing within seven calendar days, or fails to timely pay the hearing fee described in paragraph (3) below, it waives its right to request review of a Delisting Determination, Public Reprimand Letter, or written denial of an initial listing application. In the case of a Company's failure to timely request a hearing or pay the hearing fee for review of a Delisting Determination, the Hearings Department will take action to suspend trading of the securities and follow procedures to delist the securities.

(3) **Fees**

Within seven calendar days of the date of the Staff Delisting Determination, Public Reprimand Letter, or written denial of an initial listing application, the Company must submit a non-refundable hearing fee of $20,000. No payment will be credited and applied towards the hearings fee unless the issuer has previously paid all applicable fees due to the Exchange.

(4) **Scheduling of Hearings**

The Hearings Department will schedule hearings to take place, to the extent practicable, within 45 days of the request for a hearing, at a location determined by the Hearings Department. The Hearings Department will send written acknowledgment of the Company's hearing request and inform the Company of the date, time, and location of the hearing, and deadlines for written submissions to the Hearings Panel. The Company will be provided at least ten calendar days notice of the hearing unless the Company waives such notice.

(5) **Submissions from Company**

The Company must provide a written submission to the Hearings Department, to which Staff may respond in writing, stating with specificity the grounds on which the Company is seeking review of the Staff Delisting Determination notification, Public Reprimand Letter, or written denial of a listing application in accordance with subsection (a)(1) of this Rule ("Written Submission"). The Company must include in the Written Submission all legal arguments on which it intends to rely. As appropriate, the Company's Written Submission may include a written plan of compliance and request that the Hearings Panel grant an exception to the listing standards for a limited time period, as permitted by Rule 5815(c)(1)(A) or may set forth specific grounds for the Company's contention that the issuance of a Staff Delisting Determination, Public Reprimand Letter, or denial of a listing application, was in error, and may also submit public documents or other written material in support of its position, including any information not available at the time of the Staff Determination. The Company may supplement the Written Submission by providing a written update to the Hearings Department ("Written Update") no later than two business days in advance of the hearing. The Written Update may not include any legal argument not raised by the Company with specificity in the Written Submission. The Hearings Panel will review the written record, as described in Rule 5840(a), before the hearing.

(6) **Presentation at Hearing**

At an oral hearing, the Company may make such presentation as it deems appropriate, including the appearance by its officers, directors, accountants, counsel, investment bankers, or other persons, and the Hearings Panel may question any representative appearing at the hearing. The Company will not be permitted to introduce any legal argument not raised by the Company with specificity in the Written Submission required by subsection (a)(5) of this Rule. Absent solicitation from the Hearings Panel, the Company will not be permitted to introduce any material information that was not raised by the Company with specificity in the Written Submission or Written Update provided for by subsection (a)(5) of this Rule, unless the Company shows either that the material

information did not exist at the time the Company was permitted to submit a Written Update or the Company shows that exceptional or unusual circumstances exist that warrant consideration of the newly raised material information. Exceptional or unusual circumstances would include, but are not necessarily limited to, material information that was not earlier discoverable by the Company despite all reasonable measures having been taken. If the Hearings Panel determines either that the Company has shown that the material information did not exist at the time the Company was permitted to submit a Written Update or that the Company has shown exceptional or unusual circumstances exist that warrant consideration of the newly raised material information, then the Company will be permitted to introduce such information at the oral hearing. Staff shall have up to three business days, or such shorter time as the Hearings Panel requests, following the oral hearing to respond in writing to the Company's newly raised material information. The Company may respond to the Staff's submission only if the Hearings Panel requests it do so. Hearings are generally scheduled to last one hour, but the Hearings Panel may extend the time. The Hearings Department will arrange for and keep on file a transcript of oral hearings.

(b) **Composition of the Hearings Panel**

Each Hearing is presided over by at least two Hearings Panel members, except as provided in Rule 5815(d)(3).

(c) **Scope of the Hearings Panel's Discretion**

(1) When the Hearings Panel review is of a deficiency related to continued listing standards, the Hearings Panel may, where it deems appropriate:

(A) grant an exception to the continued listing standards for a period not to exceed 180 days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted;

(B) Reserved;

(C) suspend and delist the Company's securities;

(D) issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated a Nasdaq Texas corporate governance or notification listing standard (other than one required by Rule 10A-3 or Rule 10D-1 under the Act) and the Hearings Panel determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Hearings Panel will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations;

(E) find the Company in compliance with all applicable listing standards; or

(F) In the case of a Company that fails to file a periodic report (e.g., Form 10-K, 10-Q, 20-F, 40-F, or N-CSR), the Hearings Panel may grant an exception for a period not to exceed 360 days from the due date of the first such late periodic report. The Company can regain compliance with the requirement by filing that periodic report and any other delinquent reports with due dates falling before the end of the exception period. In determining whether to grant an exception, and the length of any such exception, the Hearings Panel will consider the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

(G) In the case of a Company that fails to hold an annual meeting, the Hearings Panel may grant an exception for a period not to exceed 360 days from the deadline to hold the annual meeting (one year after the end of the Company's fiscal year).

(H) In the case of a Company whose business plan is to complete one or more acquisitions, as described in Rule IM-5101-2, where the Staff Delisting Determination letter is based on a failure to satisfy (i) the requirement set forth in Rule IM-5101-2(b) and Rule 5452(a)(3) to complete one or more business combinations within 36 months of the effectiveness of its IPO registration statement; or (ii) the requirements for initial listing immediately following a business combination as required by Rule IM-5101-2, only reverse a delisting decision where the Panel determines that the Staff Delisting Determination letter was in error and that the Company never failed to satisfy the requirement. In such cases, the Panel may not consider facts indicating that the Company had regained compliance under Rule 5815(c)(1)(E), nor may the Panel grant an exception under Rule 5815(c)(1)(A) allowing the Company additional time to regain compliance.

(2) When the Hearings Panel's review is of a Staff denial of an initial listing application, the Hearings Panel may, where it deems appropriate:

(A) affirm Staff's denial of the application;

(B) conditionally approve initial listing subject to an exception to the listing standards not to exceed 180 calendar days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted; or

(C) approve initial listing on a finding that the Company meets all initial listing requirements

(3) A Hearings Panel may consider any failure to meet any quantitative or qualitative standard for initial or continued listing, including failures previously not considered by Staff. The Company will be given written notice of such consideration and an opportunity to respond.

(4) Under the authority described in the Rule 5100 Series, the Hearings Panel may subject the Company to additional or more stringent criteria for the initial or continued listing of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities inadvisable or unwarranted in its opinion, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq Texas.

(d) **Hearings Panel Procedures**

(1) **Panel Decision**

After the hearing, the Hearings Department, on behalf of the Hearings Panel, will issue a Panel Decision that meets the requirements of Rule 5840(c) and has been approved by each member of the Hearings Panel. The Panel Decision shall be promptly provided to the Company, and is effective immediately upon issuance, unless it specifies to the contrary. The Panel Decision will provide notice that the Company may appeal the Panel Decision to the Listing Council within 15 calendar days of the date of the Decision and that the Decision may be called for review by the Listing Council within 45 calendar days from the date of the Decision.

(2) **Form 25 Notification of Delisting**

If the Panel issues a Decision to delist the Company's securities, the Hearings Department will immediately take action to suspend trading of the securities, unless the Decision specifies to the contrary. If the Company does not appeal a Decision to delist and the Listing Council does not call the matter for review, or withdraws its call for review, Nasdaq Texas will follow the procedures described in Rule 5830 to submit an application on Form 25 to the SEC to strike the security from listing.

(3) **Hearings Panel Deadlock**

If, following the hearing, the Hearings Panel cannot reach a unanimous decision, the Hearings Department will notify the Company of this circumstance. The Company will be provided an additional hearing before a Hearings Panel composed of three members who did not participate in the previous hearing. The Company may decide whether the hearing will be written or oral, in person or by telephone. The Company may submit any documents or other written material in support of its request for review, including information not available at the time of the initial hearing. There will be no fee for the new hearing. After review by a Hearings Panel convened pursuant to this paragraph, the Hearings Department on behalf of the Hearings Panel will issue a Decision that meets the requirements of Rule 5840(c) and that has been approved by at least a majority of the Hearings Panel.

(4) **Procedures Applicable for Recurring Deficiencies**

(A) **Discretionary Hearings Panel Monitor**

A Hearings Panel may, after a Company regains compliance with all applicable listing standards, monitor the Company's continued compliance for up to one year after the compliance date, if the Hearings Panel concludes that there is a likelihood that the issuer will fail to maintain compliance with one or more listing standards during that period. If the Hearings Panel or the Listing Qualifications Department determines that a Company under a Hearings Panel Monitor, under this subsection (A), fails any listing standard during the one-year monitoring period, then, notwithstanding Rule 5810(c)(2), the Company will not be permitted to provide the Listing Qualifications Department with a plan of compliance with respect to any deficiency that arises during the one-year monitoring period, and the Listing Qualifications Department will not be permitted to grant additional time for the Company to regain compliance with respect to any deficiency, nor will the company be afforded an applicable cure or compliance period pursuant to Rule 5810(c)(3). Rather, the Listing Qualifications Department will promptly issue a Staff Delisting Determination.

(B) **Mandatory Hearings Panel Monitor**

In the case of a Company that has regained compliance with the listing standards where the company was granted an exception by the Hearing Panel for failure to maintain certain levels of stockholders' equity, to timely file periodic reports, or with the bid price requirement where the company was ineligible for a compliance period under Rule 5810(c)(3)(A)(i) or (ii), after having been granted an exception to these continued listing standards by the Hearings Panel, the Hearings Panel will impose a Hearings Panel Monitor for a period of one year from the date the company regains compliance. If, within that one year monitoring period the Listing Qualifications Department finds the Company again out of compliance with the requirement that was the subject of the exception, then, notwithstanding Rule 5810(c)(2), the Company will not be permitted to provide the Listings Qualifications Department with a plan of compliance with respect to that deficiency and the Listings Qualifications Department will not be permitted to grant additional time for the Company to regain compliance with respect to that deficiency, nor will the company be afforded an applicable cure or compliance period pursuant to Rule 5810(c)(3). Rather, the Listing Qualifications Department will promptly issue a Staff Delisting Determination.

(C) **Panel Monitor Procedures**

If a Company receives a Staff Delisting Determination during a one-year Hearings Panel Monitor under paragraph (d)(4)(A) or (B) of this Rule, the Company may request review by a Hearings Panel. Unless indicated otherwise in this subparagraph (C), the hearing will be conducted in accordance with the procedures outlined in Rule 5815. Upon such a request, the Hearings Department will promptly schedule a new hearing, with the initial Hearings Panel or a newly convened Hearings Panel if the initial Hearings Panel is unavailable. The hearing may be oral or written, at the Company's election. The Hearings Panel will consider the Company's compliance history when rendering its Decision. If the Company does not request review of the Staff Delisting Determination then the Company's securities will be suspended as described in the Staff Delisting Determination.

(5) **Request for Hearings Panel Reconsideration**

A Company may request, in writing, that the Hearings Panel reconsider a Panel Decision only upon the basis that a mistake of material fact existed at the time of the Panel Decision. The Company's request for reconsideration shall be made within seven calendar days of the date of issuance of the Panel Decision. A Company's request for reconsideration will not stay a delisting determination or suspension of trading of the Company's securities, unless the Hearings Panel, before the scheduled date for suspension, issues a written determination staying the suspension and/or reversing the determination to delist. A Company's request for reconsideration will not extend the time for the Company to initiate the Listing Council's review of the Panel Decision.

If the Hearings Panel grants a Company's reconsideration request, it will issue a modified Decision meeting the requirements of Rule 5840(c) within 15 calendar days of the date of the original Panel Decision, or lose jurisdiction over the matter. If the Listing Council calls a Panel Decision for review on the same issue that the Company has requested reconsideration by the Hearings Panel, the Listing Council may assert jurisdiction over the initial Panel Decision or permit the Hearings Panel to proceed with the reconsideration and issue a new Decision.

5820. Appeal to the Nasdaq Texas Listing and Hearing Review Council

A Company may appeal a Panel Decision to the Listing Council. The Listing Council may also call for review a Panel Decision on its own initiative. This Rule 5820 describes the procedures applicable to appeals and calls for review.

(a) **Procedure for Requesting Appeal**

A Company may appeal any Panel Decision to the Listing Council by submitting a written request for appeal and a non-refundable fee of $15,000 to the Nasdaq Texas Office of Appeals and Review within 15 calendar days of the date of the Panel Decision. An appeal will not operate as a stay of the Panel Decision. Upon receipt of the appeal request and the applicable fee, the Nasdaq Texas Office of Appeals and Review will acknowledge the Company's request and provide deadlines for the Company to provide written submissions. No payment will be credited and applied towards the appeal fee unless the issuer has previously paid all applicable fees due to the Exchange.

(b) **Procedures for Initiating Call for Review**

The Listing Council may also call for review any Panel Decision upon the request of one or more members of the Listing Council within 45 calendar days of the date of the Panel Decision. The Office of Appeals and Review will promptly inform the Company of the reasons for the review and provide a deadline for written submissions. A call for review by the Listing Council will not operate as a stay of the Panel Decision, unless the call for review specifies to the contrary. The Listing Council may withdraw the call for review of a Panel Decision at any time.

(c) **Composition of Listing Council**

The Listing Council is a committee appointed by the Nasdaq Texas Board of Directors pursuant to the Nasdaq Texas By-Laws whose responsibilities include the review of Panel Decisions by a Hearings Panel.

(d) **Scope of Listing Council's Discretion**

(1) The Listing Council may, where it deems appropriate, affirm, modify, or reverse the Panel Decision, or remand the matter to the Listing Qualifications Department or to the Hearings Panel for further consideration. The Listing Council may grant an exception for a period not longer than 360 calendar days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted. The Listing Council also may issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated a Nasdaq Texas corporate governance or notification listing standard (other than one required by Rule 10A-3 or Rule 10D-1 under the Act) and the Listing Council determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Listing Council will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.

(2) The Listing Council may consider any failure to meet any quantitative standard or qualitative consideration for initial or continued listing, including failures previously not considered by the Hearings Panel. The Listing Council may also consider any action taken by a Company during the review process that would have constituted a violation of Nasdaq Texas' corporate governance requirements had the Company's securities been trading on Nasdaq Texas at the time. The Company will be afforded written notice of such consideration and an opportunity to respond.

(3) Under the authority described in the Rule 5100 Series, the Listing Council may subject the Company to additional or more stringent criteria for the initial or continued listing of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities inadvisable or unwarranted in its opinion, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq Texas.

(4) In the case of a Company that fails to file a periodic report (e.g., Form 10-K, 10-Q, 20-F, 40-F, or N-CSR), the Listing Council may grant an exception for a period not to exceed 360 days from the due date of the first such late periodic report. The Company can regain compliance with the requirement by filing that periodic report and any other delinquent reports with due dates falling before the end of the exception period. In determining whether to grant an exception, and the length of any such exception, the Listing Council will consider the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the

Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

(5) In the case of a Company that fails to hold an annual meeting, the Listing Council may grant an exception for a period not to exceed 360 days from the deadline to hold the annual meeting (one year after the end of the Company's fiscal year).

(6) The Listing Council may also recommend that the Nasdaq Texas Board consider the matter.

(e) **Listing Council Review Process**

(1) **Review Generally on Written Record**

For each matter before the Listing Council, whether on appeal for call for review, a subcommittee consisting of at least two members of the Listing Council will review the written record, as described in Rule 5840(a). Members of the Listing Council who are not on a subcommittee will be provided with a written summary of the record prepared by an Advisor, and may, but will not be required to, review the written record. The Listing Council shall consider the written record and, at its discretion, may request additional written materials and/or hold additional hearings. If an oral hearing is scheduled, it will take place, to the extent practicable, within 45 days of the date the appeal was submitted or the call for review was initiated.

(2) **Record of Proceedings Maintained**

A record of the documents considered by the Listing Council will be kept by the Nasdaq Texas Office of Appeals and Review.

(3) **Written Decision Issued**

A written Listing Council Decision meeting the requirements of Rule 5840(c) will be issued after approval by at least a majority of the Listing Council. The Listing Council Decision will be promptly provided to the Company and will take immediate effect unless it specifies to the contrary. If the Listing Council determines to delist the Company, the securities of the Company will be immediately suspended, unless the Listing Council Decision specifies to the contrary.

(4) **Reconsideration of a Listing Council Decision**

A Company may request, in writing, that the Listing Council reconsider a Listing Council Decision only upon the basis that a mistake of material fact existed at the time of the Listing Council Decision. The Company's request must be made within seven calendar days of the date of the Listing Council Decision. A Company's request for reconsideration will not stay

a Listing Council Decision unless the Listing Council issues a written determination staying the Decision. If the Listing Council grants a Company's reconsideration request, the Listing Council will issue a modified Decision meeting the requirements of Rule 5840(c) within 15 calendar days of the date of the original Listing Council Decision, or lose jurisdiction over the matter.

(5) **Notice of Board Right to Call**

The Listing Council Decision will provide notice that the Nasdaq Texas Board may call the Listing Council Decision for review pursuant to provisions in Rule 5825.

(6) **Form 25 Notification of Delisting**

If the Listing Council determines to delist the Company and the Nasdaq Texas Board does not call the matter for review or withdraws its call for review, Nasdaq Texas will follow the procedures described in Rule 5830 to submit an application on Form 25 to the Securities and Exchange Commission to delist the security.

5825. Discretionary Review by Nasdaq Texas Board

(a) **Review at Discretion of Board**

A Panel Decision, in a matter where the Hearings Panel has granted the maximum exception period and the Listing Council is precluded from granting additional time under Rules 5815(c)(1)(F) and 5820(d)(4), or a Listing Council Decision may be called for review by the Board of Directors of Nasdaq Texas (the "Nasdaq Texas Board") solely upon the request of one or more Board members not later than the next Nasdaq Texas Board meeting that is 15 calendar days or more following the date of the Panel or Listing Council Decision. This review will be undertaken solely at the discretion of the Nasdaq Texas Board and will not operate as a stay of the Panel or Listing Council Decision, unless the Board's call for review specifies to the contrary. At the sole discretion of the Nasdaq Texas Board, it may withdraw its call for review of a Panel or Listing Council Decision at any time before issuance of a Decision.

(b) **Scope of Discretion of Board**

The Board may consider any failure to meet any quantitative standard or qualitative consideration for initial or continued listing, including failures previously not considered by the Listing Council. It may also consider any action taken by a Company during the review process that would have constituted a violation of Nasdaq Texas' corporate governance requirements had the Company's securities been trading on Nasdaq Texas at the time. The Company will be afforded written notice of such consideration and an opportunity to respond. Pursuant to the Rule 5100 Series, the Board may subject the Company to additional or more stringent criteria for the initial or continued listing of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the

securities inadvisable or unwarranted in its opinion, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq Texas.

(c) **Review on Written Record**

If the Nasdaq Texas Board conducts a discretionary review, the review generally will be based on the written record considered by the Hearings Panel or Listing Council. However, the Nasdaq Texas Board may, at its discretion, request and consider additional information from the Company and/or from Staff. If the Board considers additional information, a record of the documents reviewed by the Nasdaq Texas Board will be kept by the Nasdaq Texas Office of Appeals and Review.

(d) **Board Decision**

If the Nasdaq Texas Board conducts a discretionary review, the Company will be provided a written Decision that meets the requirements of Rule 5840(c). The Nasdaq Texas Board may affirm, modify or reverse the Panel or Listing Council Decision and may remand the matter to the Listing Council, Hearings Panel, or staff of the Listing Qualifications Department with appropriate instructions. The Nasdaq Texas Board also may issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated a Nasdaq Texas corporate governance or notification listing standard (other than one required by Rule 10A-3 or Rule 10D-1 under the Act) and the Nasdaq Texas Board determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Nasdaq Texas Board will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations. The Decision of the Nasdaq Texas Board will take immediate effect, unless it specifies to the contrary, and represents the final action of Nasdaq Texas. If the Nasdaq Texas Board determines to delist the Company, the securities of the Company will be immediately suspended, unless the Nasdaq Texas Board specifies to the contrary, and Nasdaq Texas will follow the procedures contained in Rule 5830 and submit an application on Form 25 to the Commission to strike the security from listing.

5830. Finality of Delisting Determination

When Nasdaq Texas has made a final determination to delist a Company's securities, it will follow procedures consistent with the Act to strike the security from listing. Nasdaq Texas' determination to delist a Company's securities is final when, after a Delisting Determination has been issued, all available review and appeal procedures and periods available under these Rules have expired.

Nasdaq Texas will issue a press release and post a notice on its website announcing its final determination to remove a security from listing, consistent with Rule 12d2-2 under the Act. Under Rule 12d2-2, Nasdaq Texas must disseminate this public notice not less than 10 days before the delisting becomes effective and maintain the website notice until the delisting is effective. Following the public notification, Nasdaq Texas will file an application on Form 25

with the Commission to delist the security, and will promptly provide a copy of that Form 25 to the Company. The delisting of the security becomes effective 10 days after the Form 25 is filed pursuant to Rule 12d2-2(d)(1) under the Act, unless the Commission postpones the delisting pursuant to Rule 12d2-2(d)(3).

5835. Rules Applicable to Adjudicators and Advisors

(a) **Ex Parte Communications**

(1) **No Ex parte Communications**

No member of the staff of the Listing Qualifications Department or its counsel, and no Company representative will make or knowingly cause to be made an ex parte communication relevant to the merits of a proceeding under this Section to an Adjudicator or any Advisor.

Similarly, no Adjudicator who is participating in a Decision with respect to a proceeding under this Section, and no Advisor with respect to such a proceeding, will make or knowingly cause to be made an ex parte communication relevant to the merits of that proceeding to a Company representative, a member of the staff of the Listing Qualifications Department or its counsel.

(2) An Adjudicator or Advisor who is participating in or advising with respect to a proceeding who receives, makes, or knowingly causes to be made an ex parte communication relevant to the merits of a proceeding will place a copy of it, or its substance if it is an oral communication, in the record of the proceeding. Staff of the Listing Qualifications Department or the Company, as applicable, will be permitted to respond to the ex parte communication, and any response will be placed in the record of the proceeding.

(b) **No Communications Between Adjudicatory Bodies**

(1) Members of a Hearings Panel and their Advisors who are participating in a proceeding under this Section are prohibited from making communications relevant to the merits of such proceeding to members of the Listing Council or the Nasdaq Texas Board or their respective Advisors.

(2) Members of the Listing Council and their Advisors are prohibited from making communications relevant to the merits of a proceeding under this Rule 5800 Series to members of a Hearings Panel who are participating in such proceeding or their Advisors, or members of the Nasdaq Texas Board or their Advisors.

(3) Members of the Nasdaq Texas Board and their Advisors are prohibited from making communications relevant to the merits of a proceeding under this Rule 5800 Series to members of a Hearings Panel who are participating in such proceeding or their Advisors, or members of the Listing Council or their Advisors.

(4) An Adjudicator or Advisor who is participating in or advising with respect to a proceeding who receives, makes, or knowingly causes to be made a communication prohibited by paragraphs (1) - (3) above will place a copy of it, or its substance if it is an oral communication, in the record of the proceeding. Staff of the Listing Qualifications Department and the Company will be permitted to respond to the communication, and any such response will be placed in the record of the proceeding.

(c) **Recusal or Disqualification**

No person will serve as a member of a Hearings Panel, or participate as a member of the Listing Council, the Nasdaq Texas Board, the staff of the Listing Qualifications Department or Advisor to an Adjudicator, in a matter as to which he or she has a conflict of interest or bias, or circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the person will recuse himself or herself, or will be disqualified.

(1) **Exchange of Biographical Information**

To facilitate the process for recusal and disqualification, at least five days before any proceeding under this Section, the Company will provide the Hearings Department or the Advisor to the Listing Council or the Nasdaq Texas Board, as applicable, with names and biographical information of each person who will appear on behalf of the Company at the proceeding, and the Hearings Department or Advisor, as applicable, will provide the Company and the Staff with names and biographical information of the Adjudicators for the proceeding; provided, however, that with respect to proceedings before the Listing Council or the Nasdaq Texas Board, the Advisor to the respective Adjudicatory Body may post names and biographical information of each Adjudicator on a publicly available website in lieu of providing them directly to the Company.

(2) **Disqualification Procedures**

A Company or the Staff of the Listing Qualifications Department may file a request to disqualify an Adjudicator. A request to disqualify will be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Adjudicator's fairness might reasonably be questioned, and will be accompanied by a statement setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the party learned of those facts. A request to disqualify must be filed (A) not later than two business days after the party was provided with the name and biographical information of the Adjudicator, or (B) if the name and biographical information of the Adjudicator was posted on a website, not later than two business days after the Company requested Listing Council review or received notice of discretionary review by the Listing Council or the Nasdaq Texas Board. A request for disqualification of an Adjudicator will be decided by the party with authority to order disqualification of such Adjudicator, as detailed below, who will promptly investigate whether disqualification is required and issue a written response to the request.

(A) **Nasdaq** Texas **Board**

The Chair of the Nasdaq Texas Board will have authority to order the disqualification of a Director, and a majority of the Nasdaq Texas Board excluding the Chair of the Nasdaq Texas Board will have authority to order the disqualification of the Chair.

(B) **Listing Council**

A Chair of the Listing Council will have authority to order the disqualification of a member of the Listing Council, and a majority of the Listing Council excluding any Chairs of the Listing Council will have authority to order the disqualification of a Chair of the Listing Council.

(C) **Staff of Listing Qualifications Department; Panelist of Hearings Panel**

The General Counsel of Nasdaq Texas will have authority to order the disqualification of (i) a member of the staff of the Listing Qualifications Department reviewing the qualifications of a Company, (ii) a member of a Hearings Panel, or (iii) an Advisor to an Adjudicatory Body.

5840. Adjudicatory Process: General Information

(a) **Record on Review**

At each level of a proceeding under this Section, the written record may consist of the following items, as applicable: correspondence between Nasdaq Texas and the Company; the Company's public filings; information released to the public by the Company; written submissions, exhibits, or requests submitted by either the Company or the Listing Qualifications Department and responses thereto; and any additional information considered by the Adjudicatory Body as part of the review process. The written record will be supplemented by the transcript of any hearings held during the review process and all Decisions issued.

At each level of review under this Section, the Company will be informed of the contents of the written record. The Company will be provided a copy of any documents in the record that were not provided by the Company or are not publicly available, at least three calendar days before the deadline for Company submissions, unless the Company waives this production.

If additional issues arising under the Rule 5000 Series are considered, as permitted by the 5800 Series, the notice of such consideration and any response to such notice shall be made a part of the record.

(b) **Additional Information Requested or Considered**

At each level of a proceeding under this Section, the Adjudicatory Body, as part of its review:

(1) may request additional information from the Company or the Listing Qualifications Department; and

(2) may consider additional information available from other sources it deems relevant. The Company and the Listing Qualifications Department will be afforded written notice and an opportunity to address the significance of any information requested or considered, and the notice, responses to the notice, and the information considered will be made part of the record.

(c) **Contents of Decisions**

Each Adjudicatory Body's written Decision will include:

(1) a statement describing the procedural history of the proceeding, including investigations or reviews undertaken by the Listing Qualifications Department;

(2) the quantitative or qualitative standard that the Company is alleged to have failed to satisfy;

(3) a statement setting forth the findings of fact with respect to the Company;

(4) the conclusions of the Adjudicatory Body as to whether the Company has failed to satisfy the quantitative or qualitative standards for initial or continued listing; and

(5) a statement of the Adjudicatory Body in support of its disposition of the matter, and, if applicable, the rationale for any exception to the initial or continued listing requirements granted.

(d) **Correction of Clerical Errors**

The Hearings Panel and the Listing Council may correct clerical or other non-substantive errors in their respective Decisions either on their own motion or at the request of a Company. A copy of any such corrected Decision will be provided to the Company.

(e) **Computation and Adjustment of Time**

(1) Except as described in paragraph (2) below, in counting any time under this Section, the day of the act, event, or default from which the period of time begins to run, is not to be included. The last day of the period is included, unless it is a Saturday, Sunday, federal holiday, or Nasdaq Texas holiday in which case the period runs until the end of the next day that is not a Saturday, Sunday, federal holiday or Nasdaq Texas holiday.

(2) When Staff determines whether a deficiency has occurred with respect to the Bid Price, Market Value of Listed Securities, or Market Value of Publicly Held Shares requirements, the first trading day that the Bid Price or Market Value is below required standards is included in computing the total number of consecutive trading days of default. Similarly, when Staff determines whether a Company has regained compliance with the Bid Price, Market Value of Listed Securities, or Market Value of Publicly Held Shares requirements,

the first trading day that the Bid Price or Market Value is at or above required standards is included in computing the total number of consecutive trading days.

(3) If the Office of General Counsel determines that notice required to be provided under this Section was not properly given or that other extenuating circumstances exist, the Hearings Department may adjust the periods of time provided by the rules for the filing of written submissions, the scheduling of hearings, or the performance of other procedural actions by the Company or an Adjudicator, as applicable, to allow the Company or the Adjudicator the time contemplated by these rules.

(4) A Company may waive any notice period specified in this Section.

(f) **Delivery of Documents**

Delivery of any document under this Section may be made by electronic delivery, hand delivery, facsimile, regular mail or overnight courier. Delivery will be considered timely if the electronic delivery, hand delivery, fax, or overnight courier is received on or before the relevant deadline. If a Company has not specified a facsimile number, e-mail address, or street address, delivery will be made to the last known facsimile number, e-mail address, and street address. If a Company is represented by counsel or a representative, delivery may be made to the counsel or representative.

(g) **Document Retention Procedures**

Any document submitted to Nasdaq Texas in connection with a proceeding under this Section will be retained in accordance with applicable record retention policies.

(h) **Documentation of Decisions**

The Listing Qualifications Department or the Advisor to an Adjudicatory Body, as applicable, shall document the date on which a Decision with respect to a Company is implemented.

(i) **Re-Listing of a Company**

A Company that has been the subject of a Decision by an Adjudicatory Body to delist such Company shall be required, prior to re-listing, to comply with the requirements for initial listing. A Company that has been suspended but that has not been the subject of such a Decision shall be required, prior to re-listing, to comply with requirements for continued listing.

(j) **Voluntary Delisting**

(1) A Company may voluntarily terminate its listing upon compliance with all requirements of Rule 12d2-2(c) under the Act. In part, Rule 12d2-2(c) requires that the Company may delist by filing an application on Form 25 with the Commission, provided that the Company: (i) complies with all applicable laws in effect in the state in which it is

incorporated and with the applicable Nasdaq Texas Rules; (ii) provides notice to Nasdaq Texas no fewer than 10 days before the Company files the Form 25 with the Commission, including a statement of the material facts relating to the reasons for delisting; and (iii) contemporaneous with providing notice to Nasdaq Texas, publishes notice of its intent to delist, along with its reasons therefore, via a press release and on its web site, it if has one. Any notice provided on the Company's web site pursuant to Rule 12d2-2(c) must remain available until the delisting has become effective. The Company must also provide a copy of the Form 25 to Nasdaq Texas simultaneously with its filing with the Commission. Nasdaq Texas will provide notice on its web site of the Company's intent to delist as required by Rule 12d2-2(c)(3).

(2) A Company that seeks to voluntarily delist a class of securities pursuant to Rule 5840(j)(1) that has received notice from Nasdaq Texas, pursuant to the Rule 5800 Series or otherwise, that it fails to comply with one or more requirements for continued listing, or that is aware that it is below such continued listing requirements notwithstanding that it has not received such notice from Nasdaq Texas, must disclose this fact (including the specific continued listing requirement that it is below) in: (i) its statement of all material facts relating to the reasons for withdrawal from listing provided to Nasdaq Texas along with written notice of its determination to withdraw from listing required by Rule 12d2-2(c)(2)(ii) under the Act; and (ii) its press release and web site notice required by Rule 12d2-2(c)(2)(iii) under the Act.

(k) **Disclosure of Public Reprimand Letter**

A Company that receives an Adjudicatory Body Decision that serves as a Public Reprimand Letter must make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing the receipt of the Decision, including the Rule(s) upon which the Decision was based. As described in Rule 5250(b)(1) and IM-5250-1, the Company must notify Nasdaq Texas' MarketWatch Department about the announcement through the electronic disclosure submission system available at www.nasdaq.net, except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during Nasdaq Texas market hours, the Company must notify MarketWatch at least ten minutes prior to the announcement. If the public announcement is made outside of Nasdaq Texas market hours, the Company must notify MarketWatch of the announcement prior to 6:50 a.m. ET. The Company should make the public announcement as promptly as possible but not more than four business days following receipt of the Decision.

(l) **Disclosure by Nasdaq Texas**

In order to maintain the quality of and public confidence in its market and to protect investors and the public interest, Nasdaq Texas may, at any level of a proceeding under this Rule 5800 Series, make a public announcement, including by press release, describing a notification, Public Reprimand Letter, Staff Delisting Determination, Adjudicatory Body Decision, or other event involving a Company's listing or trading on Nasdaq Texas.

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General Equity and Option Rules

GENERAL 1 GENERAL PROVISIONS

Section 1 Definitions

(a) No change.

(b) Unless the context otherwise requires:

(1) – (21) No change.

(22) The term "Limited Underwriting Member" means a broker or dealer admitted to limited underwriting membership in Nasdaq Texas.

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GENERAL 3 MEMBERSHIP AND ACCESS

Section 1. Membership, Registration and Qualification Requirements

Series 1000 of the Rules of the Nasdaq Stock Market, LLC ("Nasdaq"), as such rules may be in effect from time to time (the "Nasdaq Rule 1000 Series"), are hereby incorporated by reference into this Nasdaq BX Rule 1000 Series (other than Nasdaq Rules [1031,]1050, 1090, 1130, 1150, 1160, and 1170), and are thus Nasdaq BX Rules and thereby applicable to Nasdaq BX Members, Associated Persons, and other persons subject to the Exchange's jurisdiction. Nasdaq BX Members, Associated Persons, and other persons subject to the Exchange's jurisdiction shall comply with the Nasdaq Rule 1000 Series as though such rules were fully set forth herein. All defined terms, including any variations thereof, contained in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq BX-related meaning of such term. The defined terms "Exchange" or "Nasdaq" shall be read to refer to the Nasdaq BX Exchange; "Rule" or "Exchange Rule" shall be read to refer to the Exchange Rules; the defined term "Applicant" in the Nasdaq Rule 1000 Series shall be read to refer to an Applicant to the Nasdaq BX Exchange; the defined terms "Board" or "Exchange Board" in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq BX Board of Directors; the defined term "Director" in the Nasdaq Rule 1000 Series shall be read to refer to a Director of the Board of the Nasdaq BX Exchange; the defined term "Exchange Review Council" in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq BX Exchange Review Council; the defined term "Subcommittee" in the Nasdaq Rule 1000 Series shall be read to refer to a Subcommittee of the Nasdaq BX Exchange Review Council; the defined term "Interested Staff" in the Nasdaq Rule 1000 Series shall be read to refer to Interested Staff of Nasdaq BX; the defined term "Member" in the Nasdaq Rule 1000 Series shall be read to refer to a Nasdaq BX Member; the defined term "Associated Person" shall be read to refer to a Nasdaq BX Associated Person; the defined terms "Exchange Membership Department" or

"Membership Department" shall be read to refer to the Nasdaq BX Membership Department; and the defined term "Exchange Regulation Department" shall be read to refer to the Nasdaq BX Regulation Department.

Additionally, cross references in the Nasdaq Rule 1000 Series to "Rule 0120" shall refer to Nasdaq BX General 1 and Equity 1, cross references in the Nasdaq Rule 1000 Series to Rule 3010 shall refer to Nasdaq BX Rule 3010; cross references in the Nasdaq Rule 1000 Series to Rule 3011 shall refer to Nasdaq BX Rule 3011; and cross references to "General 4, Section 1200 Series" shall be read to refer to Nasdaq BX General 4, Section 1.

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Equity Rules

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EQUITY 3 [BX VENUTRE MARKET LISTING RULES]Reserved

[5001. The Qualification, Listing, and Delisting of Companies

This Rule 5000 Series (consisting of Rules 5000-5999) contains rules related to the qualification, listing and delisting of Companies on the Nasdaq BX listing platform called the "BX Venture Market". Companies listed on the BX Venture Market do not qualify, as a result of such listing, for any exemption to the application of the penny stock rules or state securities registration requirements. The Exchange will take action, pursuant to the Rule 5100 Series, to delist any Company listed on the BX Venture Market that attempts to rely on an exemption from state securities registration which may otherwise be available to Companies listed on the Exchange.

The Rule 5100 Series (consisting of Rules 5100-5199) discusses the Exchange's general regulatory authority. The Rule 5200 Series (consisting of Rules 5200-5299) sets forth the procedures and prerequisites for gaining a listing on the Exchange, as well as the disclosure obligations of listed Companies. The Rule 5500 Series (consisting of Rules 5500-5599) contains the specific quantitative listing requirements for listing on the Exchange. The corporate governance requirements applicable to Companies listed on the Exchange are contained in the Rule 5600 Series (consisting of Rules 5600-5699). The consequences of a failure to meet the Exchange's listing standards are contained in the Rule 5800 Series (consisting of Rules 5800-5899). Finally, Company listing fees are described in the Rule 5900 Series (consisting of Rules 5900-5999).

The Exchange exercises other authorities important to listed Companies discussed in other Rules Series in the Marketplace Rules. For example, the Exchange may close markets upon request of the SEC (see Rule 4121). It may also halt the trading of a Company's securities under certain circumstances and pursuant to established procedures (See Rule 4120 and IM-5250-1). These authorities are exercised primarily by the MarketWatch Department and are contained in the Rule 4000 Series.

The Exchange is a party to a regulatory contract with the Financial Industry Regulatory Authority, Inc. ("FINRA") and a separate regulatory contract with The Nasdaq Stock Market LLC ("Nasdaq") pursuant to which FINRA and Nasdaq have agreed to perform certain functions described in the Rules on behalf of the Exchange. Notwithstanding the fact that the Exchange has entered into these regulatory contracts to perform some of the Exchange's functions, the Exchange shall retain ultimate legal responsibility for, and control of, such functions.]

[5005. Definitions

(a) The following is a list of definitions used throughout the Listing Rules. This section also lists various terms together with references to other rules where they are specifically defined. Unless otherwise specified by the Rules, these terms shall have the meanings set forth below. Defined terms are capitalized throughout the Listing Rules.

(1) "**Act**" means the Securities Exchange Act of 1934.

(2) "**Bid Price**" means the closing bid price.

(3) "**Commission**" or "**SEC**" means the United States Securities and Exchange Commission.

(4) "**Company**" means the issuer of a security listed or applying to list on the Exchange. For purposes of the Rule 5000 Series, the term "Company" includes an issuer that is not incorporated, such as, for example, a limited partnership.

(5) "**Country of Domicile**" means the country under whose laws a Company is organized or incorporated.

(6) "**Direct Registration Program**" means any program by a Company, directly or through its transfer agent, whereby a Shareholder may have securities registered in the Shareholder's name on the books of the Company or its transfer agent without the need for a physical certificate to evidence ownership.

(7) "**EDGAR System**" means the SEC's Electronic Data Gathering, Analysis, and Retrieval system.

(8) "**ESOP**" means employee stock option plan.

(9) "**Executive Officer**" is defined in Rule 5605(a)(1).

(10) "**Filed with the Exchange**" means submitted to the Exchange directly or filed with the Commission through the EDGAR System.

(11) "**Family Member**" is defined in Rule 5605(a)(2).

(12) "**Foreign Private Issuer**" shall have the same meaning as under Rule 3b-4 under the Act.

(13) "**Independent Director**" is defined in Rule 5605(a)(2).

(14) "**Listed Securities**" means securities listed on the Exchange or another national securities exchange.

(15) "**Market Value**" means the consolidated closing bid price multiplied by the measure to be valued (e.g., a Company's Market Value of Listed Securities is equal to the consolidated closing bid price multiplied by the number of the Company's Listed Securities).

(16) "**Member**" means a broker or dealer admitted to membership on the Exchange.

(17) "**Market Maker**" means a dealer that, with respect to a security, holds itself out (by entering quotations in the Exchange) as being willing to buy and sell such security for its own account on a regular and continuous basis and that is registered as such.

(18) "**Other Regulatory Authority**" means, in the case of a bank or savings authority identified in Section 12(i) of the Act, the agency vested with authority to enforce the provisions of Section 12 of the Act.

(19) "**Primary Equity Security**" means a Company's first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests, American Depositary Receipts (ADR) or American Depositary Shares (ADS).

(20) "**Publicly Held Shares**" means shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding. Determinations of beneficial ownership in calculating publicly held shares shall be made in accordance with Rule 13d-3 under the Act.

(21) "**Public Holders**" means holders of a Security that includes both beneficial holders and holders of record, but does not include any holder who is, either directly or indirectly, an Executive Officer, director, or the beneficial holder of more than 10% of the total shares outstanding.

(22) "**Round Lot**" or "**Normal Unit of Trading**" means 100 shares of a Security unless, with respect to a particular Security, the Exchange determines that a normal unit of trading shall constitute other than 100 shares. If a normal unit of trading is other than 100 shares, a special identifier shall be appended to the Company's Exchange symbol.

(23) "**Round Lot Holder**" means a holder of a Normal Unit of Trading. The number of beneficial holders will be considered in addition to holders of record.

(24) "**Sarbanes-Oxley Act**" means the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212).

(25) "**Security**" means a Company's Common Stock, Preferred Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests, American Depositary Receipts (ADR), American Depositary Shares (ADS), Units, Rights or Warrants.

(26) "**Shareholder**" means a record or beneficial owner of a Security listed or applying to list. For purposes of the Rule 5000 Series, the term "Shareholder" includes, for example, a limited partner, the owner of a depository receipt, or unit.

(27) "**Substitution Listing Even**t" means: a reverse stock split, re-incorporation or a change in the Company's place of organization, the formation of a holding company that replaces a listed Company, reclassification or exchange of a Company's listed shares for another Security, the listing of a new class of securities in substitution for a previously-listed class of securities, or any technical change whereby the Shareholders of the original Company receive a share-for-share interest in the new Company without any change in their equity position or rights.]

[**5100. The Exchange's Regulatory Authority**]
[**5101. Preamble to the Rule 5100 Series**

The Exchange is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. The Exchange stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy and supporting the capital formation process. The Exchange's Companies are publicly recognized as sharing these important objectives.

Consistent with these goals, and mindful of the smaller size and liquidity characteristics of certain of the Companies that may list on the Exchange, the Exchange will provide expert surveillance of market activity in listed companies by experienced market regulators, as described in Rule 5105. It has also adopted rules to ensure that investors may clearly distinguish BX Venture Market listed securities from those listed on Nasdaq or other national securities exchanges, as described in Rule 5106. In addition, the Exchange require that companies undergo a rigorous review process before being approved for listing, and are subject to heightened regulatory oversight thereafter. The additional listing procedures and requirements will be enforced by the highly qualified, experienced listing staff in Nasdaq's Listing Qualifications Department, as described in Rule 5102. This staff also has discretionary authority to deny listing to otherwise qualified companies where necessary to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. This authority is described in Rule 5104 and IM-5104-1-4.]

[**5102. Experienced Listing Qualifications Staff**

The Exchange will employ the staff in Nasdaq's Listing Qualifications Department to apply and enforce its listing standards pursuant to a regulatory contract. Notwithstanding this contractual arrangement, the Exchange retains ultimate legal responsibility for and control of these

functions. Staff in the Nasdaq Listing Qualifications Department have substantial experience in regulating listed companies. In addition to the review of companies seeking a listing as described in Rule 5205, the Department will monitor compliance with all listing standards on an on-going basis through the regular review of public filings, Form 8-K disclosures, press releases, market data, and closing bid price.

The Department also includes within it a group dedicated to the investigation of companies and the screening for potential public interest concerns. The investigative group will be supervised by at least one individual with substantial prior regulatory experience at a national securities exchange or experience with the SEC's Enforcement Division, FINRA, or another organization with responsibilities for enforcing the federal securities laws. Oversight of the listings program will similarly include at all times at least one individual with substantial prior experience in supervising a listing program at a national securities exchange that currently has an active listing program. In addition, the Chief Regulatory Offer of the Exchange will be required to have substantial prior regulatory experience with a national securities exchange or equivalent experience.]

[**5103. Automatic Bars to Listing**

(a) Regulatory History. The Exchange will not approve for listing or allow the continued listing of a Company if any executive officer, director, promoter, or control person was involved in any event that occurred during the prior five years described in Item 401(f)(2) - (8) of Regulation S-K under the Act. In addition, as discussed more fully in Rule 5104 and IM-5104-1, the Exchange will ordinarily exercise its discretion to deny listing when it determines that an executive officer, director, promoter, or control person of the Company has a history of regulatory misconduct that does not implicate this automatic bar. Any determination to list or allow the continued listing of such a Company will only be made after consideration of factors set forth in IM-5104-1 and with the written approval of the Chief Regulatory Officer of the Exchange.

(b) Public Shells. The Exchange will not approve for listing or allow the continued listing of "shell" Companies. In determining whether a Company is a shell, the Exchange will look to a number of factors, including but not limited to: whether the Company is considered a "shell company" as defined in Rule 12b-2 under the Act; what percentage of the Company's assets are active versus passive; whether the Company generates revenues, and if so, whether the revenues are passively or actively generated; whether the Company's expenses are reasonably related to the revenues being generated; how many employees support the Company's revenue-generating business operations; how long the Company has been without material business operations; and whether the Company has publicly announced a plan to begin operating activities or generate revenues, including through a near-term acquisition or transaction.

(c) Impermissible Claims of Exemptions. Companies listed on the BX Venture Market do not qualify, as a result of such listing, for any exemption from the application of the penny stock rules contained in Rules 15g-1 through 15g-100 under the Act or state securities registration requirements. The Exchange will not list any Company, and will delist any listed Company that attempts to rely on an exemption from state securities registration which otherwise may be available under state law to Companies listed on the Exchange.]

[**5104. Discretionary Authority**

The Exchange, in addition to applying the enumerated criteria set forth in the Rule 5000 Series, has broad discretionary authority over the initial and continued listing of securities in the BX Venture Market in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. The Exchange may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on the BX Venture Market inadvisable or unwarranted in the opinion of the Exchange, even though the securities meet all enumerated criteria for initial or continued listing on the BX Venture Market. In all circumstances where the Listing Qualifications Department (as defined in Rule 5805) exercises its discretionary authority under this Rule, the Listing Qualifications Department shall issue a Staff Delisting Determination under Rule 5810(c)(1), and in all circumstances where an Adjudicatory Body (as defined in Rule 5805) exercises such authority, the use of the authority shall be described in the written decision of the Adjudicatory Body.

Although the Exchange has broad discretion under this Rule to impose additional or more stringent criteria, the Rule does not provide a basis for the Exchange to grant exemptions or exceptions from the enumerated criteria for initial or continued listing, which may be granted solely pursuant to rules explicitly providing such authority.]

[**IM-5104-1. Use of Discretionary Authority in the Case of a Regulatory History That Does Not Implicate the Automatic Bar.**

The Exchange ordinarily will use its discretionary authority to deny initial or continued listing to a Company when an individual with a history of regulatory misconduct is associated with the Company even though that history does not lead to the automatic bar described in Rule 5103(a). However, in limited circumstances, it may determine to allow the listing of such Company, provided it obtains the written approval of the Chief Regulatory Officer of the Exchange. In determining whether to list such a Company, the Exchange will consider the totality of information in its possession, including the information provided by a an independent qualified third party investigator as described in Rule 5205(d), as well the following factors:

- the nature and severity of the conduct, taken in conjunction with the length of time since the conduct occurred;
- whether the conduct involved fraud or dishonesty;
- whether the conduct was securities-related;
- whether the investing public was involved;
- whether the conduct demonstrates a propensity for financial mismanagement;

- how the individual has been employed since the violative conduct;
- whether there are continuing sanctions (either criminal or civil) against the individual;
- whether the individual made restitution;
- whether the Company has taken effective remedial action; and
- the totality of the individual's relationship to the Company, giving consideration to:
  - -the individual's current or proposed position;
  - -the individual's current or proposed scope of authority;
  - -the extent to which the individual has responsibility for financial accounting or reporting; and
  - -the individual's equity interest.

The Exchange may determine that the regulatory history rises to the level of a public interest concern, but may also consider whether remedial measures proposed by the Company, if taken, would allay that concern. Examples of such remedial measures could include any or all of the following, as appropriate:

- the individual's resignation from officer, director or promoter positions, and/or other employment with the Company;
- divestiture of stock holdings;
- terminations of contractual arrangements between the Company and the individual; or
- the establishment of a voting trust surrounding the individual's shares.

The Exchange Staff is willing to discuss with Companies, on a case-by-case basis, what remedial measures may be appropriate to address public interest concerns, and for how long such remedial measures would be required. Alternatively, the Exchange may conclude that a public interest concern is so serious that no remedial measure would be sufficient to alleviate it. In the event that the Exchange Staff denies initial or continued listing based on such public interest considerations, the Company may seek review of that determination through the procedures set forth in the Rule 5800 Series. On consideration of such appeal, a Hearings Panel comprised of persons independent of the Exchange may accept, reject or modify the Staff's recommendations by imposing conditions.]

[**IM-5104-2. Use of Discretionary Authority Based on Financial Disclosures**

The Exchange may use its discretionary authority to delist a Company when a Company files for protection under any provision of the federal bankruptcy laws or comparable foreign laws, when a Company's independent accountants issue a disclaimer opinion on financial statements required to be audited, or when financial statements do not contain a required certification.]

[**IM-5104-3. Use of Discretionary Authority Based on Past Corporate Governance Issues**

The Exchange will review the Company's past corporate governance activities. This review may include activities taking place while the Company is listed on the Exchange or an exchange that imposes corporate governance requirements, as well as activities taking place after a formerly listed company is no longer listed on the Exchange or such an exchange. Based on such review, and in accordance with the Rule 5800 Series, the Exchange may take any appropriate action, including placing restrictions on or additional requirements for listing, or denying listing of a Security, if the Exchange determines that there have been violations or evasions of such corporate governance standards. Such determinations will be made on a case-by-case basis as necessary to protect investors and the public interest. Whenever Staff has identified a past violation or evasion of a corporate governance standard pursuant to its review of a Company's past corporate governance activities, but decides not to exercise its discretionary authority to deny listing, the listing must be approved in writing by the Chief Regulatory Officer.]

[**IM-5104-4. Use of Discretionary Authority Based on Publicly Held Shares or Shareholder Count**

The Exchange may apply its authority described in the Rule 5100 Series to deny listing to or delist a Security that meets all applicable listing requirements if the Exchange determines that there are an insufficient number of Publicly Held Shares or Shareholders that are not subject to trading restrictions, such that denial of listing or delisting is necessary to maintain the quality of and public confidence in the market, to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest.]

[**5105. Oversight of Market Activity**

FINRA will regulate market activity on the Nasdaq Texas Venture Market pursuant to a regulatory contract that will be in place before the Market is operational. Notwithstanding the regulatory contract, the Exchange retains ultimate legal responsibility for and control of these functions.

A regulatory review will utilize electronic surveillance patterns calibrated to detect potential issues that may arise in low-priced, less liquid stocks. In addition, a regulatory program will include review of trading that takes place on the over-the-counter market in securities listed on the Nasdaq Texas Venture Market; the activity of firms on the Nasdaq Texas Venture Market; "focused exams" concentrated on sales practices and firm oversight and any other activities required to effectively regulate the Market.

Staff of the Exchange will monitor real-time trading of securities listed on the Nasdaq Texas Venture Market. The Exchange will provide a monthly report to the Directors of the Division of

Trading and Markets and the Office of Compliance, Inspections, and Examinations describing significant developments on the Nasdaq Texas Venture Market. The Exchange's Chief Regulatory Officer will provide quarterly reports to the Directors of the Division of Trading and Markets and the Office of Compliance, Inspections, and Examinations describing the regulatory activities of the Exchange and FINRA during the prior quarter.]

[**5106. Market Data Display Requirements**

To avoid any confusion on the part of the investing public, the Exchange will refer to this listing venue as the BX Venture Market and not as Nasdaq BX. Its communications and marketing literature will include a prominent explanation that the BX Venture Market is separate from and not a tier of The Nasdaq Stock Market. It will include prominent information on its website describing the differences between the BX Venture Market and other national securities exchanges.

Further, the Exchange is committed to ensuring that BX Venture Market securities are clearly distinguished, and distinguishable, from securities listed on the traditional exchanges on its data products and to end-users of the data. To that end, the Exchange will require, through its distribution agreements and global market data policy documents, that market data distributors prominently identify the BX Venture Market as the listing market and, where display of text is not consistent with the display methodology and user needs of the distributor, to use the Market Center identifier "B" to prominently display the listing market with quotation and last sale information for BX Venture Market-listed securities. Every market data vendor that distributes BX Venture Market data to users must have a signed data distribution agreement that will bind the data vendor to these display requirements, backed by contractual sanctions including termination of distribution. The Exchange will have these agreements in place before the BX Venture Market begins operations, and the market center identifier will be distributed and required to be displayed upon the launch of the market. The Exchange will, in connection with the launch, review the displays of data distributors and require immediate compliance if any displays fail to meet the requirements of the market data agreements. Thereafter, the Exchange will conduct periodic audits of all market data vendors to ensure compliance. If a market data vendor does not satisfy the Exchange's display requirements, the Exchange will take action against the vendor, up to and including terminating the vendor's ability to receive data from the Exchange.]

[**5110. Business Combinations with Entities not Listed on the Exchange that Result in a Change of Control**

A Company will not be allowed to remain listed in connection with a transaction whereby the Company combines with an entity not listed on the Exchange, resulting in a change of control of the Company and potentially allowing the non-listed entity to obtain an Exchange listing. The new entity will be subject to all initial listing requirements, application procedures, and public interest reviews. In determining whether a change of control has occurred, the Exchange shall consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the Company. The Exchange shall also consider the nature of the businesses and the relative size of the listed Company and the

non-listed entity. The Company must submit an application for the post-transaction entity with sufficient time to allow the Exchange to complete its review before the transaction is completed. The review will include the background checks associated with the review of any initial listing application, including the potential use of third party firms, as discussed in Rule 5205(d). If the Company's application for initial listing has not been approved prior to consummation of the transaction, the Exchange will issue a Staff Delisting Determination and begin delisting proceedings pursuant to the Rule 5800 Series.]

[5200. General Procedures and Prerequisites for Initial and Continued Listing on the Exchange]
[5205. The Applications and Qualifications Process

(a) Overview

The Exchange may approve a Company for listing after determining that it is not disqualified based on an automatic bar pursuant to Rule 5103; that it meets the Prerequisites to Listing in Rule 5210, the initial Listing Requirements in the Rule 5500 Series, and the Corporate Governance Requirements in the Rule 5600 Series; and that the public interest review has not identified any concerns that call for disapproval pursuant to the Exchange's discretionary authority as set forth in Rule 5104 and IM-5104-1 - 4. In making its determination, the Exchange will consider the totality of information in its possession, including any information provided by an independent qualified third party investigator pursuant to Rule 5205(d).

(b) Application

To apply for listing on the Exchange, a Company shall execute a Listing Agreement and submit a Listing Application on the forms designated by the Exchange providing the information required by Section 12(b) of the Act.

All forms and applications relating to listing of securities on the Exchange referenced in the Rule 5000 Series are available on www.bxventure.com. The Listing Application and process requires the applicant Company to, among other things:

(1) provide detailed descriptions and supporting documentation of all pending or prior inquiries, investigations, lawsuits, litigation, arbitration, hearings or any other legal or administrative proceedings involving current executive officers, directors, promoters, and ten percent or greater shareholders of the Company; all inquiries, investigations, lawsuits, litigation, arbitration, hearings or any other legal or administrative proceedings commenced within the past 10 years involving the Company, its predecessors and subsidiaries; any events described under Item 401(f) of Regulation S-K involving officers, directors, promoters or control persons; all bridge financings, shelf registrations, Regulation S offerings or private placements consummated in the prior six months; and copies of any blue sky memoranda;

(2) file with the Exchange all reports and other documents filed or required to be filed with the Commission or Other Regulatory Authority. This requirement is satisfied by publicly

filing documents through the EDGAR System. All required reports must be filed with the Exchange on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with the Exchange shall contain audited financial statements. A Company's compliance with Rule 5500 Series qualifications will be based on its most recent filings and on financial statements that are either: (i) prepared in accordance with U.S. generally accepted accounting principles; (ii) reconciled to U.S. generally accepted accounting principles as required by the Commission's rules; or (iii) prepared in accordance with International Financial Reporting Standards, as issued by the International Accounting Standards Board, for Companies that are permitted to file financial statements using those standards consistent with the Commission's rules.

(3) provide to the Exchange any information or documentation, public or non-public, deemed necessary to make a determination regarding a Security's initial listing, including, but not limited to, any material provided to or received from the Commission or Other Regulatory Authority. A Company's Security may be denied listing if the Company fails to provide such information within a reasonable period of time or if any communication to the Exchange contains a material misrepresentation or omits material information necessary to make the communication to the Exchange not misleading.

(4) certify that all applicable listing criteria are satisfied; that it is not relying on an exemption from state registration or "blue sky" requirements for companies listed on the Boston Stock Exchange; and to the veracity of all information provided.

(c) Staff Review

(1) In considering a Company's application for listing, Staff shall review all information provided by the Company on its application and pursue additional clarifying documentation from the Company if necessary. In addition, Staff shall:

(A) review the Company's public filings, including the management's discussion and analysis, the stated risk factors, related party transactions, litigation, and the auditor's opinion;

(B) review proxy disclosures to screen for events described under Item 401(f) of Regulation S-K under the Act;

(C) conduct background checks of the Company and affiliated individuals with the use of publicly available databases and other public resources, such as Lexis-Nexis, the Web-CRD regulatory database, and web-based search engines;

(D) refer review of a Company to a qualified independent third party investigative firm in appropriate circumstances, as described below in Section 5205(d).

(2) If the Exchange identifies as a result of its internal review a regulatory issue that triggers an automatic bar under Rule 5103 or another regulatory issue that Staff determines

calls for the exercise of discretionary authority to deny listing under Rule 5104 and the Interpretive Materials thereunder, the application will be disapproved.

(3) If the Exchange identifies as a result of its internal review:

(A) a regulatory event described under Item 401(f)(2)-(8) of Regulation S-K about an officer, director, promoter, or control person that occurred more than five years prior; or

(B) a history of regulatory misconduct by a person that is not an officer, director, promoter, or control person of the Company but who has significant influence on or importance to the Company;

it will ordinarily exercise its discretionary authority to deny listing. However, if the Exchange determines that the information identified may not rise to the level requiring denial of the listing, or if it identifies any issue that raises potential public interest concerns about which it seeks additional information (such as, for example, media accounts of criminal allegations or improper business practices, or indication of financial impropriety) it will refer the Company to an independent qualified third party investigative firm for review, as described in Rule 5205(d) below. A decision to list a Company that has been referred to an outside review pursuant to this paragraph must be approved in writing by the Chief Regulatory Officer of the Exchange. The CRO must also approve the listing of any Company with an officer, director, promoter, or control person that has described a bankruptcy under Item 401(f)(1) of Regulation S-K, and any Company for which Staff has identified a past violation or evasion of a corporate governance standard under IM-5104-3, but decided not to exercise its discretionary authority to deny listing.

(d) Independent Qualified Third-Party Investigative Review

The Exchange will retain an independent qualified third party investigative firm to assist in its public interest review process. Staff will make random, regular referrals to such a firm of at least 10% of applicant companies that were not previously listed on a national securities exchange. In addition, Staff will utilize a third party firm when it would be impractical to research a regulatory history occurring outside the United States. Finally, Staff will seek review of a Company when, as described in paragraph 5205(c)(3) above, the internal review has uncovered a regulatory issue or potential public interest concern that does not trigger an automatic bar and Staff has not made a determination to disapprove the application. While the scope of investigations will vary based on the reasons for review, they generally will focus on criminal history, government sanctions and watchlists, and will also include online and onsite checks of court records, searches of relevant state and country criminal databases, and searches of global risk compliance databases covering government prohibited and barred persons. In appropriate circumstances, the outside firm would be asked to make inquiries with respect to the applicant issuer's business practices, customers, suppliers, or whistle blower complaints.

(e) The procedures and determinations described in this Rule 5205 shall be followed, as applicable, whenever a listed Company names a new officer, director, promoter, or control

person or makes a disclosure of an event described under Item 401(f) of Regulation S-K under the Act, and whenever Staff, in the course of its on-going monitoring of listed Companies, identifies a potential pubic interest concern.]

[**5210. Prerequisites for Applying to List on the Exchange**

All Companies applying to list on the Exchange must meet the following prerequisites:

(a) Registration under 12(b) of the Act

A Security shall be eligible for listing on the Exchange provided that it is:

(1) registered pursuant to Section 12(b) of the Act; or

(2) subject to an exemption issued by the Commission that permits the listing of the Security notwithstanding its failure to be registered pursuant to Section 12(b).

(b) Auditor Registration

Each Company applying for initial listing must be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act.

(c) Direct Registration Program

All securities initially listing on the Exchange must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act. This provision does not extend to non-equity securities that are book-entry only. A Foreign Private Issuer may follow its home country practice in lieu of this requirement by utilizing the process described in Rule 5615(a)(3).

(d) Fees

The Company is required to pay all applicable fees as described in the Rule 5900 Series. The Exchange will not list the Security of any Company that has an outstanding balance with the Exchange or with The Nasdaq Stock Market.

(e) Good Standing

No Security shall be approved for listing that is delinquent in its filing obligation with the Commission or Other Regulatory Authority or suspended from trading by the Commission pursuant to Section 12(k) of the Act or by the appropriate regulatory authorities of the Company's Country of Domicile.

(f) Certification

Upon approval of a listing application, the Exchange shall certify to the Commission, pursuant to Section 12(d) of the Act and the rules thereunder, that it has approved the Security for listing and registration. Listing can commence only upon effectiveness of the Security's registration pursuant to Section 12(d).

(g) Security Depository

(1) "Securities Depository" means a securities depository registered as a clearing agency under Section 17A of the Act.

(2) For initial listing, a Security shall have a CUSIP number or foreign equivalent identifying the securities included in the file of eligible issues maintained by a Securities Depository in accordance with the rules and procedures of such securities depository. This subparagraph shall not apply to a Security if the terms of the Security do not and cannot be reasonably modified to meet the criteria for depository eligibility at all Securities Depositories.

(3) A Security Depository's inclusion of a CUSIP number or foreign equivalent identifying a security in its file of eligible issues does not render the security "depository eligible" under Rule 11310 until:

(A) in the case of any new issue distributed by an underwriting syndicate on or after the date a Securities Depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available, the date of the commencement of trading in such security on the Exchange; or

(B) in the case of any new issue distributed by an underwriting syndicate prior to the date a Securities Depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available where the managing underwriter elects not to deposit the securities on the date of the commencement of trading in such security on the Exchange, such later date designated by the managing underwriter in a notification submitted to the Securities Depository; but in no event more than three (3) months after the commencement of trading in such security on the Exchange.

(h) Limited Partnerships

No security issued in a limited partnership rollup transaction (as defined by Section 14(h) of the Act), shall be eligible for listing unless:

(i) the rollup transaction was conducted in accordance with procedures designed to protect the rights of limited partners as provided in Section 6(b)(9) of the Act, as it may from time to time be amended, and

(ii) a broker-dealer that is a member of a national securities association subject to Section 15A(b)(12) of the Act participates in the rollup transaction.

The Company shall further provide an opinion of counsel stating that such broker-dealer's participation in the rollup transaction was conducted in compliance with the rules of a national securities association designed to protect the rights of limited partners, as specified in the Limited Partnership Rollup Reform Act of 1993.

In addition to any other applicable requirements, each limited partnership listed on the Exchange shall have a corporate general partner or co-general partner that satisfies the audit committee requirements set forth in the Rule 5600 Series.

Note: The only currently existing national securities association subject to Section 15A(b)(12) of the Act is FINRA. Its rules designed to protect the rights of limited partners, pursuant to the Limited Partnership Rollup Reform Act of 1993, are specified in FINRA Rule 2310.

(i) Ineligibility of Certain Securities

No Security shall be approved for listing on the Exchange if the Security satisfies the quantitative requirements for initial listing on any tier of The Nasdaq Stock Market LLC.

(j) Ticker Symbols

The assignment of symbols for companies listed on the BX Venture Market is governed by the National Market System Plan for the Selection and Reservation of Securities Symbols, pursuant to which securities listed on the BX Venture Market are eligible to have a trading symbol of from one to five characters. Notwithstanding, Companies not previously listed on a national securities exchange must adopt a four or five character ticker symbol as a prerequisite to listing on the BX Venture Market. Companies listing on the BX Venture Market following a delisting from another national securities exchange and that traded on that exchange with a one, two, or three-character symbol will be permitted to retain the ticker symbol, provided that the Company must, prior to listing on the BX Venture Market, issue a press release announcing its delisting from the other exchange and comply with the disclosure requirements of Item 3.01 of Form 8-K.]

[**5215. American Depositary Receipts**

(a) Eligibility

American Depositary Receipts can be listed on the Exchange provided they represent shares in a non-Canadian foreign Company.

(b) Computations

In the case of American Depositary Receipts, stockholders' equity and total assets shall relate to the foreign issuer and not to any depositary or any other person deemed to be an issuer for purposes of Form S-12 under the Securities Act of 1933. The underlying security will be considered when determining Publicly Held Shares, stockholders' equity, Round Lot or Public Holders, total assets, operating history and Market Value of Listed Securities.]

[**5225. Listing Requirements for Units**

(a) All component parts of a Unit shall meet the requirements for initial and continued listing.

(b) For initial and continued listing, a unit must have at least two registered and active Market Makers.

(c) The minimum period for listing units shall be 30 days from the first day of listing, except the period may be shortened if the units are suspended or withdrawn for regulatory purposes. Companies and underwriters seeking to withdraw units from listing must provide the Exchange with notice of such intent at least 15 days prior to withdrawal.

(d) The issuer of units shall include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed with the Commission under the federal securities law and the rules and regulations thereunder a statement regarding any intention to delist the units immediately after the minimum listing period.]

[**5250. Obligations for Companies Listed on the Exchange**

(a) Obligation to Provide Information to the Exchange

(1) The Exchange may request any additional information or documentation, public or non-public, deemed necessary to make a determination regarding a Company's continued listing, including, but not limited to, any material provided to or received from the Commission or Other Regulatory Authority. A Company may be denied continued listing if it fails to provide such information within a reasonable period of time or if any communication to the Exchange contains a material misrepresentation or omits material information necessary to make the communication to the Exchange not misleading. The Company shall provide full and prompt responses to requests by the Exchange or by FINRA acting on behalf of the Exchange for information related to unusual market activity or to events that may have a material impact on trading of its securities in the Exchange.

(2) As set forth in Rule 5625, a Company must provide the Exchange with prompt notification after an Executive Officer of the Company becomes aware of any noncompliance by the Company with the requirements of the Rule 5600 Series.

(b) Obligation to Make Public Disclosure

(1) Disclosure of Material Information

Except in unusual circumstances as described in IM-5250-1, a Company shall make prompt disclosure to the public through any Regulation FD compliant method (or combination of methods) of disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions. The Company shall, prior to the release of the information, provide notice of such disclosure to the MarketWatch Department at least ten minutes prior to public announcement if the

information involves any of the events set forth in IM-5250-1 and the public release of the material information is made during market hours. If the public release of the material information is made outside of market hours, Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET. As described in IM-5250-1, prior notice to the MarketWatch Department must be made through the electronic disclosure submission system available at a website designated by the Exchange for that purpose, except in emergency situations.

(2) Disclosure of Notification of Deficiency

As set forth in Rule 5810(b), a Company that receives a notification of deficiency from the Exchange is required to make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing receipt of the notification and the Rule(s) upon which the deficiency is based. However, note that in the case of a deficiency related to the requirement to file a periodic report contained in Rule 5250(c)(1) or (2), the Company is required to make the public announcement by issuing a press release. As described in Rule 5250(b)(1) and IM-5250-1, the Company must notify the Exchange's MarketWatch Department about the announcement through the electronic disclosure submission system available at a website designated by the Exchange for that purpose, except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during market hours, the Company must notify MarketWatch at least ten minutes prior to the announcement. If the public announcement is made outside of market hours, the Company must notify MarketWatch of the announcement prior to 6:50 a.m. ET.

(3) Requirement to Disseminate Press Releases over National Newswire

A Company that issues a press release in satisfaction of its disclosure obligations as described in paragraphs (1) and (2) above is required to disseminate the press release over a national newswire service acceptable to the Exchange.

(4) References to Listing on the Exchange

To avoid investor confusion, Companies listed on the Exchange must refer to themselves as being listed on the " BX Venture Market", unless otherwise required by applicable rules or regulations, and must not in any way, whether in press releases, public statements or otherwise, represent that they are listed on The Nasdaq Stock Market. A Company that represents itself as listed on The Nasdaq Stock Market or that refers to itself as a Nasdaq listed company will be subject to immediate delisting pursuant to procedures in the Rule 5800 Series.

(c) Obligation to File Periodic Financial Reports

(1) A Company shall timely file all required periodic financial reports with the Commission through the EDGAR System or with the Other Regulatory Authority. A Company that does not file through the EDGAR System shall supply to the Exchange two

(2) copies of all reports required to be filed with the Other Regulatory Authority or email an electronic version of the report to the Exchange. All required reports must be filed with the Exchange on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with the Exchange shall contain audited financial statements.

(2) Foreign Private Issuer Interim Reports

Each Foreign Private Issuer shall submit on a Form 6-K an interim balance sheet and income statement as of the end of its second quarter. This information, which must be presented in English, but does not have to be reconciled to U.S. GAAP, must be provided no later than six months following the end of the Company's second quarter. In the case of a Foreign Private Issuer that is a limited partnership, such information shall be distributed to limited partners if required by statute or regulation in the jurisdiction in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement.

(3) Auditor Registration

Each listed Company shall be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act.

(d) Distribution of Annual and Interim Reports

(1) Distribution of Annual Reports

Each Company (including a limited partnership) shall make available to Shareholders an annual report containing audited financial statements of the Company and its subsidiaries (which, for example, may be on Form 10-K, 20-F, 40-F or N-CSR) within a reasonable period of time following the filing of the annual report with the Commission. A Company may comply with this requirement either:

(A) by mailing the report to Shareholders;

(B) by satisfying the requirements for furnishing an annual report contained in Rule 14a-16 under the Act; or

(C) by posting the annual report to Shareholders on or through the Company's website (or, in the case of a Company that is an investment company that does not maintain its own website, on a website that the Company is allowed to use to satisfy the website posting requirement in Rule 16a-3(k) under the Act), along with a prominent undertaking in the English language to provide Shareholders, upon request, a hard copy of the Company's annual report free of charge. A Company that chooses to satisfy this requirement pursuant to this paragraph (C) must, simultaneous with this posting, issue a press release stating that its annual report has

been filed with the Commission (or Other Regulatory Authority). This press release shall also state that the annual report is available on the Company's website and include the website address and that Shareholders may receive a hard copy free of charge upon request. A Company must provide such hard copies within a reasonable period of time following the request.

(2) Distribution of Interim Reports

Companies that distribute interim reports to Shareholders should distribute such reports to both registered and beneficial Shareholders. Companies are also encouraged to consider additional technological methods to communicate such information to Shareholders in a timely and less costly manner as such technology becomes available.

(3) Access to Quarterly Reports

(A) Each Company that is not a limited partnership (limited partnerships are governed by paragraph (B) below) and is subject to Rule 13a-13 under the Act shall make available copies of quarterly reports including statements of operating results to Shareholders either prior to or as soon as practicable following the Company's filing of its Form 10-Q with the Commission. If the form of such quarterly report differs from the Form 10-Q, the Company shall file one copy of the report with the Exchange in addition to filing its Form 10-Q pursuant to Rule 5250(c)(1). The statement of operations contained in quarterly reports shall disclose, at a minimum, any substantial items of an unusual or non-recurrent nature and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.

(B) Each Company that is limited partnership and is subject to Rule 13a-13 under the Act shall make available copies of quarterly reports including statements of operating results to limited partners either prior to or as soon as practicable following the partnership's filing of its Form 10-Q with the Commission. Such reports shall be distributed to limited partners if required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. If the form of such quarterly report differs from the Form 10-Q, the Company shall file one copy of the report with the Exchange in addition to filing its Form 10-Q pursuant to Rule 5250(c)(1). The statement of operations contained in quarterly reports shall disclose, at a minimum, any substantial items of an unusual or non-recurrent nature and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.

(4) Access to Interim Reports

(A) Each Company that is not a limited partnership and is not subject to Rule 13a-13 under the Act and that is required to file with the Commission, or Other Regulatory Authority, interim reports relating primarily to operations and financial position,

shall make available to Shareholders reports which reflect the information contained in those interim reports. Such reports shall be made available to Shareholders either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report provided to Shareholders differs from that filed with the regulatory authority, the Company shall file one copy of the report to Shareholders with the Exchange in addition to the report to the regulatory authority that is filed with the Exchange pursuant to Rule 5250(c)(1).

(B) Each Company that is a limited partnership that is not subject to Rule 13a-13 under the Act and is required to file with the Commission, or Other Regulatory Authority, interim reports relating primarily to operations and financial position, shall make available to limited partners reports which reflect the information contained in those interim reports. Such reports shall be distributed to limited partners if required by statue or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. Such reports shall be distributed to limited partners either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report provided to limited partners differs from that filed with the regulatory authority, the Company shall file one copy of the report to limited partners with the Exchange in addition to the report to the regulatory authority that is filed with the Exchange pursuant to Rule 5250(c)(1).

(5) A Foreign Private Issuer may follow its home country practice in lieu of the requirements of Rule 5250(d)(1), (2), (3) or (4) by utilizing the process described in Rule 5615(a)(3).

(6) The Company shall comply with any obligation of any person regarding filing or disclosure of information material to the Company or the Security, whether such obligation arises under the securities laws of the United States or the Company's Country of Domicile, or other applicable federal or state statutes or rules.

(e) Exchange Notification Requirements

Various corporate events resulting in material changes will trigger the requirement for Companies to submit certain forms and applicable fees to the Exchange as specified below.

(1) Change in Number of Shares Outstanding

The Company shall file, on a form designated by the Exchange no later than 10 days after the occurrence, any aggregate increase or decrease of any class of securities listed on the Exchange that exceeds 5% of the amount of securities of the class outstanding.

(2) Listing of Additional Shares

A Company shall be required to notify the Exchange, except for a Company solely listing American Depositary Receipts, at least 15 calendar days prior to establishing or materially

amending a stock option plan, purchase plan or other equity compensation arrangement pursuant to which stock may be acquired by officers, directors, employees, or consultants without shareholder approval. The Exchange recognizes that when a Company makes an equity grant to induce an individual to accept employment, as permitted by the exception contained in Rule 5635(a)(4), it may not be practical to provide the advance notice otherwise required by this Rule. Therefore, when a Company relies on that exception to make such an inducement grant without shareholder approval, it is sufficient to notify the Exchange about the grant and the use of the exception no later than the earlier of: (x) five calendar days after entering into the agreement to issue the securities; or (y) the date of the public announcement of the award required by Rule 5635(a)(4).

The notifications required by this paragraph must be made on the Notification: Listing of Additional Shares and the Exchange encourages Companies to file this form as soon as practicable, even if all of the relevant terms are not yet known. The Exchange reviews these forms to determine compliance with applicable Exchange rules, including the shareholder approval requirements. Therefore, if a Company fails to file timely the form required by this paragraph, the Exchange may issue either a Public Reprimand Letter or a Delisting Determination (pursuant to the Rule 5800 Series).

(3) Record Keeping Change

(A) The Company shall file on a form designated by the Exchange notification of any corporate name change, or other change requiring payment of a record-keeping fee, no later than 10 days after the change. The Company shall also pay the appropriate Record-Keeping Fee as referenced in the Rule 5900 Series.

(B) The Company shall also notify the Exchange promptly in writing, absent any fees, of any change in the general character or nature of its business and any change in the address of its principal executive offices.

(4) Substitution Listing

The Company shall notify the Exchange of a Substitution Listing Event (other than a reincorporation or a change to a Company's place of organization) no later than 15 calendar days prior to the implementation of such event by filing the appropriate form as designated by the Exchange. For a re-incorporation or change to a Company's place of organization, a Company shall notify the Exchange as soon as practicable after such event has been implemented by filing the appropriate form as designated by the Exchange. The Company shall also pay the appropriate Substitution Listing Fee as referenced in the Rule 5900 Series.

(5) Transfer Agent, Registrar, ADR Bank Changes

The issuer of any class of securities listed on the Exchange, except for American Depositary Receipts, shall notify the Exchange promptly in writing of any change in the Company's transfer agent or registrar.

(6) Dividend Action or Stock Distribution

In the case of any dividend action or action relating to a stock distribution of a listed stock the Company shall, no later than 10 calendar days prior to the record date of such action:

(i) notify the Exchange by filing the appropriate form as designated by the Exchange; and

(ii) provide public notice using a Regulation FD compliant method.

Notice to the Exchange should be given as soon as possible after declaration and, in any event, no later than simultaneously with the public notice.

(7) Securities Issuance

(i) A Company must notify the Exchange prior to any issuance of securities in a capital raising transaction and represent that it is not relying on an exemption from state registration or "blue sky" requirements for companies listed on the Boston Stock Exchange. This notice must be provided on the appropriate form as designated by the Exchange.

(ii) A Company must also provide the Exchange with copies of any "blue sky memorandum" and other documents discussing the treatment of a securities issuance under the blue-sky laws of the various states no later than five days after the issuance of the securities. These documents must be provided even where they are prepared for a third party, such as the underwriter of the securities offering.

(f) Obligation to Pay Fees

The Company is required to pay all applicable fees as described in the Rule 5900 Series.]

[**IM-5250-1. Disclosure of Material Information**

Rule 5250(b)(1) requires that, except in unusual circumstances, Companies must disclose promptly to the public through any Regulation FD compliant method (or combination of methods) of disclosure any material information that would reasonably be expected to affect the value of their securities or influence investors' decisions. Companies must notify the Exchange at least ten minutes prior to the release to the public of material information that involves any of the events set forth below when the public release of the information is made during market hours (7:00 a.m. to 8:00 p.m. ET). If the public release of the material information is made outside of market hours, Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET. Under unusual circumstances Companies may not be required to make public disclosure of material events; for example, where it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the Company to pursue its legitimate corporate objectives. However, Companies remain obligated to disclose this information to the Exchange upon request pursuant to Rule 5250(a)(1).

Whenever unusual market activity takes place in a Company's securities, the Company normally should determine whether there is material information or news which should be disclosed. If rumors or unusual market activity indicate that information on impending developments has become known to the investing public, or if information from a source other than the Company becomes known to the investing public, a clear public announcement may be required as to the state of negotiations or development of Company plans. Such an announcement may be required, even though the Company may not have previously been advised of such information or the matter has not yet been presented to the Company's Board of Directors for consideration. In certain circumstances, it may also be appropriate to publicly deny false or inaccurate rumors, which are likely to have, or have had, an effect on the trading in its securities or would likely have an influence on investment decisions.

Notification to the MarketWatch Department

Companies must notify the MarketWatch Department prior to the distribution of certain material news at least ten minutes prior to public announcement of the news when the public release of the information is made during market hours (7:00 a.m. to 8:00 p.m. ET). If the public release of the material information is made outside of market hours, Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET. Except in emergency situations, this notification must be made through the Exchange's electronic disclosure submission system available at a website designated by the Exchange for that purpose. In emergency situations, Companies may instead provide notification by telephone or facsimile. Examples of an emergency situation include: lack of computer or internet access; technical problems on either the Company or the Exchange system or an incompatibility between those systems; and a material development such that no draft disclosure document exists, but immediate notification to the MarketWatch Department is important based on the material event.

If a Company repeatedly fails to notify the Exchange at least ten minutes prior to the distribution of material news during market hours or prior to 6:50 a.m. ET for material news distributed outside of market hours, or repeatedly fails to use the electronic disclosure submission system when the Exchange finds no emergency situation existed, the Exchange may issue a Public Reprimand Letter (as defined in Rule 5805(j)) or, in extreme cases, a Staff Delisting Determination (as defined in Rule 5805(h)). In determining whether to issue a Public Reprimand Letter, the Exchange will consider whether the Company has demonstrated a pattern of failures, whether the Company has been contacted concerning previous violations, and whether the Company has taken steps to assure that future violations will not occur.

Trading Halts

A trading halt benefits current and potential Shareholders by halting all trading in any Exchange securities until there has been an opportunity for the information to be disseminated to the public. This decreases the possibility of some investors acting on information known only to them. A trading halt provides the public with an opportunity to evaluate the information and consider it in making investment decisions. It also alerts the marketplace to the fact that news has been released.

The MarketWatch Department monitors real time trading in all Exchange securities during the trading day for price and volume activity. In the event of certain price and volume movements, the MarketWatch Department may contact a Company and its Market Makers in order to ascertain the cause of the unusual market activity. The MarketWatch Department treats the information provided by the Company and other sources in a highly confidential manner, and uses it to assess market activity and assist in maintaining fair and orderly markets. An Exchange listing includes an obligation to disclose to the MarketWatch Department information that the Company is not otherwise disclosing to the investing public or the financial community. On, occasion, changes in market activity prior to the Company's release of material information may indicate that the information has become known to the investing public. Changes in market activity also may occur when there is a release of material information by a source other than the Company, such as when a Company is subject to an unsolicited take-over bid by another company. Depending on the nature of the event and the Company's views regarding the business advisability of disclosing the information, the Exchange's MarketWatch Department may work with the Company to accomplish a timely release of the information. Furthermore, depending on the materiality of the information and the anticipated affect of the information on the price of the Company's securities, the Exchange's MarketWatch Department may advise the Company that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The institution of a temporary trading halt pending the release of information is not a reflection on the value of the securities halted. Such trading halts are instituted, among other reasons, to insure that material information is fairly and adequately disseminated to the investing public and the marketplace, and to provide investors with the opportunity to evaluate the information in making investment decisions. A trading halt normally lasts one half hour but may last longer if a determination is made that news has not been adequately disseminated or that the original or an additional basis under Rule 4120 exists for continuing the trading halt.

The MarketWatch Department is required to keep non-public information, confidential and to use such information only for regulatory purposes.

Companies are required to notify the MarketWatch Department of the release of material information included in the following list of events at least ten minutes prior to the release of such information to the public when the public release of the information is made during market hours (7:00 a.m. to 8:00 p.m. ET). If the public release of the material information is made outside of market hours, Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET. It should also be noted that every development that might be reported to the Exchange in these areas would not necessarily be deemed to warrant a trading halt. In addition to the following list of events, the Exchange encourages Companies to avail themselves of the opportunity for advance notification to the MarketWatch Department in situations where they believe, based upon their knowledge of the significance of the information, that a temporary trading halt may be necessary or appropriate.

(a) Financial-related disclosures, including quarterly or yearly earnings, earnings restatements, pre-announcements or "guidance."

(b) Corporate reorganizations and acquisitions, including mergers, tender offers, asset transactions and bankruptcies or receiverships.

(c) New products or discoveries, or developments regarding customers or suppliers (e.g., significant developments in clinical or customer trials, and receipt or cancellation of a material contract or order).

(d) Senior management changes of a material nature or a change in control.

(e) Resignation or termination of independent auditors, or withdrawal of a previously issued audit report.

(f) Events regarding the Company's securities â€" e.g., defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, or public or private sales of additional securities.

(g) Significant legal or regulatory developments.

(h) Any event requiring the filing of a Form 8-K.

Use of Regulation FD Compliant Methods in the Disclosure of Material Information

Regardless of the method of disclosure that a Company chooses to use, Companies are required to notify the MarketWatch Department of the release of material information that involves any of the events set forth above at least ten minutes prior to its release to the public when the public release of the information is made during market hours (7:00 a.m. to 8:00 p.m. ET). If the public release of the material information is made outside of market hours, Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET. When a Company chooses to utilize a Regulation FD compliant method for disclosure other than a press release or Form 8-K, the Company will be required to provide prior notice the MarketWatch Department of: 1) the press release announcing the logistics of the future disclosure event; and 2) a descriptive summary of the material information to be announced during the disclosure event if the press release does not contain such a summary.

Depending on the materiality of the information and the anticipated effect of the information on the price of the Company's securities, the MarketWatch Department may advise the Company that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The MarketWatch Department will assess with Companies using methods of disclosure other than a press release or Form 8-K the timing within the disclosure event when the Company will cover the material information so that the halt can be commenced accordingly. Companies will be responsible for promptly alerting the MarketWatch Department of any significant changes to the previously outlined disclosure timeline. Companies are reminded that the posting of information on the Company's website may not by itself be considered a sufficient method of public disclosure under Regulation FD and SEC guidance and releases thereunder, and as a result, under the Exchange's rules.]

[**5255. Direct Registration Program**

(a) Except as indicated in paragraph (c) below, all securities listed on the Exchange (except securities which are book-entry only) must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act.

(b) If a Company establishes or maintains a Direct Registration Program for its Shareholders, the Company shall, directly or through its transfer agent, participate in an electronic link with a clearing agency registered under Section 17A of the Act to facilitate the electronic transfer of securities held pursuant to such program.

(c) Exemption

A Foreign Private Issuer must be eligible to participate in a Direct Registration Program, as required by Rule 5255, unless prohibited from complying by a law or regulation in its home country. In such case, a Foreign Private Issuer may follow its home country practice in lieu of this requirement by using the process described in Rule 5615(a)(3) and IM-5615-3.]

[**5500. Listing Requirements]**
[5501. Preamble to the Exchange's Listing Requirements

This section contains the initial and continued listing requirements for listing a Company's Security on the Exchange.

In addition to meeting the quantitative requirements in this section, a Company must meet the requirements of the Rule 5100 Series, the disclosure obligations set forth in the Rule 5200 Series, the Corporate Governance requirements set forth in the Rule 5600 Series, and pay any applicable fees in the Rule 5900 Series. A Company's failure to meet any of the continued listing requirements will be processed in accordance with the provisions set forth in the Rule 5800 Series.]

[**5505. Initial Listing of Securities Not Previously Listed on a National Securities Exchange**

(a) In order to be listed on the Exchange, a Security, other than a Security described in Rule 5506, must meet all of the following requirements:

(1) $1 million of stockholders' equity or $5 million total assets;

(2) 200,000 Publicly Held Shares;

(3) 200 Public Holders, at least 100 of which must be Round Lot Holders;

(4) $2 million Market Value of Listed Securities;

(5) $1.00 minimum bid price per share;

(6) One year operating history; and

(7) Two registered and active Market Makers.

(b) In addition to satisfying the quantitative requirements above, the Company must also demonstrate that it has a plan to maintain sufficient working capital for its planned business for at least twelve months after the first day of listing. The Company's plan may include estimates on cash-flow statements, planned and available measures for financing, descriptions of the planned business and investments, and well-founded assessments of the future prospects of the Company. It is important that the basis for all assumptions be made clear.]

[**5506. Initial Listing of Securities Previously Listed on a National Securities Exchange**

(a) In lieu of the requirements of Rule 5505, a Security may be listed on the Exchange if the Security was previously listed on a national securities exchange and meets all of the following requirements:

(1) 200,000 Publicly Held Shares;

(2) 200 Public Holders, at least 100 of which must be Round Lot Holders;

(3) $2 million Market Value of Listed Securities;

(4) $0.25 minimum bid price per share; and

(5) Two registered and active Market Makers.

(b) For purposes of this Rule 5506, a Company will be considered to have been previously listed on another national securities exchange:

(1) if it was listed on such an exchange at any time during the three months before its listing on the Exchange; or

(2) in the case of a Company that applies to list prior to September 30, 2011, if it was listed on another national securities exchange at any time between January 1, 2010 and September 30, 2011.]

[**5507. Rights and Warrants**

The Exchange will only initially list a right or warrant if the security underlying the right or warrant is listed on the Exchange or a covered security, as described in Section 18(b) of the Securities Act of 1933.]

[**5550. Continued Listing of Securities**

In order to remain listed on the Exchange, a Security must continue to meet all of the following requirements. Failure to meet any of the continued listing requirements will be processed in accordance with the provisions set forth in the Rule 5800 Series.

(a) At least 200,000 Publicly Held Shares;

(b) At least 200 Public Holders;

(c) Market Value of Listed Securities of at least $1 million;

(d) Minimum bid price of at least $0.25 per share; and

(e) At least two registered and active Market Makers.]

[**5551. Rights and Warrants**

In order for a right or warrant to remain listed on the Exchange, the security underlying the right or warrant must remain listed on the Exchange or be a covered security, as described in Section 18(b) of the Securities Act of 1933.]

[**5600. Corporate Governance Requirements**]
[**5601. Preamble to the Corporate Governance Requirements**

In addition to meeting the quantitative requirements in the Rule 5200 and 5500 Series, Companies applying to list and listed on the Exchange must meet the qualitative requirements outlined in this Rule 5600 Series. These requirements include rules relating to a Company's board of directors, including audit committees and Independent Director oversight of executive officer compensation; code of conduct; shareholder meetings, including proxy solicitation and quorum; review of related party transactions; shareholder approval; and voting rights. Exemptions to these rules, including phase-in schedules, are set forth in Rule 5615.

The Exchange maintains a website that provides guidance on the applicability of the corporate governance requirements by FAQs and published summaries of anonymous versions of previously issued staff interpretative letters. Companies are encouraged to contact Listing Qualifications to discuss any complex issues or transactions. Companies can also submit a request for a written interpretation pursuant to Rule 5602.]

[**5602. Written Interpretations of Exchange Listing Rules**

(a) A Company listed on the Exchange may request from the Exchange a written interpretation of the Rules contained in the 5000 through 5900 Series. In connection with such a request, the Company must submit to the Exchange a non-refundable fee of $15,000.

(b) A response to a request for a written interpretation generally will be provided within four weeks from the date the Exchange receives all information necessary to respond to the request,

although if a Company requires a response by a specific date it should state the date in its request for the written interpretation and the Exchange will attempt to respond by that date.

(c) An applicant to the Exchange that has submitted the applicable application fee under Rule 5910(a) will not also be required to submit a fee in connection with a request for a written interpretation involving the applicant's initial listing on the Exchange.

(d) The Exchange's Board of Directors or its designee may, in its discretion, defer or waive all or any part of the written interpretation fee prescribed herein.

(e) The Exchange shall publish on its website a summary of each interpretation within 90 days from the date such interpretation is issued.

(f) A Company is eligible to request a written interpretation from the Exchange pursuant to paragraphs (a) or (b), subject to payment of the appropriate fee, if it has a class of securities that has been suspended or delisted from the Exchange, but the suspension or delisting decision is under review pursuant to the Rule 5800 Series.]

[**5605. Independent Directors and Audit Committees**

(a) Definitions

(1) "Executive Officer" means those officers covered in Rule 16a-1(f) under the Act.

(2) "Independent Director" means a person other than an Executive Officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. For purposes of this rule, "Family Member" means a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home. The following persons shall not be considered independent:

(A) a director who is, or at any time during the past three years was, employed by the Company;

(B) a director who accepted or who has a Family Member who accepted any compensation from the Company in excess of $120,000 during any period of twelve consecutive months within the three years preceding the determination of independence, other than the following:

(i) compensation for board or board committee service;

(ii) compensation paid to a Family Member who is an employee (other than an Executive Officer) of the Company; or

(iii) benefits under a tax-qualified retirement plan, or non-discretionary compensation.

Provided, however, that in addition to the requirements contained in this paragraph (B), audit committee members are also subject to additional, more stringent requirements under Rule 5605(c)(2).

(C) a director who is a Family Member of an individual who is, or at any time during the past three years was, employed by the Company as an Executive Officer;

(D) a director who is, or has a Family Member who is, a partner in, or a controlling Shareholder or an Executive Officer of, any organization to which the Company made, or from which the Company received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year, or $200,000, whichever is more, other than the following:

(i) payments arising solely from investments in the Company's securities; or

(ii) payments under non-discretionary charitable contribution matching programs.

(E) a director of the Company who is, or has a Family Member who is, employed as an Executive Officer of another entity where at any time during the past three years any of the Executive Officers of the Company serve on the compensation committee of such other entity; or

(F) a director who is, or has a Family Member who is, a current partner of the Company's outside auditor, or was a partner or employee of the Company's outside auditor who worked on the Company's audit at any time during any of the past three years.

(G) in the case of an investment company, in lieu of paragraphs (A)-(F), a director who is an "interested person" of the Company as defined in Section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee.]

[***IM-5605-1. Definition of Independence Rule 5605(a)(2)***

It is important for investors to have confidence that individuals serving as Independent Directors do not have a relationship with the listed Company that would impair their independence. The board has a responsibility to make an affirmative determination that no such relationships exist through the application of Rule 5605(a)(2). Rule 5605(a)(2) also provides a list of certain relationships that preclude a board finding of independence. These objective measures provide transparency to investors and Companies, facilitate uniform application of the rules, and ease administration. Because the Exchange does not believe that ownership of Company stock by

itself would preclude a board finding of independence, it is not included in the aforementioned objective factors. It should be noted that there are additional, more stringent requirements that apply to directors serving on audit committees, as specified in Rule 5605(c).

The Rule's reference to the "Company" includes any parent or subsidiary of the Company. The term "parent or subsidiary" is intended to cover entities the Company controls and consolidates with the Company's financial statements as filed with the Commission (but not if the Company reflects such entity solely as an investment in its financial statements). The reference to Executive Officer means those officers covered in Rule 16a-1(f) under the Act. In the context of the definition of Family Member under Rule 5605(a)(2), the reference to marriage is intended to capture relationships specified in the Rule (parents, children and siblings) that arise as a result of marriage, such as "in-law" relationships.

The three year look-back periods referenced in paragraphs (A), (C), (E) and (F) of the Rule commence on the date the relationship ceases. For example, a director employed by the Company is not independent until three years after such employment terminates.

For purposes of paragraph (A) of the Rule, employment by a director as an Executive Officer on an interim basis shall not disqualify that director from being considered independent following such employment, provided the interim employment did not last longer than one year. A director would not be considered independent while serving as an interim officer. Similarly, for purposes of paragraph (B) of the Rule, compensation received by a director for former service as an interim Executive Officer need not be considered as compensation in determining independence after such service, provided such interim employment did not last longer than one year. Nonetheless, the Company's board of directors still must consider whether such former employment and any compensation received would interfere with the director's exercise of independent judgment in carrying out the responsibilities of a director. In addition, if the director participated in the preparation of the Company's financial statements while serving as an interim Executive Officer, Rule 5605(c)(2)(A)(iii) would preclude service on the audit committee for three years.

Paragraph (B) of the Rule is generally intended to capture situations where a compensation is made directly to (or for the benefit of) the director or a Family Member of the director. For example, consulting or personal service contracts with a director or Family Member of the director would be analyzed under paragraph (B) of the Rule. In addition, political contributions to the campaign of a director or a Family Member of the director would be considered indirect compensation under paragraph (B). Non-preferential payments made in the ordinary course of providing business services (such as payments of interest or proceeds related to banking services or loans by a Company that is a financial institution or payment of claims on a policy by a Company that is an insurance company), payments arising solely from investments in the Company's securities and loans permitted under Section 13(k) of the Act will not preclude a finding of director independence as long as the payments are non-compensatory in nature. Depending on the circumstances, a loan or payment could be compensatory if, for example, it is not on terms generally available to the public.

Paragraph (D) of the Rule is generally intended to capture payments to an entity with which the director or Family Member of the director is affiliated by serving as a partner, controlling Shareholder or Executive Officer of such entity. Under exceptional circumstances, such as where a director has direct, significant business holdings, it may be appropriate to apply the corporate measurements in paragraph (D), rather than the individual measurements of paragraph (B). Issuers should contact the Exchange if they wish to apply the Rule in this manner. The reference to a partner in paragraph (D) is not intended to include limited partners. It should be noted that the independence requirements of paragraph (D) of the Rule are broader than Rule 10A-3(e)(8) under the Act.

Under paragraph (D), a director who is, or who has a Family Member who is, an Executive Officer of a charitable organization may not be considered independent if the Company makes payments to the charity in excess of the greater of 5% of the charity's revenues or $200,000. However, the Exchange encourages Companies to consider other situations where a director or their Family Member and the Company each have a relationship with the same charity when assessing director independence.

For purposes of determining whether a lawyer is eligible to serve on an audit committee, Rule 10A-3 under the Act generally provides that any partner in a law firm that receives payments from the issuer is ineligible to serve on that issuer's audit committee. In determining whether a director may be considered independent for purposes other than the audit committee, payments to a law firm would generally be considered under Rule 5605(a)(2), which looks to whether the payment exceeds the greater of 5% of the recipient's gross revenues or $200,000; however, if the firm is a sole proprietorship, Rule 5605(a)(2)(B), which looks to whether the payment exceeds $120,000, applies.

Paragraph (G) of the Rule provides a different measurement for independence for investment companies in order to harmonize with the Investment Company Act of 1940. In particular, in lieu of paragraphs (A)-(F), a director who is an "interested person" of the Company as defined in Section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee, shall not be considered independent.

(b) Executive Sessions

Independent Directors must have regularly scheduled meetings at which only Independent Directors are present ("executive sessions").]

[***IM-5605-2. Executive Sessions of Independent Directors***

Regularly scheduled executive sessions encourage and enhance communication among Independent Directors. It is contemplated that executive sessions will occur at least twice a year, and perhaps more frequently, in conjunction with regularly scheduled board meetings.

(c) Audit Committee Requirements

(1) Audit Committee Charter

Each Company must certify that it has adopted a formal written audit committee charter and that the audit committee will review and reassess the adequacy of the formal written charter on an annual basis. The charter must specify:

(A) the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes and membership requirements;

(B) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the Company, actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to oversee the independence of the outside auditor;

(C) the committee's purpose of overseeing the accounting and financial reporting processes of the Company and the audits of the financial statements of the Company; and

(D) the specific audit committee responsibilities and authority set forth in Rule 5605(c)(3).]

[***IM-5605-3. Audit Committee Charter***

Each Company is required to adopt a formal written charter that specifies the scope of its responsibilities and the means by which it carries out those responsibilities; the outside auditor's accountability to the audit committee; and the audit committee's responsibility to ensure the independence of the outside auditor. Consistent with this, the charter must specify all audit committee responsibilities set forth in Rule 10A-3(b)(2), (3), (4) and (5) under the Act. Rule 10A-3(b)(3)(ii) under the Act requires that each audit committee must establish procedures for the confidential, anonymous submission by employees of the listed Company of concerns regarding questionable accounting or auditing matters. The rights and responsibilities as articulated in the audit committee charter empower the audit committee and enhance its effectiveness in carrying out its responsibilities.

Rule 5605(c)(3) imposes additional requirements for investment company audit committees that must also be set forth in audit committee charters for these Companies.

(2) Audit Committee Composition

(A) Each Company must have, and certify that it has and will continue to have, an audit committee of at least three members, each of whom must: (i) be an Independent Director as defined under Rule 5605(a)(2); (ii) meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act); (iii) not have participated in the preparation of the financial statements of the Company or any current subsidiary of the Company at any time during the past three years; and (iv) be able to read and

understand fundamental financial statements, including a Company's balance sheet, income statement, and cash flow statement. Additionally, each Company must certify that it has, and will continue to have, at least one member of the audit committee who has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(B) Non-Independent Director for Exceptional and Limited Circumstances

Notwithstanding paragraph (2)(A)(i), one director who: (i) is not an Independent Director as defined in Rule 5605(a)(2); (ii) meets the criteria set forth in Section 10A(m)(3) under the Act and the rules thereunder; and (iii) is not currently an Executive Officer or employee or a Family Member of an Executive Officer, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the Company and its Shareholders. A Company, other than a Foreign Private Issuer, that relies on this exception must comply with the disclosure requirements set forth in Item 407(d)(2) of Regulation S-K. A Foreign Private Issuer that relies on this exception must disclose in its next annual report (e.g., Form 20-F or 40-F) the nature of the relationship that makes the individual not independent and the reasons for the board's determination. A member appointed under this exception may not serve longer than two years and may not chair the audit committee.]

[***IM-5605-4. Audit Committee Composition***

Audit committees are required to have a minimum of three members and be comprised only of Independent Directors. In addition to satisfying the Independent Director requirements under Rule 5605(a)(2), audit committee members must meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act): they must not accept any consulting, advisory, or other compensatory fee from the Company other than for board service, and they must not be an affiliated person of the Company. As described in Rule 10A-3(d)(1) and (2), a Company must disclose reliance on certain exceptions from Rule 10A-3 and disclose an assessment of whether, and if so, how, such reliance would materially adversely affect the ability of the audit committee to act independently and to satisfy the other requirements of Rule 10A-3. It is recommended also that a Company disclose in its annual proxy (or, if the Company does not file a proxy, in its Form 10-K or 20-F) if any director is deemed eligible to serve on the audit committee but falls outside the safe harbor provisions of Rule 10A-3(e)(1)(ii) under the Act. A director who qualifies as an audit committee financial expert under Item 407(d)(5)(ii) and (iii) of Regulation S-K is presumed to qualify as a financially sophisticated audit committee member under Rule 5605(c)(2)(A).

(3) Audit Committee Responsibilities and Authority

The audit committee must have the specific audit committee responsibilities and authority necessary to comply with Rule 10A-3(b)(2), (3), (4) and (5) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act), concerning responsibilities relating to: (i) registered public accounting firms, (ii) complaints relating to accounting, internal accounting controls or auditing matters, (iii) authority to engage advisers, and (iv) funding as determined by the audit committee. Audit committees for investment companies must also establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

(4) Cure Periods for Audit Committee

(A) If a Company fails to comply with the audit committee composition requirement under Rule 10A-3(b)(1) under the Act and Rule 5605(c)(2)(A) because an audit committee member ceases to be independent for reasons outside the member's reasonable control, the audit committee member may remain on the audit committee until the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement. A Company relying on this provision must provide notice to the Exchange immediately upon learning of the event or circumstance that caused the noncompliance.

(B) If a Company fails to comply with the audit committee composition requirement under Rule 5605(c)(2)(A) due to one vacancy on the audit committee, and the cure period in paragraph (A) is not otherwise being relied upon for another member, the Company will have until the earlier of the next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the vacancy, the Company shall instead have 180 days from such event to regain compliance. A Company relying on this provision must provide notice to the Exchange immediately upon learning of the event or circumstance that caused the noncompliance.

(5) Exception

At any time when a Company has a class of common equity securities (or similar securities) that is listed on another national securities exchange or national securities association subject to the requirements of Rule 10A-3 under the Act, the listing of classes of securities of a direct or indirect consolidated subsidiary or an at least 50% beneficially owned subsidiary of the Company (except classes of equity securities, other than non-convertible, non-participating preferred securities, of such subsidiary) shall not be subject to the requirements of Rule 5605(c).

(d) Compensation Committee Requirements

The provisions of this Rule 5605(d) and IM-5605-6 are operative only subject to the effective dates outlined in Rule 5605(d)(6). During the transition period until a Company is required to comply with a particular provision, the Company must continue to comply with the corresponding provision, if any, of Rule 5605A(d) and IM-5605A-6.

(1) Compensation Committee Charter

Each Company must certify that it has adopted a formal written compensation committee charter and that the compensation committee will review and reassess the adequacy of the formal written charter on an annual basis. The charter must specify:

(A) the scope of the compensation committee's responsibilities, and how it carries out those responsibilities, including structure, processes and membership requirements;

(B) the compensation committee's responsibility for determining, or recommending to the board for determination, the compensation of the chief executive officer and all other Executive Officers of the Company;

(C) that the chief executive officer may not be present during voting or deliberations on his or her compensation; and

(D) the specific compensation committee responsibilities and authority set forth in Rule 5605(d)(3).

(2) Compensation Committee Composition

(A) Each Company must have, and certify that it has and will continue to have, a compensation committee of at least two members, each of whom must: (i) be an Independent Director as defined under Rule 5605(a)(2); and (ii) not accept directly or indirectly any consulting, advisory or other compensatory fee from the Company or any subsidiary thereof. Compensatory fees shall not include: (i) fees received as a member of the compensation committee, the board of directors or any other board committee; or (ii) the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the Company (provided that such compensation is not contingent in any way on continued service). In determining whether a director is eligible to serve on the compensation committee, a Company's board also must consider whether the director is affiliated with the Company, a subsidiary of the Company or an affiliate of a subsidiary of the Company to determine whether such affiliation would impair the director's judgment as a member of the compensation committee.

(B) Non-Independent Committee Member under Exceptional and Limited Circumstances

Notwithstanding paragraph 5605(d)(2)(A) above, if the compensation committee is comprised of at least three members, one director who does not meet the requirements of paragraph 5605(d)(2)(A) and is not currently an Executive Officer or employee or a Family Member of an Executive Officer, may be appointed to the compensation committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the Company and its Shareholders. A Company that relies on this exception must disclose either on or through the Company's website or in the proxy statement for the next annual meeting subsequent to such determination (or, if the Company does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. In addition, the Company must provide any disclosure required by Instruction 1 to Item 407(a) of Regulation S-K regarding its reliance on this exception. A member appointed under this exception may not serve longer than two years.

(3) Compensation Committee Responsibilities and Authority

As required by Rule 10C-1(b)(2), (3) and (4)(i)-(vi) under the Act, the compensation committee must have the following specific responsibilities and authority.

(A) The compensation committee may, in its sole discretion, retain or obtain the advice of a compensation consultant, legal counsel or other adviser.

(B) The compensation committee shall be directly responsible for the appointment, compensation and oversight of the work of any compensation consultant, legal counsel and other adviser retained by the compensation committee.

(C) The Company must provide for appropriate funding, as determined by the compensation committee, for payment of reasonable compensation to a compensation consultant, legal counsel or any other adviser retained by the compensation committee.

(D) The compensation committee may select, or receive advice from, a compensation consultant, legal counsel or other adviser to the compensation committee, other than in-house legal counsel, only after taking into consideration the following factors:

(i) the provision of other services to the Company by the person that employs the compensation consultant, legal counsel or other adviser;

(ii) the amount of fees received from the Company by the person that employs the compensation consultant, legal counsel or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel or other adviser;

(iii) the policies and procedures of the person that employs the compensation consultant, legal counsel or other adviser that are designed to prevent conflicts of interest;

(iv) any business or personal relationship of the compensation consultant, legal counsel or other adviser with a member of the compensation committee;

(v) any stock of the Company owned by the compensation consultant, legal counsel or other adviser; and

(vi) any business or personal relationship of the compensation consultant, legal counsel, other adviser or the person employing the adviser with an Executive Officer of the Company.

Nothing in this Rule shall be construed: (i) to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant, legal counsel or other adviser to the compensation committee; or (ii) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

The compensation committee is required to conduct the independence assessment outlined in this Rule with respect to any compensation consultant, legal counsel or other adviser that provides advice to the compensation committee, other than in-house legal counsel. However, nothing in this Rule requires a compensation consultant, legal counsel or other compensation adviser to be independent, only that the compensation committee consider the enumerated independence factors before selecting, or receiving advice from, a compensation adviser. Compensation committees may select, or receive advice from, any compensation adviser they prefer, including ones that are not independent, after considering the six independence factors outlined above.

For purposes of this Rule, the compensation committee is not required to conduct an independence assessment for a compensation adviser that acts in a role limited to the following activities for which no disclosure is required under Item 407(e)(3)(iii) of Regulation S-K: (a) consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of Executive Officers or directors of the Company, and that is available generally to all salaried employees; and/or (b) providing information that either is not customized for a particular issuer or that is customized based on parameters that are not developed by the adviser, and about which the adviser does not provide advice.

(4) Cure Period for Compensation Committee

If a Company fails to comply with the compensation committee composition requirement under Rule 5605(d)(2)(A) due to one vacancy, or one compensation committee member ceases to be independent due to circumstances beyond the member's reasonable control, the Company shall regain compliance with the requirement by the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure

to comply with this requirement; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the failure to comply with this requirement, the Company shall instead have 180 days from such event to regain compliance. A Company relying on this provision shall provide notice to the Exchange immediately upon learning of the event or circumstance that caused the noncompliance.

(5) Smaller Reporting Companies

A Smaller Reporting Company, as defined in Rule 12b-2 under the Act, is not subject to the requirements of Rule 5605(d), except that a Smaller Reporting Company must have, and certify that it has and will continue to have, a compensation committee of at least two members, each of whom must be an Independent Director as defined under Rule 5605(a)(2). A Smaller Reporting Company may rely on the exception in Rule 5605(d)(2)(B) and the cure period in Rule 5605(d)(4). In addition, a Smaller Reporting Company must certify that it has adopted a formal written compensation committee charter or board resolution that specifies the content set forth in Rule 5605(d)(1)(A)-(C). A Smaller Reporting Company does not need to include in its formal written compensation committee charter or board resolution the specific compensation committee responsibilities and authority set forth in Rule 5605(d)(3).

(6) Effective Dates of Rule 5605(d) and IM-5605-6; Transition for Companies Listed On the Exchange as of the Effective Dates

The provisions of Rule 5605(d)(3) shall be effective on July 1, 2013; to the extent a Company does not have a compensation committee in the period before the final implementation deadline applicable to it as outlined in the paragraph below, the provisions of Rule 5605(d)(3) shall apply to the Independent Directors who determine, or recommend to the board for determination, the compensation of the chief executive officer and all other Executive Officers of the Company. Companies should consider under state corporate law whether to grant the specific responsibilities and authority referenced in Rule 5605(d)(3) through a charter, resolution or other board action; however, the Exchange requires only that a compensation committee, or Independent Directors acting in lieu of a compensation committee, have the responsibilities and authority referenced in Rule 5605(d)(3) on July 1, 2013. Companies must have a written compensation committee charter that includes, among others, the responsibilities and authority referenced in Rule 5605(d)(3) by the implementation deadline set forth in the paragraph below.

In order to allow Companies to make necessary adjustments in the course of their regular annual meeting schedule, Companies will have until the earlier of their first annual meeting after January 15, 2014, or October 31, 2014, to comply with the remaining provisions of Rule 5605(d) and IM- 5605-6. A Company must certify to the Exchange, no later than 30 days after the final implementation deadline applicable to it, that it has complied with Rule 5605(d). During the transition period, Companies that are not yet required to comply with a particular provision of revised Rule 5605(d) and IM-5605-6

must continue to comply with the corresponding provision, if any, of Rule 5605A(d) and IM-5605A-6.]

[***IM-5605-6. Independent Director Oversight of Executive Compensation***

Independent oversight of executive officer compensation helps assure that appropriate incentives are in place, consistent with the board's responsibility to act in the best interests of the corporation. Compensation committees are required to have a minimum of two members and be comprised only of Independent Directors.

In addition to satisfying the Independent Director requirements under Rule 5605(a)(2), compensation committee members must not accept any consulting, advisory or other compensatory fee from the Company, other than fees received for board or committee service or fixed amounts of compensation received under a retirement plan (including deferred compensation) for prior service with the Company (provided that such compensation is not contingent in any way on continued service). In addition, a Company's board must consider, in determining whether a director is eligible to serve on the compensation committee, whether the director is affiliated with the Company, a subsidiary of the Company or an affiliate of a subsidiary of the Company to determine whether such affiliation would impair the director's judgment as a member of the compensation committee. In that regard, while a board may conclude differently with respect to individual facts and circumstances, the Exchange does not believe that ownership of Company stock by itself, or possession of a controlling interest through ownership of Company stock by itself, precludes a board finding that it is appropriate for a director to serve on the compensation committee. In fact, it may be appropriate for certain affiliates, such as representatives of significant stockholders, to serve on compensation committees since their interests are likely aligned with those of other stockholders in seeking an appropriate executive compensation program.

A Smaller Reporting Company must have a compensation committee with a minimum of two members who are Independent Directors as defined under Rule 5605(a)(2) and a formal written compensation committee charter or board resolution that specifies the committee's responsibilities and authority set forth in Rule 5605(d)(1)(A)-(C). However, in recognition of the fact that Smaller Reporting Companies may have fewer resources than larger Companies, Smaller Reporting Companies are not required to adhere to the additional compensation committee eligibility requirements in Rule 5605(d)(2)(A), or to incorporate into their formal written compensation committee charter or board resolution the specific compensation committee responsibilities and authority set forth in Rule 5605(d)(3).]

[**5610. Code of Conduct**

Each Company shall adopt a code of conduct applicable to all directors, officers and employees, which shall be publicly available. A code of conduct satisfying this rule must comply with the definition of a "code of ethics" set out in Section 406(c) of the Sarbanes-Oxley Act and any regulations promulgated thereunder by the Commission. See 17 C.F.R. 228.406 and 17 C.F.R. 229.406. In addition, the code must provide for an enforcement mechanism. Any waivers of the code for directors or Executive Officers must be approved by the Board. Companies, other than

Foreign Private Issuers, shall disclose such waivers within four business days by filing a current report on Form 8-K with the Commission or, in cases where a Form 8-K is not required, by distributing a press release. Foreign Private Issuers shall disclose such waivers either by distributing a press release or including disclosure in a Form 6-K or in the next Form 20-F or 40-F. Alternatively, a Company, including a Foreign Private Issuer, may disclose waivers on the Company's website in a manner that satisfies the requirements of Item 5.05(c) of Form 8-K.]

[**IM-5610. Code of Conduct**

Ethical behavior is required and expected of every corporate director, officer and employee whether or not a formal code of conduct exists. The requirement of a publicly available code of conduct applicable to all directors, officers and employees of a Company is intended to demonstrate to investors that the board and management of Companies have carefully considered the requirement of ethical dealing and have put in place a system to ensure that they become aware of and take prompt action against any questionable behavior. For Company personnel, a code of conduct with enforcement provisions provides assurance that reporting of questionable behavior is protected and encouraged, and fosters an atmosphere of self-awareness and prudent conduct.

Rule 5610 requires Companies to adopt a code of conduct complying with the definition of a "code of ethics" under Section 406(c) of the Sarbanes-Oxley Act and any regulations promulgated thereunder by the Commission. See 17 C.F.R. 228.406 and 17 C.F.R. 229.406. Thus, the code must include such standards as are reasonably necessary to promote the ethical handling of conflicts of interest, full and fair disclosure, and compliance with laws, rules and regulations, as specified by the Sarbanes-Oxley Act. However, the code of conduct required by Rule 5610 must apply to all directors, officers, and employees. Companies can satisfy this obligation by adopting one or more codes of conduct, such that all directors, officers and employees are subject to a code that satisfies the definition of a "code of ethics."

As the Sarbanes-Oxley Act recognizes, investors are harmed when the real or perceived private interest of a director, officer or employee is in conflict with the interests of the Company, as when the individual receives improper personal benefits as a result of his or her position with the Company, or when the individual has other duties, responsibilities or obligations that run counter to his or her duty to the Company. Also, the disclosures a Company makes to the Commission are the essential source of information about the Company for regulators and investors â€” there can be no question about the duty to make them fairly, accurately and timely. Finally, illegal action must be dealt with swiftly and the violators reported to the appropriate authorities. Each code of conduct must require that any waiver of the code for Executive Officers or directors may be made only by the board and must be disclosed to Shareholders, along with the reasons for the waiver. All Companies, other than Foreign Private Issuers, must disclose such waivers within four business days by filing a current report on Form 8-K with the Commission, providing website disclosure that satisfies the requirements of Item 5.05(c) of Form 8-K, or, in cases where a Form 8-K is not required, by distributing a press release. Foreign Private Issuers must disclose such waivers either by providing website disclosure that satisfies the requirements of Item 5.05(c) of Form 8-K, by including disclosure in a Form 6-K or in the next Form 20-F or 40-F or by distributing a press release. This disclosure requirement provides investors the comfort that

waivers are not granted except where they are truly necessary and warranted, and that they are limited and qualified so as to protect the Company and its Shareholders to the greatest extent possible.

Each code of conduct must also contain an enforcement mechanism that ensures prompt and consistent enforcement of the code, protection for persons reporting questionable behavior, clear and objective standards for compliance, and a fair process by which to determine violations.]

[**5615. Exemptions from Certain Corporate Governance Requirements**

This rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, and sets forth the phase-in schedules for initial public offerings, Companies emerging from bankruptcy, Companies transferring from other markets and Companies ceasing to be Smaller Reporting Companies. This rule also describes the applicability of the corporate governance rules to Controlled Companies and sets forth the phase-in schedule afforded to Companies ceasing to be Controlled Companies. During the transition period before Companies are subject to revised Rule 5605(d) and IM-5605-6, a reference in this Rule 5615 to Rule 5605(d) or IM-5605-6 shall be deemed to refer to Rule 5605A(d) or IM-5605A-6..

(a) Exemptions to the Corporate Governance Requirements

(1) Asset-backed Issuers and Other Passive Issuers

The following are exempt from the requirements relating to Audit Committees (Rule 5605(c)), Compensation Committees (Rule 5605(d)) and Codes of Conduct (Rule 5610):

(A) asset-backed issuers; and

(B) issuers, such as unit investment trusts, that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.]

[***IM-5615-1. Asset-backed Issuers and Other Passive Issuers***

Because of their unique attributes, Rules 5605(c), 5605(d) and 5610 do not apply to asset-backed issuers and issuers, such as unit investment trusts, that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

(2) Cooperatives

Cooperative entities, such as agricultural cooperatives, that are structured to comply with relevant state law and federal tax law and that do not have a publicly traded class of common stock are exempt from Rule 5605(d). However, such entities must comply with all federal securities laws, including without limitation those rules required by Section 10A(m) of the Act and Rule 10A-3 thereunder.]

[***IM-5615-2.***

Certain member-owned cooperatives that list their preferred stock are required to have their common stock owned by their members. Because of their unique structure and the fact that they do not have a publicly traded class of common stock, such entities are exempt from Rule 5605(d).

(3) Foreign Private Issuers

(A) A Foreign Private Issuer may follow its home country practice in lieu of the requirements of the Rule 5600 Series, the requirement to distribute annual and interim reports set forth in Rule 5250(d), and the Direct Registration Program requirement set forth in Rules 5210(c) and 5255, provided, however, that such a Company shall: comply with the Notification of Noncompliance requirement (Rule 5625), the Voting Rights requirement (Rule 5640), have an audit committee that satisfies Rule 5605(c)(3), and ensure that such audit committee's members meet the independence requirement in Rule 5605(c)(2)(A)(ii). Except as provided in this paragraph, a Foreign Private Issuer must comply with the requirements of the Rule 5000 Series, including the listing agreement requirement in Rule 5205(a).

(B) Disclosure Requirements

(i) A Foreign Private Issuer that follows a home country practice in lieu of one or more provisions of Rule 5600 and the Direct Registration Program requirement set forth in 5210(c) and 5255 shall disclose in its annual reports filed with the Commission each requirement that it does not follow and describe the home country practice followed by the issuer in lieu of such requirements. Alternatively, a Foreign Private Issuer that is not required to file its annual report with the Commission on Form 20-F may make this disclosure only on its website. A Foreign Private Issuer that follows a home country practice in lieu of the requirement in Rule 5605(d)(2) to have an independent compensation committee must disclose in its annual reports filed with the Commission the reasons why it does not have such an independent committee.

(ii) A Foreign Private Issuer making its initial public offering or first U.S. listing on the Exchange shall disclose in its registration statement or on its website each requirement that it does not follow and describe the home country practice followed by the Company in lieu of such requirements.]

[***IM-5615-3. Foreign Private Issuers***

A Foreign Private Issuer (as defined in Rule 5005) listed on the Exchange may follow the practice in such Company's home country (as defined in General Instruction F of Form 20-F) in lieu of the provisions of the Rule 5600 Series, Rule 5250(d), and Rules 5210(c) and 5255, subject to several important exceptions. First, such an issuer shall comply with Rule 5625 (Notification of Noncompliance). Second, such a Company shall have an audit committee that satisfies Rule 5605(c)(3). Third, members of such audit committee shall meet the criteria for independence referenced in Rule 5605(c)(2)(A)(i) (the criteria set forth in Rule 10A-3(b)(1) under the Act, subject to the exemptions provided in Rule 10A-3(c) under the Act). Fourth, a Foreign Private Issuer must comply with Rules 5210(b) and 5255 (Direct Registration Program) unless prohibited from complying by a law or regulation in its home country. Finally, a Foreign Private Issuer that elects to follow home country practice in lieu of a requirement of the Rules 5600 Series or Rules 5250(d), 5210(c) or 5255 shall submit to the Exchange a written statement from an independent counsel in such Company's home country certifying that the Company's practices are not prohibited by the home country's laws and, in the case of a Company prohibited from complying with Rules 5210(c) and 5255, certifying that a law or regulation in the home country prohibits such compliance. In the case of new listings, this certification is required at the time of listing. For existing Companies, the certification is required at the time the Company seeks to adopt its first noncompliant practice. In the interest of transparency, the rule requires a Foreign Private Issuer to make appropriate disclosures in the Company's annual filings with the Commission (typically Form 20-F or 40-F), and at the time of the Company's original listing in the United States, if that listing is on the Exchange, in its registration statement (typically Form F-1, 20-F, or 40-F); alternatively, a Company that is not required to file an annual report on Form 20-F may provide these disclosures in English on its website in addition to, or instead of, providing these disclosures on its registration statement or annual report. The Company shall disclose each requirement that it does not follow and include a brief statement of the home country practice the Company follows in lieu of these corporate governance requirement(s). If the disclosure is only available on the website, the annual report and registration statement should so state and provide the web address at which the information may be obtained. Companies that must file annual reports on Form 20-F are encouraged to provide these disclosures on their websites, in addition to the required Form 20-F disclosures, to provide maximum transparency about their practices.

(4) Limited Partnerships

A limited partnership is not subject to the requirements of the Rule 5600 Series, except as provided in this Rule 5615(a)(4). A limited partnership may request a written interpretation pursuant to Rule 5602.

(A) No provision of this Rule shall be construed to require any foreign Company that is a partnership to do any act that is contrary to a law, rule or regulation of any public authority exercising jurisdiction over such Company or that is contrary to generally accepted business practices in the Company's Country of Domicile. The Exchange shall have the ability to provide exemptions from applicability of these provisions as may be necessary or appropriate to carry out this intent.

(B) Corporate General Partner

Each Company that is a limited partnership shall maintain a corporate general partner or co-general partner, which shall have the authority to manage the day-to-day affairs of the partnership.

(C) Independent Directors/Audit Committee

The corporate general partner or co-general partner shall maintain a sufficient number of Independent Directors on its board to satisfy the audit committee requirements set forth in Rule 5605(b).

(D) Partner Meetings

A Company that is a limited partnership shall not be required to hold an annual meeting of limited partners unless required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement.

(E) Quorum

In the event that a meeting of limited partners is required pursuant to paragraph (D), the quorum for such meeting shall be not less than 33-1/3 percent of the limited partnership interests outstanding.

(F) Solicitation of Proxies

In the event that a meeting of limited partners is required pursuant to paragraph (D), the Company shall provide all limited partners with proxy or information statements and if a vote is required, shall solicit proxies thereon.

(G) Review of Related Party Transactions

Each Company that is a limited partnership shall conduct an appropriate review of all related party transactions on an ongoing basis and shall utilize the Audit Committee or a comparable body of the Board of Directors for the review of potential material conflict of interest situations where appropriate.

(H) Shareholder Approval

Each Company that is a limited partnership must obtain shareholder approval when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which stock may be acquired by officers, directors, employees, or consultants, as would be required under Rule 5635 and IM-5635.

(I) Auditor Registration

Each Company that is a limited partnership must be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act.

(J) Notification of Noncompliance.

Each Company that is a limited partnership must provide the Exchange with prompt notification after an Executive Officer of the Company, or a person performing an equivalent role, becomes aware of any noncompliance by the Company with the requirements of this Rule 5600 Series.

(5) Management Investment Companies

Management investment companies (including business development companies) are subject to all the requirements of the Rule 5600 Series, except that management investment companies registered under the Investment Company Act of 1940 are exempt from the Compensation Committee requirement set forth in Rule 5605(d) and the Code of Conduct requirement set forth in Rule 5610.]

[***IM-5615-4. Management Investment Companies***

Management investment companies registered under the Investment Company Act of 1940 are already subject to a pervasive system of federal regulation in certain areas of corporate governance covered by 5600. In light of this, the Exchange exempts from Rule 5605(d) and 5610 management investment companies registered under the Investment Company Act of 1940. Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that Act, are required to comply with all of the provisions of the Rule 5600 Series.

(b) Phase-In Schedules

(1) Initial Public Offerings

(A)

(i) A Company listing in connection with its initial public offering shall be permitted to phase in its compliance with the independent audit committee requirement pursuant to Rule 10A-3(b)(1)(iv)(A) under the Act as follows: (1) one independent member at the time of listing; (2) a majority of independent members within 90 days of the date of effectiveness of the Company's registration statement; and (3) all independent members within one year of the date of effectiveness of the Company's registration statement. It should be noted, however, that pursuant to Rule 10A-3(b)(1)(iii) under the Act

investment companies are not afforded the exemptions under Rule 10A-3(b)(1)(iv) under the Act.

(ii) For purposes of this Rule 5615(b)(1)(A), a Company shall be considered to be listing in conjunction with an initial public offering only if it meets the conditions in Rule 10A-3(b)(1)(iv)(A) under the Act, namely, that the Company was not, immediately prior to the effective date of a registration statement, required to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Act.

(B)

(i) A Company listing in connection with its initial public offering shall be permitted to phase in its compliance with the compensation committee composition requirement set forth in Rule 5605(d)(2) as follows: (1) one member must satisfy the requirement at the time of listing; (2) a majority of members must satisfy the requirement within 90 days of listing; and (3) all members must satisfy the requirement within one year of listing.

(ii) For purposes of this Rule 5615(b)(1)(B), a Company shall be considered to be listing in conjunction with an initial public offering if, immediately prior to listing, it does not have a class of common stock registered under the Act.

(2) Companies Emerging from Bankruptcy

A Company that is listing upon emerging from bankruptcy shall be permitted to phase-in the independent compensation committee requirement of Rule 5605(d) on the same schedule as a Company listing in conjunction with its initial public offering.

(3) Transfers from other Markets

(A) A Company transferring from another national securities exchange with a substantially similar requirement shall be immediately subject to the requirements of Rule 5605(c) and (d), provided that the Company will be afforded the balance of any grace period afforded by the other market. This transition period is not intended to supplant any applicable requirements of Rule 10A-3 under the Act.

(B) A Company that is not subject to a substantially similar requirement at the time of its listing on the Exchange, such as a company currently quoted solely in the over-the-counter market, must comply with the audit committee requirement of Rule 5605(c) at the time of listing, subject to any applicable phase-in period allowed by Rule 10A-3 under the Act. Such a Company shall be permitted to phase in its compliance with the compensation committee composition requirement set forth in Rule 5605(d)(2) as follows: (1) one member must satisfy the requirement at the time of listing; (2) a majority of members must satisfy the requirement within 90 days of listing; and (3) all members must satisfy the requirement within one year of listing.

(4) Phase-In Schedule for a Company Ceasing to be a Smaller Reporting Company

Pursuant to Rule 12b-2 under the Act, a Company tests its status as a Smaller Reporting Company on an annual basis as of the last business day of its most recently completed second fiscal quarter (for purposes of this Rule, the "Determination Date"). A Company with a public float of $75 million or more as of the Determination Date will cease to be a Smaller Reporting Company as of the beginning of the fiscal year following the Determination Date (the "Start Date").

By six months from the Start Date, a Company must comply with Rule 5605(d)(3) and certify to the Exchange that: (i) it has complied with the requirement in Rule 5605(d)(1) to adopt a formal written compensation committee charter including the content specified in Rule 5605(d)(1)(A)- (D); and (ii) it has complied, or within the applicable phase-in schedule will comply, with the additional requirements in Rule 5605(d)(2)(A) regarding compensation committee composition.

A Company shall be permitted to phase in its compliance with the additional compensation committee eligibility requirements of Rule 5605(d)(2)(A) relating to compensatory fees and affiliation as follows: (i) one member must satisfy the requirements by six months from the Start Date; (ii) a majority of members must satisfy the requirements by nine months from the Start Date; and (iii) all members must satisfy the requirements by one year from the Start Date.

Since a Smaller Reporting Company is required to have a compensation committee comprised of at least two Independent Directors, a Company that has ceased to be a Smaller Reporting Company may not use the phase-in schedule for the requirements of Rule 5605(d)(2)(A) relating to minimum committee size or that the committee consist only of Independent Directors as defined under Rule 5605(a)(2).

During this phase-in schedule, a Company that has ceased to be a Smaller Reporting Company must continue to comply with Rule 5605(d)(5).

(c) How the Rules Apply to a Controlled Company

(1) Definition

A Controlled Company is a Company of which more than 50% of the voting power for the election of directors is held by an individual, a group or another company.

(2) Exemptions Afforded to a Controlled Company

A Controlled Company is exempt from the requirements of Rule 5605(d). A Controlled Company, other than a Foreign Private Issuer, relying upon this exemption must comply with the disclosure requirements set forth in Instruction 1 to Item 407(a) of Regulation S-K. A Foreign Private Issuer must disclose in its next annual report (e.g., Form 20-F or 40-F) that it is a Controlled Company and the basis for that determination.

(3) Phase-In Schedule for a Company Ceasing to be a Controlled Company

A Company that has ceased to be a Controlled Company within the meaning of Rule 5615(c)(1) shall be permitted to phase-in its independent compensation committee on the same schedule as Companies listing in conjunction with their initial public offering. It should be noted, however, that a Company that has ceased to be a Controlled Company within the meaning of Rule 5615(c)(1) must comply with the audit committee requirements of Rule 5605(c) as of the date it ceased to be a Controlled Company. Furthermore, the executive sessions requirement of Rule 5605(b) applies to a Controlled Company as of the date of listing and continues to apply after it ceases to be controlled.]

[***IM-5615-5. Controlled Company Exemption***

This exemption recognizes that majority Shareholders, including parent companies, have the right to select directors and control certain key decisions, such as executive officer compensation, by virtue of their ownership rights. In order for a group to exist for purposes of this rule, the Shareholders must have publicly filed a notice that they are acting as a group (e.g., a Schedule 13D). A Controlled Company not relying upon this exemption need not provide any special disclosures about its controlled status. It should be emphasized that this controlled company exemption does not extend to the audit committee requirements under Rule 5605(c) or the requirement for executive sessions of Independent Directors under Rule 5605(b).]

[**5620. Meetings of Shareholders**

(a) Each Company listing common stock or voting preferred stock, and their equivalents, shall hold an annual meeting of Shareholders no later than one year after the end of the Company's fiscal year-end, unless such Company is a limited partnership that meets the requirements of Rule 5615(a)(4)(D).]

[***IM-5620. Meetings of Shareholders or Partners***

Rule 5620 requires that each Company listing common stock or voting preferred stock, and their equivalents, hold an annual meeting of Shareholders within one year of the end of each fiscal year. At each such meeting, Shareholders must be afforded the opportunity to discuss Company affairs with management and, if required by the Company's governing documents, to elect directors. A new listing that was not previously subject to a requirement to hold an annual meeting is required to hold its first meeting within one-year after its first fiscal year-end following listing. Of course, the Exchange's meeting requirement does not supplant any applicable state or federal securities laws concerning annual meetings.

(b) Proxy Solicitation

Each Company that is not a limited partnership shall solicit proxies and provide proxy statements for all meetings of Shareholders and shall provide copies of such proxy solicitation to the Exchange. Limited partnerships that are required to hold an annual meeting of partners are subject to the requirements of Rule 5615(a)(4)(F).

(c) Quorum

Each Company that is not a limited partnership shall provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33 1/3 % of the outstanding shares of the Company's common voting stock. Limited partnerships that are required to hold an annual meeting of partners are subject to the requirements of Rule 5615(a)(4)(E).]

[**5625. Notification of Noncompliance**

A Company must provide the Exchange with prompt notification after an Executive Officer of the Company becomes aware of any noncompliance by the Company with the requirements of this Rule 5600 Series.]

[**5630. Review of Related Party Transactions**

(a) Each Company that is not a limited partnership shall conduct an appropriate review and oversight of all related party transactions for potential conflict of interest situations on an ongoing basis by the Company's audit committee or another independent body of the board of directors. For purposes of this rule, the term "related party transaction" shall refer to transactions required to be disclosed pursuant to Item 404 of Regulation S-K under the Act. However, in the case of non-U.S. issuers, the term "related party transactions" shall refer to transactions required to be disclosed pursuant to Form 20-F, Item 7.B.

(b) Limited partnerships shall comply with the requirements of Rule 5615(a)(4)(G).]

[**5635. Shareholder Approval for Equity Compensation**

(a) Shareholder approval is required prior to the issuance of securities when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which stock may be acquired by officers, directors, employees, or consultants, except for:

(1) warrants or rights issued generally to all security holders of the Company or stock purchase plans available on equal terms to all security holders of the Company (such as a typical dividend reinvestment plan);

(2) tax qualified, non-discriminatory employee benefit plans (e.g., plans that meet the requirements of Section 401(a) or 423 of the Internal Revenue Code) or parallel nonqualified plans, provided such plans are approved by the Company's independent compensation committee or a majority of the Company's Independent Directors; or plans that merely provide a convenient way to purchase shares on the open market or from the Company at Market Value;

(3) plans or arrangements relating to an acquisition or merger as permitted under IM-5635; or

(4) issuances to a person not previously an employee or director of the Company, or following a bona fide period of non-employment, as an inducement material to the individual's entering into employment with the Company, provided such issuances are approved by either the Company's independent compensation committee or a majority of the Company's Independent Directors. Promptly following an issuance of any employment inducement grant in reliance on this exception, a Company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

(b) Exchange-listed Companies and their representatives are encouraged to use the interpretative letter process described in Rule 5602.]

[**IM-5635. Shareholder Approval for Stock Option Plans or Other Equity Compensation Arrangements**

Employee ownership of Company stock can be an effective tool to align employee interests with those of other Shareholders. Stock option plans or other equity compensation arrangements can also assist in the recruitment and retention of employees, which is especially critical to young, growing Companies, or Companies with insufficient cash resources to attract and retain highly qualified employees. However, these plans can potentially dilute shareholder interests. Rule 5635(a) ensures that Shareholders have a voice in these situations, given this potential for dilution.

Rule 5635(a) requires shareholder approval when a plan or other equity compensation arrangement is established or materially amended. For these purposes, a material amendment would include, but not be limited to, the following:

(1) any material increase in the number of shares to be issued under the plan (other than to reflect a reorganization, stock split, merger, spinoff or similar transaction);

(2) any material increase in benefits to participants, including any material change to: (i) permit a repricing (or decrease in exercise price) of outstanding options, (ii) reduce the price at which shares or options to purchase shares may be offered, or (iii) extend the duration of a plan;

(3) any material expansion of the class of participants eligible to participate in the plan; and

(4) any expansion in the types of options or awards provided under the plan.

While general authority to amend a plan would not obviate the need for shareholder approval, if a plan permits a specific action without further shareholder approval, then no such approval would generally be required. However, if a plan contains a formula for automatic increases in the shares available (sometimes called an "evergreen formula"), or for automatic grants pursuant to a dollar-based formula (such as annual grants based on a certain dollar value, or matching contributions based upon the amount of compensation the participant elects to defer), such plans

cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. However, plans that do not contain a formula and do not impose a limit on the number of shares available for grant would require shareholder approval of each grant under the plan. A requirement that grants be made out of treasury shares or repurchased shares will not alleviate these additional shareholder approval requirements.

As a general matter, when preparing plans and presenting them for shareholder approval, Companies should strive to make plan terms easy to understand. In that regard, it is recommended that plans meant to permit repricing use explicit terminology to make this clear.

Rule 5635(a) provides an exception to the requirement for shareholder approval for warrants or rights offered generally to all Shareholders. In addition, an exception is provided for tax qualified, non-discriminatory employee benefit plans as well as parallel nonqualified plans as these plans are regulated under the Internal Revenue Code and Treasury Department regulations. An equity compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable tax qualified, non-discriminatory employee benefit plan or parallel nonqualified plan that the Company provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law, is also exempt from shareholder approval under this section.

Further, the rule provides an exception for inducement grants to new employees because in these cases a Company has an arm's length relationship with the new employees. Inducement grants for these purposes include grants of options or stock to new employees in connection with a merger or acquisition. The rule requires that such issuances be approved by the Company's independent compensation committee or a majority of the Company's Independent Directors. The rule further requires that promptly following an issuance of any employment inducement grant in reliance on this exception, a Company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

In addition, plans or arrangements involving a merger or acquisition do not require shareholder approval in two situations. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that meet the requirements of this Rule 5635(a). These shares may be used for post-transaction grants of options and other equity awards by the listed Company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or arrangement or another plan or arrangement, without further shareholder approval, provided: (1) the time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company or its subsidiaries at the time the merger or acquisition was consummated. The Exchange would view a plan or arrangement adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. This exception is appropriate because it will not result in any increase in the aggregate

potential dilution of the combined enterprise. In this regard, any additional shares available for issuance under a plan or arrangement acquired in connection with a merger or acquisition would be counted by the Exchange in determining whether the transaction involved the issuance of 20% or more of the Company's outstanding common stock, thus triggering the shareholder approval requirements under Rule 5635(a).

Inducement grants, tax qualified non-discriminatory benefit plans, and parallel nonqualified plans are subject to approval by either the Company's independent compensation committee or a majority of the Company's Independent Directors. It should also be noted that a Company would not be permitted to use repurchased shares to fund option plans or grants without prior shareholder approval.

For purposes of Rule 5635(a) and IM-5635, the term "parallel nonqualified plan" means a plan that is a "pension plan" within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. Â§1002 (1999), that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may thereafter be enacted. However, a plan will not be considered a parallel nonqualified plan unless: (i) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitation that may hereafter be enacted); (ii) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limitations described in the preceding sentence; and, (iii) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.]

[**5640. Voting Rights**

Voting rights of existing Shareholders of publicly traded common stock registered under Section 12 of the Act cannot be disparately reduced or restricted through any corporate action or issuance. Examples of such corporate action or issuance include, but are not limited to, the adoption of time-phased voting plans, the adoption of capped voting rights plans, the issuance of super-voting stock, or the issuance of stock with voting rights less than the per share voting rights of the existing common stock through an exchange offer.]

[**IM-5640. Voting Rights Policy**

The following Voting Rights Policy is based upon, but more flexible than, former Rule 19c-4 under the Act. Accordingly, the Exchange will permit corporate actions or issuances by Companies that would have been permitted under former Rule 19c-4, as well as other actions or issuances that are not inconsistent with this policy. In evaluating such other actions or issuances, the Exchange will consider, among other things, the economics of such actions or issuances and the voting rights being granted. The Exchange's interpretations under the policy will be flexible,

recognizing that both the capital markets and the circumstances and needs of Companies change over time. The text of the Exchange Voting Rights Policy is as follows:

Companies with Dual Class Structures

The restriction against the issuance of super voting stock is primarily intended to apply to the issuance of a new class of stock, and Companies with existing dual class capital structures would generally be permitted to issue additional shares of the existing super voting stock without conflict with this policy.

Consultation with the Exchange

Violation of the Exchange Voting Rights Policy could result in the loss of a Company's Exchange or public trading market. The policy can apply to a variety of corporate actions and securities issuances, not just super voting or so-called "time phase" voting common stock. While the policy will continue to permit actions previously permitted under former Rule 19c-4, it is extremely important that Companies communicate their intentions to their Exchange representatives as early as possible before taking any action or committing to take any action that may be inconsistent with the policy. The Exchange urges Companies listed on the Exchange not to assume, without first discussing the matter with the Exchange Staff, that a particular issuance of common or preferred stock or the taking of some other corporate action will necessarily be consistent with the policy. It is suggested that copies of preliminary proxy or other material concerning matters subject to the policy be furnished to the Exchange for review prior to formal filing.

Review of Past Voting Rights Activities

In reviewing an application for initial qualification for listing of a Security on the Exchange, the Exchange will review the Company's past corporate actions to determine whether another self-regulatory organization (SRO) has found any of the Company's actions to have been a violation or evasion of the SRO's voting rights policy. Based on such review, the Exchange may take any appropriate action, including the denial of the application or the placing of restrictions on such listing. The Exchange will also review whether a Company seeking initial listing of a Security in the Exchange has requested a ruling or interpretation from another SRO regarding the application of that SRO's voting rights policy with respect to a proposed transaction. If so, the Exchange will consider that fact in determining its response to any ruling or interpretation that the Company may request on the same or similar transaction.

Non-U.S. Companies

The Exchange will accept any action or issuance relating to the voting rights structure of a non-U.S. Company that is in compliance with the Exchange's requirements for domestic Companies or that is not prohibited by the Company's home country law.]

[5700. Additional Requirements for Securities Listed on the Exchange Issued by Nasdaq or its Affiliates]

[**5701. Additional Requirements for Securities Listed on the Exchange Issued by Nasdaq or its Affiliates**

(a) For purposes of this Rule 5701, the terms below are defined as follows:

(1) "Nasdaq Affiliate" means Nasdaq, Inc. and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Nasdaq, Inc., where "control" means that the one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity.

(2) "Affiliate Security" means any security issued by a Nasdaq Affiliate or any Exchange-listed option on any such security, with the exception of Portfolio Depository Receipts as defined in Equity 3A, Section 2(e)(1)(A) and Index Fund Shares as defined in Equity 3A, Section 2(f)(1)(A).

(b) Upon initial and throughout continued listing and trading of the Affiliate Security on the Exchange, the Exchange shall:

(1) provide a quarterly report to the Exchange's Regulatory Oversight Committee detailing the Exchange's monitoring of:

(A) the Nasdaq Affiliate's compliance with the listing requirements contained in the Rule 5000, 5100, 5200, 5500, and 5600 Series; and

(B) the trading of the Affiliate Security, which shall include summaries of all related surveillance alerts, complaints, regulatory referrals, trades cancelled or adjusted pursuant to Equity 11, Rule 11890, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data of such security.

(2) engage an independent accounting firm once a year to review and prepare a report on the Affiliate Security to ensure that the Nasdaq Affiliate is in compliance with the listing requirements contained in the Rule 5000, 5100, 5200, 5500 and 5600 Series and promptly provide BX's Regulatory Oversight Committee with a copy of the report prepared by the independent accounting firm.

(c) In the event that the Exchange determines that the Nasdaq Affiliate is not in compliance with any of the listing requirements contained in the Rule 5000, 5100, 5200, 5500 and 5600 Series, the Exchange shall file a report with the Commission within five business days of providing notice to the Nasdaq Affiliate of its non-compliance. The report shall identify the date of non-compliance, type of non-compliance and any other material information conveyed to the Nasdaq Affiliate in the notice of noncompliance. Within five business days of receipt of a plan of compliance from the Nasdaq Affiliate, the Exchange shall notify the Commission of such receipt, whether the plan of compliance was accepted by the Exchange or what other action was

taken with respect to the plan and the time period provided to regain compliance with the Rule 5000, 5100, 5200, 5500 and 5600 Series, if any.]

[**5800. Failure to Meet Listing Standards**]
[**5801. Preamble to the Rules and Procedures When a Company Fails to Meet a Listing Standard**

Securities of a Company that does not meet the listing standards set forth in the Rule 5000 Series are subject to delisting from, or denial of initial listing on the Exchange. This Section sets forth procedures for the independent review, suspension, and delisting of Companies that fail to satisfy one or more standards for initial or continued listing, and thus are "deficient" with respect to the listing standards.

The Listings Qualifications Department is responsible for identifying deficiencies that may lead to delisting or denial of a listing application; notifying the Company of the deficiency or denial; and issuing Staff Delisting Determinations and Public Reprimand Letters. Rule 5810 contains provisions regarding the Listing Qualifications Department's process for notifying Companies of different types of deficiencies and their corresponding consequences.

The Hearings Panel, upon timely request by a Company, will review a Staff Delisting Determination, denial of a listing application, or Public Reprimand Letter at an oral or written hearing, and issue a Decision that may, among other things, grant an "exception" to the Exchange's listing standards or affirm a delisting. Rule 5815 contains provisions relating to the hearings process.

The Listing and Hearings Review Council, upon timely appeal by a Company or on its own initiative, may review the Decisions of the Hearings Panel. Rule 5820 contains provisions relating to the Listing Council review process.

Finally, the Exchange's Board of Directors may exercise discretion to call for review a Listing Council Decision. Rule 5825 contains provisions related to that process.

Procedures related to SEC notification of the Exchange's final Delisting Determinations are discussed in Rule 5830. Rules applicable to Adjudicators and Advisors are provided in Rule 5835 and general information relating to the adjudicatory process is provided in Rule 5840.

A Company's failure to maintain compliance with the applicable provisions of the Rule 5000 Series will result in the termination of the listing unless an exception is granted to the Company, as described below. The termination of the Company's listing will become effective in accordance with the procedures set forth herein, including Rule 5830.]

[**5805. Definitions**

(a) "**Adjudicatory Body**" or "**Adjudicator**" means the Hearings Panel, the Listing Council, the Board or a member thereof.

(b) "**Advisor**" means an individual employed by the Exchange who is advising an Adjudicatory Body with respect to a proceeding under this section.

(c) "**Hearings Department**" means the Hearings Department of the Exchange's Office of General Counsel.

(d) The "**Hearings Panel**" is an independent panel made up of at least two persons who are not employees or otherwise affiliated with the Exchange or its affiliates, and who have been authorized by the Exchange's Board of Directors.

(e) "**Listing Council**" means the Exchange's Listing and Hearing Review Council.

(f) The "**Listing Qualifications Department**" is the department of the Exchange responsible for evaluating Company compliance with quantitative and qualitative listing standards and determining eligibility for initial and continued listing of a Company's securities.

(g) "**Staff**" refers to employees of the Listing Qualifications Department.

(h) "**Staff Delisting Determination**" or "**Delisting Determination**" is a written determination by the Listing Qualifications Department to delist a listed Company's securities for failure to meet a continued listing standard.

(i) "**Decision**" means a written decision of an Adjudicatory Body.

(j) "**Public Reprimand Letter**" means a letter issued by Staff or a Decision of an Adjudicatory Body in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 under the Act) and Staff or the Adjudicatory Body determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, Staff or the Adjudicatory Body will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.

(k) "**Office of Appeals and Review**" means the Office of Appeals and Review of the Exchange's Office of General Counsel.

(l) "**Board**" or "**Exchange Board**" means the Board of Directors of Nasdaq BX, Inc.]

[**5810. Notification of Deficiency by the Listing Qualifications Department**

When the Listing Qualifications Department determines that a Company does not meet a listing standard set forth in the Rule 5000 Series, it will immediately notify the Company of the deficiency. As explained in more detail below, deficiency notifications are of four types:

(1) Staff Delisting Determinations, which are notifications of deficiencies that, unless appealed, subject the Company to immediate suspension and delisting;

(2) notifications of deficiencies for which a Company may submit a plan of compliance for Staff review;

(3) notifications of deficiencies for which a Company is entitled to an automatic cure or compliance period; and

(4) Public Reprimand Letters.

Notifications of deficiencies that allow for submission of a compliance plan or an automatic cure or compliance period may result, after review of the compliance plan or expiration of the cure or compliance period, in issuance of a Staff Delisting Determination or a Public Reprimand Letter.

(a) Information Contained in Deficiency Notification and Delisting Determination

Deficiency notifications and Delisting Determinations will:

(1) inform the Company of the factual bases for Staff's determination of deficiency or delisting, and the quantitative or qualitative standard the Company has failed to satisfy;

(2) provide the Company with instructions regarding its obligations to disclose the deficiency under the Exchange's Listing Rules; and

(3) inform the Company:

(A) in the case of a Staff Delisting Determination, that the Company's securities will be suspended as of a date certain; the Company has a right to request review of the Delisting Determination by a Hearings Panel; and that a request for review within seven days (as set forth in Rule 5815(a)(1)) will stay the suspension;

(B) in the case of a deficiency for which the Company may submit a plan of compliance for review by Staff, the deadline by which a plan must be submitted;

(C) in the case of a deficiency for which the Company is entitled to an automatic cure or compliance period, the expiration date of the cure or compliance period; and

(D) in the case of a Public Reprimand Letter, an explanation of why Staff concluded the letter is appropriate and the Company's right to request review of the Letter by a Hearings Panel.

(b) Company Disclosure Obligations

A Company that receives a notification of deficiency, Staff Delisting Determination, or Public Reprimand Letter is required to make a public announcement through the news media disclosing

receipt of the notification and the Rule(s) upon which the deficiency is based. A Company that receives a notification of deficiency or Staff Delisting Determination related to the requirement to file a periodic report contained in Rule 5250(c)(1) or (2) is required to make the public announcement by issuing a press release disclosing receipt of the notification and the Rule(s) upon which the deficiency is based, in addition to filing any Form 8-K required by SEC rules. In all other cases, the Company may make the public announcement either by filing a Form 8-K, where required by SEC rules, or by issuing a press release. As described in Rule 5250(b)(1) and IM-5250-1, the Company must notify the MarketWatch Department about the announcement through the electronic disclosure submission system available at a website designated by the Exchange for that purpose, except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during market hours, the Company must notify MarketWatch at least ten minutes prior to the announcement. If the public announcement is made outside of market hours, the Company must notify MarketWatch of the announcement prior to 6:50 a.m. ET. The Company should make the public announcement as promptly as possible but not more than four business days following receipt of the notification.]

[***IM-5810-1. Disclosure of Written Notice of Staff Determination***

Rule 5810(b) requires that a Company make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing the receipt of (i) a notice that the Company does not meet a listing standard set forth in the Rule 5000 Series, (ii) a Staff Delisting Determination to limit or prohibit continued listing of the Company's securities under Rule 5810 as a result of the Company's failure to comply with the continued listing requirements, or (iii) a Public Reprimand Letter; provided however, that if the notification relates to a failure to meet the requirements of Rules 5250(c)(1) or (2), the Company must make the public announcement by issuing a press release. Such public announcement shall be made as promptly as possible, but not more than four business days following the receipt of the notification, Staff Delisting Determination, or Public Reprimand Letter, as applicable. If the public announcement is not made by the Company within the time allotted, trading of its securities shall be halted, even if the Company appeals the Staff Delisting Determination or Public Reprimand Letter as set forth in Rule 5815. If the Company fails to make the public announcement by the time that the Hearings Panel issues its Decision, that Decision will also determine whether to delist the Company's securities for failure to make the public announcement.

Rule 5810(b) does not relieve a Company of its disclosure obligation under the federal securities laws, nor should it be construed as providing a safe harbor under the federal securities laws. It is suggested that the Company consult with corporate/securities counsel in assessing its disclosure obligations under the federal securities laws.

(c) Types of Deficiencies and Notifications

The type of deficiency at issue determines whether the Company will be immediately suspended and delisted, or whether it may submit a compliance plan for review or is entitled to an automatic cure or compliance period before a Staff Delisting Determination is issued. In the case of a deficiency not specified below, Staff will issue the Company a Staff Delisting Determination or a Public Reprimand Letter.

(1) Deficiencies that Immediately Result in a Staff Delisting Determination

Staff's notice will inform the Company that its securities are immediately subject to suspension and delisting when:

(A) a Company fails to timely solicit proxies and hold its annual shareholders' meeting;

(B) Staff has determined, under its discretionary authority in the Rule 5100 Series, that the Company's continued listing raises a public interest concern;

(C) the Security fails to meet the $0.25 per share bid price requirement of Rule 5550(d). A failure to meet this requirement shall be determined to exist only if the deficiency continues for 20 consecutive business days

(D) the Company represents itself as listed on The Nasdaq Stock Market or refers to itself as a Nasdaq listed Company; or

(E) the Company attempts to rely on an exemption from state securities registration which otherwise may be available under state law to Companies listed on the Exchange.

(2) Deficiencies for which a Company may Submit a Plan of Compliance for Staff Review

(A) Unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination, the Listing Qualifications Department may accept and review a plan to regain compliance when a Company is deficient with respect to one of the standards listed in subsections (i) through (iv) below. In accordance with Rule 5810(c)(2)(C), plans provided pursuant to subsections (i) through (iii) below must be provided generally within 30 calendar days, and in accordance with Rule 5810(c)(2)(E), plans provided pursuant to subsection (iv) must be provided generally within 45 calendar days.

(i) all quantitative deficiencies from standards that do not provide a compliance period;

(ii) deficiencies from the standards of Rules 5605 (Independent Directors, Audit Committees and Independent Director Oversight of Executive Officer Compensation) or 5615(a)(4)(C) (Independent Directors/Audit Committee of Limited Partnerships) where the cure period of the Rule is not applicable;

(iii) deficiencies from the standards of Rules 5620(c) (Quorum), 5630 (Review or Related Party Transactions), 5635 (Shareholder Approval), 5250(c)(3) (Auditor Registration), 5255(a) (Direct Registration Program), 5610 (Code of Conduct), 5615(a)(4)(E) (Quorum of Limited Partnerships),

5615(a)(4)(G) (Related Party Transactions of Limited Partnerships), or 5640 (Voting Rights); or

(iv) failure to file periodic reports as required by Rules 5250(c)(1) or (2).]

[***IM-5810-2. Staff Review of Deficiencies***

As provided in Rule 5810(c)(2)(A)(i), the Staff may accept a plan to regain compliance with respect to quantitative deficiencies from standards that do not themselves provide a compliance period. Such standards are included in Rules 5505 (Initial Listing of Securities) and Rule 5550 (Continued Listing of Securities).

(B) Staff Alternatives Upon Review of Plan

Staff may request such additional information from the Company as is necessary to make a determination, as described below. In cases other than filing delinquencies, which are governed by Rule 5810(c)(2)(E) below, upon review of a plan of compliance, Staff may either:

(i) grant an extension of time to regain compliance not greater than 90 calendar days from the date of Staff's initial notification, unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination. If Staff grants an extension, it will inform the Company in writing of the basis for granting the extension and the terms of the extension;

(ii) issue a Staff Delisting Determination letter that includes a description of the basis for denying the extension; or

(iii) issue a Public Reprimand Letter, as defined in Rule 5805(j).

(C) Timeline for Submission of Compliance Plans

Except for deficiencies from the standards of Rule 5250(c)(1) or (2), Staff's notification of deficiencies that allow for compliance plan review will inform the Company that it has 30 calendar days to submit a plan to regain compliance with the Exchange's listing standard(s). Staff may extend this deadline for up to an additional 5 calendar days upon good cause shown and may request such additional information from the Company as is necessary to make a determination regarding whether to grant such an extension.

(D) Failure to Meet the Terms of a Staff Extension

If the Company does not regain compliance within the time period provided by all applicable Staff extensions, Staff will immediately issue a Staff Delisting Determination indicating the date on which the Company's securities will be suspended unless it requests review by a Hearings Panel.

(E) Filing Delinquencies

In the case of deficiencies from the standards of Rule 5250(c)(1) or (2):

(i) Staff's notice shall provide the Company with 45 calendar days to submit a plan to regain compliance with the listing standard; provided, however, that the Company shall not be provided with an opportunity to submit such a plan if review under the Rule 5800 Series of a prior Staff Delisting Determination with respect to the Company is already pending. Staff may extend this deadline for up to an additional 5 calendar days upon good cause shown and may request such additional information from the Company as is necessary to make a determination regarding whether to grant such an extension.

(ii) The maximum additional time provided by all exceptions granted by Staff for a deficiency described in paragraph (i) above is 90 calendar days from the due date of the first late periodic report (as extended by Rule 12b-25 under the Act, if applicable). In determining whether to grant an exception, and the length of any such exception, Staff will consider, and the Company should address in its plan of compliance, the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

(3) Deficiencies for which the Rules Provide a Specified Cure or Compliance Period

With respect to deficiencies related to the standards listed in (A) - (C) below, Staff's notification will inform the Company of the applicable cure or compliance period provided by these Rules and discussed below. If the Company does not regain compliance within the specified cure or compliance period, the Listing Qualifications Department will immediately issue a Staff Delisting Determination letter.

(A) Market Makers

A failure to meet the continued listing requirement for a number of Market Makers shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.

(B) Market Value of Listed Securities

A failure to meet the continued listing requirements for Market Value of Listed Securities shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 90 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 90 day compliance period.

(C) Audit Committee Rules

If a Company fails to meet the audit committee composition requirements in Rule 5605(c)(2) because an audit committee member ceases to be independent for reasons outside his/her control, the Listing Qualifications Department will promptly notify the Company and inform it that has until the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure, to cure the deficiency. If the Company fails to meet the audit committee composition requirement due to one vacancy on the audit committee, and the Company is not relying upon a cure period for another member, the Listing Qualifications Department will promptly notify the Company and inform it that it has until the earlier of its next annual shareholders meeting or one year from the event that caused the failure to cure the deficiency. However, if the Company's next annual shareholders' meeting is held sooner than 180 days after the event that caused the deficiency, then the Company has 180 days from the event that caused the deficiency to cure it.

(D) Director, Promoter, or Control Person with a Regulatory History

If an executive officer, director, promoter, or control person of a Company was involved in any event that occurred during the prior described in Item 401(f)(2) - (8) of Regulation S-K under the Act, the Listing Qualifications Department will promptly notify the Company and inform it that it has thirty calendar days to remove the individual from that position at the Company.

(4) Public Reprimand Letter

Staff's notification may be in the form of a Public Reprimand Letter in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 under the Act) and Staff determines that delisting is an inappropriate sanction. In determining whether to issue a public reprimand letter, the Listing Qualifications Department will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.

(d) Additional Deficiencies

The Listing Qualifications Department continues to evaluate the compliance of Companies while they are under review by Adjudicatory Bodies and may identify additional deficiencies. Upon identification of an additional deficiency, Staff will issue an additional notification of deficiency to the Company and send a copy to the appropriate Adjudicatory Body.

(1) Staff's notification of the additional deficiency will conform to the requirements set forth in Rule 5810(a) if:

(A) the matter under review by an Adjudicatory Body is a Public Reprimand Letter; or

(B) the additional deficiency identified is one that has an automatic cure or compliance period.

(2) If the additional deficiency is one that would in the normal course result in immediate suspension and delisting, or one for which the Company may submit a compliance plan to Staff for review, Staff's notification will instruct the Company to address the issue to the Hearings Panel at its hearing, unless the hearing for the original deficiency has already taken place. If the hearing has already taken place, Staff's notification will instruct the Company to provide in writing, within a specified time period, a submission that addresses the deficiency to the Adjudicatory Body before which its matter is pending.]

[**5815. Review of Staff Determinations by Hearings Panel**

When a Company receives a Staff Delisting Determination or a Public Reprimand Letter issued by the Listing Qualifications Department, or when its application for initial listing is denied, it may request in writing that the Hearings Panel review the matter in a written or an oral hearing. This section sets forth the procedures for requesting a hearing before a Hearings Panel, describes the Hearings Panel and the possible outcomes of a hearing, and sets forth Hearings Panel procedures.

(a) Procedures for Requesting and Preparing for a Hearing

(1) Timely Request Stays Delisting

(A) A Company may, within seven calendar days of the date of the Staff Delisting Determination notification, Public Reprimand Letter, or denial of a listing application, request a written or oral hearing before a Hearings Panel to review the Staff Delisting Determination. Subject to the limitations in paragraphs (B) and (C) below, a timely request for a hearing will stay the suspension and delisting action pending the issuance of a written Panel Decision. Requests for hearings should be submitted in writing to the Hearings Department.

(B) If the Staff Delisting Determination relates to deficiencies from the standards of Rule 5250(c)(1) or (2), which require a Company to timely file its periodic reports with the Commission, the delisting action will only be stayed for 15 calendar days

from the deadline to request a hearing unless the Company specifically requests and the Hearings Panel grants a further stay. A request for a further stay must include an explanation of why such a stay would be appropriate and should be included in the Company's request for a hearing. Based on that submission and any recommendation provided by Staff, the Hearings Panel will determine whether to grant the Company a further stay. In determining whether to grant the stay, the Hearings Panel will consider the Company's specific circumstances, including the likelihood that the filing can be made within any exception period that could subsequently be granted, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. The Hearings Panel will notify the Company of its conclusion as soon as is practicable, but in no event more than 15 calendar days following the deadline to request the hearing. In the event the Hearings Panel determines not to grant the Company a stay, the Company's securities will be immediately suspended and will remain suspended unless the Panel Decision issued after the hearing determines to reinstate the securities.

(C) If the Staff Delisting Determination relates to a deficiency from the standard of Rule 5550(d), which requires a Company to maintain a minimum bid price of $0.25 per share, a timely request for a hearing will stay delisting pending the issuance of a written Panel Decision. However, notwithstanding the request for a hearing, the security will be suspended from trading on the Exchange pursuant to Rule 4120(b)(1)(A)(iv).

(2) Failure to Request Results in Immediate Delisting

If a Company fails to request in writing a hearing within seven calendar days, it waives its right to request review of a Delisting Determination. In that event, the Hearings Department will take action to suspend trading of the securities and follow procedures to delist the securities.

(3) Fees

Within 15 calendar days of the date of the Staff Delisting Determination the Company must submit a hearing fee to the Exchange to cover the cost of the hearing, as follows:

(A) when the Company has requested a written hearing, $4,000; or

(B) when the Company has requested an oral hearing, whether in person or by telephone, $5,000.

(4) Scheduling of Hearings

The Hearings Department will schedule hearings to take place, to the extent practicable, within 45 days of the request for a hearing, at a location determined by the Hearings

Department. The Hearings Department will send written acknowledgment of the Company's hearing request and inform the Company of the date, time, and location of the hearing, and deadlines for written submissions to the Hearings Panel. The Company will be provided at least ten calendar days notice of the hearing unless the Company waives such notice.

(5) Submissions from Company

The Company may submit to the Hearings Department a written plan of compliance and request that the Hearings Panel grant an exception to the listing standards for a limited time period, as permitted by Rule 5815(c)(1)(A) or may set forth specific grounds for the Company's contention that the issuance of a Staff Delisting Determination, Public Reprimand Letter, or denial of a listing application, was in error, and may also submit public documents or other written material in support of its position, including any information not available at the time of the Staff Determination. The Hearings Panel will review the written record, as described in Rule 5840(a), before the hearing.

(6) Presentation at Hearing

At an oral hearing, the Company may make such presentation as it deems appropriate, including the appearance by its officers, directors, accountants, counsel, investment bankers, or other persons, and the Hearings Panel may question any representative appearing at the hearing. Hearings are generally scheduled to last one hour, but the Hearings Panel may extend the time. The Hearings Department will arrange for and keep on file a transcript of oral hearings.

(b) Composition of the Hearings Panel

Each Hearing is presided over by at least two Hearings Panel members, except as provided in Rule 5815(d)(3).

(c) Scope of the Hearings Panel's Discretion

(1) When the Hearings Panel review is of a deficiency related to continued listing standards, the Hearings Panel may, where it deems appropriate:

(A) grant an exception to the continued listing standards for a period not to exceed 90 days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted;

(B) Reserved;

(C) suspend and delist the Company's securities;

(D) issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated an Exchange corporate governance or notification listing

standard (other than one required by Rule 10A-3 under the Act) and the Hearings Panel determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Hearings Panel will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations;

(E) find the Company in compliance with all applicable listing standards;

(F) in the case of a Company that received a Staff Delisting Determination because its Security is not in compliance with the minimum price requirement of Rule 5550(d), determine that the Company has regained compliance if the Security maintains a closing bid price of $0.25 per share or more for at least 10 consecutive trading days prior to Panel's Decision. However, if the Company has received three or more Staff Delisting Determinations for failure to comply with minimum price requirement of Rule 5550(d) in the prior 12 months, the Panel shall only determine that the Company has regained compliance if the Security maintains a closing bid price of $0.25 per share or more for at least 20 consecutive trading days prior to the Panel's Decision. The Panel may make a compliance determination at any time, including prior to the Hearing; but must issue its Decision no later than 90 days after the date of the Staff Delisting Determination; or

(G) in the case of a Company that fails to file a periodic report (e.g., Form 10-K, 10-Q, 20-F, 40-F, or N-CSR), the Hearings Panel may grant an exception for a period not to exceed 180 days from the due date of the first such late periodic report. The Company can regain compliance with the requirement by filing that periodic report and any other delinquent reports with due dates falling before the end of the exception period. In determining whether to grant an exception, and the length of any such exception, the Hearings Panel will consider the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

(2) When the Hearings Panel's review is of a Staff denial of an initial listing application, the Hearings Panel may, where it deems appropriate:

(A) affirm Staff's denial of the application;

(B) conditionally approve initial listing subject to an exception to the listing standards not to exceed 90 calendar days from the date of the Panel Decision; or

(C) approve initial listing on a finding that the Company meets all initial listing requirements.

(3) A Hearings Panel may consider any failure to meet any quantitative or qualitative standard for initial or continued listing, including failures previously not considered by Staff. The Company will be given written notice of such consideration and an opportunity to respond.

(4) Under the authority described in the Rule 5100 Series, the Hearings Panel may subject the Company to additional or more stringent criteria for the initial or continued listing of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities inadvisable or unwarranted in its opinion, even though the securities meet all enumerated criteria for initial or continued listing on the Exchange.

(d) Hearings Panel Procedures

(1) Panel Decision

After the hearing, the Hearings Department, on behalf of the Hearings Panel, will issue a Panel Decision that meets the requirements of Rule 5840(c) and has been approved by each member of the Hearings Panel. The Panel Decision shall be promptly provided to the Company, and is effective immediately upon issuance, unless it specifies to the contrary. The Panel Decision will provide notice that the Company may appeal the Panel Decision to the Listing Council within 15 calendar days of the date of the Decision and that the Decision may be called for review by the Listing Council within 45 calendar days from the date of the Decision.

(2) Form 25 Notification of Delisting

If the Panel issues a Decision to delist the Company's securities, the Hearings Department will immediately take action to suspend trading of the securities, unless the Decision specifies to the contrary. If the Company does not appeal a Decision to delist and the Listing Council does not call the decision for review or withdraws its call for review, the Exchange will follow the procedures described in Rule 5830 to submit an application on Form 25 to the SEC to strike the Security from listing.

(3) Hearings Panel Deadlock

If, following the hearing, the Hearings Panel cannot reach a unanimous decision, the Hearings Department will notify the Company of this circumstance. The Company will be provided an additional hearing before a Hearings Panel composed of three members who did not participate in the previous hearing. The Company may decide whether the hearing will be written or oral, in person or by telephone. The Company may submit any documents or other written material in support of its request for review, including information not available at the time of the initial hearing. There will be no fee for the new

hearing. After review by a Hearings Panel convened pursuant to this paragraph, the Hearings Department on behalf of the Hearings Panel will issue a Decision that meets the requirements of Rule 5840(c) and that has been approved by at least a majority of the Hearings Panel.

(4) Procedures Applicable for Recurring Deficiencies

(A) Hearings Panel Monitor

A Hearings Panel may, after a Company regains compliance with all applicable listing standards, monitor the Company's continued compliance for up to one year after the compliance date, if the Hearings Panel concludes that there is a likelihood that the issuer will fail to maintain compliance with one or more listing standards during that period. If the Hearings Panel or the Listing Qualifications Department determines that a Company under Hearings Panel monitor fails any listing standard during the monitor period, the Staff will issue a Staff Delisting Determination and the Hearings Department will promptly schedule a new hearing, with the initial Hearings Panel or a newly convened Hearings Panel if the initial Hearings Panel is unavailable. The hearing may be oral or written, at the Company's election. Notwithstanding Rule 5810(c)(2), the Company will not be permitted to provide the Listing Qualifications Department with a plan of compliance with respect to any deficiency that arises during the monitor period, and the Listing Qualifications Department will not be permitted to grant additional time for the Company to regain compliance with respect to any deficiency. The Hearings Panel will consider the Company's compliance history when rendering its Decision.

(B) No Hearings Panel Monitor

If a Hearings Panel has not opted to monitor a Company that has regained compliance with the listing standards requiring the Company to timely file periodic reports, and within one year of the date the Company regained compliance with such listing standard, the Listing Qualifications Department finds the Company again out of compliance with that requirement, then, notwithstanding Rule 5810(c)(2), the Listing Qualifications Department will not allow the Company to provide it with a plan of compliance or grant additional time for the Company to regain compliance. Rather, the Listing Qualifications Department will promptly issue a Staff Delisting Determination, and the Company may request review by a Hearings Panel. The Hearings Panel will consider the Company's compliance history when rendering its Decision.

(5) Request for Hearings Panel Reconsideration

A Company may request, in writing, that the Hearings Panel reconsider a Panel Decision only upon the basis that a mistake of material fact existed at the time of the Panel Decision. The Company's request for reconsideration shall be made within seven calendar days of the date of issuance of the Panel Decision. A Company's request for

reconsideration will not stay a delisting determination or suspension of trading of the Company's securities, unless the Hearings Panel, before the scheduled date for suspension, issues a written determination staying the suspension and/or reversing the determination to delist. A Company's request for reconsideration will not extend the time for the Company to initiate the Listing Council's review of the Panel Decision.

If the Hearings Panel grants a Company's reconsideration request, it will issue a modified Decision meeting the requirements of Rule 5840(c) within 15 calendar days of the date of the original Panel Decision, or lose jurisdiction over the matter. If the Listing Council calls a Panel Decision for review on the same issue that the Company has requested reconsideration by the Hearings Panel, the Listing Council may assert jurisdiction over the initial Panel Decision or permit the Hearings Panel to proceed with the reconsideration and issue a new Decision.]

[**5820. Exchange Listing and Hearing Review Council**

A Company may appeal a Panel Decision to the Listing Council. The Listing Council may also call for review a Panel Decision on its own initiative. This Rule 5820 describes the procedures applicable to appeals and calls for review.

(a) Procedure for Requesting Appeal

A Company may appeal any Panel Decision to the Listing Council by submitting a written request for appeal and a fee of $4,000 to the Exchange's Office of Appeals and Review within 15 calendar days of the date of the Panel Decision. An appeal will not operate as a stay of the Panel Decision. Upon receipt of the appeal request and the applicable fee, the Office of Appeals and Review will acknowledge the Company's request and provide deadlines for the Company to provide written submissions.

(b) Procedures for Initiating Call for Review

The Listing Council may also call for review any Panel Decision upon the request of one or more members of the Listing Council within 45 calendar days of the date of the Panel Decision. The Office of Appeals and Review will promptly inform the Company of the reasons for the review and provide a deadline for written submissions. A call for review by the Listing Council will not operate as a stay of the Panel Decision, unless the call for review specifies to the contrary. The Listing Council may withdraw the call for review of a Panel Decision at any time.

(c) Composition of Listing Council

The Listing Council is a committee appointed by the Exchange Board of Directors pursuant to the Exchange By-Laws whose responsibilities include the review of Panel Decisions by a Hearings Panel.

(d) Scope of Listing Council's Discretion

(1) The Listing Council may, where it deems appropriate, affirm, modify, or reverse the Panel Decision, or remand the matter to the Listing Qualifications Department or to the Hearings Panel for further consideration. The Listing Council may grant an exception for a period not longer than 180 calendar days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted. The Listing Council also may issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 under the Act) and the Listing Council determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Listing Council will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.

(2) The Listing Council may consider any failure to meet any quantitative standard or qualitative consideration for initial or continued listing, including failures previously not considered by the Hearings Panel. The Listing Council may also consider any action taken by a Company during the review process that would have constituted a violation of the Exchange's corporate governance requirements had the Company's securities been trading on the Exchange at the time. The Company will be afforded written notice of such consideration and an opportunity to respond.

(3) Under the authority described in the Rule 5100 Series, the Listing Council may subject the Company to additional or more stringent criteria for the initial or continued listing of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities inadvisable or unwarranted in its opinion, even though the securities meet all enumerated criteria for initial or continued listing on the Exchange.

(4) In the case of a Company that fails to file a periodic report (e.g., Form 10-K, 10-Q, 20-F, 40-F, or N-CSR), the Listing Council may grant an exception for a period not to exceed 180 days from the due date of the first such late periodic report. The Company can regain compliance with the requirement by filing that periodic report and any other delinquent reports with due dates falling before the end of the exception period. In determining whether to grant an exception, and the length of any such exception, the Listing Council will consider the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

(5) The Listing Council may also recommend that the Exchange Board consider the matter.

(e) Listing Council Review Process

(1) Review Generally on Written Record

For each matter before the Listing Council, whether on appeal for call for review, a subcommittee consisting of at least two members of the Listing Council will review the written record, as described in Rule 5840(a). Members of the Listing Council who are not on a subcommittee will be provided with a written summary of the record prepared by an Advisor, and may, but will not be required to, review the written record. The Listing Council shall consider the written record and, at its discretion, may request additional written materials and/or hold additional hearings. If an oral hearing is scheduled, it will take place, to the extent practicable, within 45 days of the date the appeal was submitted or the call for review was initiated.

(2) Record of Proceedings Maintained

A record of the documents considered by the Listing Council will be kept by the Office of Appeals and Review.

(3) Written Decision Issued

A written Listing Council Decision meeting the requirements of Rule 5840(c) will be issued after approval by at least a majority of the Listing Council. The Listing Council Decision will be promptly provided to the Company and will take immediate effect unless it specifies to the contrary. If the Listing Council determines to delist the Company, the securities of the Company will be immediately suspended, unless the Listing Council Decision specifies to the contrary.

(4) Reconsideration of a Listing Council Decision

A Company may request, in writing, that the Listing Council reconsider a Listing Council Decision only upon the basis that a mistake of material fact existed at the time of the Listing Council Decision. The Company's request must be made within seven calendar days of the date of the Listing Council Decision. A Company's request for reconsideration will not stay a Listing Council Decision unless the Listing Council issues a written determination staying the Decision. If the Listing Council grants a Company's reconsideration request, the Listing Council will issue a modified Decision meeting the requirements of Rule 5840(c) within 15 calendar days of the date of the original Listing Council Decision, or lose jurisdiction over the matter.

(5) Notice of Board Right to Call

The Listing Council Decision will provide notice that the Exchange Board may call the Listing Council Decision for review pursuant to provisions in Rule 5825.

(6) Form 25 Notification of Delisting

If the Listing Council determines to delist the Company and the Exchange Board does not call the matter for review or withdraws its call for review, the Exchange will follow the procedures described in Rule 5830 to submit an application on Form 25 to the Securities and Exchange Commission to delist the Security.]

[**5825. Discretionary Review by Exchange Board**

(a) Review at Discretion of Board

A Panel Decision, in a matter where the Hearings Panel has granted the maximum exception period and the Listing Council is precluded from granting additional time under Rules 5815(c)(1)(G) and 5820(d)(4), or a Listing Council Decision may be called for review by the Exchange Board solely upon the request of one or more Board members not later than the next Board meeting that is 15 calendar days or more following the date of the Panel or Listing Council Decision. This review will be undertaken solely at the discretion of the Board and will not operate as a stay of the Panel or Listing Council Decision, unless the Board's call for review specifies to the contrary. At the sole discretion of the Board, it may withdraw its call for review of a Panel or Listing Council Decision at any time before issuance of a Decision.

(b) Scope of Discretion of Board

The Board may consider any failure to meet any quantitative standard or qualitative consideration for initial or continued listing, including failures previously not considered by the Listing Council. It may also consider any action taken by a Company during the review process that would have constituted a violation of the Exchange's corporate governance requirements had the Company's securities been trading on the Exchange at the time. The Company will be afforded written notice of such consideration and an opportunity to respond. Pursuant to the Rule 5100 Series, the Board may subject the Company to additional or more stringent criteria for the initial or continued listing of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities inadvisable or unwarranted in its opinion, even though the securities meet all enumerated criteria for initial or continued listing on the Exchange.

(c) Review on Written Record

If the Board conducts a discretionary review, the review generally will be based on the written record considered by the Hearings Panel or Listing Council. However, the Board may, at its discretion, request and consider additional information from the Company and/or from Staff. If the Board considers additional information, a record of the documents reviewed by the Board will be kept by the Office of Appeals and Review.

(d) Board Decision

If the Board conducts a discretionary review, the Company will be provided a written Decision that meets the requirements of Rule 5840(c). The Board may affirm, modify or reverse the Panel or Listing Council Decision and may remand the matter to the Listing Council, Hearings Panel,

or staff of the Listing Qualifications Department with appropriate instructions. The Board also may issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated a corporate governance or notification listing standard (other than one required by Rule 10A-3 of the Act) and the Board determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Board will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations. The Decision of the Board will take immediate effect, unless it specifies to the contrary, and represents the final action of the Exchange. If the Board determines to delist the Company, the securities of the Company will be immediately suspended, unless the Board specifies to the contrary, and the Exchange will follow the procedures contained in Rule 5830 and submit an application on Form 25 to the Commission to strike the security from listing.]

[**5830. Finality of Delisting Determination**

When the Exchange has made a final determination to delist a Company's securities, it will follow procedures consistent with the Act to strike the Security from listing. The Exchange's determination to delist a Company's securities is final when, after a Delisting Determination has been issued, all available review and appeal procedures and periods available under these Rules have expired.

The Exchange will issue a press release and post a notice on its website announcing its final determination to remove a Security from listing, consistent with Rule 12d2-2 under the Act. Under Rule 12d2-2, the Exchange must disseminate this public notice not less than 10 days before the delisting becomes effective and maintain the website notice until the delisting is effective. Following the public notification, the Exchange will file an application on Form 25 with the Commission to delist the Security, and will promptly provide a copy of that Form 25 to the Company. The delisting of the Security becomes effective 10 days after the Form 25 is filed pursuant to Rule 12d2-2(d)(1) under the Act, unless the Commission postpones the delisting pursuant to Rule 12d2-2(d)(3).]

[**5835. Rules Applicable to Adjudicators and Advisors**

(a) Ex Parte Communications

(1) No Ex parte Communications

No member of the Staff of the Listing Qualifications Department or its counsel, and no Company representative will make or knowingly cause to be made an ex parte communication relevant to the merits of a proceeding under this Section to an Adjudicator or any Advisor.

Similarly, no Adjudicator who is participating in a Decision with respect to a proceeding under this Section, and no Advisor with respect to such a proceeding, will make or knowingly cause to be made an ex parte communication relevant to the merits of that

proceeding to a Company representative, a member of the Staff of the Listing Qualifications Department or its counsel.

(2) An Adjudicator or Advisor who is participating in or advising with respect to a proceeding who receives, makes, or knowingly causes to be made an ex parte communication relevant to the merits of a proceeding will place a copy of it, or its substance if it is an oral communication, in the record of the proceeding. Staff of the Listing Qualifications Department or the Company, as applicable, will be permitted to respond to the ex parte communication, and any response will be placed in the record of the proceeding.

(b) No Communications Between Adjudicatory Bodies

(1) Members of a Hearings Panel and their Advisors who are participating in a proceeding under this Section are prohibited from making communications relevant to the merits of such proceeding to members of the Listing Council or the Board or their respective Advisors.

(2) Members of the Listing Council and their Advisors are prohibited from making communications relevant to the merits of a proceeding under this Rule 5800 Series to members of a Hearings Panel who are participating in such proceeding or their Advisors or members of the Board or their Advisors.

(3) Members of the Board and their Advisors are prohibited from making communications relevant to the merits of a proceeding under this Rule 5800 Series to members of a Hearings Panel who are participating in such proceeding or their Advisors, or members of the Listing Council or their Advisors.

(4) An Adjudicator or Advisor who is participating in or advising with respect to a proceeding who receives, makes, or knowingly causes to be made a communication prohibited by paragraphs (1) - (2) above will place a copy of it, or its substance if it is an oral communication, in the record of the proceeding. Staff of the Listing Qualifications Department and the Company will be permitted to respond to the communication, and any such response will be placed in the record of the proceeding.

(c) Recusal or Disqualification

No person will serve as a member of a Hearings Panel, or participate as a member of the Listing Council, the Board, the Staff of the Listing Qualifications Department or Advisor to an Adjudicator, in a matter as to which he or she has a conflict of interest or bias, or circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the person will recuse himself or herself, or will be disqualified.

(1) Exchange of Biographical Information

To facilitate the process for recusal and disqualification, at least five days before any proceeding under this Section, the Company will provide the Hearings Department or the Advisor to the Listing Council or the Board, as applicable, with names and biographical information of each person who will appear on behalf of the Company at the proceeding, and the Hearings Department or Advisor, as applicable, will provide the Company and the Staff with names and biographical information of the Adjudicators for the proceeding; provided, however, that with respect to proceedings before the Listing Council or the Board, the Advisor may post names and biographical information of each Adjudicator on a publicly available website in lieu of providing them directly to the Company.

(2) Disqualification Procedures

A Company or the Staff of the Listing Qualifications Department may file a request to disqualify an Adjudicator. A request to disqualify will be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Adjudicator's fairness might reasonably be questioned, and will be accompanied by a statement setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the party learned of those facts. A request to disqualify must be filed (A) not later than two business days after the party was provided with the name and biographical information of the Adjudicator, or (B) if the name and biographical information of the Adjudicator was posted on a website, not later than two business days after the Company requested Listing Council review or received notice of discretionary review by the Listing Council or the Board. A request for disqualification of an Adjudicator will be decided by the party with authority to order disqualification of such Adjudicator, as detailed below, who will promptly investigate whether disqualification is required and issue a written response to the request.

(A) Exchange Board

The Chair of the Board will have authority to order the disqualification of a Director, and a majority of the Board excluding the Chair of the Board will have authority to order the disqualification of the Chair.

(B) Listing Council

A Chair of the Listing Council will have authority to order the disqualification of a member of the Listing Council, and a majority of the Listing Council excluding any Chairs of the Listing Council will have authority to order the disqualification of a Chair of the Listing Council.

(C) Staff of Listing Qualifications Department; Panelist of Hearings Panel

The General Counsel of the Exchange will have authority to order the disqualification of (i) a member of the Staff of the Listing Qualifications Department reviewing the qualifications of a Company, (ii) a member of a Hearings Panel, or (iii) an Advisor to an Adjudicatory Body.]

[**5840. Adjudicatory Process: General Information**

(a) Record on Review

At each level of a proceeding under this Section, the written record may consist of the following items, as applicable: correspondence between the Exchange and the Company; the Company's public filings; information released to the public by the Company; written submissions, exhibits, or requests submitted by either the Company or the Listing Qualifications Department and responses thereto; and any additional information considered by the Adjudicatory Body as part of the review process. The written record will be supplemented by the transcript of any hearings held during the review process and all Decisions issued.

At each level of review under this Section, the Company will be informed of the contents of the written record. The Company will be provided a copy of any documents in the record that were not provided by the Company or are not publicly available, at least three calendar days before the deadline for Company submissions, unless the Company waives this production.

If additional issues arising under the Rule 5000 Series are considered, as permitted by the Rule 5800 Series, the notice of such consideration and any response to such notice shall be made a part of the record.

(b) Additional Information Requested or Considered

At each level of a proceeding under this Section, the Adjudicatory Body, as part of its review:

(1) may request additional information from the Company or the Listing Qualifications Department; and

(2) may consider additional information available from other sources it deems relevant. The Company and the Listing Qualifications Department will be afforded written notice and an opportunity to address the significance of any information requested or considered, and the notice, responses to the notice, and the information considered will be made part of the record.

(c) Contents of Decisions

Each Adjudicatory Body's written Decision will include:

(1) a statement describing the procedural history of the proceeding, including investigations or reviews undertaken by the Listing Qualifications Department;

(2) the quantitative or qualitative standard that the Company is alleged to have failed to satisfy;

(3) a statement setting forth the findings of fact with respect to the Company;

(4) the conclusions of the Adjudicatory Body as to whether the Company has failed to satisfy the quantitative or qualitative standards for initial or continued listing; and

(5) a statement of the Adjudicatory Body in support of its disposition of the matter, and, if applicable, the rationale for any exception to the initial or continued listing requirements granted.

(d) Correction of Clerical Errors

The Hearings Panel and the Listing Council may correct clerical or other non-substantive errors in their respective Decisions either on their own motion or at the request of a Company. A copy of any such corrected Decision will be provided to the Company.

(e) Computation and Adjustment of Time

(1) Except as described in paragraph (2) below, in counting any time under this Section, the day of the act, event, or default from which the period of time begins to run, is not to be included. The last day of the period is included, unless it is a Saturday, Sunday, federal holiday, or Exchange holiday in which case the period runs until the end of the next day that is not a Saturday, Sunday, federal holiday or Exchange holiday.

(2) When Staff determines whether a deficiency has occurred with respect to bid price or market value of listed securities, the first trading day that the market value is below the required standard is included in computing the total number of consecutive trading days of default. Similarly, when Staff determines whether a Company has regained compliance with the bid price or market value of listed securities requirement, the first trading day that the market value is at or above required standard is included in computing the total number of consecutive trading days.

(3) If the Office of General Counsel determines that notice required to be provided under this Section was not properly given or that other extenuating circumstances exist, the Hearings Department may adjust the periods of time provided by the rules for the filing of written submissions, the scheduling of hearings, or the performance of other procedural actions by the Company or an Adjudicator, as applicable, to allow the Company or the Adjudicator the time contemplated by these rules.

(4) A Company may waive any notice period specified in this Section.

(f) Delivery of Documents

Delivery of any document under this Section may be made by electronic delivery, hand delivery, facsimile, regular mail or overnight courier. Delivery will be considered timely if the electronic delivery, hand delivery, fax, or overnight courier is received on or before the relevant deadline. If a Company has not specified a facsimile number, e-mail address, or street address, delivery will be made to the last known facsimile number, e-mail address, and street address. If a Company is

represented by counsel or a representative, delivery may be made to the counsel or representative.

(g) Document Retention Procedures

Any document submitted to the Exchange in connection with a proceeding under this Section will be retained in accordance with applicable record retention policies.

(h) Documentation of Decisions

The Listing Qualifications Department or the Advisor to an Adjudicatory Body, as applicable, shall document the date on which a Decision with respect to a Company is implemented.

(i) Re-Listing of a Company

A Company that has been the subject of a Decision by an Adjudicatory Body to delist such Company shall be required, prior to re-listing, to comply with the requirements for initial listing. A Company that has been suspended but that has not been the subject of such a Decision shall be required, prior to re-listing, to comply with requirements for continued listing.

(j) Voluntary Delisting

(1) A Company may voluntarily terminate its listing upon compliance with all requirements of Rule 12d2-2(c) under the Act. In part, Rule 12d2-2(c) requires that the Company may delist by filing an application on Form 25 with the Commission, provided that the Company: (i) complies with all applicable laws in effect in the state in which it is incorporated and with the applicable Exchange Rules; (ii) provides notice to the Exchange no fewer than 10 days before the Company files the Form 25 with the Commission, including a statement of the material facts relating to the reasons for delisting; and (iii) contemporaneous with providing notice to the Exchange, publishes notice of its intent to delist, along with its reasons therefore, via a press release and on its web site, it if has one. Any notice provided on the Company's web site pursuant to Rule 12d2-2(c) must remain available until the delisting has become effective. The Company must also provide a copy of the Form 25 to the Exchange simultaneously with its filing with the Commission. The Exchange will provide notice on its web site of the Company's intent to delist as required by Rule 12d2-2(c)(3).

(2) A Company that seeks to voluntarily delist a class of securities pursuant to Rule 5840(j)(1) that has received notice from the Exchange, pursuant to the Rule 5800 Series or otherwise, that it fails to comply with one or more requirements for continued listing, or that is aware that it is below such continued listing requirements notwithstanding that it has not received such notice from the Exchange, must disclose this fact (including the specific continued listing requirement that it is below) in: (i) its statement of all material facts relating to the reasons for withdrawal from listing provided to the Exchange along with written notice of its determination to withdraw from listing required by Rule 12d2-

2(c)(2)(ii) under the Act; and (ii) its press release and web site notice required by Rule 12d2-2(c)(2)(iii) under the Act.

(k) Disclosure of Public Reprimand Letter

A Company that receives an Adjudicatory Body Decision that serves as a Public Reprimand Letter must make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing the receipt of the Decision, including the Rule(s) upon which the Decision was based. As described in Rule 5250(b)(1) and IM-5250-1, the Company must notify the Exchange's MarketWatch Department about the announcement through the electronic disclosure submission system available at a website designated by the Exchange for that purpose, except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during market hours, the Company must notify MarketWatch at least ten minutes prior to the announcement. If the public announcement is made outside of market hours, the Company must notify MarketWatch of the announcement prior to 6:50 a.m. ET. The Company should make the public announcement as promptly as possible but not more than four business days following receipt of the Decision.]

[**5900. Company Listing Fees**]
[**5901. Preamble to the Company Listing Fees**

This section sets forth the required fees for Companies both seeking listing and currently listed on the Exchange pursuant to the Rule 5000 Series. With certain exceptions, Companies seeking to list on the Exchange must pay a non-refundable application fee. Listed Companies are required to pay annual fees and fees for certain corporate changes, such as a change in name or a substitution listing. Please note that the fees related to written interpretations of the Exchange's listing rules can be found in Rule 5602.]

[**5910. Listing Fees**

(a) Application Fee

A Company that submits an application to list any class of its securities on the Exchange, shall pay to the Exchange a non-refundable application fee of $10,000, which must be submitted with the Company's application. However, if a Company is listed on another national securities exchange and has received notice that it is subject to being delisted from that exchange for failure to comply with a quantitative listing requirement, the application fee does not have to be paid to the Exchange until the other exchange issues a final decision to delist the Company's securities or the Company is listed on the Exchange, whichever occurs first.

(b) Annual Fee

(1) Each issuer shall pay an annual fee of $20,000 for the first class of securities listed on the Exchange and $5,000 for each additional class of securities listed on the Exchange.

(2) The Annual Fee will be pro-rated during a Company's first year of listing on the Exchange based on the month of listing. For example, a Company initially listing in April would be charged 9/12 of the Annual Fee for the first year of listing.

(3) If a class of securities is delisted or voluntarily removed from The Nasdaq Stock Market, the Company shall receive a credit for that portion of the annual fees for such class of securities attributable to the months following the date of removal, which will be applied only to offset the Exchange's Annual fees for that calendar year. For example, a Company that is delisted from Nasdaq on April 5th and immediately lists on the Exchange will receive a credit of 8/12 of the annual fee paid to Nasdaq for the year, which will be used to offset the applicable Annual Fee owed to the Exchange for that year only. Any amounts paid to Nasdaq in excess of the Annual Fees owed to the Exchange for that year shall not be refunded nor applied against fees in future years.

(4) Mergers

(i) A Company that completes a merger with another Company listed on the Exchange during the first calendar quarter will receive a credit or waiver, as applicable, for 75% of the Annual Fee assessed to the acquired Exchange-listed Company.

(ii) A Company not listed on the Exchange that completes a merger with a Company listed on the Exchange and that is the surviving entity will, upon listing on the Exchange, receive a credit or waiver, as applicable, of the Annual Fee previously paid by the listed Company, pro-rated for the months remaining in the calendar year. If the fee was not paid, the credit will go to the non-surviving entity.

(c) Record-Keeping Fee

A Company that makes a change such as a change to its name, the par value or title of its Security, or its symbol shall pay a fee of $2,500 to the Exchange and submit the appropriate form as designated by the Exchange.

(d) Substitution Listing Fee

A Company that implements a Substitution Listing Event shall pay a fee of $7,500 to the Exchange and submit the appropriate form as designated by the Exchange.]

[5920. Fee Waivers

The Exchange's Board of Directors or its designee may defer or waive all or any part of any of the fees prescribed herein. A deferral or waiver will only be granted in rare circumstances where in the opinion of the Exchange, charging the fee would be inequitable and the factual circumstances are unlikely to be frequently replicated. Requests for a deferral or waiver should be sent by e-mail to billing@bxventure.com, and must include the bases for the request.]

Equity 3A Other Listing Rules and Rules Regarding Unlisted Trading Privileges

Section 1. [Operation of Listing Standards

The Exchange listing standards are contained in the Rule 5000 Series within Equity 3. The provisions of Equity 3A that permit the listing of securities are maintained solely to permit the trading of securities that cannot be listed on the Exchange through unlisted trading privileges. These rules will not be operative to permit the listing of these securities unless and until the Exchange files a proposed rule change under Section 19(b)(2) under the Act to adopt listing fees for these securities and such proposed rule change is approved by the Commission.]Reserved

Section 2. Additional Quantitative Listing Criteria

In order to be listed on the Exchange, an issuer shall be required to meet the criteria set forth in the Rule 5000 Series [within Equity 3] or one or more of the paragraphs below. The Exchange may extend unlisted trading privileges to any security that is an NMS Stock (as defined in Rule 600 of Regulation NMS) that is listed on another national securities exchange. Any such security will be subject to all Exchange trading rules applicable to NMS Stocks, unless otherwise noted, including provisions of this Rule and Rule 4120, Equity 3A, Section 3, and Equity 10, Section 8.

(a) [The Exchange may list Common Stock, Preferred Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests, American Depositary Receipts (ADR), American Depositary Shares (ADS), Units, Rights or Warrants pursuant to the Rule 5000 Series within Equity 3.]Reserved

(b) [**Index Warrants**

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

(1) The minimum public distribution shall be at least 1 million warrants.

(2) The minimum number of public holders shall be at least 400.

(3) The aggregate market value of the outstanding index warrants shall be at least $4 million.

(4) The issuer of the index warrants must have a minimum tangible net worth in excess of $150 million.

(5) The term of the index warrant shall be for a period from one to five years.

(6) Limitations on Issuance — Where an issuer has a minimum tangible net worth in excess of $150 million but less than $250 million, the Exchange will not list stock index warrants of the issuer if the value of such warrants plus the aggregate value, based upon the original issuing price, of all outstanding stock index, currency index and currency warrants of the issuer and its affiliates combined that are listed for trading on the Exchange or another national securities exchange exceeds 25% of the issuer's net worth.

(7) A.M. Settlement — The terms of stock index warrants for which 25% or more of the value of the underlying index is represented by securities that are traded primarily in the United States must provide that the opening prices of the stocks comprising the index will be used to determine (i) the final settlement value (i.e., the settlement value for warrants that are exercised at expiration) and (ii) the settlement value for such warrants that are valued on either of the two business days preceding the day on which the final settlement value is to be determined.

(8) Automatic Exercise — All stock index warrants and any other cash-settled warrants must include in their terms provisions specifying (i) the time by which all exercise notices must be submitted and (ii) that all unexercised warrants that are in the money (or that are in the money by a stated amount) will be automatically exercised on their expiration date or on or promptly following the date on which such warrants are delisted by the Exchange (if such warrant issue has not been listed on another national securities exchange).

(9) Foreign Country Securities — In instances where the stock index underlying a warrant is comprised in whole or in part with securities traded outside the United States, the foreign country securities or American Depositary Receipts ("ADRs") thereon that (i) are not subject to a comprehensive surveillance agreement, and (ii) have less than 50% of their global trading volume in dollar value within the United States, shall not, in the aggregate represent more than 20% of the weight of the index, unless such index is otherwise approved for warrant or option trading.

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

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

Any index warrant listed pursuant to this paragraph shall not be required to meet the requirements of Equity 3A, Section 4. The Exchange may apply additional or more stringent criteria as necessary to protect investors and the public interest.]Reserved

(c) [**Other Securities**

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

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

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

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

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

(2) Issuers of securities listed pursuant to this paragraph (f) must also be eligible for listing on the Nasdaq Global Market or the New York Stock Exchange (NYSE) or be an affiliate of a company that is also eligible for listing on the Nasdaq Global Market or the NYSE; provided, however, that the provisions of Equity 3A, Section 4 will be applied to sovereign issuers of "other" securities on a case-by-case basis.

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

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

(1) Issuer Listing Standards

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

(i) is eligible for listing on the Nasdaq Global Market or the New York Stock Exchange (NYSE) or is an affiliate of a company eligible for listing on the Nasdaq Global Market or the NYSE; provided, however, that the provisions of Equity 3A, Section 4 will be applied to sovereign issuers of SEEDS on a case-by-case basis; and

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

(B) In addition, the market value of a SEEDS offering, when combined with the market value of all other SEEDS offerings previously completed by the issuer and traded on the Exchange or

another national securities exchange, may not be greater than 25 percent of the issuer's net worth at the time of issuance.

(2) Equity-Linked Debt Security Listing Standards

The issue must have:

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

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

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

(D) a minimum term of one year.

(3) Minimum Standards Applicable to the Linked Security

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

(A)

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

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

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

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

(C) be issued by:

(i) a U.S. company; or

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

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

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

c.

1. the combined trading volume of the non-U.S. security and other related non-U.S. securities occurring in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the non-U.S. security and in other related non-U.S. securities over the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing.

2. the average daily trading volume for the non-U.S. security in the U.S. markets over the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing is 100,000 or more shares; and

3. the trading volume for the non-U.S. security in the U.S. market is at least 60,000 shares per day for a majority of the trading days for the six- month period preceding the date of selection of the non-U.S. security for a SEEDS listing.

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

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

(A) The issuance of SEEDS relating to any underlying U.S. security may not exceed five percent of the total outstanding shares of such underlying security. The issuance of SEEDS relating to any underlying non-U.S. security or sponsored ADR may not exceed: (i) two percent of the total shares outstanding worldwide if at least 30 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing;1 (ii) three percent of the total shares outstanding worldwide if at least 50 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing; (iii) five percent of the total shares outstanding worldwide if at least 70 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing. 1

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

(5) Prior to the commencement of trading of a particular SEEDS listed pursuant to this subsection, the Exchange or its subsidiaries will distribute a circular to the membership providing guidance regarding member firm compliance responsibilities (including suitability recommendations and account approval) when handling transactions in SEEDS.]Reserved

(e) **Portfolio Depository Receipts**

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

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

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

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

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

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

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

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

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

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

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

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

A member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Portfolio Depository Receipts for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule.

Upon request of a customer, a member shall also provide a prospectus for the particular series of Portfolio Depository Receipts.

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

(A) Eligibility Criteria for Index Components.

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

a. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least $75 million;

b. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares;

c. The most heavily weighted component stock shall not exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks shall not exceed 65% of the weight of the index or portfolio;

d. The index or portfolio shall include a minimum of 13 component stocks; and

e. All securities in the index or portfolio shall be US Component Stocks listed on the Exchange or another national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act.

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

a. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least $100 million;

b. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares;

c. The most heavily weighted component stock shall not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks shall not exceed 60% of the weight of the index or portfolio;

d. The index or portfolio shall include a minimum of 20 component stocks; and

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

(iii) Index or portfolio approved in connection with derivative securities. Upon the initial listing of a series of Portfolio Depository Receipts pursuant to Rule 19b-4(e) under the Act, the index or portfolio underlying a series of Portfolio Depository Receipts shall have been reviewed and approved for trading of options, Portfolio Depository Receipts, Index Fund Shares, index-linked exchangeable notes, or index-linked securities by the Commission under Section 19(b)(2) of the Act and rules thereunder, and the conditions set forth in the Commission's approval order,

including comprehensive surveillance sharing agreements with respect to Non-US Component Stocks and the requirements regarding dissemination of information, continue to be satisfied. Each component stock of the index or portfolio shall be either

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

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

(B) Index Methodology and Calculation.

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund advisor;

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

a. Equity 3A, Section 2(e)(3)(A)(i) will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's regular market session.

b. Equity 3A, Section 2(e)(3)(A)(ii) will be widely disseminated by one or more major market data vendors at least every 60 seconds during the Exchange's regular market session; or

c. Equity 3A, Section 2(e)(3)(A)(iii) will be widely disseminated by one or more major market data vendors at least every 15 seconds with respect to indexes containing only US Component Stocks and at least every 60 seconds with respect to indexes containing Non-US Component Stocks, during the Exchange's regular market session.

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

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index or portfolio composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(C) Disseminated Information. The Reporting Authority will disseminate for each series of Portfolio Depository Receipts an estimate, updated at least every 15 seconds, of the value of a share of each series (the "Intraday Indicative Value") during the Exchange's regular market session. The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of

the series or upon the index value. The Intraday Indicative Value will be updated at least every 15 seconds during the Exchange's regular market session; to reflect changes in the exchange rate between the US dollar and the currency in which any component stock is denominated. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on the Exchange, then the last official calculated Intraday Indicative Value must remain available throughout the Exchange's trading hours.

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

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

(F) Creation and redemption. For Portfolio Depository Receipts listed pursuant to Equity 3A, Section 2(e)(3)(A)(ii) or (iii) above, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the series of Portfolio Depository Receipts must state that the Trust must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

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

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

(i) The index or portfolio must consist of Fixed Income Securities;

(ii) Components that in aggregate account for at least 75% of the weight of the index or portfolio must have a minimum original principal amount outstanding of $100 million or more;

(iii) A component may be a convertible security, however, once the convertible security component converts to an underlying equity security, the component is removed from the index or portfolio;

(iv) No component fixed-income security (excluding Treasury Securities) will represent more than 30% of the weight of the index or portfolio, and the five highest weighted component fixed-income securities do not in the aggregate account for more than 65% of the weight of the index or portfolio;

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

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

(B) Index Methodology and Calculation.

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

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

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

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

(A) Index Methodology and Calculation.

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

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

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(6) The following provisions shall apply to all series of Portfolio Depositary Receipts listed pursuant Equity 3A, Section 2(e)(4) and (5) above:

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

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

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

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

(8) The Exchange may list and trade Portfolio Depository Receipts based on one or more indexes or portfolios. The Portfolio Depository Receipts based on each particular index or portfolio, or combination thereof, shall be designated as a separate series and shall be identified by a unique symbol. The components of an index or portfolio on which Portfolio Depository Receipts are based shall be selected by the Exchange or its agent, an affiliate of the Exchange, or by such

other person as shall have a proprietary interest in and authorized use of such index or portfolio, and may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

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

(A) Initial Listing —

(i) for each Trust, the Exchange will establish a minimum number of Portfolio Depository Receipts required to be outstanding at the time of commencement of trading on the Exchange.

(ii) the Exchange will obtain a representation from the issuer of each series of Portfolio Depository Receipts that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.

(B) Continued Listing —

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

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

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

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

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

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

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

(10) Neither the Exchange, the Reporting Authority nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value, the current value of the portfolio of securities required to be deposited to the Trust; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depository Receipts; net asset value; or other information relating to the creation, redemption or trading of Portfolio Depository Receipts, resulting from any negligent act or omission by the Exchange, the Reporting Authority, or any agent of the Exchange or any act, condition or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more underlying securities.

(f) **Index Fund Shares**

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

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

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

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

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

(B)

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

aggregate number in return for a deposit of a specified number of shares of stock, a specified portfolio of fixed income securities or a combination of the above and/or cash with a value equal to the next determined net asset value. When aggregated in the same specified minimum number, Index Fund Shares may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock, fixed income securities or a combination thereof and/or cash with a value equal to the next determined net asset value.

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

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

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

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

a. The identity and number of shares held of each specific equity security;

b. The identity and amount held for each specific fixed income security;

c. The specific types of Financial Instruments and characteristics of such Financial Instruments; and

d. Cash equivalents and the amount of cash held in the portfolio.

If the Exchange becomes aware that the net asset value related to Index Fund Shares included in the provisions of this subparagraph (1)(B) is not being disseminated to all market participants at the same time or the daily public website disclosure of portfolio holdings does not occur, the Exchange shall halt trading in such series of Index Fund Share, as appropriate. The Exchange may resume trading in such Index Fund Shares only when the net asset value is disseminated to all market participants at the same time or the daily public website disclosure of portfolio holdings occurs, as appropriate.

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

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

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

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

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

A member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Index Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule.

Upon request of a customer, a member shall also provide a prospectus for the particular series of Index Fund Shares.

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

(A) Eligibility Criteria for Index Components.

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

a. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least $75 million;

b. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares;

c. The most heavily weighted component stock shall not exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks shall not exceed 65% of the weight of the index or portfolio;

d. The index or portfolio shall include a minimum of 13 component stocks; and

e. All securities in the index or portfolio shall be US Component Stocks listed on the Exchange or another national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act.

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

a. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least $100 million;

b. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares;

c. The most heavily weighted component stock shall not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks shall not exceed 60% of the weight of the index or portfolio;

d. The index or portfolio shall include a minimum of 20 component stocks; and

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

(iii) Index or portfolio approved in connection with derivative securities. Upon the initial listing of a series of Index Fund Shares pursuant to Rule 19b-4(e) under the Act, the index or portfolio underlying a series of Index Fund Shares shall have been reviewed and approved for trading of options, Portfolio Depository Receipts, Index Fund Shares, index-linked exchangeable notes, or index-linked securities by the Commission under Section 19(b)(2) of the Act and rules thereunder, and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements with respect to Non-US Component Stocks and the requirements regarding dissemination of information, continue to be satisfied. Each component stock of the index or portfolio shall be either

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

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

(B) Index Methodology and Calculation

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund advisor;

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

a. Equity 3A, Section 2(f)(3)(A)(i) will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's regular market session;

b. Equity 3A, Section 2(f)(3)(A)(ii) will be widely disseminated by one or more major market data vendors at least every 60 seconds during the Exchange's regular market session; or

c. Equity 3A, Section 2(f)(3)(A)(iii) will be widely disseminated by one or more major market data vendors at least every 15 seconds with respect to indexes containing only US Component Stocks and at least every 60 seconds with respect to indexes containing Non-US Component Stocks, during the Exchange's regular market session

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

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index or portfolio composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

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

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

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

(F) Creation and redemption. For Index Fund Shares listed pursuant to Equity 3A, Section 2(f)(3)(A)(ii) or (iii) above, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the series of Index Fund Shares must state that the series of Index Fund Shares must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

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

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

(i) The index or portfolio must consist of Fixed Income Securities;

(ii) Components that in aggregate account for at least 75% of the weight of the index or portfolio must have a minimum original principal amount outstanding of $100 million or more;

(iii) A component may be a convertible security, however, once the convertible security component converts to an underlying equity security, the component is removed from the index or portfolio;

(iv) No component fixed-income security (excluding Treasury Securities) will represent more than 30% of the weight of the index or portfolio, and the five highest weighted component fixed-income securities do not in the aggregate account for more than 65% of the weight of the index or portfolio;

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

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

(B) Index Methodology and Calculation.

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

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

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(5) The Exchange may approve a series of Index Fund Shares based on a combination of indexes or an index or portfolio of component securities representing the U.S. equity market, the international equity market, and the fixed income market for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided: (i) such portfolio or combination of indexes has been reviewed and approved for the trading of options, Portfolio Depository Receipts, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by

the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied; or (ii) each index or portfolio of equity and fixed income component securities separately meets either the criteria set forth in Equity 3A, Section 2(f)(3) or (4) above.

(A) Index Methodology and Calculation.

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

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

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(6) The following provisions shall apply to all series of Index Fund Shares listed pursuant Equity 3A, Section 2(f)(4) and (5) above:

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

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

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

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

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

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

(A) Initial Listing —

(i) for each series, the Exchange will establish a minimum number of Index Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.

(ii) The Exchange will obtain a representation from the issuer of each series of Index Fund Shares that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.

(B) Continued Listing —

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

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

b. if the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available or the index or portfolio on which the series of Index Fund Shares is based is replaced with a new index or portfolio, unless the new index or portfolio meets the requirements of this Equity 3A, Section 2(f) for listing either pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 (including the filing of a Form 19b-4(e) with the Commission) or by Commission approval of a filing pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934; or

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

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

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

(10) Neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value, the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares; net asset value; or other information relating to the purchase, redemption or trading of Index Fund Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more underlying securities.

(g) **Trust Issued Receipts**

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

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

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

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

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

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

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

(5) The Exchange may list and trade Trust Issued Receipts based on one or more securities. The Trust Issued Receipts based on particular securities shall be designated as a separate series and

shall be identified by a unique symbol. The securities that are included in a series of Trust Issued Receipts shall be selected by the Exchange or its agent, an affiliate of the Exchange, or by such other person as shall have a proprietary interest in such Trust Issued Receipts.

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

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

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

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

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

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

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

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

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

(D) Trustee — the following requirements apply:

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

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

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

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

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

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

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

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

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

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

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

(h) **Securities Linked to the Performance of Indexes and Commodities (Including Currencies)**

Nasdaq Texas will consider for listing and trading equity index-linked securities ("Equity Index-Linked Securities") and commodity-linked securities ("Commodity-Linked Securities"), fixed income index-linked securities ("Fixed Income Index-Linked Securities"), futures-linked securities ("Futures-Linked Securities") and multifactor index-linked securities ("Multifactor Index-Linked Securities" and, together with Equity Index-Linked Securities, Commodity-Linked Securities, Fixed Income Index-Linked Securities and Futures-Linked Securities, "Linked Securities") that in each case meet the applicable criteria of this Rule.

Equity Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying equity index or indexes (an "Equity Reference Asset").

The payment at maturity with respect to Commodity-Linked Securities is based on one or more physical Commodities or Commodity futures, options or other Commodity derivatives, Commodity-Related Securities, or a basket or index of any of the foregoing (any such basis for payment is referred to below as the "Commodity Reference Asset"). The terms "Commodity" and "Commodity-Related Security" are defined in Equity 10, Section 8(a)(c).

The payment at maturity with respect to Fixed Income Index-Linked Securities is based on the performance of one or more indexes or portfolios of notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof or a basket or index of any of the foregoing (a "Fixed Income Reference Asset").

The payment at maturity with respect to Futures-Linked Securities is based on the performance of an index of (a) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (b) interest rate futures or options or derivatives on the foregoing in this subparagraph (b); or (c) CBOE Volatility Index (VIX) Futures (a "Futures Reference Asset").

The payment at maturity with respect to Multifactor Index-Linked Securities is based on the performance of any combination of two or more Equity Reference Assets, Commodity Reference Assets, Fixed Income Reference Assets or Futures Reference Assets (a "Multifactor Reference Asset", and together with Equity Reference Asset, Commodity Reference Asset, Fixed Income Reference Asset and Futures Reference Asset, "Reference Assets"). A Multifactor Reference Asset may include as a component a notional investment in cash or a cash equivalent based on a widely accepted overnight loan interest rate, LIBOR, Prime Rate, or an implied interest rate based on observed market spot and foreign currency forward rates.

Linked Securities may or may not provide for the repayment of the original principal investment amount. Nasdaq Texas will consider Linked Securities for listing and trading pursuant to Rule 19b-4(e) under the Act, provided:

(a) Both the issue and the issuer of such security initially meet and continuously maintain the criteria for other securities set forth in Rule 5730(a), except that if the security is traded in $1,000 denominations or is redeemable at the option of holders thereof on at least a weekly basis, then no minimum number of holders and no minimum public distribution of trading units shall be required..

(b) The issue has a term of not less than one (1) year and not greater than thirty (30) years.

(c) The issue must, on an initial and continued listing basis, be the non-convertible debt of the Company.

(d) On an initial and continued listing basis, the payment at maturity may or may not provide for a multiple of the direct or inverse performance of an underlying index, indexes or Reference Asset; however, in no event will a loss (negative payment) at maturity be accelerated by a multiple that exceeds three times the performance of an underlying index, indexes or Reference Asset.

In addition, as applicable, the issuer of the Linked Security must include a statement on a public website in substantially the following form: "The seeks returns that are the returns of

the for a single day. Due to the compounding of daily returns, holding periods of greater than one day can result in returns that are significantly different than the target return. Investors should consult the prospectus for further details on the calculation of the returns and the risks associated with investing in this product."

(e) On an initial and continued listing basis, the Company will be expected to have a minimum tangible net worth in excess of $250,000,000 (if the Linked Securities are fully and unconditionally guaranteed by an affiliate of the Company, Nasdaq Texas will rely on such affiliate's tangible net worth for purposes of this requirement). In the alternative, the Company will be expected to have a minimum tangible net worth of $150,000,000 and the original issue price of the Linked Securities, combined with all of the Company's other Linked Securities listed on a national securities exchange or otherwise publicly traded in the United States, must not be greater than 25 percent of the Company's tangible net worth at the time of issuance (if the Linked Securities are fully and unconditionally guaranteed by an affiliate of the Company, Nasdaq Texas will apply the provisions of this paragraph to such affiliate instead of the Company and will include in its calculation all Linked Securities that are fully and unconditionally guaranteed by such affiliate). Government issuers and supranational entities will be evaluated on a case-by-case basis.

(f) On an initial and continued listing basis, the Company is in compliance with Rule 10A-3 under the Act.

(g) Maintenance and Dissemination—(i) If the index is maintained by a broker-dealer, the broker-dealer shall erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer. (ii) Unless the Commission order applicable under paragraph (k) or (l) hereof provides otherwise, the current value of the index or the Reference Asset (as applicable) will be widely disseminated at least every 15 seconds during Nasdaq Texas' regular market session, except as provided in the next clause (iii). (iii) The values of the following indexes need not be calculated and widely disseminated at least every 15 seconds if, after the close of trading, the indicative value of the Equity Index-Linked Security based on one or more of such indexes is calculated and disseminated to provide an updated value: CBOE S&P 500 BuyWrite Index(sm), CBOE DJIA Buy Write Index(sm), CBOE Nasdaq-100 BuyWrite Index(sm). (iv) If the value of a Linked Security is based on more than one index, then the dissemination requirement of this paragraph (g) applies to the composite value of such indexes. (v) In the case of a Commodity-Linked Security that is periodically redeemable, the indicative value of the subject Commodity-Linked Security must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during Nasdaq Texas' regular market session. The provisions of sections (ii), (iii) and (v) of this paragraph shall be satisfied on an initial and continued listing basis.

(h) Trading Halts. In the case of Linked Securities, if the indicative value (if required to be disseminated) or the Reference Asset value is not being disseminated as required, or if the value of the index is not being disseminated as required, Nasdaq Texas may halt trading during the day on which such interruption occurs. Nasdaq Texas will halt trading no later than

the beginning of trading following the trading day when the interruption commenced if such interruption persists at this time.

(i) Surveillance Procedures. FINRA will implement and maintain on behalf of Nasdaq Texas written surveillance procedures for Linked Securities. Nasdaq Texas will enter into adequate comprehensive surveillance sharing agreements for non-U.S. securities, as applicable.

(j) Linked Securities will be treated as equity instruments. Furthermore, for the purpose of fee determination, Linked Securities shall be deemed and treated as Other Securities.

(k) Linked Securities

(i) Equity Index-Linked Securities Criteria

(A) In the case of an Equity Index-Linked Security, each underlying index is required to have at least ten (10) component securities; provided, however, that there shall be no minimum number of component securities if one or more issues of Derivative Securities Products (which are defined in Rule 5705(b)(3)(A)(i)(a)), Linked Securities (as described in Rule 5710), or securities listed on another national securities exchange pursuant to substantially equivalent listing rules, constitute, at least in part, component securities underlying an issue of Equity Index-Linked Securities. In addition, the index or indexes to which the security is linked shall either:

(1) have been reviewed and approved for the trading of Index Fund Shares or options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements for non-U.S. stocks, continue to be satisfied, or

(2) the index or indexes meet the following criteria:

(a) Each component security (excluding Derivative Securities Products and Linked Securities) has a minimum market value of at least $75 million, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index(excluding Derivative Securities Products and Linked Securities), the market value can be at least $50 million;

(b) Component stocks (excluding Derivative Securities Products and Linked Securities) that in the aggregate account for at least 90% of the weight of the index (excluding Derivative Securities Products and Linked Securities) each shall have a minimum global monthly trading volume of 1,000,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months;

(c) No underlying component security (excluding Derivative Securities Products and Linked Securities) will represent more than 25% of the weight of the index, and, to the extent applicable, the five highest weighted component securities in the index (excluding Derivative Securities Products and Linked Securities) do not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 component securities);

(d) 90% of the index's numerical value (excluding Derivative Securities Products and Linked Securities) and at least 80% of the total number of component securities (excluding Derivative Securities Products and Linked Securities) will meet the then current criteria for standardized option trading on a national securities exchange or a national securities association, provided, however, that an index will not be subject to this requirement if (a) no underlying component security represents more than 10% of the dollar weight of the index (excluding Derivative Securities Products and Linked Securities) and (b) the index has a minimum of 20 components (excluding Derivative Securities Products and Linked Securities); and

(e) All component securities shall be either (A) securities (other than securities of a foreign issuer and American Depository Receipts ("ADRs")) that are (i) issued by a 1934 Act reporting company or by an investment company registered under the Investment Company Act of 1940 that, in each case, has securities listed on a national securities exchange and (ii) an "NMS stock" (as defined in Rule 600 of Regulation NMS under the Act), or (B) securities of a foreign issuer or ADRs, provided that securities of a foreign issuer (including when they underlie ADRs) whose primary trading market outside the United States is not a member of the Intermarket Surveillance Group ("ISG") or a party to a comprehensive surveillance sharing agreement with Nasdaq Texas will not in the aggregate represent more than 50% of the dollar weight of the index; and provided further that (i) the securities of any one such market do not represent more than 20% of the dollar weight of the index, and (ii) the securities of any two such markets do not represent more than 33% of the dollar weight of the index.

(B) Continued Listing Criteria

(1) Nasdaq Texas will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject Equity Index-Linked Security), if any of the standards set forth above in paragraph A are not continuously maintained, except that:

(a) the criteria that no single component represent more than 25% of the dollar weight of the index (excluding Derivative Securities Products and Linked Securities) and, to the extent applicable, the five highest dollar weighted components in the index (excluding Derivative Securities Products and Linked Securities) cannot represent more than 50% (or 60% for indexes with less than 25 components) of the dollar weight of the index, need only be satisfied at the time the index is rebalanced; and

(b) Component stocks (excluding Derivative Securities Products and Linked Securities) that in the aggregate account for at least 90% of the weight of the index (excluding Derivative Securities Products and Linked Securities) each shall have a minimum global monthly trading volume of 500,000 shares, or minimum global notional volume traded per month of $12,500,000, averaged over the last six months.

(2) In connection with an Equity Index-Linked Security that is listed pursuant to paragraph (i)(A)(1) above, Nasdaq Texas will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject Equity Index-Linked Security) if an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or indexes as set forth by the Commission in its order under Section 19(b)(2) of the Act approving the index or indexes for the trading of options or other derivatives.

(3) Nasdaq Texas will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series (unless the Commission has approved the continued trading of the subject Equity Index-Linked Security), under any of the following circumstances:

(a) if the aggregate market value or the principal amount of the Equity Index-Linked Securities publicly held is less than $400,000;

(b) if an interruption to the dissemination of the value of the index or composite value of the indexes persists past the trading day in which it occurred or is no longer calculated or widely disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to indexes containing foreign country securities, provided, however, that, if the official index value does not change during some or all of the period when trading is occurring on Nasdaq Texas (for example, for indexes of foreign country securities, because of time zone differences or holidays in the countries where such indexes' component stocks trade) then the last calculated official index value must remain available throughout Nasdaq Texas trading hours; or

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

(4) Equity-Linked Index Rebalancing. Equity-Linked Indexes will be rebalanced at least annually.

(ii) Reference Asset Criteria for Commodity-Linked Securities

(A) In the case of a Commodity-Linked Security, the Reference Asset shall meet the criteria in either subparagraph (1) or subparagraph (2) below:

(1) The Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Commodity-Related Securities or options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied.

(2) The pricing information for each component of a Reference Asset other than a Currency must be derived from a market which is an ISG member or affiliate or with which Nasdaq Texas has a comprehensive surveillance sharing agreement. Notwithstanding the previous sentence, pricing information for gold and silver may be derived from the London Bullion Market Association. The pricing information for each component of a Reference Asset that is a Currency must be either: (1) the generally accepted spot price for the currency exchange rate in question; or (2) derived from a market of which (a) is an ISG member or affiliate or with which Nasdaq Texas has a comprehensive surveillance sharing agreement and (b) is the pricing source for a currency component of a Reference Asset that has previously been approved by the Commission. A Reference Asset may include components representing not more than 10% of the dollar weight of such Reference Asset for which the pricing information is derived from markets that do not meet the requirements of this subparagraph (2), provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Reference Asset. The term "Currency," as used in this subparagraph, shall mean one or more currencies, or currency options, futures, or other currency derivatives, Commodity-Related Securities if their underlying Commodities are currencies or currency derivatives, or a basket or index of any of the foregoing.

(B) The issue must meet the following continued listing criteria:

(1) Nasdaq Texas will commence delisting or removal proceedings if any of the initial listing criteria described above are not continuously maintained.

(2) Nasdaq Texas will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series under any of the following circumstances:

(a) If the aggregate market value or the principal amount of the Commodity-Linked Securities publicly held is less than $400,000;

(b) An interruption to the dissemination of the value of the Commodity Reference Asset persists past the trading day in which it occurred or is no longer calculated or available and a new Commodity Reference Asset is substituted, unless the new Commodity Reference Asset meets the requirements of this rule; or

(c) If such other event shall occur or condition exists which in the opinion of Nasdaq Texas makes further dealings on Nasdaq Texas inadvisable.

(iii) Fixed Income Index-Linked Securities Listing Standards

(A) The issue must meet one of the criteria set forth in either (1) or (2) below.

(1) The Fixed Income Reference Asset to which the security is linked shall have been reviewed and approved for the trading of options, Index Fund Shares, or other derivatives by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission's approval order, continue to be satisfied.

(2) The issue must meet the following initial listing criteria:

(a) Components of the Fixed Income Reference Asset that in the aggregate account for at least 75% of the weight of the Fixed Income Reference Asset must each have a minimum original principal amount outstanding of $100 million or more;

(b) A component of the Fixed Income Reference Asset may be a convertible security, however, once the convertible security component converts to the underlying equity security, the component is removed from the Fixed Income Reference Asset;

(c) No component of the Fixed Income Reference Asset (excluding Treasury Securities and GSE Securities) will represent more than 30% of the dollar weight of the Fixed Income Reference Asset, and the five highest dollar weighted components in the Fixed Income Reference Asset will not in the aggregate account for more than 65% of the dollar weight of the Fixed Income Reference Asset;

(d) An underlying Fixed Income Reference Asset (excluding one consisting entirely of exempted securities) must include a minimum of 13 non-affiliated issuers; and

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

(B) In addition, the value of the Fixed Income Reference Asset must be widely disseminated to the public by one or more major market vendors at least once per business day.

(C) The issue must meet the following continued listing criteria:

(1) Nasdaq Texas will commence delisting or removal proceedings if any of the initial listing criteria described above are not continuously maintained.

(2) Nasdaq Texas will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series:

(a) if the aggregate market value or the principal amount of the Fixed Income Index-Linked Securities publicly held is less than $400,000;

(b) An interruption to the dissemination of the value of the Fixed Income Reference Asset persists past the trading day in which it occurred or is no longer calculated or available and a new Fixed Income Reference Asset is substituted, unless the new Fixed Income Reference Asset meets the requirements of this Rule 5710(k); or

(c) if such other event shall occur or condition exists which in the opinion of Nasdaq Texas makes further dealings inadvisable.

(iv) Futures-Linked Securities Listing Standards

(A) The issue must meet the initial listing standard set forth in either (1) or (2) below:

(1) The Futures Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Futures-Linked Securities or options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied, or

(2) the pricing information for components of a Futures Reference Asset must be derived from a market which is an ISG member or affiliate or with which Nasdaq Texas has a comprehensive surveillance sharing agreement. A Futures Reference Asset may include components representing not more than 10% of the dollar weight of such Futures Reference Asset for which the pricing information is derived from markets that do not meet the requirements of this subparagraph (2); provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Futures Reference Asset.

(B) In addition, the issue must meet both of the following initial listing criteria:

(1) the value of the Futures Reference Asset must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Regular Market Session (as defined in Rule 4120); and

(2) in the case of Futures-Linked Securities that are periodically redeemable, the value of a share of each series (the "Intraday Indicative Value") of the subject Futures-Linked Securities must be calculated and widely disseminated by Nasdaq Texas or one or more major market data vendors on at least a 15-second basis during the Regular Market Session (as defined in Rule 4120).

(C) The issue must meet the following continued listing criteria:

(1) Nasdaq Texas will commence delisting or removal proceedings if any of the initial listing criteria described above are not continuously maintained.

(2) Nasdaq Texas will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series under any of the following circumstances:

(a) if the aggregate market value or the principal amount of the Futures-Linked Securities publicly held is less than $400,000;

(b) An interruption to the dissemination of the value of the Futures Reference Asset persists past the trading day in which it occurred or is no longer calculated or available and a new Futures Reference Asset is substituted, unless the new Futures Reference Asset meets the requirements of this Rule 5710(k); or

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

(v) Multifactor Index-Linked Securities Listing Standards

(A) The issue must meet the following initial listing standards set forth in either (1) or (2) below:

(1) each component of the Multifactor Reference Asset to which the security is linked shall have been reviewed and approved for the trading of either options, Index Fund Shares, or other derivatives under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied, or

(2) each Reference Asset included in the Multifactor Reference Asset must meet the applicable initial and continued listing criteria set forth in the relevant subsection of this Rule 5710(k).

(B) In addition, the issue must meet both of the following initial listing criteria:

(1) the value of the Multifactor Reference Asset must be calculated and widely disseminated to the public on at least a 15-second basis during the time the Multifactor Index-Linked Security trades on Nasdaq Texas; and

(2) in the case of Multifactor Index-Linked Securities that are periodically redeemable, the indicative value of the Multifactor Index- Linked Securities must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the time the Multifactor Index-Linked Securities trade on Nasdaq Texas.

(C) Nasdaq Texas will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series:

(1) if any of the initial listing criteria described above are not continuously maintained;

(2) if the aggregate market value or the principal amount of the Multifactor Index-Linked Securities publicly held is less than $400,000;

(3) An interruption to the dissemination of the value of the Multifactor Reference Asset persists past the trading day on which it occurred or is no longer calculated or available and a new Multifactor Reference Asset is substituted, unless the new Multifactor Reference Asset meets the requirements of this Rule 5710(k); or

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

(l) Nasdaq Texas may submit a rule filing pursuant to Section 19(b) of the Act to permit the listing and trading of Linked Securities that do not otherwise meet the standards set forth in this rule. Any of the statements or representations regarding (a) the index composition or reference asset description and limitations; (b) dissemination and availability of the index, reference asset, or intraday indicative values; or (c) the applicability of Nasdaq Texas listing rules specified in such proposals constitute continued listing standards. If a series of Linked Securities does not satisfy these requirements, Nasdaq Texas may halt trading in the securities and will initiate delisting proceedings pursuant to the Rule 5800 Series.

• • • ***Commentary*** **----------**

.01 (a) The registered Market Maker in Linked Securities must file with Nasdaq Texas, in a manner prescribed by Nasdaq Texas, and keep current a list identifying all accounts for trading in the Reference Asset components, the commodities, currencies or futures underlying the Reference Asset components, or any derivative instruments based on the Reference Asset or based on any Reference Asset component or any physical commodity, currency or futures underlying a Reference Asset component, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker in Linked Securities shall trade in the Reference Asset components, the commodities, currencies or futures underlying the Reference Asset components, or any derivative instruments based on the Reference Asset or based on any Reference Asset component or any physical commodity, or futures currency underlying a Reference Asset component, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to Nasdaq Texas as required by this Rule.

(b) In addition to the existing obligations under Nasdaq Texas rules regarding the production of books and records (e.g., Rule 4625), the registered Market Maker in Linked Securities shall make available to Nasdaq Texas such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or nonregistered employee affiliated with such entity for its or their own accounts in the Reference Asset components, the commodities, currencies or futures underlying the Reference Asset components, or any derivative instruments based on the Reference Asset or based on any Reference Asset component or any physical commodity, currency or futures underlying a Reference Asset component, as may be requested by Nasdaq Texas.

[The Exchange will consider for listing and trading equity index-linked securities ("Equity Index-Linked Securities) and commodity-linked securities ("Commodity-Linked Securities" and, together with Equity Index-Linked Securities, "Linked Securities") that in each case meet the applicable criteria of this Rule. Equity Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying equity index or indexes. The payment at maturity with respect to Commodity-Linked Securities is based on one or more physical Commodities or Commodity futures, options or other Commodity derivatives, Commodity-Related Securities, or a basket or index of any of the foregoing (any such basis for payment is referred to below as the "Reference Asset"). The terms "Commodity" and "Commodity-Related Security" are defined in Equity 10, Section 8.

Linked Securities may or may not provide for the repayment of the original principal investment amount. The Exchange may submit a rule filing pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 to permit the listing and trading of Linked Securities that do not otherwise meet the standards set forth below in paragraphs (1) through (12). The Exchange will consider Linked Securities for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, provided:

(1) Both the issue and the issuer of such security meet the criteria for other securities set forth in paragraph (f) of this rule, except that if the security is traded in $1,000 denominations or is redeemable at the option of holders thereof on at least a weekly basis, then no minimum number of holders and no minimum public distribution of trading units shall be required.

(2) The issue has a term of not less than one (1) year and not greater than thirty (30) years.

(3) The issue must be the non-convertible debt of the issuer.

(4) The payment at maturity may or may not provide for a multiple of the direct or inverse performance of an underlying index, indexes or Reference Asset; however, in no event will a loss (negative payment) at maturity be accelerated by a multiple that exceeds twice the performance of an underlying index, indexes or Reference Asset.

(5) The issuer will be expected to have a minimum tangible net worth in excess of $250,000,000 and to exceed by at least 20% the earnings requirements set forth in paragraph (a)(1) of this Rule. In the alternative, the issuer will be expected: (i) to have a minimum tangible net worth of $150,000,000 and to exceed by at least 20% the earnings requirement set forth in paragraph (a)(1) of this Rule, and (ii) not to have issued securities where the original issue price of all the issuer's other index-linked note offerings (combined with index-linked note offerings of the issuer's affiliates) listed on a national securities exchange exceeds 25% of the issuer's net worth.

(6) The issuer is in compliance with Rule 10A-3 under the Securities Exchange Act of 1934.

(7) Equity Index Criteria—In the case of an Equity Index-Linked Security, each underlying index is required to have at least ten (10) component securities. In addition, the index or indexes to which the security is linked shall either

(A) have been reviewed and approved for the trading of options or other derivatives by the Commission under Section 19(b)(2) of the 1934 Act and rules thereunder and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements for non-U.S. stocks, continue to be satisfied, or

(B) the index or indexes meet the following criteria:

(i) Each component security has a minimum market value of at least $75 million, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market value can be at least $50 million;

(ii) Each component security shall have trading volume in each of the last six months of not less than 1,000,000 shares, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume shall be at least 500,000 shares in each of the last six months;

(iii) Indexes based upon the equal-dollar or modified equal-dollar weighting method will be rebalanced at least semiannually;

(iv) In the case of a capitalization-weighted or modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months;

(v) No underlying component security will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index do not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 component securities);

(vi) 90% of the index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading on a national securities exchange or a national securities association, provided, however, that an index will not be subject to this requirement if (a) no underlying component security represents more than 10% of the dollar weight of the index and (b) the index has a minimum of 20 components;

(vii) All component securities shall be either (A) securities (other than securities of a foreign issuer and American Depository Receipts ("ADRs")) that are (i) issued by a 1934 Act reporting company or by an investment company registered under the Investment Company Act of 1940 that, in each case, has securities listed on a national securities exchange and (ii) an "NMS stock" (as defined in Rule 600 of SEC Regulation NMS) or (B) securities of a foreign issuer or ADRs, provided that securities of a foreign issuer (including when they underlie ADRs) whose primary trading market outside the United States is not a member of the Intermarket Surveillance Group ("ISG") or a party to a comprehensive surveillance sharing agreement with the Exchange will not in the aggregate represent more than 20% of the dollar weight of the index.

(8) Reference Asset Criteria—In the case of a Commodity-Linked Security, the Reference Asset shall meet the criteria in either subparagraph (A) or subparagraph (B) below:

(A) The Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Commodity-Related Securities or options or other derivatives by the Commission under Section 19(b)(2) of the 1934 Act and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied.

(B) The pricing information for each component of a Reference Asset other than a Currency must be derived from a market which is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement. Notwithstanding the previous sentence, pricing information for gold and silver may be derived from the London Bullion Market Association. The pricing information for each component of a Reference Asset that is a Currency must be either (1) the generally accepted spot price for the currency exchange rate in question or (2) derived from a market which (x) is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement and (y) is the pricing source for a currency component of a Reference Asset that has previously been approved by the Commission. A Reference Asset may include components representing not more than 10% of the dollar weight of such Reference Asset for which the pricing information is derived from markets that do not meet the requirements of this subparagraph (B), provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Reference Asset. The term "Currency," as used in this subparagraph, shall mean one or more currencies, or currency options, futures, or other currency derivatives, Commodity-Related Securities if their underlying Commodities are currencies or currency derivatives, or a basket or index of any of the foregoing.

(9) Maintenance and Dissemination—(i) If the index is maintained by a broker-dealer, the broker-dealer shall erect a "firewall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer. (ii) Unless the Commission order applicable under clause 7(A) or 8(A) hereof provides otherwise, the current value of the index or the Reference Asset (as applicable) will be widely disseminated at least every 15 seconds during the Exchange's regular market session, except as provided in the next clause (iii). (iii) The values of the following indexes need not be calculated and widely disseminated at least every 15 seconds if, after the close of trading, the indicative value of the Equity Index-Linked Security based on one or more of such indexes is calculated and disseminated to provide an updated value: CBOE S&P 500 BuyWrite Index(sm), CBOE DJIA Buy Write Index(sm), CBOE Nasdaq-100 BuyWrite Index(sm). (iv) If the value of a Linked Security is based on more than one index, then the dissemination requirement of this paragraph 9 applies to the composite value of such indexes. (v) In the case of a Commodity-Linked Security that is periodically redeemable, the indicative value of the subject Commodity-Linked Security must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Exchange's regular market session.

(10) Trading Halts. In the case of Commodity-Linked Securities, if the indicative value (if required to be disseminated) or the Reference Asset value is not being disseminated as required,

or, in the case of Equity Index-Linked Securities, if the value of the index is not being disseminated as required, the Exchange may halt trading during the day on which such interruption occurs. The Exchange will halt trading no later than the beginning of trading following the trading day when the interruption commenced if such interruption persists at this time.

(11) Surveillance Procedures. FINRA will implement on behalf of the Exchange written surveillance procedures for Linked Securities. The Exchange will enter into adequate comprehensive surveillance sharing agreements for non-U.S. securities, as applicable.

(12) Linked Securities will be treated as equity instruments. Furthermore, for the purpose of fee determination, Linked Securities shall be deemed and treated as Other Securities.]

(i) **FINRA**

The Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions described in this Rule on behalf of the Exchange. Functions performed by FINRA, FINRA departments, and FINRA staff under Equity 3A, Section 2 are being performed by FINRA on behalf of the Exchange. Notwithstanding the fact that the Exchange has entered into the Regulatory Contract with FINRA to perform some of the Exchange's functions, the Exchange shall retain ultimate legal responsibility for, and control of, such functions.

(j) **Managed Fund Shares**

(1) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Fund Shares that meet the criteria of Equity 3A, Section 2(j).

(2) Applicability. Equity 3A, Section 2(j) is applicable only to Managed Fund Shares. Except to the extent inconsistent with Equity 3A, Section 2(j), or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Managed Fund Shares are included within the definition of "security" or "securities" as such terms are used in the Equity Rules.

(A) The Exchange will file separate proposals under Section 19(b) of the Act before the listing of Managed Fund Shares. Trading of Managed Fund Shares on an unlisted trading privileges basis shall be governed by Equity 3A, Section 3.

(B) Transactions in Managed Fund Shares will occur throughout the Exchange's trading hours.

(C) Minimum Price Variance. The minimum price variation for quoting and entry of orders in Managed Fund Shares is $0.01.

(D) Surveillance Procedures. The Exchange will implement written surveillance procedures for Managed Fund Shares.

(E) Creation and Redemption. For Managed Fund Shares based on an international or global portfolio, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the series of Managed Fund Shares must state that such series must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

(3) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(A) Managed Fund Share. The term "Managed Fund Share" means a security that (a) represents an interest in a registered investment company ("Investment Company") organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value.

(B) Disclosed Portfolio. The term "Disclosed Portfolio" means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day.

(C) Intraday Indicative Value. The term "Intraday Indicative Value" is the estimated indicative value of a Managed Fund Share based on current information regarding the value of the securities and other assets in the Disclosed Portfolio.

(D) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Managed Fund Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Managed Fund Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Intraday Indicative Value; the Disclosed Portfolio; the amount of any cash distribution to holders of Managed Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Managed Fund Shares. A series of Managed Fund Shares may have more than one Reporting Authority, each having different functions.

(4) Initial and Continued Listing — Managed Fund Shares will be listed and traded on the Exchange subject to application of the following criteria:

(A) Initial Listing — Each series of Managed Fund Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria:

(i) For each series, the Exchange will establish a minimum number of Managed Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.

(ii) Nasdaq [BX]Texas will obtain a representation from the issuer of each series of Managed Fund Shares that the net asset value per share for the series will be calculated daily and that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

(B) Continued Listing — Each series of Managed Fund Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria:

(i) Intraday Indicative Value. The Intraday Indicative Value for Managed Fund Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Fund Shares trade on the Exchange.

(ii) Disclosed Portfolio.

(a) The Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

(b) The Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.

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

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

(b) if the value of the Intraday Indicative Value is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time;

(c) if the Investment Company issuing the Managed Fund Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to the Investment Company with respect to the series of Managed Fund Shares; or

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

(iv) Trading Halt. If the Intraday Indicative Value of a series of Managed Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value occurs. If the interruption to

the dissemination of the Intraday Indicative Value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. If a series of Managed Fund Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading in that series as specified in Rules 4120 and 4121. In addition, if the Exchange becomes aware that the net asset value or the Disclosed Portfolio with respect to a series of Managed Fund Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value or the Disclosed Portfolio is available to all market participants.

(v) Termination. Upon termination of an Investment Company, the Exchange requires that Managed Fund Shares issued in connection with such entity be removed from listing on the Exchange.

(vi) Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus.

(5) Limitation of Liability. Neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Managed Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Managed Fund Shares; net asset value; or other information relating to the purchase, redemption, or trading of Managed Fund Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

(6) Disclosures. The provisions of this subparagraph apply only to series of Managed Fund Shares that are the subject of an order by the Securities and Exchange Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its members regarding application of these provisions of this subparagraph to a particular series of Managed Fund Shares by means of an information circular prior to commencement of trading in such series.

The Exchange requires that members provide to all purchasers of a series of Managed Fund Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of Managed Fund Shares that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Managed Fund Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of (the series of Managed

Fund Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Fund Shares)"

A member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Managed Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members under this rule.

Upon request of a customer, a member shall also provide a prospectus for the particular series of Managed Fund Shares.

(7) If the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. Personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio.

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

Section 3. Derivative Securities Traded under Unlisted Trading Privileges

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

(1) Information Circular. The Exchange shall distribute an information circular prior to the commencement of trading in each such UTP Derivative Security that generally includes the same information as contained in the information circular provided by the listing exchange, including: (a) the special risks of trading the new derivative securities product; (b) the Rules of the Exchange that will apply to the new derivative securities product, including General 9, Section 10; (c) information about the dissemination of the value of the underlying assets or indexes; and (d) the applicable trading hours for the UTP Derivative Security and the risks of trading during the period from 7:00 a.m. to 9:30 a.m. and from 4:00 p.m. to 7:00 p.m. due to the lack of

calculation or dissemination of the underlying index value, the Intra-Day Indicative Value (as defined in Equity 3A, Section 2), or a similar value.

(2) Product Description.

Members are subject to the prospectus delivery requirements under the Securities Act of 1933, unless the UTP Derivative Security is the subject of an order by the Commission exempting the product from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and the product is not otherwise subject to prospectus delivery requirements under the Securities Act of 1933.

The Exchange shall inform Members of the application of the provisions of this subparagraph to UTP Derivative Securities by means of an information circular. The Exchange requires that Members provide all purchasers of UTP Derivative Securities a written description of the terms and characteristics of those securities, in a form approved by the Exchange or prepared by the open-ended management company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, Members shall include a written description with any sales material relating to UTP Derivative Securities that is provided to customers or the public. Any other written materials provided by a Member to customers or the public making specific reference to the UTP Derivative Securities as an investment vehicle must include a statement substantially in the following form:

"A circular describing the terms and characteristics of {the UTP Derivative Securities{has been prepared by the {open-ended management investment company name} and is available from your broker. It is recommended that you obtain and review such circular before purchasing {the UTP Derivative Securities}."

A Member carrying an omnibus account for a non-Member is required to inform such non-Member that execution of an order to purchase UTP Derivative Securities for such omnibus account will be deemed to constitute an agreement by the non-Member to make such written description available to its customers on the same terms as are directly applicable to the Member under this Rule.

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

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

(4) Limitations on Market Makers. Market makers in a UTP Derivative Security that is a Commodity-Related Security (as defined in Equity 10, Section 8) shall comply with Equity 10, Section 8.

(5) Surveillance. The Exchange shall enter into a comprehensive surveillance sharing agreement with markets trading components of the index or portfolio on which the UTP Derivative Security

is based to the same extent as the listing exchange's rules require the listing exchange to enter into a comprehensive surveillance sharing agreement with such markets.

Section 4. Additional Quantitative Maintenance Criteria

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

(a) [Other Securities Listed Pursuant to Equity 3A, Section 2(c) and] Linked Securities

(1) The aggregate market value or principal amount of publicly-held units (except Linked Securities that were listed pursuant to Equity 3A, Section 2(h)) must be at least $1 million.

(2) Delisting or removal proceedings will be commenced (unless the Commission has approved the continued trading) with respect to any Equity Index-Linked Security that was listed pursuant to paragraph (7)(B) of Equity 3A, Section 2(h) if any of the standards set forth in paragraph (7)(B) of such rule are not continuously maintained, except that:

(i) the criteria that no single component represent more than 25% of the weight of the index and the five highest weighted components in the index may not represent more than 50% (or 60% for indexes with less than 25 components) of the weight of the Index, need only be satisfied for capitalization weighted and price weighted indexes as of the first day of January and July in each year;

(ii) the total number of components in the index may not increase or decrease by more than 33-1/3% from the number of components in the index at the time of its initial listing, and in no event may be less than ten (10) components;

(iii) the trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; and

(iv) in a capitalization-weighted or modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have had an average monthly trading volume of at least 1,000,000 shares over the previous six months.

(3) With respect to an Equity Index-Linked Security that was listed pursuant to paragraph (7)(A) of Equity 3A, Section 2(h), delisting or removal proceedings will be commenced (unless the Commission has approved the continued trading of the subject security) if an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or indexes as set forth by the Commission in its order under Section 19(b)(2) of the 1934 Act approving the index or indexes for the trading of options or other derivatives.

(4) With respect to a Commodity-Linked Security that was listed pursuant to Equity 3A, Section 2(h), delisting or removal proceedings will be commenced (unless the Commission has approved the continued trading of the subject security) if any of the listing requirements set forth in Equity 3A, Section 2(h) that were applicable at the time of the initial listing of the security are no longer being met. Notwithstanding the foregoing, a security will not be delisted due to lack of comprehensive surveillance sharing agreements if the Reference Asset has at least 10 components and the Exchange has comprehensive surveillance sharing agreements with respect to at least 90% of the dollar weight of the Reference Asset for which such agreements are otherwise required.

(5) Delisting or removal proceedings will also be commenced with respect to any Linked Security listed pursuant to Equity 3A, Section 2(h) (unless the Commission has approved the continued trading of the subject security), under any of the following circumstances:

(i) if the aggregate market value or the principal amount of the Linked Security issue publicly held is less than $400,000;

(ii) if the value of the index, composite value of the indexes or the value of the Reference Asset (as applicable) is no longer calculated or widely disseminated as required by Equity 3A, Section 2(h)(9);

(iii) with respect to a Commodity-Linked Security, if the value of the Reference Asset is no longer calculated or available and a new Reference Asset is substituted, unless the new Reference Asset meets the requirements of this Rule and Equity 3A, Section 2(h); or

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

(b) Rights and Warrants

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

(c) Bankruptcy and/or Liquidation

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

EQUITY 4 EQUITY TRADING RULES

4110. No change.

4120. Limit Up-Limit Down Plan and Trading Halts

(a) No change.

(b) Regulatory Halts

(1) Authority to Implement a Regulatory Halt

(A) The Exchange shall implement a Regulatory Halt in the following circumstances, as applicable:

(i) – (iii) No change.

(iv) [The Exchange shall declare a Regulatory Halt when the Exchange becomes aware that a security listed on the Exchange fails to comply with Rule 5550(d)](a) The Exchange shall declare a Regulatory Halt on Nasdaq Texas of a Nasdaq Texas-listed security to permit the dissemination of material news, provided, however, that in the Pre-Market Session (as defined Rule 4120(a)(6)) Nasdaq Texas will halt trading for dissemination of news only at the request of an issuer or pursuant to section (iv)(b) below; and

(b) The Exchange shall declare a Regulatory Halt in a security listed on Nasdaq Texas when Nasdaq Texas requests from the issuer information relating to: (x) material news; (y) the issuer's ability to meet Nasdaq Texas' listing qualification requirements, as set forth in the Listing Rule 5000 Series; or (z) any other information which is necessary to protect investors and the public interest.