

Additions: Underscored

Deletions: [Bracketed]

## **Rule 98 – Operation of a Specialist Unit**

### (a) Applicability

- (1) Unless a member organization and its approved persons are subject to Rule 98 (Former), the provisions of this rule shall apply to all member organizations seeking to operate a specialist unit at the Exchange.

### (b) Definitions

For purposes of this Rule, the following terms shall be defined as provided.

- (1) “Specialist” means any individual qualified to act as a specialist on the Floor of the Exchange, as defined in Rule 103.
- (2) “Specialist unit” means any member organization, aggregation unit within a member organization, or division or department within an integrated proprietary aggregation unit of a member organization that (i) has been approved by NYSE Regulation pursuant to section (c) of this Rule, (ii) is eligible for allocations under Rule 103B as a specialist in a security listed on the Exchange, and (iii) has met all registration and qualification requirements for specialists assigned to such unit. For purposes of Exchange rules and notwithstanding the foregoing, the term “specialist unit” shall be interchangeable with the terms “specialist organization” or “specialist member organization.”
- (3) “Specialist API” refers to any algorithmic system used by a specialist unit to generate quoting or trading messages for the specialist’s account that are delivered to the Exchange-provided trading platform, commonly referred to as “Display Book®” via an external quote application programmed interface (“API”) pursuant to Rule 104.
- (4) “Specialist’s account” means any account through which a specialist unit quotes or trades at the Exchange in securities allocated to it pursuant to Rule 103B.
- (5) “Specialist rules” means any rules that govern specialist conduct or trading.
- (6) “Specialist confidential information” means any non-public information relating to a specialist unit’s trading or quoting in securities allocated to that

specialist pursuant to Rule 103B, including positions or any other indication of a specialist's trading or quoting interest in securities allocated to such specialist, the specialist API, or any other non-public information relating to a specialist's interactions with a security allocated to such specialist, but not including non-public order information.

- (7) “Non-public order” means any order, whether expressed electronically or verbally, or any information regarding a reasonably imminent non-public transaction or series of transactions entered or intended for entry or execution on the Exchange and which is not publicly available on a real-time basis via an Exchange-provided datafeed, such as NYSE OpenBook® or otherwise not publicly available. Non-public orders include order information at the opening, re-openings, the close, when the security is trading in slow mode, and order information in the NYSE Display Book® that is not available via NYSE OpenBook®.
- (8) “Investment banking department” means any department or division, whether or not specifically identified as such, that performs any investment banking services on behalf of a member organization.
- (9) “Research department” means any department or division, whether or not specifically identified as such, that is responsible for preparing the substance of a research report on behalf of a member organization.
- (10) “Customer-facing department” means any trading or market-making department, division, aggregation unit, or desk that receives, routes, or executes orders for its own customers or customers of another broker-dealer or clearing accounts.
- (11) “Aggregation unit” means any trading or market-making department, division, or desk that meets the requirements of the definition of an “independent trading unit” pursuant to Rule 200 of Regulation SHO, 17 CFR Part 242.200(f).
- (12) “Approved person” means any person who controls a member organization, or who engages in a securities or kindred business and is controlled by or under common control with a member organization but is not a member or allied member or an employee of a member organization, as defined in Rule 304.
- (13) “Non-trading related services” means those persons or systems that provide support services to a trading or market-making department, division, aggregation unit, or desk, including a specialist unit, but that are not involved with day-to-day trading decisions.
- (14) “Integrated proprietary aggregation unit” means an aggregation unit of a member organization or approved person with a trading objective to engage in proprietary trading, including market-making activities. An integrated

proprietary aggregation unit must be separate from any department or division that engages in the activities of an investment banking, research, or customer-facing department. Subject to section (d) of this Rule, a specialist unit may be part of an integrated proprietary aggregation unit.

- (15) “Related products” means any derivative instrument that is related to a security allocated to a specialist unit, including options, warrants, hybrid securities, single-stock futures, security-based swap agreement, a forward contract, or any other instrument that is exercisable into or whose price is based upon or derived from a security listed at the Exchange.

(c) Approval to operate a specialist unit.

- (1) A member organization will be permitted to operate a specialist unit provided that the member organization has obtained prior written approval from NYSE Regulation, Inc. (“NYSE Regulation”).
- (2) A member organization seeking approval to operate a specialist unit pursuant to this Rule must (i) adopt and implement comprehensive written procedures and guidelines governing the conduct and supervision of business handled by such unit; (ii) establish a process for regular review of such written procedures and guidelines; and (iii) implement controls and surveillances reasonably designed to prevent and detect violations of these procedures and guidelines. At a minimum, such policies and procedures shall be reasonably designed in accordance with the following.
- (A) Unless otherwise specified in this Rule, the specialist unit shall maintain the confidentiality of both specialist confidential information and non-public orders.
- (i) A member organization’s departments, divisions, or aggregation units not part of the specialist unit, including investment banking, research, and customer-facing departments, shall not have access to specialist confidential information or non-public order information.
- (ii) Approved persons shall not have access to specialist confidential information or non-public order information. Notwithstanding this restriction, a specialist may make available to a Floor broker associated or affiliated with an approved person or member organization any information that the specialist would be permitted to provide under Exchange rules to an unaffiliated Floor broker.
- (B) Except as provided in paragraph (d) of this Rule, the specialist unit shall comply with all of the requirements of an aggregation unit.
- (C) The specialist unit shall not have access to material non-public information that is in the possession of aggregation units of the member organization or the approved person that do not include the specialist

unit and that is related to a security allocated to the specialist unit, including (i) information relating to investment banking or research activity by the member organization or approved person; (ii) information relating to trading by customer-facing departments; and (iii) information relating to positions held by aggregation units that do not include the specialist unit.

- (D) The specialist unit shall maintain or have allocated to it net capital sufficient to meet the requirements of Rule 104.21.
- (E) Senior managers of the member organization or approved person who are not assigned solely to the specialist unit may provide management oversight of the specialist unit provided that any such management oversight does not conflict with or compromise in any way the specialist unit from complying with the specialist rules.

(i) For purposes of risk management, senior managers of a member organization or approved person who are not assigned to the specialist unit may have access to specialist confidential information or non-public orders provided that upon receipt of such information, the senior manager (1) does not make such information available to the individuals or systems responsible for the day-to-day trading decisions of other aggregation units at the member organization or approved person, and (2) does not use such information to directly or indirectly influence the day-to-day trading decisions of the other aggregation units of the member organization or approved person with respect to the securities allocated to the specialist unit for which the senior manager has specialist confidential information or non-public order information.

(ii) Except as provided for in this Rule, no specialist may be directly supervised or controlled by an individual associated with an approved person or the member organization who is assigned to any investment banking, research, or customer-facing departments.

(3) If a member organization is approved to operate a specialist unit under this Rule, the specialist rules will apply only to trading at the Exchange by the specialist unit in the securities allocated to the specialist unit.

(d) Approval to operate a specialist unit within an integrated proprietary aggregation unit.

(1) Notwithstanding any provision of this Rule to the contrary, a member organization will be permitted to operate a specialist unit within an integrated proprietary aggregation unit, provided that the member organization has obtained prior written approval from NYSE Regulation.

(2) A member organization seeking approval to operate a specialist unit within an integrated proprietary aggregation unit pursuant to this Rule must (i) adopt

and implement comprehensive written procedures and guidelines governing the conduct and supervision of business handled by such unit; (ii) establish a process for regular review of such written procedures and guidelines; and (iii) implement controls and surveillances reasonably designed to prevent and detect violations of these procedures and guidelines. At a minimum, such policies and procedures shall be reasonably designed in accordance with the following.

- (A) Unless otherwise provided in this Rule, the specialist unit shall meet the requirements set forth in section (c)(2)(A), (C), (D), and (E) of this Rule.
  - (B) The specialist unit shall restrict access to non-public order information by other areas of the integrated proprietary aggregation unit as follows.
    - (i) Except as provided for in section (c)(2)(E) of this Rule, individuals not assigned to the specialist unit shall not have access to non-public order information.
    - (ii) Systems, including computer algorithms, not assigned to the specialist unit shall not have access to non-public order information.
    - (iii) While on the Floor of the Exchange, individuals assigned to the specialist unit, including specialists, shall not communicate with individuals or systems responsible for making trading decisions for the integrated proprietary aggregation unit.
    - (iv) When an individual assigned to a specialist unit moves to a location off of the Floor of the Exchange, he or she shall not (1) make any non-public order information or specialist confidential information available to individuals or systems responsible for making trading decisions for the integrated proprietary aggregation unit, or (2) use any non-public order information or, except as provided for in section (f) of this Rule, specialist confidential information in connection with making trading decisions for the integrated proprietary aggregation unit.
  - (C) The integrated proprietary aggregation unit shall maintain records of its specialist accounts independent of the accounts of the integrated proprietary aggregation unit.
  - (D) The integrated proprietary aggregation unit may not engage in any activities that violate other Exchange rules or federal securities laws or regulations, including prohibitions on frontrunning, wash sales, and manipulation.
- (3) If a member organization is approved to operate a specialist unit within an integrated proprietary aggregation unit under this Rule, the specialist rules will apply to any trading on or through the systems and facilities of the

Exchange by the integrated proprietary aggregation unit through the specialist unit in the securities that are allocated to the specialist unit. The specialist rules will also apply to the integrated proprietary aggregation unit if the integrated proprietary aggregation unit causes the specialist unit to violate the specialist rules.

- (4) An integrated proprietary aggregation unit shall maintain order audit trail information consistent with the following:
- (A) The order tracking requirements of NYSE Rule 132B shall apply to the integrated proprietary aggregation unit's trading on or through the systems and facilities of the Exchange in securities allocated to the specialist unit, including trading by the specialist unit.
  - (B) The integrated proprietary aggregation unit must meet the order audit trail requirements of the exchanges or marketplaces where it trades or quotes.
  - (C) Member organizations must maintain records sufficient to reconstruct in a time-sequenced manner both the entry and execution of trading by the independent proprietary aggregation unit, including records sufficient to compare the entry and execution of trading by such unit to records maintained by the Exchange concerning trading or quoting on or through the systems and facilities of the Exchange by the specialist unit in the securities allocated to it.

(e) Sharing Non-Trading Related Services

- (1) Subject to approval by NYSE Regulation, a specialist unit may share non-trading related services with its member organization or approved persons.
- (2) To obtain approval to share non-trading related services, the specialist unit must (i) adopt and implement comprehensive written procedures and guidelines governing the sharing of non-trading related services; (ii) establish a process for regular review of such written procedures and guidelines; and (iii) implement controls and surveillances reasonably designed to prevent and detect violations of these procedures and guidelines. At a minimum, such policies and procedures shall be reasonably designed in accordance with the following.
  - (A) The specialist unit and member organization or approved person shall maintain the confidentiality of specialist confidential information and non-public orders.
    - (i) Individuals who provide non-trading related services to the specialist unit and who have access to either specialist confidential information or non-public order information shall not, either directly or indirectly, provide such information or otherwise use such information in such a

way that it could be made available to individuals or systems that are not part of the specialist unit, except to the extent that such information is needed for the purpose of providing non-trading related services to the specialist unit. Under no circumstances shall non-public order information or specialist confidential information be made available to investment banking, research, or customer-facing departments.

- (ii) Systems, including computer algorithms, that provide non-trading related services to the specialist unit and that have access to either specialist confidential information or non-public order information shall be configured in such a way to ensure that such information is not made available to individuals or systems that are not assigned to the specialist unit, except to the extent that such information is needed for the purpose of providing non-trading related services to the specialist unit. Under no circumstances shall non-public order information or specialist confidential information be made available to investment banking, research, or customer-facing departments.

(f) Risk Management

- (1) Subject to the approval of NYSE Regulation, a specialist unit that has been approved pursuant to section (c) of this Rule is eligible for an exemption from the requirements of Rule 105(b)-(d) and the Guidelines for Specialists' Specialty Stock Option and Single Stock Futures Transactions Pursuant to Rule 105 for the purpose of conducting risk management trading.
- (A) To obtain an exemption from Rule 105(b)-(d) and the guidelines thereunder, the specialist unit must (i) adopt and implement comprehensive written procedures and guidelines governing the conduct of trading in related products, (ii) establish a process for regular review of such written procedures and guidelines; and (iii) implement controls and surveillances reasonably designed to prevent and detect violations of these procedures and guidelines. At a minimum, such policies and procedures shall be reasonably designed to provide that:
  - (i) The individuals or systems, including computer algorithms, responsible for trading in related products shall not have access to non-public order information or, except as provided for in sections (f)(1)(A)(v) and (vi) of this Rule, specialist confidential information.
  - (ii) While on the Floor of the Exchange, individuals assigned solely to the specialist unit, including specialists, shall not directly enter or execute any trades in related products.
  - (iii) When an individual assigned to a specialist unit moves off of the Floor of the Exchange, he or she shall not (1) make any non-public order

information or specialist confidential information available to individuals or systems responsible for making trading decisions for related products, or (2) use any non-public order information or, except as provided in section (f)(1)(A)(v) of this Rule, specialist confidential information, in connection with making trading decisions for trading in related products.

- (iv) The specialist API shall not make any trading decisions for any related products.
- (v) The individuals or systems, including computer algorithms, responsible for making trading decisions in related products may have electronic access to the specialist unit's trades at the Exchange in securities allocated to the specialist unit, provided that such trades have been printed to the Consolidated Tape.
- (vi) Except as provided for in section (c)(2)(E) of this Rule, when providing risk management oversight over trading in securities allocated to the specialist unit and other trading within the specialist unit, senior managers of the specialist unit who have access to non-public order information or specialist confidential information shall not (1) make such information available to the individuals or systems responsible for the day-to-day trading decisions of either trading in related products within the specialist unit, or, if applicable, the integrated proprietary aggregation unit that provides risk management to the specialist unit pursuant to sections (f)(2) or (f)(3) of this Rule, or (2) use such information to directly or indirectly influence the day-to-day trading decisions of either trading in related products within the specialist unit or, if applicable, the integrated proprietary aggregation unit of the member organization or approved person with respect to the securities allocated to the specialist unit for which the senior manager has non-public order information.

- (2) Subject to the approval of NYSE Regulation, an integrated proprietary aggregation unit approved pursuant to section (d) of this Rule to operate a specialist unit may conduct risk management trading related to the specialist unit's trading, including trading in related products, provided that:
  - (A) In addition to meeting the requirements of sections (d) and (f)(1)(A)(i) through (v) of this Rule, the integrated proprietary aggregation unit must (i) adopt and implement comprehensive written procedures and guidelines governing the conduct of risk management of the specialist unit, (ii) establish a process for regular review of such written procedures and guidelines; and (iii) implement controls and surveillances reasonably designed to prevent and detect violations of these procedures and guidelines.

- (i) The individuals or systems, including computer algorithms, responsible for managing the risk of the specialist unit may electronically direct the specialist unit's trading or quoting at the Exchange in securities that are allocated to the specialist unit, provided, however, that the specialist unit must comply at all times with its market-making obligations, including the specialist rules, notwithstanding any electronic trading directions received from the integrated proprietary aggregation unit.
- (3) Subject to the approval of NYSE Regulation, an approved person or member organization associated with a specialist unit may conduct risk management trading related to the specialist unit's trading, including trading in related products, provided that:

  - (A) The specialist unit maintains the confidentiality of specialist confidential information and non-public order information, as required by section (c) of this Rule.
  - (B) Individuals employed by the approved person who are responsible for making risk-management decisions on behalf of the specialist unit shall be dually employed with the specialist unit's member organization.
  - (C) The approved person or member organization must (i) adopt and implement comprehensive written procedures and guidelines governing the conduct of risk management of the specialist unit, (ii) establish a process for regular review of such written procedures and guidelines; and (iii) implement controls and surveillances reasonably designed to prevent and detect violations of these procedures and guidelines. At a minimum, such policies and procedures shall be reasonably designed to provide that:

    - (i) The individuals or systems, including computer algorithms, responsible for managing the risk of the specialist unit shall be assigned to an integrated proprietary aggregation unit.
    - (ii) The individuals or systems, including computer algorithms, responsible for managing the risk of the specialist unit shall not have access to non-public order information or, except as provided for in sections (f)(3)(C)(iii) and (iv) of this Rule, specialist confidential information.
    - (iii) The individuals or systems, including computer algorithms, responsible for managing the risk of the specialist unit may have electronic access to the specialist unit's trades at the Exchange in securities allocated to the specialist unit, provided that such trades have been printed to the Consolidated Tape.

- (iv) The individuals or systems, including computer algorithms, responsible for managing the risk of the specialist unit may electronically direct the specialist unit's trading or quoting at the Exchange in securities that are allocated to the specialist unit, provided, however, that the specialist unit must comply at all times with its market making obligations, including the specialist rules, notwithstanding any electronic trading directions received from the member organization or approved person.

(g) Failure to Maintain Confidentiality

- (1) In the event that a specialist unit receives from the member organization or approved person non-public information about a security that is allocated to the specialist, that specialist shall promptly communicate that fact to the person responsible for compliance with the securities laws and regulations within the specialist unit (compliance officer) and shall seek a determination from such compliance officer as to whether the specialist should cease acting as a specialist in the security involved.
  - (A) If the compliance officer determines that the specialist should temporarily cease acting as a specialist in the security:
    - (i) The specialist shall transfer the responsibility to act as a specialist in such security to another member who is registered as a specialist and who is not in possession of the information so received;
    - (ii) The compliance officer shall immediately notify NYSE Regulation Division of Market Surveillance when (1) a determination is made that another specialist should act as a specialist in such security, and (2) when the compliance officer determines that the specialist who regularly handles the security can resume acting as a specialist for that security.
    - (iii) The compliance officer shall be responsible for determining when it is appropriate for the specialist to resume acting as specialist in the security involved.
    - (iv) The compliance officer shall take such actions as may be necessary to ensure that the transfer of the security to another member who is registered as a specialist is conducted in a "neutral" manner so that there is no communication of the information that had been received by the specialist who, as a consequence of receiving such information, was required to cease acting as a specialist for that security.
    - (v) The compliance officer shall maintain a written record of each request from a specialist for a determination of whether to cease acting as a specialist in a security. Such record shall include a description of the information received by the specialist, an indication when and from

whom the information was received, when the compliance officer was consulted on the matter, when the compliance officer made a determination on the matter, the determination of whether to cease acting as a specialist in a security, the basis for such determination, the time at which the specialist resumed acting as a specialist in the security involved, and such other information as the Exchange may from time to time require.

(h) Reporting Obligations

- (1) The member organization or approved person associated with a specialist unit shall report to NYSE Regulation, on a monthly “after the fact” basis and on such form and in such specific detail as NYSE Regulation may prescribe, information regarding material investment banking activities in which it has been engaged (e.g., underwriting, tender offers, mergers, acquisitions, recapitalizations, etc.), and material research reports, recommendations, etc., pertaining to any security that has been allocated to a specialist unit pursuant to Rule 103B.
- (2) A specialist unit shall report to NYSE Regulation on a monthly “after the fact” basis and on such form and in such specific detail as NYSE Regulation may prescribe, information regarding determinations pursuant to section (g)(1) of this Rule by a compliance officer that a specialist shall not be required to cease acting as a specialist in a security.
- (3) A specialist unit shall promptly report to NYSE Regulation any failure to maintain the confidentiality of specialist confidential information or non-public order information, as required by sections (c), (d), (e), and (f) of this Rule.
- (4) In the event a specialist unit, member organization, or approved person becomes aware of any trading activity that may be a result of a breach of (i) the specialist unit’s internal controls or surveillances as required by sections (c), (d), (e), and (f) of this Rule, or (ii) the requirement to maintain the confidentiality of specialist confidential information or non-public order information, as required by sections (c), (d), (e), and (f) of this Rule, the specialist unit, member organization, or approved person shall:
  - (A) Promptly conduct an internal investigation into any such actual or potential breach to determine whether such breach occurred and if there was a breach, how such breach occurred;
  - (B) Promptly take any and all necessary remedial measures to prevent and detect such breaches from recurring; and
  - (C) On a quarterly basis, for any ongoing internal investigation required by section (h)(4)(A) of this Rule, report in writing to NYSE Regulation:

- (i) The commencement of the internal investigation;
- (ii) The quarterly progress of each open investigation (report by the 15<sup>th</sup> day of the month following the quarter); and
- (iii) The completion of the investigation, including the methodology and results of the investigation, remedial actions taken, any internal disciplinary action taken, and any referral of the matter to the Exchange, another self-regulatory organization, the Securities and Exchange Commission or another Federal agency.

(i) Breach

Any failure by the specialist unit to maintain confidentiality of specialist confidential information or non-public order information or any breach of any internal controls established to protect such information, may result in the imposition of appropriate regulatory sanctions, including a withdrawal of the registration of one or more securities of the specialist unit or the withdrawal of approval to operate a specialist unit.

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**Rule 98 (Former). Restrictions on Approved Person Associated with a Specialist's Member Organization**

*This Rule is applicable only to those specialist member organizations and associated approved persons that have been approved for an exemption under this Rule before [effective date of proposed Rule 98] and have not been approved to operate as a specialist unit under Rule 98. This Rule is not available for new entrants to become a specialist unit at the Exchange.*

(a) (No Change)

(b) (No Change)

(c) (No Change)

**Guidelines for Approved Persons Associated with a Specialist's Member Organization**

(a) An "approved person" is a person (other than a member, allied member, or employee of a member organization) who controls a member organization, or is engaged in a securities or kindred business and is controlled by or under common control with a member organization (the term "approved person" is defined in Rule 2. The term "engaged in a securities or kindred business" is defined in Rule 2.). The term "control" is defined in Rule 2 to mean the power to direct, or cause the direction of, the management or policies of a person, whether through ownership of securities, by contract or otherwise. Under the definition, a person is presumed to control another person if such person, directly or indirectly, has the right to vote 25% or more of the voting securities, or is entitled to receive 25% or more of the net profits, or is a director, general partner or principal executive officer (or a person occupying a similar status or performing similar functions), of the other person. In these Guidelines, a member organization having one or more employees, partners or officers who are members registered with the Exchange as specialists is referred to as a "specialist member organization" and the approved person of a specialist member organization is sometimes referred to as being "associated" with the member organization.

The Exchange Rules listed below impose certain restrictions on an approved person who is associated with the specialist member organization:

- *Rule 104(a) (Former)* provides that a specialist may not effect any purchase or sale of a security in which he is registered for the account of an approved person associated with his organization, unless such transaction is reasonably necessary to permit the specialist to maintain fair and orderly markets.
- *Rule 104.13(Footer)* provides that any transaction for the benefit of an approved person associated with a specialist member organization, in any

stock in which a specialist in the specialist member organization is registered, must be for investment purposes and effected in a stabilizing manner, and precludes an approved person from originating an order in such stock for any account over which such approved person exercises investment discretion.

- *Rule 105(b) (Former)* provides that an approved person associated with a specialist member organization may trade in options or single stock futures overlying a specialty stock for hedging purposes only.

The restrictions discussed above were adopted to ensure that approved persons of specialist member organizations would not be placed in a more advantageous position vis-a-vis other market participants because of their association with a specialist member organization and their possible access to confidential information concerning the specialist's book or the specialist's trading activities. The restrictions are also designed to minimize potential conflicts of interest that may arise when a specialist handles an order for the account of an associated approved person while also handling public orders and orders for other members, or when the approved person is trading in a specialty stock. The restriction against "popularizing" is specifically addressed to concerns about conflicts of interest and the potential for market manipulation that may arise when the approved person makes recommendations, solicits orders, etc. in a stock in which an associated specialist is registered.

The objective of these Guidelines is to provide an exemption from the restrictions discussed above where an approved person and an associated specialist member organization organize their respective operations in such a way that the activities of each entity are clearly separate and distinct. Rule 98 (*Former*) and these Guidelines contemplate "functional regulation" whereby restrictions that are appropriately imposed on the activities of a specialist member organization are not also imposed on the activities of an associated person which maintains an "arm's length" relationship with the specialist member organization. "Functional regulation" is intended to provide member organizations with greater flexibility for conducting business operations, while at the same time not compromising legitimate regulatory objectives.

It is not mandatory that an approved person associated with a specialist member organization seek exemptive relief. If the approved person chooses to do so in a manner that is acceptable to the Exchange under these Guidelines, it gains an exemption from the restrictions discussed above as provided in Rule 98 (*Former*). If the approved person chooses not to do so, it remains subject to those restrictions.

**(b)** The "functional regulation" contemplated by these Guidelines essentially calls for the establishment of procedures that are sufficient to restrict the flow of privileged information between the approved person and the associated specialist member organization. Such procedures shall be expected to preclude the

possibility that such privileged information, as discussed in the subparagraph below, will be made available to be used in any way to influence a particular trading decision by a specialist in the associated specialist member organization, or vice versa. Generally, in order to obtain the exemptions from the Rules discussed in paragraph (a) above, the approved person and the specialist member organization that is to be associated with such approved person, should establish their respective operational structures along the lines discussed below.

**(i) *Organizational Separation*** The approved person and the associated specialist member organization should be organized as separate and distinct organizations. The specialist member organization must function as an entirely freestanding, separate entity responsible for its own trading decisions, and may not function in any manner as a "downstairs" extension of the "upstairs" trading desk. If a prospective specialist firm is not a separate and distinct organization from its proposed approved person, the Exchange may temporarily exempt such prospective specialist firm from this section of the Guidelines. Such temporary exemption is contingent on the prospective specialist firm satisfying sections (b)(ii) through (b)(x) of these Guidelines, including specifically satisfying the Exchange that adequate information barriers will be maintained notwithstanding the fact that separate entities are not employed.

**(ii) *Management Influence*** The respective management structures of the approved person and the associated specialist member organization should be organized in such a way that the approved person, through any of its officers, directors, partners or employees, does not exert any influence on particular trading decisions of the associated specialist member organization or any specialist therein. The approved person would not necessarily be precluded, however, from playing a general oversight role as to the management of an associated specialist member organization. The approved person would not necessarily be precluded for example, from setting general profitability targets, overall market strategy (as opposed to strategy on particular trades), and basic trading philosophy for the associated specialist member organization, would not necessarily be precluded from conducting periodic financial reviews to monitor fulfillment of profitability targets or from participating in personnel selection matters relating to the associated specialist member organization, and would not necessarily be precluded from engaging in other appropriate managerial responsibility activities, provided that any such general managerial oversight does not conflict with or compromise in any way the market-making responsibilities of the specialists in the associated specialist member organization as stated in Rule 104 or any other Rule or policy of the Exchange.

**(iii) *Confidentiality of Trading Information and Information Derived from Clearing and Margin Financing Arrangements Pertaining to Specialist Member Organization*** The approved person and the associated specialist member organization should establish procedures to ensure that any information pertaining to stock positions and trading activities of the associated specialist member

organization, and information derived from any clearing and margin financing arrangements between the approved person and the associated specialist member organization, may be made available only to those (other than employees actually performing clearing and margin financing activity) in senior management positions at the approved person who are involved in exercising general managerial oversight over the specialist member organization. Generally, such information may be made available only to the approved person's chief executive officer, chief operational officer, chief financial officer, and senior officer responsible for managerial oversight of the associated specialist member organization, and only for the purpose of exercising permitted managerial oversight. Such information may not be made available to anyone actually engaged in making day-to-day trading decisions for the approved person, or in making recommendations to the customers or potential customers of the approved person. Any margin financing arrangements must be sufficiently flexible so as not to limit the ability of any specialist in the specialist member organization to meet market-making or other obligations under Exchange Rules.

*(iv) Confidentiality of Trading Information and Information Derived from Clearing Arrangements Retaining to Approved Person* The approved person and the specialist member organization should establish procedures to ensure that any information pertaining to stock positions and trading activities of the approved person may be made available only to those in senior management positions at the specialist member organization who are involved in exercising general managerial oversight over the approved person, in such capacities as indicated in subparagraph (iii) above. If the specialist member organization clears any trades of the approved person, it shall establish procedures to maintain the confidentiality of such information in accordance with the principles stated in subparagraph (iii) above.

*(v) Separate Books and Records Generally* The approved person and the associated specialist member organization should maintain separate and distinct books, records, and accounts as to their respective business operations.

*(vi) Separate Financial Accounting* The approved person should avoid commingling its fund or securities with funds or securities of the associated specialist member organization for any purpose, other than as may be specifically approved by the Exchange. Any transfers of funds between the approved person and the associated specialist member organization should be properly recorded in accordance with generally accepted accounting principles.

*(vii) Capital Requirements Met Separately* If the approved person is a member organization of the Exchange, such approved person should at all times meet all applicable financial requirements imposed by the Exchange or the Securities and Exchange Commission separately from the associated specialist member organization. If the approved person is not a member organization of the Exchange, but is a broker-dealer, such approved person should at all times meet all

applicable financial requirements imposed by Securities and Exchange Commission Rule 15c3-1 separately from the associated specialist member organization. Each specialist associated with such specialist member organization should at all times meet all applicable financial requirements imposed by any Exchange Rule separately from the approved person. The specialist member organization's capital must be dedicated exclusively to specializing activities, and must not be at risk for any liabilities of the approved person. This paragraph shall not apply to a specialist member organization that is registered as a specialist solely in Investment Company Units (as defined in paragraph 703.16 of the Listed Company Manual) or a Trust Issued Receipt (as defined in Rule 1200). However, such specialist member organization will remain subject to the minimum capital requirements specified in Rule 104.20.

**(viii)** *Confidentiality of Specialist's "Book"* The approved person and the associated specialist member organization should establish procedures to ensure that information pertaining to orders in a specialty stock left with any specialist member of the specialist member organization shall be kept confidential, and shall not be made available, either directly or indirectly, to any officer, director, partner, or employee of the approved person, except as provided in Rule 115 or in any other Rule of the Exchange.

**(ix)** *Confidentiality of Information Derived from Business Transactions With Issuer* Where, as permitted by Rule 460, the approved person engages in a business transaction with a company in any of whose securities a specialist member of the associated specialist member organization is registered, the approved person should establish procedures to ensure that any material, non-public information derived from such issuer in the course of such business transaction is kept confidential and is not made available, either directly or indirectly, to the associated specialist member organization or to any member, partner, director, officer, or employee thereof.

**(x)** *Confidentiality of Proposed Research Reports, Recommendations, Etc* Where, as permitted by and in accordance with Rule 113.20, an approved person associated with a specialist member organization purposes to issue to its customers any material research report, recommendation, etc., either written or oral, about any individual security in which a specialist member of the specialist member organization, is registered, the approved person should establish procedures to ensure that no information pertaining to such research report, recommendation, etc. is made available, either directly or indirectly, to the associated specialist member organization or to any member, partner, director, officer, or employee thereof, in such a way as to permit such associated specialist member organization, or any member, partner, director, officer, or employee thereof, to take undue advantage of any information pertaining to such research report, recommendation, etc.

(c) In order to obtain the exemptions provided by Rule 98 (Former), the approved person and the specialist member organization with which such approved person is associated shall submit to the Exchange a written statement detailing the internal controls each of them intends to adopt to satisfy each of the conditions stated in subparagraphs (b)(i) through (b)(x) of these Guidelines, and the compliance and audit procedures it proposes to implement to ensure that the internal controls are maintained. If the Exchange determines that the organizational structure and the compliance and audit procedures proposed by the approved person and such specialist member organization, are acceptable under the Guidelines, the Exchange shall so inform the approved person and such specialist member organization, in writing at which point the exemptions provided by Rule 98(a) shall be granted. Absent such prior written approval, the exemptions provided by Rule 98 shall not be available. The written statement should identify the individuals in senior management positions (and their titles/levels of responsibility) of the approved person to whom information concerning the specialist member organization's trading activities and stock positions, and information concerning clearing and margin financing arrangements, is to be made available, the purposes for which it is to be made available, the frequency with which the information is to be made available, and format in which the information is to be made available. If any partner, director, officer, or employee of the approved person intends to serve in any such capacity with the associated specialist member organization, or vice versa, the written statement must include a statement of the duties of the particular individual at both entities, and why it is necessary for such individual to be a partner, director, officer, or employee of both entities. The Exchange will grant approval for service at both entities only if the dual affiliation is for overall management control purposes. Dual affiliation will not be permitted for an individual who intends to be active in the day-to-day business operations of both entities. Nothing in the foregoing, however, shall preclude an employee of one entity who performs strictly operational functions from performing similar functions on behalf of the other entity, provided that such individual is clearly identified, and the functions performed on behalf of each entity are specified, in the written statement described above, and all requirements in paragraph (b) above as to maintaining the confidentiality of information are met. Notwithstanding the above, a specialist member organization and approved persons approved for an exemption pursuant to paragraph (b) of this Rule may apply for approval pursuant to Rule 98(e) to share non-trading related services, as specified in that rule.

(d) If the person and the associated specialist member organization determine that any condition stated in paragraph (b) is not applicable, they shall so state in the written statement to the Exchange. If, subsequent to obtaining the written approval discussed in paragraph (c) above, the approved person and the associated specialist member organization determine that any such condition which had formerly been inapplicable shall become applicable, the approved person and the associated specialist member organization shall seek and obtain written approval of their proposed compliance with such condition before proceeding. For example, assume that prior written approval of functional separation has been obtained, but the

initial written statement had provided that the approved person would not clear proprietary trades of its associated specialist member organization. If it is subsequently determined that the approved person shall clear proprietary trades of the associated specialist member organization, the written approval of the Exchange must first be obtained. Whenever any statement made in any written statement submitted to and approved by the Exchange becomes inaccurate or incomplete, a corrected supplemental written statement shall be promptly submitted by the approved person and its associated specialist member organization to the Exchange for its approval.

**(e)** The Exchange shall not approve any joint account between a specialist member organization that is associated with an approved person entitled to the exemptions provided by Rule 98 (Former) and any other specialist member organization unless and until such other specialist member organization and such approved person have agreed to comply with each of the conditions set forth in subparagraph (b)(i) through (b)(x) in a manner that is acceptable to the Exchange.

**(f)** Pursuant to the requirements of Rule 113(b) (Former), all proprietary orders for the account of an approved person given to a specialist in an associated specialist member organization must indicate the account for which it is entered.

**(g)** The specialist member organization may make available to a broker affiliated with an associated approved person only the market information that it would make available in the normal course of its specializing activity, to any other broker, and in the same manner that it would make such information available to any other broker. The specialist member organization may make any such information available to a broker affiliated with an associated approved person only pursuant to a request by such broker for such information, and may not, on its own initiative, provide such broker with such information. A broker affiliated with an associated approved person may make available to the specialist member organization only the market information that he would make available to an unaffiliated specialist member organization in the normal course of his trading and market "probing" activities.

**(h)** No individual associated with an approved person may trade as a Competitive Trader or Registered Competitive Market-Maker in any stock in which any specialist in its associated specialist member organization is registered.

**(i)** Subparagraph (b), (b)(iv), (b)(ix) and (b)(x) of these Guidelines require the establishment of procedures designed to prohibit the flow of certain market sensitive information from an approved person to its associated specialist member organization or to any member, partner, director, or employee thereof. In the event that, as a result of any breach of these procedures, any specialist in the associated specialist member organization becomes aware of the fact that he has received, either directly or indirectly, any such information relating to any of his specialty stocks from his organization's associated approved person, the specialist shall

promptly communicate that fact and disclose the information so received to the person responsible for compliance with securities laws and regulations within his member organization (the compliance officer) and shall seek determination from the compliance officer as to whether he should, as a consequence of his receipt of such information, give up the book in the specialty stock involved. If the compliance officer determines that the specialist should give up the book, the specialist shall give it up to another member who is registered as a specialist in the stock and who is not in possession of the information so received. In any event, the compliance officer shall determine when it is appropriate for the specialist to recover the book and resume acting as specialist in the specialty stock involved. In any case where the compliance officer determines that the book should be given up to another specialist, he shall immediately so notify the Exchange. The compliance officer shall take such actions as may be necessary to ensure that the book is transferred in a "neutral" manner so that there is no communication of the information that had been received by the specialist who, as a consequence of receiving such information, is required to give up the book. The compliance officer shall immediately notify the Exchange when he makes a determination that the book may be given back to the specialist who regularly handles it.

The compliance officer shall keep a written record of each request received from a specialist for a determination as referred to above. Such record shall include a description of the information received by the specialist, and shall indicate when and from whom the information was received, when the compliance officer was consulted on the matter, when the compliance officer made a determination on the matter, the determination and the basis thereof, and such other information as the Exchange may from time to time require. If the book is given up, the record shall also set forth the time at which the specialist reacquired the book and the basis upon which the compliance officer determined that such reacquisition was appropriated.

Members and member organizations are cautioned that any trading by any person while in possession of material, non-public information received as a result of any breach of the internal controls required by the Guidelines may violate Rule 10b-5, Rule 14e-3, Exchange Rule 104, just and equitable principles of trade or one or more other provisions of the 1934 Act, or regulations thereunder or rules of the Exchange. The Exchange intends to review carefully any such trading of which it becomes aware with a view towards determining whether any such violation has occurred.

**(j)** An approved person associated with a specialist member organization shall report to the Exchange, on a monthly "after the fact" basis and on such form and in such specific detail as the Exchange may prescribe, information regarding material investment banking activities in which it has been engaged (e.g., underwriting, tender offers, mergers, acquisitions, recapitalizations, etc.), and material research reports, recommendations, etc., pertaining to any security in which a specialist member of an associated specialist member organization is registered. A specialist

member organization associated with an approved person shall report to the Exchange on a monthly "after the fact" basis and on such form and in such specific detail as the Exchange may prescribe, information regarding determinations by a compliance officer, made pursuant to paragraph (i) above that a specialist shall not be required to give up the book.

**(k)** Any failure, by either the approved person or its associated specialist member organization, to maintain confidentiality or privileged market information, any breach of the internal controls established by any such approved person or specialist member organization, and any violation of these Guidelines, or of the written statement submitted to the Exchange for its approval, may result in the imposition of appropriate regulatory sanctions, including a withdrawal of the registration of one or more stocks of the associated specialist member organization, or the withdrawal of one or more of the exemptions provided by Rule 98 (Former).

\* \* \* \* \*

**Rule 98A. Restrictions on Persons or Parties Affiliated with A Specialist Unit**

No issuer, or partner or subsidiary thereof, may become an approved person of a specialist unit that is registered in a stock of that issuer.

\* \* \* \* \*

**Rule 98A (Former) Restrictions on Persons or Parties Affiliated with Specialist and Odd-Lot Dealer Member Organizations**

*This Rule is applicable only to those specialist member organizations and associated approved persons that have been approved for an exemption Rule 98 (Former) and have not been approved to operate as a specialist unit under Rule 98. This Rule is not available for new entrants to become a specialist unit at the Exchange.*

\* \* \* \* \*

(No Change)

**Rule 99. Round-Lot Transactions of Odd-Lot Dealer**

No odd-lot dealer shall effect while on the Floor of the Exchange purchases or sales of any security in which such odd-lot dealer is registered, for any account in which such odd-lot dealer or his or her specialist unit or any other member, or allied member in such organization is directly or indirectly interested, unless such dealings are reasonably necessary to permit the odd-lot dealer to act as such in such security, or, if also registered as a specialist in such security, to act as a specialist.

\* \* \* \* \*

**Rule 99 (Former). Round-Lot Transactions of Odd-Lot Dealer and Broker**

*This Rule is applicable only to those specialist member organizations and associated approved persons that have been approved for an exemption under Rule 98 (Former) and have not been approved to operate as a specialist unit under Rule 98. This Rule is not available for new entrants to become a specialist unit at the Exchange.*

\* \* \* \* \*

(No Change)

**[Rule 102. Options of Odd-Lot Dealers**

No odd-lot dealer or his member organization and no other member, allied member, or approved person, in such organization shall acquire, hold, or grant, directly or indirectly, any interest in any put, call, straddle or option in any stock in which such odd-lot dealer is registered.]

\* \* \* \* \*

**Rule 103B. Specialist Stock Allocation**

\* \* \* \* \*

***Prohibition on Functioning as Specialist in ETF and Specialist in any Component Security of the ETF (Former)***

*This section is applicable only to those specialist member organizations and associated approved persons that have been approved for an exemption under Rule 98 (Former) and have not been approved to operate as a specialist unit under Rule 98. This section is not available for new entrants to become a specialist unit at the Exchange.*

(No Change)

**Prohibition on Functioning as Specialist in ETF and Specialist in any Component Security of the ETF**

No specialist unit may apply to be allocated an ETF if it is registered as specialist in any security that is a component of the ETF unless, prior to such allocation, such specialist unit demonstrates to the satisfaction of the Exchange that all information regarding the activities of such specialist unit with regard to its trading of registered ETFs is effectively separated from all persons within such specialist unit trading component securities of such ETF, and conversely that all information regarding the activities of such specialist unit in its registered securities is effectively separated from all persons trading its registered ETFs. A specialist unit that is registered as specialist in a component stock of an ETF may in the alternative establish a separate member organization that may apply to be the specialist in an ETF. An ETF specialist unit must meet the requirements of Rule 98 to operate a specialist unit.

If, subsequent to an ETF being allocated to a specialist unit, a security in which the specialist unit is registered as specialist becomes a component security of such ETF, the specialist unit must (i) withdraw its registration as specialist in the security which is a component of the ETF; or (ii) withdraw its registration as specialist in the ETF; or (iii) demonstrate to the satisfaction of the Exchange the existence of physical and procedural information barriers to assure the effective separation of information regarding trading in ETFs and in its component securities; or (iv) establish a separate specialist unit that must meet the requirements of Rule 98 and will be registered as specialist in the ETF.

\* \* \* \* \*

**Rule 104. Dealings by Specialists**

**(a)(Former)**

*This section is applicable only to those specialist member organizations and associated approved persons that have been approved for an exemption under Rule 98 (Former) and have not been approved to operate as a specialist unit under Rule 98. This section is not available for new entrants to become a specialist unit at the Exchange.*

(No Change)

\* \* \* \* \*

(a) No specialist shall effect on the Exchange purchases or sales of any security in which such specialist is registered, for any account in which he, his specialist unit or any other member or allied member in such unit or officer or employee thereof is directly or indirectly interested, unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market, or to act as an odd-lot dealer in such security.

\* \* \* \* \*

• • • *Supplementary Material:* -----

**Functions of Specialists**

\* \* \* \* \*

**.13 Investment Transactions (Former). —**

*This section is applicable only to those specialist member organizations and associated approved persons that have been approved for an exemption under Rule 98 (Former) and have not been approved to operate as a specialist unit under Rule 98. This section is not available for new entrants to become a specialist unit at the Exchange.*

(No Change)

\* \* \* \* \*

.13 Investment Transactions

(a) Any transactions effected for the benefit of any of the following persons in stocks in which a specialist is registered must be for investment purposes:

(i) any member, allied member, officer, employee or person or party active in the business of the specialist; or

(ii) the spouse and children of any of the above-named persons or parties who reside in the same household as such person or party.

(b) Any transaction included within paragraph (a) may only be made as follows:

(i) acquisitions at prices below the last different price—on "minus" or "zero minus" ticks; and

(ii) liquidations at prices above the last different price—on "plus" or "zero plus" ticks—except with the prior approval of the Exchange.

(c) All off-Floor orders entered for any of the above-named accounts must be identified so that such orders will not be executed prior to any agency order received by the specialist at the same price even though such agency order may be received subsequent to the identified order.

(d) No specialist, and no member or allied member affiliated with such specialist, officer, employee or person active in the business of the specialist shall originate orders in stocks in which such specialist is registered for any account over which they exercise investment discretion.

(e) Transactions in a stock in which a specialist is registered effected for trust accounts, including "blind" accounts, for the benefit of such specialist or any person specified in paragraph (a) shall be subject to the provisions of this rule. Transactions in a fund which invests broadly in securities and which may from to time invest in a security in which a specialist is registered, shall not be subject to this rule.

\* \* \* \* \*

**Rule 105. Specialists' Interest in Pools, Options, and Single Stock Futures**

**(a)(Former)**

*This section is applicable only to those specialist member organizations and associated approved persons that have been approved for an exemption under Rule 98 (Former) and have not been approved to operate as a specialist unit under Rule 98. This section is not available for new entrants to become a specialist unit at the Exchange.*

(No Change)

\* \* \* \* \*

(a) No member acting as a specialist or his or her member organization or any other member, allied member or approved person in such organization or officer or employee thereof shall be directly or indirectly interested in a pool dealing or trading in a stock in which such member is registered as a specialist.

**(b) (Former)**

*This section is applicable only to those specialist member organizations and associated approved persons that have been approved for an exemption under Rule 98 (Former) and have not been approved to operate as a specialist unit under Rule 98. This section is not available for new entrants to become a specialist unit at the Exchange.*

(No Change)

\* \* \* \* \*

(b) No member acting as a specialist or his or her specialist unit or any other member, or allied member or officer or employee thereof, shall directly or indirectly, hold, acquire, grant or have an interest in any option to purchase or sell or to receive or deliver shares of a stock in which such member is registered as a specialist, or in any security future of a stock in which such member is registered as specialist, except as provided in this Rule. The term "listed option" as used herein shall mean an option issued by the Options Clearing Corporation and traded on a national securities exchange. The term "security future" shall have the meaning given that term in section 3(a)(55) of the Securities Exchange Act of 1934. A security future of a single stock is hereinafter referred to as a "single stock future".

\* \* \* \* \*

**(d) (Former)**

*This section is applicable only to those specialist member organizations and associated approved persons that have been approved for an exemption under Rule 98 (Former) and have not been approved to operate as a specialist unit under Rule 98. This section is not available for new entrants to become a specialist unit at the Exchange.*

(No Change)

\* \* \* \* \*

(d) A specialist unit and any officer or employee of such specialist unit that has a position in any specialty stock of such specialist in any account (other than the specialist's account) may grant or have an interest in listed options or single stock futures to purchase or sell or to receive or deliver shares of such specialty stock but only to the extent and in the manner that the "Guidelines", as promulgated by the Exchange and as may be amended from time to time, would permit the specialist to use listed options or single stock futures as to transactions for the specialist's account.

\* \* \* \* \*

**GUIDELINES FOR SPECIALISTS' SPECIALTY STOCK OPTION AND SINGLE STOCK FUTURES TRANSACTIONS PURSUANT TO RULE 105**

\* \* \* \* \*

**(m) Specialist Shall Not Be Options or Single Stock Futures Market-Maker (Former)**

*This section is applicable only to those specialist member organizations and associated approved persons that have been approved for an exemption under Rule 98 (Former) and have not been approved to operate as a specialist unit under Rule 98. This section is not available for new entrants to become a specialist unit at the Exchange.*

(No Change)

\* \* \* \* \*

**(m) Specialist Shall Not Be Options or Single Stock Futures Market-Maker**

No specialist unit or officer or employee thereof shall act as an options market-maker or option specialist, or function in any capacity involving market-making responsibilities, in any option as to which the underlying security is a stock in which the specialist is registered as such, nor shall any such persons function in

any market making capacity with respect to any single stock futures contract of a security in which such specialist is registered as such.

\* \* \* \* \*

**Rule 113 (Former). Specialists' Public Customers**

*This Rule is applicable only to those specialist member organizations and associated approved persons that have been approved for an exemption under Rule 98 (Former) and have not been approved to operate as a specialist unit under Rule 98. This Rule is not available for new entrants to become a specialist unit at the Exchange.*

(No Change)

\* \* \* \* \*

**Rule 113. Specialists' Public Customers**

(a) No specialist or the specialist unit with which he or she is associated shall accept an order for the purchase or sale of any stock in which he or she is registered as a specialist directly (1) from the company issuing such stock; (2) from any officer, director or 10% stockholder of that company; (3) from any pension or profit-sharing fund; (4) from any institution, such as a bank, trust company, insurance company, or investment company.

(b) No order given to a specialist for the purchase or sale of a security in which he or she is registered as a specialist shall indicate in any way the account for which it is entered except for orders received by the specialist by means other than any Exchange automated order routing system for accounts in which any of the below-named persons or parties has a direct or indirect interest:

(i) The specialist himself or herself;

(ii) any member, allied member, officer, employee or person or party active in the business of such specialist; and

(iii) the spouse and children of any of the above-named persons or parties who reside in the same household as such person or party.

(c) Every specialist shall report to the Exchange on a monthly basis, on such form and in such format as the Exchange may prescribe, a record of all purchases and sales effected in stocks in which such specialist is registered for any customer account not prohibited under section (a) which:

(1) is carried by the specialist's unit; or

(2) is serviced by such specialist or the specialist's unit; or

(3) is introduced by such specialist or the specialist's unit to another member organization on a disclosed basis.

• • • *Supplementary Material:* -----

.20"Popularizing" specialty stocks.— It is contrary to good business practice for a specialist or his or her specialist unit or any other member, or allied member in such organization or any officer or employee thereof to "popularize", either orally or in writing, any security in which he is registered. An approved person or member organization associated with the specialist unit may popularize a security in which such specialist is registered, provided that it makes the following disclosures:

(i) It is associated with a specialist who makes a market in the security:

(ii) At any given time, the associated specialist may have an inventory position, either "long" or "short", in the security; and

(iii) As a result of the associated specialist's function as a market maker, such specialist may be on the opposite side of orders executed on the Floor of the Exchange in the security.

\* \* \* \* \*

**Rule 132B. Order Tracking Requirements**

\* \* \* \* \*

[(f) The provisions of this Rule shall not apply to members effecting on the Floor proprietary transactions when they are acting in the capacity of a specialist, a Registered Competitive Market Maker, or a Competitive Trader.]

\* \* \* \* \*

**Rule 460. Specialists Participating in Contests**

(a) No specialist member or his or her specialist unit [member organization] or any other member, allied member, [or approved person] or officer or employee of [the] such specialist unit [member organization] shall participate in a proxy contest [or] of a company if such specialist member is registered [specializes] in the stock of that company.

Specialists as Directors

(b) No specialist member or his or her specialist unit [member organization] or any other member, allied member, [or approved person in such member organization or] officer or employee of [the member organization] such specialist unit shall be a director of a company if such specialist member [specializes] is registered in the stock of that company.

••• *Supplementary Material:* -----

**.10Control relationships—Business transactions—Finder's Fees.—**

(a)(1) [No specialist or his member organization or any other member, allied member or approved person in such member organization or officer or employee thereof, individually or in the aggregate, shall acquire, directly or indirectly,] A specialist unit shall report the beneficial ownership of more than 5% [10%] of the outstanding shares of any equity security [in which the specialist is registered.] that is allocated to that unit. A specialist unit shall update any report if its beneficial ownership is reduced below 5% or exceeds 10% of the outstanding shares of any equity security that is allocated to that unit.

(2) The [prohibition] reporting obligation in (a)(1) shall not apply if the security is:

(i) a convertible or derivative security, American Depositary Receipt, Global Depositary Receipt, or similar instrument, unless the conversion or redemption of such security would directly or indirectly cause the specialist unit to have a position in any security allocated to the specialist unit that is in excess of the limits set forth in section (a)(1) of this Rule [the conversion of which into common stock of the issuer would not result in a position in the common stock exceeding the 10% threshold];

(ii) an investment company unit or Trust Issued Receipt, unless the conversion or redemption of such security would directly or indirectly cause the specialist unit to have a position in any security allocated to the specialist unit that is in excess of the limits set forth in section (a)(1) of this Rule [the redemption of which would not result in a position, directly or indirectly, in any equity security in which the specialist is registered exceeding the 10% threshold]; or

(iii) a security, such as a currency warrant, that trades in relationship to the value of that underlying currency, or a security, such as an index warrant, that trades in relationship to the value of that underlying index.

(3) With respect to the securities specified in (a)(2)(iii), the specialist unit [must obtain the permission of the Exchange to exceed the 10% threshold, and] may not in any event acquire directly or indirectly the beneficial ownership of more than 25% of the issue. This provision applies regardless of whether the beneficial ownership is acquired for investment, trading, or any other purpose.

[(4) Whenever any or all of the persons described in (a)(1) above shall acquire, directly or indirectly, beneficial ownership of 5% or more of the outstanding shares of any such equity security, the specialist or his organization shall promptly report this fact to the Market Surveillance Division. Thereafter, any person described in (a)(1) above shall, at the request of the Market Surveillance Division, promptly take appropriate action either to dispose of such beneficial ownership or reduce or eliminate his interest in the specialist organization, as may be acceptable to the Exchange.]

(b)(1) No specialist unit [or his member organization] or any other member, allied member, [or approved person in such member organization or] officer or employee thereof shall engage in any business transaction (including loans, etc.) with any company in whose stock the specialist is registered, or accept a finder's fee from such company, except as provided below.

(2) Notwithstanding the provision in (b)(1) above, a specialist registered in a security issued by an investment company may purchase and redeem the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.

(3) The provisions of (b)(1) shall not apply to the receipt of routine business services, goods, materials, or insurance, on terms that would be generally available.

**.11 Definition of an Investment Company Unit.**—The term "Investment Company Unit" in paragraph .10 above shall be the same as that in Section 703.16 of the Listed Company Manual.

**.12 Definition of a Trust Issued Receipt.**—The term "Trust Issued Receipt" in paragraph .10 above shall be the same as that in Rule 1200.

**[.20 (a)** The restrictions in paragraphs 460(a) and 460.10(a) above shall apply to an approved person of a specialist organization entitled to an exemption from this Rule pursuant to Rule 98 in the manner described below.

(1) The restriction on the acquisition of beneficial ownership of 10% or more of the outstanding shares of any equity security in which such specialist is registered, as provided in Rule 460.10, shall apply to such approved person separate and distinct from the restriction as applied to any or all other persons specified in Rule 460.10, and

(2) the positions of the approved person shall not be aggregated with the positions of any one or more other persons specified in Rule 460.10. The same principle applies with respect to the reporting of positions specified in Rule 460.10.

(b) An approved person entitled to an exemption from this Rule may engage in business transactions with a company in whose stock an associated specialist is registered, may accept a finder's fee from such company, and may act as an underwriter in any capacity for a distribution of securities issued by such company.]

**[.25],20** The restrictions in paragraph .10 above relating to business transactions between a specialist or his or her specialist unit [member organization] or any other member, allied member, [or approved person in such member organization or] officer or employee thereof shall not apply to Investment Company Units (as defined in paragraph 703.16 of the Exchange's Listed Company Manual), Trust Issued Receipts (defined in NYSE Rule 1200), and derivative instruments based on one or more securities, currencies or commodities (collectively referred to as Exchange-Traded Funds or "ETFs"), if the following conditions are met:

(i) the specialist or his or her specialist unit [member organization] or any other member, allied member, [or approved person in such member organization or] officer or employee thereof only enters into the business transaction with the sponsor of the ETF and the sponsor is not involved in the day-to-day administration of the ETF; and

(ii) any fee or other compensation in connection with the business transaction paid to the specialist or his or her specialist unit [member organization] or any other member, allied member, [or approved person in such member organization or] officer or employee thereof must not be dependent on the trading price or daily trading volume of the ETF; and

(iii) the specialist or his or her specialist unit [member organization] or any other member, allied member, [or approved person in such member organization or] officer or employee thereof must notify and provide a full description to the Exchange of any business transaction or relationship, except those of a routine and generally available nature as described in paragraph .10 above, it may have with any sponsor of an ETF that he or it is registered as specialist in.

**.30**

(a) An approved person or member organization associated with a specialist unit [member organization] ( "Affiliated Specialist") [that is entitled to an exemption from certain Exchange rules pursuant to Exchange Rule 98] shall notify the Exchange of its participation in any distribution or tender or exchange offer of any security covered by paragraph (b) of this rule, in such form and within such time frame as may be prescribed by the Exchange and shall provide the information required below:

1. name of security

2. symbol
3. type of security
4. symbol of reference security or securities (if different from security being distributed)
5. description of distribution or tender or exchange offer
6. distribution price or terms of tender or exchange offer
7. date of pricing
8. time of pricing
9. pricing basis (e.g., NYSE or Consolidated close)
10. beginning and ending dates of restricted period under Regulation M (if applicable) or, for a tender or exchange offer, the date the offer is publicly announced and its expiration date
11. firm submitting notification
12. name and title of individual submitting notification
13. telephone number
14. such other information as the Exchange may from time to time require

**(b)** The notification requirements of this rule are applicable to any security in which the Affiliated Specialist is registered where such security is either:

**(i)** the subject of a tender or exchange offer (or any other security which is immediately convertible into or exchangeable for such security) for purposes of Rule 10b-13 under the Securities Exchange Act of 1934; or

**(ii)** a covered security as defined in Rule 100 of Regulation M.

\* \* \* \* \*